

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

***In re R.A.***

**No. 23-377** (Cabell County 23-JA-2)

**MEMORANDUM DECISION**

Petitioner Mother J.B.<sup>1</sup> appeals the Circuit Court of Cabell County’s May 30, 2023, order terminating her parental rights to the child, R.A., arguing that the circuit court erred by denying her motion for a post-adjudicatory improvement period and terminating her parental rights.<sup>2</sup> 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 January 2023, the DHS filed an abuse and neglect petition upon the child’s birth, alleging aggravated circumstances due to prior involuntary terminations of the petitioner’s parental rights to several older children across multiple cases.<sup>3</sup> According to the record, in 2017, four children were removed from the petitioner’s custody due to substance abuse issues. The children were reunified with the petitioner in 2018 and, shortly thereafter, an emergency petition was filed based on the petitioner’s physical abuse of one of the children while she was using methamphetamine. The petitioner was charged with a felony as a result, and her parental rights to those four children were involuntarily terminated in December 2019. That same month, the petitioner gave birth to a fifth child and another abuse and neglect petition was filed. The petitioner was granted an

---

<sup>1</sup> The petitioner appears by counsel Eric Anderson. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Heather L. Olcott. Counsel Sarah E. Dixon appears as the child’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).

<sup>3</sup> Following one proceeding, the petitioner appealed the termination of her parental rights to some of her children, and we affirmed. *See In re H.P.*, No. 19-1129, 2020 WL 3470096, at \*3 (W. Va. June 25, 2020) (memorandum decision).

improvement period during those proceedings. However, the petitioner relapsed in 2021, and her parental rights to that child were ultimately involuntarily terminated as well. The instant petition further outlined the petitioner's criminal history, including her recent incarceration while pregnant with the subject child. The petitioner waived her right to a preliminary hearing and stipulated to the allegations in the petition relating to her prior terminations in February 2023. The circuit court, therefore, adjudicated the petitioner as a neglectful parent.

Prior to disposition, the petitioner filed a motion for a post-adjudicatory improvement period. The court proceeded to a dispositional hearing in March 2023, during which the DHS and guardian supported termination of the petitioner's parental rights. The court heard testimony of a DHS worker, who outlined the petitioner's prior abuse and neglect proceedings and expressed concerns with the petitioner's "constant cycle," indicating that the petitioner would be "doing extremely well for a long time" and then relapse. The worker stated that, although the petitioner received services throughout the years, "none of it seems to stick." A probation officer then testified regarding the petitioner's recent probation revocation in October 2022, while the petitioner was pregnant with R.A. The officer indicated that she conducted a home visit following a tip that there were drugs being sold in the petitioner's home. During the visit, the officer found photos of the father with a gun, money, illegal substances, and paraphernalia; photos and videos of individuals drinking alcohol at the petitioner's home; and text messages from the petitioner to another individual requesting money in exchange for cocaine and marijuana. The father was arrested on drug possession charges the night before the home visit, and the probation officer explained that it was in violation of the petitioner's probation terms to be engaged with anyone involved in criminal activity. When the petitioner's probation was revoked, she was ordered to participate in the drug court program.

The petitioner testified that she was compliant with drug court requirements and had been screening negative for substances; however, she admitted that she has had substance abuse issues since she was a teenager but never sought treatment on her own initiative. She was only participating in substance abuse services due to the requirements of her criminal proceedings. The petitioner denied taking the photos and videos or sending the text messages found on her cell phone. She also claimed that she was no longer involved with the child's father. At the conclusion of the testimony, the court found that the petitioner failed to remedy the issues that led to the filing of the petition by her continuous involvement in drug-related activity. Therefore, the court denied the petitioner's motion for an improvement period and terminated her parental rights, finding that there was no reasonable likelihood that the conditions of abuse and/or neglect could be substantially corrected in the near future and that termination was necessary for the child's welfare.<sup>4</sup> It is from the final dispositional 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). Before this Court, the petitioner argues that the circuit court erred by denying her motion for a post-adjudicatory improvement period and

---

<sup>4</sup> The father was granted an improvement period by the same order. The permanency plan for the child is reunification with the father or adoption by kinship placement, who adopted her five siblings.

terminating her parental rights. The petitioner concedes that aggravated circumstances exist in this case; however, she asserts that she demonstrated a substantial change in circumstances since her prior involuntary terminations. Upon our review of the record, we disagree. Although the petitioner points to her recent negative drug screens, participation in drug court, and separation from the father as evidence of her improvement, the record reveals that the petitioner's pattern of behavior is insufficient to demonstrate a change in circumstances. The DHS worker's testimony of the petitioner's "constant cycle" since 2017 despite being granted improvement periods in her prior abuse and neglect proceedings, along with the probation officer's testimony of the petitioner's drug-related activity while on probation and pregnant with the child show that improvement is unlikely. Based upon this evidence, we find no error in the denial of the petitioner's motion for an improvement period in this case, as the circuit court had discretion to deny an improvement period when no improvement was likely. *See In re Tonjia M.*, 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002).

We further find no error in the circuit court's decision to terminate the petitioner's parental rights. As we have held,

When an abuse and neglect petition is brought based solely upon a previous involuntary termination of parental rights to a sibling pursuant to West Virginia Code § [49-4-605], prior to the lower court's making any disposition regarding the petition, it must allow the development of evidence surrounding the prior involuntary termination(s) and what actions, if any, the parent(s) have taken to remedy the circumstances which led to the prior termination(s).

Syl. Pt. 4, *In re George Glen B.*, 205 W. Va. 435, 518 S.E.2d 863 (1999). Furthermore, "the legislature has reduced the minimum threshold of evidence necessary for termination where one of the factors outlined in West Virginia Code § [49-4-605] is present." *Id.* at 437, 518 S.E.2d at 865, Syl. Pt. 2, in part. Here, the evidence established that the petitioner had not remedied the circumstances which led to her prior terminations, considering her continuous involvement with illegal substances and individuals engaging in criminal activity since 2017 and as recently as two months before the child's birth. Therefore, the court properly concluded that there was no reasonable likelihood that the conditions of abuse or neglect could be substantially corrected in the near future and that termination was necessary for the child's welfare. *See* W. Va. Code § 49-4-604(c)(6) (permitting circuit court to terminate parental rights upon finding no reasonable likelihood conditions of abuse and neglect can be substantially corrected in the near future and when necessary for child's welfare); *see also* Syl. Pt. 5, in part, *In re Kristin Y.*, 227 W. Va. 558, 712 S.E.2d 55 (2011) (permitting termination of parental rights "without the use of intervening less restrictive alternatives when it is found that there is no reasonable likelihood . . . that conditions of neglect or abuse can be substantially corrected" (quoting Syl. Pt. 2, *In re R.J.M.*, 164 W. Va. 496, 266 S.E.2d 114 (1980))).

Accordingly, we find no error in the decision of the circuit court, and its May 30, 2023, order is hereby affirmed.

Affirmed.

**ISSUED:** June 10, 2024

**CONCURRED IN BY:**

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