

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

*In re* Z.S.-1, Z.S.-2, and Z.S.-3

No. 23-606 (Kanawha County 23-JA-46, 23-JA-47, and 23-JA-48)

**MEMORANDUM DECISION**

Petitioner Mother M.S.-J.<sup>1</sup> appeals the Circuit Court of Kanawha County’s September 25, 2023, order terminating her parental rights to the children, arguing that the circuit court erred by denying her motion for a post-adjudicatory improvement period, denying her motion to continue disposition, and terminating her 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 February 2023, the DHS filed a petition alleging that the petitioner abused and neglected the children by allowing her boyfriend, with whom she lived, to “whip” the children with switches and belts; neglecting the children’s nutritional needs resulting in malnourishment; verbally and emotionally abusing the children; and engaging in domestic violence in front of the children. The petition noted that the petitioner had a history of drug use and recounted allegations from a prior Child Protective Services (“CPS”) case involving the family wherein the children were removed from the petitioner’s care for drug-related issues and returned in December 2022. In March 2023, the court held a hearing at which it accepted the petitioner’s waiver of her preliminary hearing and ordered services, including drug screens, supervised visits after the petitioner provided three clean screens, outpatient drug services, therapy for Z.S.-3, bus passes, parenting classes, and domestic violence counseling, among other services.

---

<sup>1</sup> The petitioner appears by counsel Jennifer R. Victor. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Katherine Campbell. Counsel Benjamin Freeman 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). Additionally, because the children share the same initials, we use numbers to differentiate them.

In April 2023, the court held an adjudicatory hearing at which a CPS worker recounted his conversation with seven-year-old Z.S.-3 wherein the child disclosed that the petitioner and her boyfriend argued and fought both physically and verbally and that the child saw the boyfriend take a substance wrapped in tinfoil into the bathroom. The CPS worker explained that the petitioner had not yet provided three clean drug screens in order to begin visitation. Then, the petitioner testified, denying any drug use in the home but admitting to one incident of domestic violence between her and her boyfriend which occurred in Z.S.-3's presence. She further testified that she was in the process of marrying her boyfriend. The petitioner stated that she was willing to take drug screens. The court found that Z.S.-3's statements to the CPS worker were credible and the petitioner and her boyfriend both had a history of drug use. Thus, the court ordered that the petitioner drug test immediately and produce three clean drug screens before visitation could occur. In the following order, the court found that there was domestic violence and drug use in the home and adjudicated the petitioner of abusing and neglecting the children. Thereafter, the petitioner filed a written motion for a post-adjudicatory improvement period.

In June 2023, the court held a dispositional hearing at which a DHS worker testified that the petitioner had not participated in services for seven weeks, was arrested and incarcerated following a domestic battery incident involving her boyfriend (now husband), tested positive for methamphetamine in May 2024, and failed to submit to multiple drug screens. Then, the petitioner testified, admitting to relapsing on methamphetamine and indicating that she had entered a drug rehabilitation program two days earlier. She further testified that the DHS worker assigned to her case never responded to her attempts to contact her, she had trouble locating the drug screening facility, and the service provider who administered her parenting and adult life skills classes was unresponsive. She further testified that her husband relapsed on drugs around the same time she did. The court took a brief recess in order for the petitioner to drug screen immediately, and the resulting screen was positive for methamphetamine. The petitioner's counsel moved to continue the hearing, arguing that the service provider failed to provide services to the petitioner, thus, the petitioner was unable to demonstrate that she could comply with an improvement period. The court opined that the petitioner had "the benefit of all the resources that the court system ha[d] to offer" yet failed to even attempt to correct the conditions that led to the filing of the initial petition. The court terminated the petitioner's parental rights and ordered that the petitioner's husband was not allowed to have contact with the children to which the petitioner responded, "I don't give a sh\*t."

In the following dispositional order, the court denied the petitioner's motion for a post-adjudicatory improvement period and found that she failed to visit with the children due to her positive drug screens, was arrested for a domestic incident involving her husband, failed to participate in services, failed to leave the abusive relationship with her boyfriend-now-husband and instead married him, and admitted to relapsing on methamphetamine. The court noted that, in the prior proceeding, the petitioner received services and completed both inpatient and outpatient drug treatment. The court found that the petitioner's failure to participate in services was attributable to her own inaction and was not the fault of the service provider. The court found that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the future because the petitioner made no efforts to rectify the conditions of abuse and neglect and failed to follow through with her family case plan. The court further found that the

children's best interests required termination. Ultimately, the court terminated the petitioner's parental rights. It is from this 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).

