

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

*In re J.P.-C.*

No. 23-593 (Wood County CC-54-2022-JA-264)

**MEMORANDUM DECISION**

Petitioner Mother E.M.<sup>1</sup> appeals the Circuit Court of Wood County’s October 3, 2023, order terminating her parental rights to J.P.-C.,<sup>2</sup> arguing that the circuit court erred by denying the petitioner an extension of her post-dispositional improvement period and denying post-termination visitation. 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 September 2022, the DHS filed a petition alleging that the petitioner abused substances to the point that proper parenting skills were impaired and that the petitioner failed to provide the child with safe and suitable housing due to her lack of long-term housing. At an adjudicatory hearing held in October 2022, the petitioner stipulated to the allegations in the petition. Accordingly, the circuit court adjudicated the petitioner of neglecting the child.

Thereafter, the court granted the petitioner a post-adjudicatory improvement period. The terms of the petitioner’s improvement period included remaining drug and alcohol free, submitting to drug screens, participating in parenting and adult life skills classes, attending supervised visits with the child, and participating in individual therapy and an intensive outpatient rehabilitation program, among other requirements. At a hearing in February 2023, the evidence presented showed that the petitioner missed several drug screens and tested positive for alcohol and methamphetamine on several occasions. The petitioner’s intensive outpatient program

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<sup>1</sup> The petitioner appears by counsel Eric K. Powell. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Andrew T. Waight. Counsel Michael D. Farnsworth Jr. 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).

recommended inpatient treatment, which the petitioner refused. The DHS requested the court terminate the petitioner's post-adjudicatory improvement period and set the matter for disposition. However, at the guardian ad litem's recommendation, the court granted the petitioner a post-dispositional improvement period with the same terms.

The DHS again recommended terminating the petitioner's post-dispositional improvement period at a review hearing held in April 2023. The petitioner's intensive outpatient rehabilitation program reported that the petitioner was found using inhalants inside the facility. Additionally, the petitioner missed several drugs screens and only sporadically participated in parenting and adult life skills classes. The court continued the petitioner's improvement period with the requirement that the petitioner attend inpatient drug rehabilitation.

The circuit court held a dispositional hearing in September 2023. The evidence showed that the petitioner entered a forty-five-day drug rehabilitation program in May 2023 but left the program after twenty-eight days. The DHS also presented evidence that the petitioner missed several drug screens and visits with the child and recently tested positive for methamphetamine. Accordingly, the DHS and the guardian recommended termination of the petitioner's parental rights. The petitioner testified and admitted to missing several visits with the child, including visits she confirmed and the child expected she would attend. She further admitted to recently using methamphetamine and inhalants. The circuit court found there was no reasonable likelihood that the conditions of neglect could be substantially corrected in the near future given that the petitioner continued using substances after two improvement periods and that termination was in the child's best interests. The court further found that post-termination visitation was not in the child's best interests because the petitioner failed to consistently attend visits during her improvement period. Accordingly, the court terminated the petitioner's parental rights to the child.<sup>3</sup> It is from this order that the petitioner appeals.

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). First, the petitioner argues that the circuit court should have granted her an extension of her post-dispositional improvement period, rather than terminating her parental rights. West Virginia Code § 49-4-610(6) provides that a circuit court may extend an improvement period "when the court finds that the [parent] has substantially complied with the terms of the improvement period." The record reflects substantial evidence of the petitioner's failure to comply with both her post-adjudicatory and post-dispositional improvement periods by failing to participate in services, missing visits, and failing to maintain her sobriety. Because the record demonstrates that the petitioner was not substantially compliant with the terms of her improvement periods, we find no abuse of discretion in the court's denial of an extension of the post-dispositional improvement period. *See In re Katie S.*, 198 W. Va. 79, 90, 479 S.E.2d 589, 600 (1996) (explaining that circuit courts have discretion to award an extension of an improvement period).

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<sup>3</sup> The father's parental rights were also terminated. The permanency plan for the child is adoption in the current placement.

Further, we have previously explained that termination 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 part, *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)). There is no such reasonable likelihood when a parent has failed to follow “a reasonable family case plan or other rehabilitative efforts of social, medical, mental health, or other rehabilitative agencies.” W. Va. Code § 49-4-604(d)(3). As discussed above, the record reflects the petitioner’s noncompliance with the terms of her improvement periods. The court also found that termination was in the best interests of the child, and circuit courts are permitted to terminate parental rights upon such findings. *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 child).

Second, the petitioner argues that the circuit court should have granted post-termination visitation. To grant post-termination visitation, the “evidence must indicate that such visitation or continued contact would not be detrimental to the child’s well being and would be in the child’s best interest.” Syl. Pt. 5, in part, *In re Christina L.*, 194 W. Va. 446, 460 S.E.2d 692 (1995). The circuit court found that post-termination visitation was not in the child’s best interests given that the petitioner missed visits during her improvement periods. This included missing scheduled visits after confirming her attendance, which resulted in the child being transported for the visit, leaving the child waiting for a visit that never occurred. Thus, the court’s finding that post-termination visitation was not in the best interests of the child is supported by the record, and we find no error.

For the foregoing reasons, we find no error in the decision of the circuit court, and its October 3, 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