

**FILED**  
**April 15, 2024**

C. CASEY FORBES, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

**STATE OF WEST VIRGINIA**  
**SUPREME COURT OF APPEALS**

***In re S.G. and A.G.***

**No. 23-311** (Morgan County CC-33-2022-JA-26 and CC-33-2022-JA-27)

**MEMORANDUM DECISION**

Petitioner Mother S.S.<sup>1</sup> appeals the Circuit Court of Morgan County’s April 28, 2023, order terminating her parental rights to the children, S.G. and A.G.<sup>2</sup> She argues that the circuit court erred by denying an extension of her improvement period and in terminating her parental rights without employing a less restrictive dispositional alternative. Upon our review, we determine that oral argument is unnecessary and that a memorandum decision affirming the circuit court’s order is appropriate. *See* W. Va. R. App. P. 21.

In August 2022, the DHS filed a petition alleging that petitioner and the children’s father were currently incarcerated and abused illegal substances, which affected their ability to properly parent the children. On August 10, 2022, law enforcement arrived at the home to arrest the father for an armed robbery. Petitioner interfered with the arrest and was charged with the misdemeanor offenses of obstructing and battery on a law enforcement officer. Law enforcement called Child Protective Services (“CPS”) following the parents’ arrests because the children were present in the home. When CPS arrived, they found S.G. in a playpen and A.G. asleep on a bed. They observed needles, syringes, a lighter, a white powdery substance, and other drug paraphernalia scattered throughout the home, on the floor, on the bed, and next to a baby bottle. The circuit court ratified

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<sup>1</sup>Petitioner appears by counsel Clinton R. Bischoff. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Katherine A. Campbell. Counsel Victoria G. Camardi appears as the children’s guardian ad litem (“guardian”).

Additionally, pursuant to West Virginia Code § 5F-2-1a, the agency formerly known as the West Virginia Department of Health and Human Resources was terminated. It is now three separate agencies—the Department of Health Facilities, the Department of Health, and the Department of Human Services. *See* W. Va. Code § 5F-1-2. For purposes of abuse and neglect appeals, the agency is now the Department of Human Services (“DHS”).

<sup>2</sup>We use initials where necessary to protect the identities of those involved in this case. *See* W. Va. R. App. P. 40(e).

emergency removal of the children from the home after petitioner waived her right to a preliminary hearing.

The circuit court held an initial adjudicatory hearing in September 2022, at which time petitioner indicated she wished to stipulate to the allegations in the DHS's petition. However, at a subsequent hearing in October 2022, petitioner requested to rescind her prior admissions. The court allowed petitioner to clarify her prior admissions and proceeded to hold a full evidentiary hearing, which concluded at a third hearing in November 2022. At the November 2022, hearing, petitioner was present by video due to her participation in an in-patient drug rehabilitation program, although she was represented by counsel. The court heard testimony of a police officer, a DHS investigative worker, the father, and petitioner. Petitioner admitted that she and the father would use heroin in the home. Photos of the home and drug paraphernalia were entered into evidence and depicted the DHS's description in the petition. At the conclusion of the evidence the court found that petitioner had a substance abuse issue that negatively affected her ability to parent the children. Therefore, the court concluded that the children were abused and neglected and adjudicated petitioner as an abusing and neglecting parent. Thereafter, the court granted petitioner a post-adjudicatory improvement period, the terms of which included completing substance abuse treatment, participating in adult life skills classes, attending counseling sessions, abstaining from drugs and alcohol, and drug screening three times weekly.

At a review hearing in January 2023, petitioner appeared electronically, as she had recently been incarcerated a second time. According to petitioner's counsel, petitioner had completed a twenty-eight-day-in-patient drug treatment program in December 2022, and a few days following her release, she was arrested after stealing money from her grandmother and brandishing a knife toward family members in her grandmother's home. Because of the foregoing, the guardian filed a motion to revoke petitioner's improvement period. The circuit court held a hearing on the guardian's motion in March 2023, at which time petitioner remained incarcerated but was represented by counsel. The court granted the guardian's motion and scheduled disposition.

