

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

***In re G.J., D.J., and K.J.***

**No. 23-411** (Kanawha County 21-JA-627, 21-JA-628, and 21-JA-630)

**MEMORANDUM DECISION**

Petitioner Father C.J.<sup>1</sup> appeals the Circuit Court of Kanawha County’s June 15, 2023, order terminating his parental rights to the children, arguing that the circuit court erred by ratifying removal of the children, revoking his improvement period, and terminating his 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 October 2021, the DHS filed a petition alleging that the petitioner abused and neglected the children by using excessive corporal punishment, allowing the mother to use excessive corporal punishment, and failing to provide the children necessary food, clothing, shelter, supervision, medical care, or education. The petition alleged that the petitioner made inappropriate sexual contact with two other children who lived in the home, who are not at issue in this appeal. The petition detailed K.J.’s Child Advocacy Center (“CAC”) interview, at which she disclosed that the mother took inappropriate pictures of her chest, used her fists to hit her, spanked her and the other children with a wooden paddle, would make her stand in a corner, and would become angry at “practically everything.” K.J. stated that the mother’s conduct began when she was at least eight years old, and that the petitioner was “practically a stranger.” The petition also detailed the CAC interviews of the two children who are not at issue here, T.M. and J.M. J.M. disclosed being hit on the feet and the bottom with a switch and being made to do pushups or jumping jacks as a punishment. T.M. disclosed that the mother hit the children on their feet and bottoms with a paddle and that the father made inappropriate sexual contact with her and J.M. In the order ratifying

---

<sup>1</sup> The petitioner appears by counsel Bryan Escue. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Heather Olcott. Counsel Joseph Curia III 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).

emergency custody, the court found that reasonable efforts to preserve the family were not required due to the aggravated circumstances of physical and sexual abuse.

In March 2022, the court held an adjudicatory hearing at which the petitioner stipulated to abusing and neglecting the children by using excessive discipline. Notably, the petitioner's position was that the discipline was not excessive, but under the law would be deemed abuse and neglect. The court granted the petitioner a six-month post-adjudicatory improvement period in the absence of a written motion. The terms of the improvement period included parenting classes, supervised visits, a psychological and parenting evaluation, a sex offender evaluation, and family therapy. In June 2022, the DHS filed a motion to terminate the petitioner's improvement period after the children disclosed additional details of abuse during therapy sessions. In August 2022, the court held a hearing at which it considered the motion. The court did not rule on the motion until February 2023, when it terminated the improvement period. Notably, the petitioner received services until February 2023, well beyond the six months that were originally granted.

In May 2023, the court held a dispositional hearing at which a Child Protective Services employee testified that the two older children, then seventeen and fourteen years old, did not want to be returned to the petitioner and the mother's care due to their constant fighting and the chaotic atmosphere. The mother testified that she hit the children's feet with a wooden stick and punished them by making them do wall sits or jumping jacks. In its dispositional order, the court found that the children detailed chronic physical abuse and that the petitioner's adult son disclosed being asked to participate in the abuse of the other children. The petitioner did not testify. The court noted that the mother had unauthorized contact with one of the children and the petitioner did not attempt to stop such contact although he knew of it and knew it was improper. The court found that due to the petitioner's repeated and serious emotional abuse of the children there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future, another improvement period would be inappropriate considering the chronic nature of the abuse and the children's wishes, and the abuse and neglect could not be corrected through services. The court further found that the petitioner demonstrated an inadequate capacity to resolve the problems of abuse and neglect; the children's best interests required termination of the petitioner's rights; and that there were no reasonable, less drastic alternatives available. Ultimately, the court terminated the petitioner's parental rights. It is from the dispositional order that the petitioner appeals.<sup>3</sup>

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 failed to make sufficient findings to ratify emergency removal. However, in *In re K.L.*, 247 W. Va. 657, 885 S.E.2d 595 (2022), we recently decided that the "petitioner's failure to take action to enforce the provisions of West Virginia Code § 49-4-303 and have K.L. returned to the home, as well as the ensuing proceedings, during which petitioner stipulated to allegations of neglect, have rendered errors surrounding K.L.'s emergency removal moot." *Id.* at 664, 885 S.E.2d at 602. Similar to the facts in *In re K.L.*, the petitioner here failed to challenge the children's

---

<sup>3</sup> The mother's parental rights were also terminated. The permanency plan for the minor children is adoption in the current placement. K.J. has since reached the age of majority.

removal below and went on to stipulate to the allegations in the petition. Thus, the issue of emergency removal is moot, and we find no reversible error.

Next, the petitioner argues that the circuit court erred by revoking his improvement period. However, we need not address the petitioner's specific arguments because the circuit court granted him a post-adjudicatory improvement period in March 2022 and revoked it in February 2023. The petitioner received a total of eleven months of services—five months more than is statutorily allowed. *See* W. Va. Code § 49-4-610(2) (“After finding that a child is an abused or neglected child . . . a court may grant a respondent an improvement period of a period not to exceed six months.”) The court's revocation of the petitioner's already-expired improvement period was not erroneous; thus, he is entitled to no relief.

Finally, the petitioner argues that the circuit court erroneously found that there were no less restrictive alternatives to termination of his parental rights because the petitioner showed he could participate in an improvement period. However, there is nothing in the record to indicate that the petitioner filed a written motion for an additional improvement period at disposition and he fails to argue that he experienced a substantial change in circumstances. *See* W. Va. Code § 49-4-610(3) (requiring, among other things, that a parent seeking a post-dispositional improvement period to file a written motion and demonstrate a substantial change in circumstances). Moreover, the evidence overwhelmingly demonstrated that additional services were incapable of remedying the conditions of abuse and neglect, severely undercutting the petitioner's argument before this Court. On the contrary, circuit courts are permitted to terminate parental rights when “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). The petitioner fails to challenge the court's findings that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future, the petitioner demonstrated an inadequate capacity to resolve the problems of abuse and neglect, and the children's best interests required termination of the petitioner's rights. Further, the petitioner readily admits in his brief that he only “stipulated to excessive discipline as a path to getting a period of improvement and salvaging his parental rights” and accuses the children of being “instilled with hostility” by their placement, demonstrating his continued refusal to acknowledge the abuse and neglect that prompted the petition's filing. *See In re Timber M.*, 231 W. Va. 44, 55, 743 S.E.2d 352, 363 (2013) (“In order to remedy the abuse and/or neglect problem, the problem must first be acknowledged.”). Thus, we decline to disturb the court's findings.

For the foregoing reasons, we find no error in the decision of the circuit court, and its June 15, 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