

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

***In re B.M.***

**No. 23-579** (Randolph County CC-42-2021-JA-56)

**MEMORANDUM DECISION**

Petitioner Mother C.L.<sup>1</sup> appeals the Circuit Court of Randolph County’s September 8, 2023, order terminating her parental rights to B.M., arguing that the court erred in relying on her discharge from family drug treatment court (“FTC”) and other erroneous factual findings in terminating her improvement period and 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 July 2021, the DHS filed a petition alleging that the petitioner admitted to the DHS that she had been abusing methamphetamine and marijuana for several months while caring for the child. At a hearing in September 2021, the petitioner admitted that her drug use impacted her ability to properly parent. Accordingly, the court adjudicated the petitioner of abusing and neglecting the child. The court directed the petitioner to undergo random drug testing and to complete an assessment for her possible participation in FTC.

Early in the proceedings, the DHS sought termination of the petitioner’s parental rights because her substance abuse was “out of control” and she failed to comply with the court’s directives. However, in December 2021, the court granted the petitioner a post-adjudicatory improvement period after she was accepted into FTC, which the court directed her to complete as a condition of her improvement period. Over the next year, the petitioner tested positive for drugs, including methamphetamine, several times, yet repeatedly denied use. Further, the petitioner’s

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<sup>1</sup> The petitioner appears by counsel Timothy H. Prentice. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Katica Ribel. Counsel Melissa T. Roman appears as the child’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).*

compliance with treatment was inconsistent, as she was initially supposed to submit to a ninety-day rehabilitation program, but failed to do so. Later, after she entered a detoxification program, the petitioner failed to participate in required classes and was dishonest in therapy. By August 2022, the petitioner's therapist recommended long-term substance abuse treatment, which the petitioner chose not to enter upon her discharge from the detoxification program, opting instead to reside at a sober living house. The petitioner later filed a motion for a post-dispositional improvement period, which the circuit court granted at a hearing in October 2022, although it cautioned that she was "quickly running out of time" to successfully complete FTC. By February 2023, the petitioner had been terminated from FTC after she failed to attend in September, October, and a portion of November 2022; tested positive for alcohol on at least two occasions, despite having been instructed that she was not permitted to drink; and still needed an "extended length of time" to achieve sobriety. Accordingly, the court concluded that the petitioner failed to successfully complete her improvement period.

In March, April, and May 2023, the court held a series of dispositional hearings. Based on the evidence, the court found that the petitioner "struggled with her honesty and her sobriety throughout the pendency of her case." The court noted that, due to her struggles, the petitioner had advanced to only the second milestone in the FTC program, which has five total milestones before graduation. Accordingly, the court found that the petitioner did not have enough time left in her improvement period to successfully complete the program and transition the child back into her home. The court also noted that the petitioner intended to reside in the sober living home through August 2024. Although the petitioner asserted that the child would be safe residing in the sober living home with her, the court disagreed, noting the lax drug screening requirements for residents and the presence of an individual who had been criminally convicted of child abuse. Despite the child having been in foster care for two years, the court found that the petitioner "never progressed in her improvement period to even have unsupervised visitation." The court further noted that the petitioner waited over a year before she "want[ed] to be sober," yet she still refused to attend long-term substance abuse treatment as recommended by her therapist. Ultimately, the court found that the petitioner "waited too long to take her sobriety seriously" and continued "to ask this child to wait longer on her recovery, that may or may not be successful, before achieving permanency." Accordingly, the court found that there was no reasonable likelihood that the petitioner could substantially correct the conditions of abuse and neglect in the near future and that it was necessary for the child's welfare to terminate her parental rights. As such, the court terminated the petitioner's parental rights.<sup>3</sup> The petitioner appeals from the dispositional order.

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). However, the petitioner completely fails to develop any of her assignments of error and has failed to cite to any authority, other than the standard of review, or otherwise provide support for arguments. Rule 10(c)(7) of the West Virginia Rules of Appellate Procedure requires, in relevant part, that "[t]he brief must contain an argument exhibiting clearly the points of . . . law presented . . . and citing the authorities relied on."

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<sup>3</sup> The child's father is deceased, and the permanency plan for the child is adoption in the current placement.

Additionally, in an Administrative Order entered December 10, 2012, the Court specifically noted that “[b]riefs that lack citation of authority [or] fail to structure an argument applying applicable law” are not in compliance with this Court’s rules. In ordering that all litigants before this Court must comply with the Rules of Appellate Procedure, the Court cautioned that “[p]ursuant to Rule 10(j), failure to file a compliant brief ‘may result in the Supreme Court refusing to consider the case, . . . dismissing the case from the docket, or imposing such other sanctions as the Court may deem appropriate.’” Because the petitioner’s assignments of error lack citation to, or application of, any pertinent legal authority, we find that she has failed to preserve these claims on appeal.

Nonetheless, we conclude that the court did not err in terminating the petitioner’s parental rights because it properly found that there was no reasonable likelihood that the petitioner could substantially correct the conditions of abuse and neglect and that termination of her rights was necessary for the child’s welfare. *See* W. Va. Code § 49-4-604(c)(6) (permitting termination of parental rights upon these findings). The petitioner asserts that timelines imposed by the FTC resulted in her unsuccessful completion of the improvement period, but it was the petitioner’s delay that resulted in her inability to progress as required. Indeed, the circuit court noted the petitioner’s continued substance abuse throughout the majority of the proceedings in finding that she waited for over one year before she seriously pursued sobriety. Even then, the petitioner failed to participate in FTC for several months and refused to submit to long-term substance abuse treatment as recommended. Simply put, the petitioner’s assertion that she corrected the conditions of abuse and neglect is unsupported by the record, especially considering that, on appeal, she continues to deny substance abuse during the proceedings, claiming that her positive drug screens were “from mostly undetermined origins and not necessarily substance misuse.”

This evidence clearly supports a finding that there was no reasonable likelihood that the petitioner could substantially correct the conditions of abuse and neglect. *See* W. Va. Code § 49-4-604(d)(3) (providing that there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected when “[t]he abusing parent . . . [has] not responded to or followed through with a reasonable family case plan or other rehabilitative efforts of social, medical, mental health, or other rehabilitative agencies designed to reduce or prevent the abuse or neglect of the child.”). Further, the evidence established that the child’s welfare required termination of the petitioner’s parental rights, especially since the proceedings had been ongoing for approximately two years. Upon review of the record, the Court finds no error in the circuit court’s termination of the petitioner’s parental rights.

For the foregoing reasons, we find no error in the decision of the circuit court, and its September 8, 2023, order is hereby affirmed.

Affirmed.

**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