

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

***In re* A.M.-1, L.D., M.M., and T.D.**

**No. 24-144** (Braxton County CC-04-2022-JA-58, CC-04-2022-JA-59, CC-04-2022-JA-60, and CC-04-2022-JA-61)

**MEMORANDUM DECISION**

Petitioner Mother A.M.-2<sup>1</sup> appeals the Circuit Court of Braxton County’s February 16, 2024, order terminating her parental rights to A.M.-1, L.D., M.M., and T.D., arguing that the circuit court erred by 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 August 2022, the DHS filed a petition alleging that the petitioner abused controlled substances to the detriment of her parenting abilities, as she tested positive for controlled substances when she gave birth to T.D. and at two prenatal appointments. The petitioner admitted to a Child Protective Services (“CPS”) worker that, during her pregnancy, she consumed THC and Percocet that was not prescribed to her. The DHS further alleged that the petitioner was the subject of two prior abuse and neglect proceedings due to her substance abuse issues, one in 2019 and one earlier in 2022. In August 2019, she was adjudicated as an abusive parent for substance abuse and successfully completed an improvement period. In May 2022, she successfully completed a preadjudicatory improvement period.

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<sup>1</sup> The petitioner appears by counsel Bernard R. Mauser. The West Virginia Department of Human Services appears by Attorney General John B. McCuskey and Assistant Attorney General Andrew Waight. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel. Counsel Mackenzie A. 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). Because the petitioner and one of the children share the same initials, we refer to them as A.M.-2 and A.M.-1, respectively.

Over the course of a preliminary hearing in September 2022 and an adjudicatory hearing in October 2022, the court heard evidence of the petitioner's drug abuse while pregnant and her ongoing relationship and cohabitation with T.D.'s father, who was testing positive for controlled substances. Based upon the evidence of the petitioner's abuse of controlled substances, the court adjudicated her of abusing and neglecting the children. The court noted that the petitioner was previously adjudicated as an abusive parent due to her use of controlled substances and she continued to abuse substances.

In November 2022, the petitioner was granted a post-adjudicatory improvement period. The terms included, among other things, that the petitioner submit to a hair follicle drug test, remain drug and alcohol free, complete parenting and adult life skills classes, maintain appropriate housing, and enroll in outpatient substance abuse treatment. At a February 2023 review hearing, the court was apprised that T.D.'s father tested positive for methamphetamine but had moved out of the petitioner's home. At a March 2023 review hearing, the court heard testimony from a CPS worker that T.D.'s father was arrested and charged with assault after a "domestic incident" at the petitioner's home. The petitioner testified as to her progress in her improvement period but upon cross-examination, admitted to drinking alcohol in violation of the terms of her improvement period. During a subsequent review hearing in April 2023, a CPS worker testified that the petitioner violated the terms of her improvement period by testing positive for ethyl sulfate, a byproduct of alcohol consumption.

In July 2023, the court held a dispositional hearing at which it granted the petitioner a post-dispositional improvement period. The terms incorporated all of the requirements of the petitioner's post-adjudicatory improvement period and specifically required that she remain drug and alcohol free and refrain from being in the presence of any drug users. However, on January 4, 2024, the court heard a motion submitted by the DHS to terminate the petitioner's parental rights because a CPS worker smelled marijuana during a visit to the petitioner's home. The CPS worker testified that the petitioner had not drug screened since September 2023 and upon submitting to a hair follicle test in December 2023, tested positive for marijuana. Based upon the petitioner's failure to comply, the court terminated her post-dispositional improvement period.

On January 22, 2024, the circuit court held a final dispositional hearing at which the petitioner explained that her positive drug screen may have been due to her unknowingly consuming marijuana from a friend's vape pen or her being around her brother while he was smoking marijuana. The court found that "[t]here is no case where another adult respondent had been given as many chances as [the petitioner]" and that the petitioner was willfully noncompliant with the court's orders and the terms of her improvement periods. Accordingly, the court found that there was no reasonable likelihood that she could or would substantially correct the conditions of abuse and neglect in the reasonably foreseeable future and there were no less restrictive alternatives available to protect the children's welfare. Ultimately, the court terminated the petitioner's parental rights to all of the children. It is from this order that the petitioner appeals.<sup>3</sup>

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<sup>3</sup> A.M.-1's father's parental and custodial rights were terminated in a prior proceeding. L.D.'s father's custodial rights were terminated in a prior proceeding. M.M.'s father's parental rights and T.D.'s father's parental rights were terminated below. The permanency plan for L.D. is legal guardianship, and the other children are to be adopted in their current placement.

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 should have granted her a three-month extension of her post-dispositional improvement period. According to West Virginia Code § 49-4-610(6), a circuit court may only grant an extension upon a finding that the parent "substantially complied with the terms of the improvement period." While the petitioner argues that she did substantially comply, she freely admits in her brief that she tested positive for alcohol and controlled substances during her improvement period despite express terms requiring her to refrain from using drugs and alcohol. Given that the primary condition to be corrected was the petitioner's drug use and she openly admits to using drugs and alcohol during the pendency of the proceedings below, we conclude that the circuit court did not abuse its discretion in refusing to grant the petitioner an extension of her 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).

The petitioner also argues that the circuit court erred by terminating her parental rights and should have instead employed a less restrictive alternative. 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." 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)). Based upon evidence of the petitioner's continual substance abuse across three abuse and neglect proceedings, the court correctly found that there was no reasonable likelihood that the petitioner could correct the issue. Further, the court found that the children's welfare necessitated termination of her parental rights, and circuit courts are permitted to terminate parental rights upon these findings. *See W. Va. Code § 49-4-604(c)(6)*. As such, we conclude that the circuit court did not err in terminating the petitioner's parental rights.

For the foregoing reasons, we find no error in the decision of the circuit court, and its February 16, 2024, order is hereby affirmed.

Affirmed.

**ISSUED:** March 19, 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

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