Before this Court, the petitioner first argues that the circuit court erred in denying her motion for a post-adjudicatory improvement period. The circuit court may grant a parent a post-adjudicatory improvement period if the parent "demonstrates, by clear and convincing evidence, that [the parent] is likely to fully participate in the improvement period." W. Va. Code § 49-4-610(2)(B). Moreover, "the circuit court has discretion to refuse to grant an improvement period when no improvement is likely." *In re Tonjia M.*, 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002). The petitioner contends that she showed that she was likely to participate in an improvement period because she had suitable housing and she admitted that she had parenting and drug problems. She claims that a service provider inexplicably stopped her services and failed to contact her to reschedule services after she was incarcerated. However, the court found that the petitioner failed to begin visitation with the children due to her positive drug screens, was arrested for a domestic incident involving her husband, failed to participate in services, married her boyfriend who she admitted engaged in domestic violence, and admitted to relapsing on methamphetamine at the dispositional hearing. Ample evidence supports the court's decision to deny the petitioner's motion for a post-adjudicatory improvement period, thus, she is entitled to no relief.

Second, the petitioner briefly argues that the circuit court erred by denying her motion to continue the dispositional hearing because she was not given a reasonable opportunity to demonstrate that she was likely to fully participate in the improvement period she sought. She claims that a service provider failed to schedule her services; thus, the court should have continued the matter to provide her additional time to demonstrate compliance. However, "[w]hether a party should be granted a continuance for fairness reasons is a matter left to the discretion of the circuit court, and a reviewing court plays a limited and restricted role in overseeing the circuit court's exercise of that discretion." *In re Tiffany Marie S.*, 196 W. Va. 223, 235, 470 S.E.2d 177, 189 (1996). Moreover, "matters involving the abuse and neglect of children . . . must be resolved as expeditiously as possible." Syl. Pt. 5, in part, *In re Carlita B.*, 185 W. Va. 613, 408 S.E.2d 365 (1991). In the dispositional order, the court squarely addressed the petitioner's attempt to blame the service provider for her failure to participate and found that the petitioner's failure to attend was attributable to her own inaction. The petitioner had ample opportunity to demonstrate she would comply with the terms of an improvement period, but, as the court found in its dispositional order, she failed drug screens, was arrested, and relapsed on drugs. The circuit court relied upon ample evidence when it denied the petitioner's motion to continue, and we perceive no error therein.

---

<sup>3</sup> The parental rights of the children's fathers were previously terminated. The permanency plan is adoption in the current placement.

Finally, the petitioner argues that the circuit court erred by terminating her parental rights, asserting that the court did not utilize the least restrictive alternative and the factual findings upon which the court terminated her rights were incorrect. However, “[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” and when necessary for the welfare of the child. 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)); *see also* W. Va. Code § 49-4-604(c)(6) (permitting circuit court to terminate parental rights upon finding no reasonable likelihood conditions of abuse and neglect can be substantially corrected in the near future and when necessary for the child’s welfare). There is no reasonable likelihood that the conditions of neglect or abuse can be substantially correct when “[t]he abusing parent or parents have not responded to or followed through with a reasonable family case plan or other rehabilitative efforts.” W. Va. Code § 49-4-604(d)(3). Based upon the evidence of domestic violence occurring in the home, the petitioner’s continued drug use, her failure to make efforts to correct the circumstances that led to the filing of the initial petition, and her statements at disposition, the court found that there was no reasonable likelihood that the conditions of abuse and neglect could be corrected. The court further found that the child’s best interests necessitated termination of the petitioner’s parental rights. The record supports the court’s ultimate decision to terminate the petitioner’s parental rights, thus, we decline to disturb that decision.

For the foregoing reasons, we find no error in the decision of the circuit court, and its September 25, 2023, order is hereby affirmed.

Affirmed.

**ISSUED:** November 6, 2024

**CONCURRED IN BY:**

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