

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

**FILED  
August 27, 2024**

C. CASEY FORBES, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

***In re J.M.***

**No. 23-514** (Wayne County CC-50-2022-JA-34)

**MEMORANDUM DECISION**

Petitioner Father G.M.<sup>1</sup> appeals the Circuit Court of Wayne County’s July 26, 2023, order terminating his parental rights to J.M., arguing that the circuit court erred by denying his motion to reinstate 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 March 2022, the DHS filed a petition alleging that the petitioner and the mother abused and neglected the child, who was born drug-affected. The petition outlined the petitioner’s history of domestic violence and criminal charges. The mother reported that the petitioner was “very violent and aggressive” and that she purposefully used drugs while pregnant so that Child Protective Services would “step in and help her keep [the child’s] dad away.” Thereafter, the matter was delayed several times as a result of criminal charges pending against the petitioner in an unrelated matter and his subsequent incarceration. Then, at a hearing in November 2022, the court found that the DHS was unable to prove its allegations against the petitioner.

As a result, the DHS filed an amended petition in November 2022 to include additional allegations that the petitioner failed to protect the child, knowing that the mother was actively abusing illegal substances during her pregnancy. Furthermore, the DHS alleged that the petitioner was unable to parent the child because of his incarceration. Following the petitioner’s release from

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<sup>1</sup> The petitioner appears by counsel Juston H. Moore. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Deputy Attorney General Steven R. Compton. Counsel Sarah E. Chapman 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).

incarceration, the circuit court held an adjudicatory hearing in February 2023, at which time the petitioner stipulated that he was incarcerated and unable to parent the child at the time the amended petition was filed. Furthermore, the petitioner testified and admitted that he “very much so suspected [the mother] was on drugs” while she was pregnant with the child, comparing her behaviors “before when she’s been on drugs.” Therefore, the court adjudicated the petitioner, finding that the child was neglected.

Thereafter, the petitioner filed a written motion for a post-adjudicatory improvement period. At a hearing on the motion in April 2023, the circuit court granted the petitioner’s requested improvement period, despite DHS testimony that he was uncooperative and displayed “very combative” behavior. The petitioner was required to obtain appropriate housing, appear for visitations with the child, attend adult life skills and parenting classes, submit to drug screening, participate in a parental fitness examination, refrain from engaging in criminal activity, and participate in anger management. Shortly thereafter, the guardian filed a motion to terminate the petitioner’s improvement period, given that he was arrested and incarcerated for a parole violation less than two weeks after the improvement period was granted. The basis of the petitioner’s parole violation was threatening messages to an inmate, including that the petitioner would “skin” another inmate’s child and “destroy” their family and dog because that inmate had allegedly harmed the mother in jail. The guardian further asserted that the messages implied that the petitioner was still in a relationship with the mother, whose parental rights had been terminated. At a hearing on this motion held in June 2023, a DHS worker testified that prior to the petitioner’s recent incarceration, he had not attended anger management classes and did not have appropriate housing. The petitioner admitted sending the threatening emails. He further stated that he had an anger management session scheduled but that he was arrested for the parole violation the day prior. Based on the foregoing, the court granted the guardian’s motion to terminate the petitioner’s improvement period and scheduled the matter for disposition. The petitioner thereafter filed a motion to reinstate his improvement period.

The final dispositional hearing was held in July 2023, during which the DHS and guardian supported the termination of the petitioner’s parental rights. The circuit court took judicial notice of prior evidence and heard testimony of a DHS worker, who discussed the petitioner’s participation since he was released from incarceration approximately one month prior to this hearing. The DHS worker stated that the petitioner had not been compliant until the last few weeks. Although the petitioner began to participate in drug screens, visits with the child, anger management sessions, and adult life skills and parenting classes, he still had not obtained appropriate housing or submitted to a parental fitness exam, as required. The DHS worker pointed out that the child was fifteen months old, and that the petitioner had been incarcerated all but two-to-three months of the child’s life. Furthermore, reminding the court of the petitioner’s parole violation which resulted in his incarceration, the DHS worker stated that “he’s made very poor choices” and “he’s proven that he’s a very dangerous man.” The petitioner’s anger management counselor testified that while the petitioner had made some progress, there were “still things he needs to improve on.” Further, although the petitioner had attended four sessions since his release from incarceration, the counselor stated that it usually takes ten-to-twelve sessions to complete anger management therapy. The petitioner also testified regarding his anger management sessions, and further admitted that his home was not appropriate for a child. Based on the evidence presented, the court denied the petitioner’s motion to reinstate his improvement period and

terminated his parental rights. The court found that there was no reasonable likelihood that the petitioner could correct the conditions of abuse and neglect in the near future and that it was in the child's best interests to terminate 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). The petitioner argues that the circuit court erred by denying his motion to reinstate his improvement period, asserting that he demonstrated a substantial change in circumstances since his release from incarceration. At the outset we must stress that there is no authority for a motion to reinstate an improvement period. Accordingly, we will first consider whether termination of the petitioner's improvement period was proper. Pursuant to West Virginia Code § 49-4-610(7), "[u]pon the motion by any party, the court shall terminate any improvement period . . . when the court finds that [the parent] has failed to fully participate in the terms of the improvement period." Here, the court correctly terminated the petitioner's improvement period based on the violent messages he admitted sending, which resulted in his arrest and subsequent incarceration. This behavior was in direct opposition to the agreed improvement period terms and occurred only two weeks after the petitioner was granted an improvement period. Having determined that termination of the petitioner's improvement period was appropriate, we now turn to the petitioner's motion, treating it as a request for a second improvement period. See W. Va. Code § 49-4-610(3)(D) (allowing circuit courts to grant an additional improvement period in the event "the respondent demonstrates that since the initial improvement period, the respondent has experienced a substantial change in circumstances"). Although the petitioner had been released from incarceration and began participating in anger management a few weeks before disposition, this evidence is insufficient to prove a substantial change in circumstances and likelihood of improvement. Therefore, the court did not abuse its discretion in denying the petitioner's motion to reinstate his improvement period. 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.").

The petitioner further argues that the circuit court erred by terminating his parental rights. He asserts that the evidence does not support a finding that there was no reasonable likelihood that the conditions of neglect or abuse could not be corrected in the near future because he was compliant with improvement period terms upon his release from incarceration. Although the petitioner began to comply with some aspects of the case plan less than one month before disposition, "it is possible for an individual to show 'compliance with specific aspects of the case plan' while failing 'to improve . . . [the] overall attitude and approach to parenting.'" *In re Jonathan Michael D.*, 194 W. Va. 20, 27, 459 S.E.2d 131, 138 (1995) (quoting *W. Va. Dep't of Hum. Servs. v. Peggy F.*, 184 W. Va. 60, 64, 399 S.E.2d 460, 464 (1990)). The petitioner's own actions demonstrated that there was no reasonable likelihood that the conditions of neglect or abuse could be substantially corrected. The petitioner was consistently incarcerated throughout the proceedings, and he had not been incarcerated for only a few months of the child's life. His second arrest resulted from violent threats he made at the expense of a child, which is indicative of his

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<sup>3</sup> As stated herein, the mother's parental rights were also terminated during the proceedings below, and the permanency plan for the child is adoption by his current foster placement.

aggressive behavior to which the DHS worker testified. This same evidence shows that termination of the petitioner's parental rights was clearly necessary for the child's welfare. Therefore, we find no error in the court's decision. *See* W. Va. Code § 49-4-604(c)(6) ("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," a circuit court is permitted to terminate an individual's parental rights).

Accordingly, we find no error in the decision of the circuit court, and its July 26, 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