At the dispositional hearing, held in April 2023, petitioner remained incarcerated but appeared in person. Petitioner testified that she began a sober living program as a term of the plea agreement in her pending criminal case but admitted that she was discharged prior to completion. Due to her discharge, she was reincarcerated to serve a one-year sentence. Petitioner further admitted to "using drugs, getting high" and that she did not complete services beyond filling out intake forms. When petitioner drug screened, she tested positive for substances such as fentanyl, amphetamine, methamphetamine, cocaine, and opiates. A CPS worker confirmed that petitioner completed no improvement period terms and had not contacted the worker since January 2023. The worker further testified that the children were young and had spent over eight months in kinship care while the case was "dragging on." Petitioner then moved the circuit court for an extension of her post-adjudicatory improvement period, or alternatively for a post-dispositional improvement period. However, the court denied petitioner's request, finding that because she failed to comply with terms of her post-adjudicatory improvement period, she would be unlikely to comply with an extension. The court further found no reasonable likelihood that the conditions of abuse or neglect could be substantially corrected in the near future and that the best interests of

the children required termination of petitioner's parental rights.<sup>3</sup> It is from the final dispositional order that petitioner appeals.

On appeal from a final order in an abuse and neglect proceeding, this Court reviews the circuit court's findings of fact for clear error and its conclusions of law de novo. Syl. Pt. 1, *In re Cecil T.*, 228 W. Va. 89, 717 S.E.2d 873 (2011). Petitioner argues that the court erred by denying an extension of her improvement period and by proceeding to terminate her parental rights when there were less restrictive dispositional alternatives available. Upon our review, we find no error.

Regarding petitioner's argument that she was entitled to an extension of her post-adjudicatory improvement period, we observe that extensions are appropriate only "when the court finds that the respondent has substantially complied with the terms of the improvement period," among other considerations. W. Va. Code § 49-4-610(6). Petitioner relies on her completion of a twenty-eight-day drug treatment program in December 2022 and argues that her subsequent incarceration hindered her ability to participate in services. However, petitioner ignores the fact that only a few days after her release from that program, she engaged in criminal activity that caused her incarceration. Additionally, petitioner's own testimony revealed her continued drug use and failure to complete any other improvement period terms. Clearly, petitioner did not substantially comply with the terms of her previously granted improvement period and the circuit court did not abuse its discretion in denying an extension. *See In re Tonjia M.*, 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002) (permitting the circuit court discretion to deny an improvement period when no improvement is likely). Moreover, although petitioner insists that she would soon be released from her incarceration and could participate in improvement period services at that time, according to Rule 5 of the West Virginia Rules of Procedure for Child Abuse and Neglect Proceedings, "[u]nder no circumstances shall a child abuse and neglect [proceeding] be delayed pending the initiation, investigation, prosecution, or resolution of any other proceeding, including, but not limited to, criminal proceedings." Therefore, we find no error in this regard.

Turning to petitioner's argument that the circuit court erred in terminating her parental rights rather than implementing a less restrictive dispositional alternative, we have held that termination is appropriate "when it is found that there is no reasonable likelihood under [West Virginia Code § 49-4-604(c)(6)] that conditions of neglect or abuse can be substantially corrected." Syl. Pt. 5, in part, *In re Kristin Y.*, 227 W. Va. 558, 712 S.E.2d 55 (2011) (quoting Syl. Pt. 2, *In re R.J.M.*, 164 W. Va. 496, 266 S.E.2d 114 (1980)). Here, the court correctly found that there was no reasonable likelihood that conditions of neglect or abuse could be substantially corrected in the near future. Although she showed some initial improvement by participating in a drug treatment program, petitioner's conduct worsened upon her completion. Only a few days after leaving the program, she was incarcerated for violent and deceitful behavior toward family members. She was given another opportunity to improve as a term of the plea agreement in her criminal case but was unable to successfully complete the program at the sober living facility. She further admitted to "getting high" immediately when discharged and before returning to incarceration. The evidence clearly demonstrates that there was no reasonable likelihood that conditions of abuse or neglect could be substantially corrected in the near future and that termination was necessary for the

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<sup>3</sup>The father's parental rights were also terminated. The permanency plan for the children is adoption by their kinship placement.

children's welfare. Therefore, the court did not err in terminating petitioner's parental rights. *See* W. Va. Code § 49-4-604(c)(6) (permitting termination of parental rights upon finding there is no reasonable likelihood conditions of abuse and neglect can be substantially corrected and when necessary for the welfare of the child).

For the foregoing reasons, we find no error in the decision of the circuit court, and its April 28, 2023, order is hereby affirmed.

Affirmed.

**ISSUED:** April 15, 2024

**CONCURRED IN BY:**

Chief Justice Tim Armstead  
Justice Elizabeth D. Walker  
Justice John A. Hutchison  
Justice William R. Wooton  
Justice C. Haley Bunn