

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

***In re A.F., D.F., and T.W.***

**No. 23-293** (Harrison County CC-17-2023-JA-4-1, CC-17-2023-JA-5-1, and CC-17-2023-JA-6-1)

**MEMORANDUM DECISION**

Petitioner Mother S.S.<sup>1</sup> appeals the Circuit Court of Harrison County’s May 8, 2023, order terminating her parental, custodial, and guardianship rights to A.F. and T.W. and her custodial rights to D.F., arguing that the circuit court erred by denying her motion for a post-dispositional 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 a petition alleging that the petitioner abused and neglected the children by subjecting them to drug abuse and a “drug endangered environment.” The petition specifically alleged that A.F., who was one year old at the time, ingested fentanyl. The child became unresponsive, so the father administered Narcan. The first responder who took the child to a nearby hospital reported that, when he arrived at the scene, the child was covered in feces and urine, which is not typical of an overdose. The petition also alleged that the petitioner admitted to her probation officer that she actively used drugs.

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<sup>1</sup> The petitioner appears by counsel Jenna L. Robey. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Lee Niezgoda. Counsel Allison McClure appears as the children’s guardian ad litem.

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).

Additionally, the court refers to the petitioner’s “parental, custodial, and guardianship rights” as to all three children. However, the petitioner is not D.F.’s mother, thus, we refer to only her custodial rights as to D.F.

The circuit court held an adjudicatory hearing in March 2023. Evidence was introduced showing that the petitioner's January 2023 drug screen was positive for several drugs, including amphetamine, methamphetamine, and fentanyl. In addition, the petitioner admitted to her probation officer that she was abusing heroin and fentanyl daily. The court found that the petitioner abused the children<sup>3</sup> by exposing them to a "drug endangered environment" and by failing to protect A.F. from that environment, which led to his ingestion of drugs and resulted in physical harm. The court further found that the petitioner and the father were actively using drugs when A.F. ingested the fentanyl, as evidenced by the petitioner's January 2023 drug screen, and that they were associating with known drug users. As a result, the court found that the children were abused and neglected and adjudicated the petitioner as an abusing and neglecting parent.

The circuit court held a dispositional hearing in April 2023. At the hearing, evidence was presented that the petitioner failed to submit to drug screens, despite being asked to screen on numerous occasions; and, of the drug screens she did submit to, three were positive for controlled substances. The petitioner testified and admitted that she did not drug screen because she was using methamphetamine and fentanyl. She also acknowledged that she did not comply with the DHS's directives throughout the proceedings. In addition, the petitioner stated she entered a substance abuse treatment program the evening before the dispositional hearing. From the evidence, the court found that the petitioner failed to take responsibility for the conditions that led to A.F.'s ingestion of fentanyl and she was dishonest about her drug use. The court denied her motion for a post-adjudicatory improvement period, as she was unwilling to participate in drug screens and was unresponsive to the DHS's rehabilitative efforts. Thus, the circuit court concluded the petitioner was unlikely to participate in an improvement period. The court found that there was no reasonable likelihood that she could substantially correct the conditions of abuse and neglect in the near future and that the children's best interests required termination of her parental rights in order to provide them with continuity of care and caretakers. Accordingly, the court terminated the petitioner's parental, custodial, and guardianship rights to A.F. and T.W. and her custodial rights to D.F.<sup>4</sup> It is from the 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). The petitioner argues that the circuit court erroneously denied her motion for a post-adjudicatory improvement period. She contends that because she entered a drug treatment facility the evening before the dispositional hearing, an improvement period was warranted. In order to obtain a post-adjudicatory improvement period, the petitioner must "demonstrate[], by clear and convincing evidence, that [she was] likely to fully participate in the improvement period." W. Va. Code § 49-4-610(2)(B). The petitioner failed to

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<sup>3</sup> This finding included T.W., whom the DHS alleged lived "primarily" with his grandmother. However, the record shows that T.W. spent time in the petitioner's home and, thus, was exposed to the conditions and conduct therein.

<sup>4</sup> The court terminated the rights of the father of A.F. and D.F., while T.W.'s father is nonabusing. The permanency plan for A.F. is adoption in the current placement. The permanency plan for D.F. is placement with the child's nonabusing mother. T.W. is to be placed in a legal guardianship with his grandmother.

make such a showing. The record shows that the petitioner failed to drug screen, used illicit drugs throughout the entirety of the proceedings, and refused to comply with the services and rehabilitative efforts provided by the DHS. Considering this, the court did not err in finding that the petitioner's last-minute entry into a drug treatment facility was not clear and convincing evidence she was likely to fully participate in an improvement period. Thus, an improvement period would have been an exercise in futility. *See In re Tonjia M.*, 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002) ("The circuit court has the discretion to refuse to grant an improvement period when no improvement is likely."). We find no error in the circuit court's denial of the petitioner's motion for a post-adjudicatory improvement period.

The petitioner also argues that the circuit court committed reversible error when it terminated her parental, custodial, and guardianship rights to A.F. and T.W. and her custodial rights to D.F. without the use of less restrictive alternatives. The petitioner claims that disposition under West Virginia Code § 49-4-604(c)(5) was the appropriate outcome. However, West Virginia Code § 49-4-604(c)(6) permits the court to terminate parental, custodial, and guardianship rights "[u]pon a finding that there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future and, when necessary for the welfare of the child." Further, "[t]ermination of parental rights, the most drastic remedy under the statutory provision covering the disposition of neglected children, [West Virginia Code § 49-4-604] may be employed without the use of intervening less restrictive alternatives" upon such a finding. Syl. Pt. 5, in part, *In re Kristin Y.*, 227 W. Va. 558, 712 S.E.2d 55 (2011). For the same reasons it denied the petitioner's motion for an improvement period, the circuit court also found there was no reasonable likelihood that she could correct the conditions of abuse and neglect in the near future. As discussed above, the petitioner continued to use drugs throughout the proceedings and failed to comply with drug screens, thereby demonstrating her inability to correct the conditions of abuse and neglect that led to the filing of the petition. Additionally, the court found that the children's best interests required termination. The court's findings are supported by the record; thus, we decline to disturb those findings on appeal.

For the foregoing reasons, we find no error in the decision of the circuit court, and its May 8, 2023, order is hereby affirmed.

Affirmed.

**ISSUED:** August 27, 2024

**CONCURRED IN BY:**

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