

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

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

*In re S.W.*

**No. 23-584** (Lewis County CC-21-2023-JA-8)

**MEMORANDUM DECISION**

Petitioner Mother K.W.<sup>1</sup> appeals the Circuit Court of Lewis County’s September 12, 2023, order terminating her parental rights to S.W., arguing that the circuit court erred by making findings not supported by the evidence and terminating her parental rights rather than granting a post-dispositional improvement period.<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 February 2023, the DHS filed a petition alleging that the petitioner’s drug use threatened the child’s safety. Specifically, during a Child Protective Services (“CPS”) interview, the then-six-year-old-child disclosed finding needles in his toybox, the bathroom, and a “messy needle room”; almost stepping on a needle on the floor; and accompanying the petitioner to other houses where drugs were present. The child drew a picture of the needles he observed, describing “the thing you push down,” “where the drugs are,” and “where the drugs come out.” The CPS worker also spoke with the child’s maternal grandmother. The grandmother reported finding used needles behind the petitioner’s bed and, although she “tried and tried to help” the petitioner, she could not ensure the child’s safety and took the child to the father’s home.<sup>3</sup> The grandmother further stated that she was

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<sup>1</sup> The petitioner appears by counsel Keith Skeen. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Kristen E. Ross. Counsel Jamella L. Lockwood 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> Based on these allegations, the nonabusing father obtained a domestic violence protective order against the petitioner and maintained custody of the child throughout the proceedings.

unaware of the petitioner's current whereabouts. The CPS worker attempted to contact the petitioner to no avail.

Promptly thereafter, the circuit court set the matter for a preliminary hearing. The petitioner was present and waived her right to the preliminary hearing. The court then ordered that she participate in drug screening and consistently test negative for substances prior to receiving supervised visitation with the child. The court further ordered that she undergo a psychological evaluation and scheduled the matter for adjudication. However, the petitioner did not appear for the adjudicatory hearing and counsel had been unable to reach her. The court granted a continuance to allow counsel the opportunity to contact the petitioner.

The adjudicatory hearing was rescheduled for March 2023. The petitioner once again did not appear but was represented by counsel. Counsel advised that he had not been in contact with the petitioner since the preliminary hearing and requested another continuance. The circuit court denied the request and proceeded to hear evidence. The DHS presented testimony of a CPS worker and the father, who confirmed the allegations in the petition. The petitioner did not present any evidence. The court found clear and convincing evidence of abuse and neglect due to the petitioner exposing the child to illicit drug use, which created unsafe conditions for the child, and adjudicated the petitioner as an abusive and neglectful parent. The court further noted that the petitioner had not availed herself to these proceedings and that it was required to "keep these cases moving."

The circuit court proceeded to a dispositional hearing in August 2023, for which the petitioner was not present but was represented by counsel. Counsel indicated that he did not know the petitioner's whereabouts; however, he advised that she recently completed a thirty-day substance abuse treatment program and requested a continuance. Because the DHS and guardian did not object, the court granted the continuance, rescheduling the matter for later that same month. The petitioner was, likewise, not present for the final dispositional hearing. Counsel advised that he was able to contact the petitioner after the last hearing and that she was aware of this hearing. Because of some belief that the petitioner may have been starting another substance abuse treatment program, counsel requested a continuance. However, the circuit court denied the request, stating that it "can't delay this on and on because she's not showing up," and proceeded to hear the DHS's evidence. A DHS worker testified, recommending termination of the petitioner's parental rights due to the petitioner's failure to participate in any way. The father testified that the child had not seen the petitioner since removal. The petitioner did not present any evidence. The court, noting that the petitioner "absconded the proceedings," terminated the petitioner's parental rights. The court concluded that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future and that termination was necessary for the welfare of the child. It is from the dispositional order that the petitioner appeals.<sup>4</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 failing to grant her a post-dispositional improvement period or otherwise consider less drastic

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<sup>4</sup> The permanency plan for the child is to remain in the custody of his nonabusing father.

dispositional alternatives to termination. We first note that the petitioner failed to file a written motion for a post-dispositional improvement period, as required by West Virginia Code § 49-4-610(3)(A), nor does she cite to any portion of the record where she moved orally for the same. Regardless, the petitioner's almost total lack of participation below proves that she would have been unlikely to participate in a post-dispositional improvement period had she requested one. *See* W. Va. Code § 49-4-610(3)(C) ("The court may grant an improvement period . . . when . . . the respondent demonstrates, by clear and convincing evidence, that the respondent is likely to fully participate in the improvement period[.]"); *see also 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.").

Additionally, the petitioner ignores our holding that "[t]ermination of parental rights . . . may be employed without the use of intervening less restrictive alternatives when it is found that there is no reasonable likelihood under [West Virginia Code § 49-4-604(c)(6)] that conditions of neglect or abuse can be substantially corrected." Syl. Pt. 5, *In re Kristin Y.*, 227 W. Va. 558, 712 S.E.2d 55 (2011) (quoting Syl. Pt. 2, *In re R.J.M.*, 164 W. Va. 496, 266 S.E.2d 114 (1980)). Here, the court specifically found that there was no reasonable likelihood that the conditions of neglect or abuse could be substantially corrected due to the petitioner having "absconded the proceedings." Indeed, our review of the record reveals that the petitioner failed to appear for all hearings other than the preliminary hearing, consistently participate in drug screening, or complete any case plan.<sup>5</sup> Critically, the petitioner failed to visit the child, and we have explained that "the level of interest demonstrated by a parent in visiting his or her children while they are out of the parent's custody is a significant factor in determining the parent's potential to improve sufficiently and achieve minimum standards to parent the child." *In re Katie S.*, 198 W. Va. 79, 90 n.14, 479 S.E.2d 589, 600 n.14 (1996) (citations omitted). Although the petitioner's counsel proffered that she may have participated in substance abuse treatment, there was no confirming evidence submitted in this regard. The court also found that termination was necessary for the child's welfare. Circuit courts are permitted to terminate parental rights upon these findings, and we conclude that the circuit court did not err. *See* W. Va. Code § 49-4-604(c)(6) (allowing courts to 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."). Therefore, we can discern no error in the court's termination of the petitioner's parental rights.

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<sup>5</sup> The petitioner further argues that the circuit court erred in its factual findings, asserting that they were not supported by the evidence. Specifically, the court found that the petitioner had not "participated in the court ordered psychological evaluation" or "provided a negative drug screen to be able to participate in visitation with the infant respondent since the inception of this case." On appeal, the petitioner asserts that she did, in fact, complete her psychological evaluation and provided three clean drug screens in June 2023, contrary to the court's finding. In support, the petitioner includes documents in the appendix record that were not admitted into evidence below. While regrettable that the circuit court did not consider these documents in its final order, we determine that any error in this regard is harmless as the court had ample other evidence upon which it relied in finding termination appropriate. As this Court has recognized, "[m]ost errors, including constitutional ones are subject to harmless error analysis." *State ex. Rel. Waldron v. Scott*, 222 W. Va. 122, 126, 663 S.E.2d 576, 580 (2008). Therefore, we find no reversible error.

Accordingly, we find no error in the decision of the circuit court, and its September 12, 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