

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

***In re X.R. and T.R.***

**No. 23-378** (Mason County CC-26-2022-JA-116 and CC-26-2022-JA-117)

**MEMORANDUM DECISION**

Petitioner Mother J.R.<sup>1</sup> appeals the Circuit Court of Mason County’s May 29, 2023, order terminating her parental and custodial rights to X.R. and T.R.,<sup>2</sup> arguing that the circuit court erred in terminating her parental rights based upon findings that were not supported by the record. 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 October 2022, the DHS filed an abuse and neglect petition alleging that the petitioner’s drug abuse resulted in abuse and neglect of the children. According to the petition, the petitioner took then-thirteen-year-old T.R. to a drug sale; attempted to pick up then-two-year-old X.R. from a caregiver while under the influence of drugs; was incapacitated from drug use for several days; admitted to using methamphetamine; and refused to agree to or participate in a temporary protection plan with the DHS. At an adjudicatory hearing in December 2022, the petitioner stipulated to her failure to protect the children due to her drug use. As a result, the circuit court adjudicated the petitioner of abusing and neglecting the children. The petitioner was granted a six-month post-adjudicatory improvement period. The conditions of the improvement period included, among other things, supervised visits with the children, drug screening, and inpatient substance abuse rehabilitation.

At a hearing in March 2023, witness testimony indicated that the petitioner was noncompliant with services, left a drug rehabilitation program against medical advice, and continued testing positive for methamphetamine. The circuit court revoked the petitioner’s

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<sup>1</sup> The petitioner appears by counsel R. Michael Shaw Jr. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Kristen E. Ross. Counsel Tanya Hunt Handley 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).

improvement period and set the matter for disposition. The dispositional hearing was held in April 2023. The petitioner did not attend but was represented by counsel. The DHS elicited testimony from the case worker, who testified that the petitioner did not communicate with her or drug screen after the revocation of her improvement period. The circuit court took judicial notice of the testimony heard at the March 2023 hearing. Based upon ample evidence, the circuit court found that there was no reasonable likelihood that the petitioner could substantially correct the conditions of abuse and neglect in the near future. The circuit court further found that termination of the petitioner's parental rights was in the children's best interests. Accordingly, the circuit court terminated the petitioner's parental and custodial rights.<sup>3</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). Before this Court, the petitioner argues that the circuit court erred in terminating her parental rights because the circuit court's findings were not supported by the record. We find no merit in the petitioner's argument.

The petitioner's brief fails to indicate, much less explain, which findings by the circuit court were erroneous. In fact, the petitioner does not dispute the circuit court's finding that she failed to comply with services and continued to test positive for controlled substances. Circuit courts must terminate parental rights "upon 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." W. Va. Code § 49-4-604(c)(6). West Virginia Code § 49-4-604(d)(3) provides that there is no reasonable likelihood that conditions of neglect or abuse can be substantially corrected where the abusing parent is "addicted to alcohol, controlled substances or drugs, to the extent that proper parenting skills have been seriously impaired and . . . [has] not responded to or followed through the recommended and appropriate treatment which could have improved the capacity for adequate parental functioning." The record is replete with evidence of the petitioner's continued use of controlled substances and failure to complete the recommended treatment. As such, we conclude that the circuit court's finding that the conditions of abuse and neglect could not be corrected in the near future was well-supported by the record. *See* Syl. Pt. 5, *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)).

For the foregoing reasons, we find no error in the decision of the circuit court, and its May 29, 2023, order is hereby affirmed.

Affirmed.

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<sup>3</sup> The parental rights of T.R.'s father were also terminated. The permanency plan for T.R. is a subsidized guardianship in her current placement. The permanency plan for X.R. is reunification with her father.

**ISSUED:** July 31, 2024

**CONCURRED IN BY:**

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