

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

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

*In re* S.H.-1

No. 23-623 (Kanawha County 23-JA-111)

**MEMORANDUM DECISION**

Petitioner Mother S.H.-2<sup>1</sup> appeals the Circuit Court of Kanawha County’s September 26, 2023, order terminating her custodial rights to S.H.-1,<sup>2</sup> arguing that the circuit court erred in terminating her custodial rights instead of granting her motion for an improvement period. 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.

On April 6, 2023, the DHS filed a petition alleging that the petitioner refused to send the child to school and allowed the child to live in an unsanitary home. According to the petition, a juvenile status offender petition was filed against the then-thirteen-year-old child in March 2023 alleging that the child was truant because he had missed more than fifty days of school. At the child’s preliminary hearing, the petitioner “became extremely agitated” and stated that “she was not going to send the minor child to school at all.” True to her word, the petitioner did not send the child to school the following week. Furthermore, school officials reported that the petitioner “ha[d] a long history of fail[ing] to respond to contact attempts in an effort to allay the minor child’s truancy issues over the years.” Due to the child’s continued absence from school, the circuit court issued an order authorizing law enforcement to take the child into custody. Law enforcement officers executed the court’s order at the petitioner’s home and observed the home in a deplorable

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<sup>1</sup> The petitioner appears by counsel Jason S. Lord. The West Virginia Department of Human Services appears by counsel Attorney General John B. McCuskey and Assistant Attorney General James Wegman. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel. Counsel Sharon K. Childers 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). Further, because the petitioner and the child share the same initials, we refer to them as S.H.-2 and S.H.-1, respectively.

condition. The child was taken into custody, and the petitioner was arrested and charged with misdemeanor child neglect.

At the preliminary hearing on the abuse and neglect petition, the petitioner was ordered to participate in parenting and adult life skills classes and a parental fitness evaluation. Shortly thereafter, the petitioner began parenting, adult life skills, and anger management classes. In addition, on April 18, 2023, the petitioner underwent the parental fitness evaluation as ordered. During the evaluation, she explained to the psychologist that her son was bullied and called racial slurs at school since elementary school and that he was suspended and expelled several times for behavioral problems. She claimed that “it was the fault of the school system that [the child] did not attend [school] as they would not work with her about him being bullied.” In his report, the psychologist concluded that the petitioner did not accept responsibility for the child’s truancy issues and believed her refusal to send him to school was justified because the school did not address the bullying issues. He further concluded that the petitioner had “dysfunctional personality traits that perpetuate her beliefs that others are at fault” and that “without insight and acceptance of responsibility, there is no reason to believe her behaviors will materially change.” Nonetheless, the psychologist determined that the petitioner’s prognosis for improved parenting was “guarded” because she expressed a willingness to do anything necessary to regain custody of the child. The psychologist recommended, among other things, that the petitioner engage in therapy to address her interpersonal skills. The case worker arranged for the petitioner to begin therapy as recommended.

At an adjudicatory hearing in June 2023, the petitioner admitted to deplorable housing conditions and educational neglect of the child. Based on the petitioner’s admissions, the circuit court found the child was abused and neglected and adjudicated the petitioner as an abusing and neglecting parent. The petitioner made an oral motion requesting a post-adjudicatory improvement period. The circuit court held the petitioner’s motion in abeyance but ordered all of the petitioner’s services to continue.

The dispositional hearing was held in September 2023. A service provider testified that she provided parenting, life skills, and anger management services to the petitioner for three months. She opined that the petitioner failed to make any progress with services or accept responsibility for her situation as she continued to make excuses and tried to justify her behavior. The provider explained that the petitioner was defensive, disrespectful, and argumentative to her landlord, employer, and other service providers, which often escalated to verbal altercations. Then, the case worker testified that the petitioner demonstrated an inability to remediate the conditions that led to the filing of the petition by refusing to accept responsibility for the child’s truancy issues. The petitioner testified that she participated in services and took responsibility for the child’s truancy issues and deplorable housing conditions but denied having anger or interpersonal communication issues. When asked about her lack of progress with services, the petitioner deflected and blamed the service provider for not assisting her with the court ordered services. The petitioner also maintained her narrative that she would have sent the child to school had the bullying issues been resolved. The petitioner further testified that she was evicted from her home in July 2023 and had not been able to find another place to live. The guardian advised the court that the child wanted the petitioner’s custodial rights to be terminated.

