

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

*In re* X.N., C.N., M.N., and K.N.

No. 23-529 (Clay County CC-08-2021-JA-7, CC-08-2021-JA-8, CC-08-2021-JA-9, and CC-08-2021-JA-10)

**MEMORANDUM DECISION**

Petitioner Mother J.N.<sup>1</sup> appeals the Circuit Court of Clay County’s August 18, 2023, order terminating her parental rights to X.N., C.N., M.N., and K.N., arguing that the court erred in finding that there was no reasonable likelihood that she could substantially correct the conditions of abuse and neglect 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 April 2021, the DHS filed a petition alleging that the petitioner failed to provide the children with a suitable home, given that the trailer in which the family resided was missing “a large section of the external wall” and the home was “cluttered with trash”; engaged in domestic violence with the father in the children’s presence; failed to protect the children from the father’s violent behavior; and failed to protect the children from abuse perpetrated by at least one of the children upon the others. At an adjudicatory hearing in June 2021, the petitioner admitted to the allegations in the petition. Accordingly, the court adjudicated the petitioner of abusing and neglecting the children.

Shortly after the adjudicatory hearing, K.N., then thirteen years old, underwent a psychological evaluation. According to the report from this evaluation, K.N. had a “significant

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<sup>1</sup> The petitioner appears by counsel Andrew Chattin. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Kristen E. Ross. Counsel Mackenzie Anne Holdren 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).

history of violence toward others.” This included violently beating his younger siblings with a branch, pushing his younger sister off a trampoline causing her to break her leg, and penetrating a younger sibling with two fingers until she bled. The petitioner later underwent a psychological evaluation as well, during which she minimized K.N.’s physical abuse of the other children and blamed the father for most of the problems in the home. During the evaluation, the petitioner indicated that “she has little she needs to improve or change about her parenting since she has left” the father. The psychologist ultimately issued a “very poor” prognosis for the petitioner to improve her parenting.

In November 2021, the court granted the petitioner a post-adjudicatory improvement period that required her to participate in parenting and adult life skills services, attend domestic violence counseling and batterer intervention services, and obtain a suitable home, among other requirements. According to a DHS report filed in April 2022, the petitioner was not fully compliant with her improvement period, as she refused to provide the DHS with her address and her visits with the children were suspended because she failed to comply with drug screens. Documents from a provider filed in October 2022 indicated that the petitioner’s plan for addressing physical fights between the children was to “let her children try and figure out their own problems,” despite the history of abuse among the children.

After multiple continued dispositional hearings, the parties convened for a final dispositional hearing in December 2022, at which a Child Protective Services (“CPS”) worker recommended termination of the petitioner’s parental rights based on the petitioner’s failure to accept that the children abused one another and her lack of housing. The CPS worker admitted that the petitioner complied with services, remained drug free during the proceedings, and was currently employed. However, the CPS worker also indicated that the petitioner was currently homeless after her recent eviction for failure to pay rent. She also cited the psychologist’s recommendation that it would be contrary to the children’s best interests to reside with the petitioner. Finally, the petitioner testified and confirmed that she was homeless after her eviction, which records indicated was a result of her failure to pay rent from April 2021 until shortly before dispositional hearing. The petitioner, however, alleged that she missed only one-and-one-half months’ rent and indicated that she recently obtained new employment. The petitioner explained that her plan for housing moving forward was to move to Indiana to live in a residence her mother owned, a plan she notified the DHS of only a few days prior to the dispositional hearing.

Ultimately, the court found that, although the petitioner had been substantially compliant with her improvement period, her psychological evaluation resulted in a “very poor” prognosis for improved parenting. This, coupled with the petitioner’s admission that she lacked housing, formed the basis for the circuit court’s finding that there was no reasonable likelihood that the petitioner could substantially correct the conditions of abuse and neglect. Further, finding that the children’s best interests required it, the court terminated the petitioner’s parental rights.<sup>3</sup> The petitioner appeals from the dispositional order.

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<sup>3</sup> The father’s parental rights were also terminated. The permanency plan for X.N. is adoption in his current foster placement, while the permanency plan for C.N. and M.N. is adoption together in their current foster placement. The permanency plan for K.N. is to continue

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 it was error to terminate her parental rights, but her assertion that she "mostly corrected" the issues for which she was adjudicated is not supported by the record. The petitioner cites to her compliance with services, but "the level of a parent's compliance with the terms and conditions of an improvement period is just one factor to be considered" at disposition in abuse and neglect cases, given that "[t]he controlling standard that governs any dispositional decision remains the best interests of the child." See Syl. Pt. 4, in part, *In re B.H.*, 233 W. Va. 57, 754 S.E.2d 743 (2014). While it may be true that the petitioner complied with some services, the record overwhelmingly establishes that she failed to correct her inability to protect the children and provide them with appropriate housing.

Indeed, the petitioner's indication that she would let the children resolve their own differences if an argument turned physical is a clear indication that she did not improve despite services. See *In re Jonathan Michael D.*, 194 W. Va. 20, 27, 459 S.E.2d 131, 138 (1995) ("[I]t 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.'" (quoting *W.Va. Dep't of Human Serv. v. Peggy F.*, 184 W. Va. 60, 64, 399 S.E.2d 460, 464 (1990))). Further, the petitioner admitted that she was living in her car at the time of the dispositional hearing and was dishonest with the circuit court about her failure to pay rent for approximately sixteen months. Although the petitioner asserted that her lack of housing was due to a lack of financial means, she represented that she was gainfully employed for almost the entirety of the proceedings. Finally, the circuit court was free to weigh the credibility of the petitioner's uncorroborated testimony about an alleged home in Indiana. See *Michael D.C. v. Wanda L.C.*, 201 W. Va. 381, 388, 497 S.E.2d 531, 538 (1997) ("A reviewing court cannot assess witness credibility through a record. The trier of fact is uniquely situated to make such determinations and this Court is not in a position to, and will not, second guess such determinations.").

Based on the evidence, the circuit court found that there was no reasonable likelihood that the conditions of abuse and neglect could be corrected and that termination of the petitioner's parental rights was in the children's best interests. Circuit courts are permitted to terminate parental rights upon these findings, and we conclude that termination here was not in error. See W. Va. Code § 49-4-604(c)(6) (permitting termination of parental rights upon finding "there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future" and that termination is necessary for the welfare of the children).

For the foregoing reasons, we find no error in the decision of the circuit court, and its August 18, 2023, order is hereby affirmed.

Affirmed.

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undergoing treatment at a residential facility, after which he will receiving transitional living support.

**ISSUED:** September 24, 2024

**CONCURRED IN BY:**

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