

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

*In re A.L.*

No. 23-287 (Tyler County 19-JA-2)

**MEMORANDUM DECISION**

Petitioner Mother J.L.<sup>1</sup> appeals the Circuit Court of Tyler County’s April 19, 2023, order terminating her parental rights to A.L.,<sup>2</sup> arguing that the circuit court erred by adjudicating the petitioner in the absence of clear and convincing evidence that she abandoned or neglected the child and by not granting her an improvement period. 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.*

Child Protective Services first became involved with the petitioner in 2019, when an abuse and neglect petition was filed involving allegations of domestic violence and drug usage. The petitioner was adjudicated as an abusing parent and granted a post-adjudicatory improvement period. After successfully completing her improvement period, the circuit court dismissed the petition, and the child was supposed to be returned to her care. During the 2019 case, the child was temporarily placed with the respondents E.B. and S.B., the child’s maternal aunt and uncle.

In July 2022, the respondents filed a petition for guardianship, alleging that the child had been living with them since the 2019 abuse and neglect case. The petition for guardianship alleged that the petitioner had abandoned the child to their care and that they had no contact with the petitioner between January 2022 and April 2022. The DHS then received a referral to investigate the allegations and in September 2022, filed an amended abuse and neglect petition, alleging that the petitioner abandoned the child.

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<sup>1</sup> The petitioner appears by counsel Eric K. Wildman. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Katherine A. Campbell. Counsel David C. White appears as the child’s guardian ad litem. Respondents E.B. and S.B., intervenors below, appear by counsel Dustin N. Schirmer.

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).*

The circuit court held two adjudicatory hearings in December 2022 and January 2023. Respondent E.B. testified that, at the conclusion of the petitioner's 2019 case, she and the petitioner agreed that the respondents would keep the child for a short period until the petitioner "got on her feet." At the time, E.B. believed the arrangement was temporary and that the petitioner would eventually take custody of the child, but E.B. testified that, since 2019, the petitioner had never attempted to take the child back into her care. The petitioner did periodically visit with the child but would often disappear for various lengths of time. Between January 2022 and April 2022, the petitioner had no contact with E.B. or the child. Respondent E.B. further testified that the petitioner failed to financially contribute to the child's care, even though she received government benefits for the child. The petitioner did not participate in any medical or educational decision making for the child. The child's teacher also testified that she did not know the petitioner and only communicated with E.B. The teacher also stated that the respondents were listed on all school forms and contact sheets, with no mention of the petitioner in any school records.

The petitioner testified, claiming that she regularly contacted the child. She stated that she attempted to contribute financially but that E.B. rejected the financial help. However, she admitted to only attempting to contribute financially approximately five times in the last three years. She also admitted that she had not taken the child to a medical appointment since 2019. Based on the evidence presented, the circuit court found that the petitioner abandoned the child by demonstrating a settled purpose to forego her parental duties and responsibilities. Thus, the court adjudicated the petitioner as a neglectful parent.

In March 2023, the circuit court held a dispositional hearing, during which the respondents, the child's teacher, the petitioner, and DHS workers testified. A DHS worker testified that the DHS recommended termination of the petitioner's parental rights to the child and that termination was in the best interests of the child. The circuit court found there was no reasonable likelihood that the conditions of neglect could be substantially corrected in the near future and that termination was in the best interests of the child based upon the evidence presented. Accordingly, the court terminated the petitioner's parental rights to the child.<sup>3</sup> It is from this order that the 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). First, the petitioner argues that the circuit court erred by adjudicating her as a neglectful parent in the absence of clear and convincing evidence that she abandoned or otherwise neglected the child.<sup>4</sup> Pursuant to West Virginia Code § 49-1-201,

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<sup>3</sup> The father's parental rights were also terminated, and the permanency plan for the child is adoption in the current placement.

<sup>4</sup> In addition to the two assignments of error we address here, the petitioner presented a third assignment of error: that "the Circuit Court abused its discretion by 'Ordering' the filing or the reopening of an Abuse and Neglect Petition replacing the Guardianship Petition previously filed by the Petition[er]'s Sister and Brother-in-Law for guardianship of Petitioner's children." However, in the argument section of the petitioner's brief, she only cites the definition of "abandonment" and does not cite any authority to support this assignment of error. "The brief must

“[a]bandonment’ means any conduct that demonstrates the settled purpose to forego the duties and parental responsibilities to the child.” Here, the record demonstrates that the circuit court had sufficient evidence upon which to find that the petitioner abandoned the child. The evidence showed that the petitioner did not financially contribute to the child, did not attend medical appointments, and was not involved in the child’s education, to the extent that the child’s teacher never interacted with the petitioner. In fact, the petitioner’s abandonment of the child was to such extent that the respondents initiated guardianship proceedings to ensure for the child’s care and stability. As such, we find no error in the circuit court’s adjudication of the petitioner as a neglectful parent based upon abandonment, as the evidence clearly establishes that the petitioner demonstrated a settled purpose to forego her duties and parental responsibilities to the child. *See In re F.S.*, 233 W. Va. 538, 544, 759 S.E.2d 769, 775 (2014) (requiring “clear and convincing evidence” of “conditions existing at the time of the filing of the petition” in order to support a finding of abuse and/or neglect).

Finally, the petitioner argues that the circuit court abused its discretion by not granting her an improvement period. To be granted an improvement period, West Virginia Code § 49-4-610 provides that a parent must file a written motion requesting the improvement period and demonstrate that he or she is likely to fully participate. Further, we have previously held that circuit courts “are not required to exhaust every speculative possibility of parental improvement.” *In re Cecil T.*, 228 W. Va. at 91, 717 S.E.2d at 875, Syl. Pt. 4, in part. First, we note that the petitioner does not provide any citations to the record where she moved for an improvement period. Second, the petitioner failed to demonstrate that she would be likely to participate in an improvement period given her abandonment of the child *after* completing an improvement period in the 2019 abuse and neglect proceeding. Critically, the circuit court has discretion to deny an improvement period when no improvement is likely. *In re Tonjia M.*, 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002). Instead of granting an improvement period, the circuit court terminated the petitioner’s parental rights upon findings that termination was in the best interests of the child and there was no reasonable likelihood that the conditions of neglect could be corrected in the near future. Accordingly, we find no error. *See* W. Va. Code § 49-4-604(c)(6) (permitting circuit court to terminate parental rights upon finding no reasonable likelihood conditions of neglect can be substantially corrected in the near future and when necessary for child’s welfare).

For the foregoing reasons, we find no error in the decision of the circuit court, and its April 19, 2023, order is hereby affirmed.

Affirmed.

**ISSUED:** June 10, 2024

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contain an argument exhibiting clearly the points of . . . law presented . . . and citing the authorities relied on.” W. Va. R. App. P. 10(c)(7). Further, the record does not contain any evidence that the circuit court entered any such order. Because the petitioner failed to comply with this rule, we decline to address this assignment of error.

**CONCURRED IN BY:**

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

**DISSENTING:**

Justice C. Haley Bunn

BUNN, Justice, dissenting:

I dissent to the majority's resolution of this case. I would have set this case for oral argument to thoroughly address the errors alleged in this appeal. Having reviewed the parties' briefs and the issues raised therein, I believe a formal opinion of this Court was warranted, not a memorandum decision. Accordingly, I respectfully dissent.