After considering the evidence, the circuit court found that the petitioner had not benefitted from the remedial services provided by the DHS and “continue[d] to blame her situation on external circumstances.” Thus, the circuit court concluded that the petitioner could not substantially correct the conditions of abuse and neglect “within a reasonable timeframe.” The circuit court further concluded that termination of the petitioner’s custodial rights was in the child’s best interest and comported with his stated preference. Accordingly, the circuit court terminated the petitioner’s custodial rights.<sup>3</sup> It is from the dispositional 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). Before this Court, the petitioner argues that the circuit court erred in terminating her custodial rights instead of granting her an improvement period. The petitioner contends that she had the “ability to rectify the presenting problems” but that she was deprived of the “opportunity to address [her] parental shortcomings” by not receiving an improvement period. We find no merit in the petitioner’s argument. As an initial matter, we note that the petitioner fails to cite to the record where she filed a written motion for an improvement period at any point during the proceedings nor does such a motion appear in the record. See Syl. Pt. 4, in part, *State ex rel. P.G.- I v. Wilson*, 247 W. Va. 235, 878 S.E.2d 730 (2021) (“A circuit court may not grant a post-adjudicatory improvement period under W. Va. Code § 49-4-610(2) . . . unless the respondent to the abuse and neglect petition files a written motion requesting the improvement period.”). Regardless, even if the petitioner had filed a written motion, the evidence presented at the dispositional hearing supported the circuit court’s finding that improvement was not likely. Despite receiving and participating in services for five months, the petitioner continued to have interpersonal conflicts and refused to accept responsibility for the child’s truancy issues. See *In re Jonathan Michael D.*, 194 W. Va. 20, 27, 459 S.E.2d 131, 138 (1995) (explaining that “it 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.’” (citation omitted)). Accordingly, we find that the circuit court did not abuse its discretion by denying the petitioner’s motion for an improvement period. See *In re Tonjia M.*, 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002) (“[T]he circuit court has the discretion to refuse to grant an improvement period when no improvement is likely.”).

The petitioner also argues that “termination of her custodial rights after only five months of services was drastic and unnecessary.” We disagree. Termination of a parent’s custodial rights is appropriate “[u]pon 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.” W. Va. Code § 49-4-604(c)(6). For the same reasons identified above, the circuit court had a sufficient basis upon which to find that there was no reasonable likelihood the petitioner could substantially correct the conditions of abuse or neglect in the near future and that termination of the petitioner’s custodial rights was in the child’s best interest. See W. Va. Code § 49-4-604(d) (“‘No reasonable likelihood that conditions of neglect or abuse can be substantially corrected’ means that . . . the abusing adult or adults have demonstrated an inadequate capacity to solve the problems of abuse or neglect on their own or with help.”). Further, the circuit court found that

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<sup>3</sup> The parental rights of child’s father were terminated below. The permanency plan for the child is a legal guardianship.

termination of the petitioner’s custodial rights was necessary for the child’s welfare and consistent with his expressed wishes. *See* W. Va. Code § 49-4-604(c)(6)(C) (requiring that courts “give consideration to the wishes of a child fourteen years of age or older . . . regarding the permanent termination of parental rights”). Accordingly, we find no error in the circuit court’s termination of the petitioner’s custodial rights.

For the foregoing reasons, the circuit court’s September 26, 2023, order is hereby affirmed.

Affirmed.

**ISSUED:** January 29, 2025

**CONCURRED IN BY:**

Chief Justice William R. Wooton  
Justice Elizabeth D. Walker  
Justice Tim Armstead  
Justice C. Haley Bunn  
Justice Charles S. Trump IV