

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

***In re B.K.***

**No. 24-161** (Mercer County CC-28-2022-JA-117)

**MEMORANDUM DECISION**

Petitioner Father C.K.<sup>1</sup> appeals the Circuit Court of Mercer County’s January 18, 2024, order terminating his parental, custodial, and guardianship rights to B.K., arguing that the circuit court erred by terminating his parental rights instead of granting a post-dispositional improvement period and failing to employ a less restrictive alternative to termination.<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 2022, the DHS filed an abuse and neglect petition alleging that the petitioner committed acts of domestic violence against the mother while she was pregnant with B.K. The DHS noted that the petitioner’s parental rights to four other children were previously involuntarily terminated due to domestic violence issues.

In November 2022, the circuit court held an adjudicatory hearing during which the petitioner stipulated to neglecting the child due to his acts of domestic violence towards the mother and was granted a post-adjudicatory improvement period. The petitioner’s family case plan included improvement period terms requiring that he participate in a psychological evaluation; submit to random drug screens; provide a safe, stable environment for the child that was free of domestic violence; participate in services, including parenting and adult life skills classes; and

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<sup>1</sup> The petitioner appears by counsel P. Michael Magann. The West Virginia Department of Human Services appears by Attorney General John B. McCuskey and Assistant Attorney General Wyclif Farquharson. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel. Counsel Evelyn Raeann Osborne 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).

abide by the recommendations of the multidisciplinary treatment team. The court reviewed the petitioner's post-adjudicatory improvement period at a hearing in May 2023 and extended the improvement period. However, at a subsequent review hearing held in August 2023, the court noted that "there has been little to no cooperation" by the petitioner and set the matter for disposition.

In September 2023, the DHS filed a motion to terminate the petitioner's parental rights because he did not participate in his family case plan, specifically, by refusing to drug screen and failing to participate in services designed to address domestic violence concerns. In October 2023, the court held a dispositional hearing at which it considered the DHS's motion. A Child Protective Services worker testified that the petitioner did not participate in a single drug screen, was uncooperative with services, and failed to maintain appropriate housing. The witness further testified that the petitioner had recently been involved in an altercation with the child's mother, resulting in the mother successfully obtaining a domestic violence protective order against him. Next, a service provider testified that the petitioner was unresponsive to her weekly attempts at communication and, as a result, she was unable to begin services with him. The petitioner testified that he was recently incarcerated due to the domestic violence between him and the mother; admitted that if he had drug screened throughout the proceedings, he would have been positive for heroin, methamphetamine, and marijuana; and requested a post-dispositional improvement period. In the resulting order, the circuit court found that based upon the petitioner's failure to make any progress in his improvement period and disregard for the proceedings, there was no reasonable likelihood that the conditions of neglect could be substantially corrected in the near future and the child's welfare necessitated termination of the petitioner's rights. Ultimately, the court terminated the petitioner's parental, custodial, and guardianship rights to B.K. It is from this order that the petitioner now 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 argues that the circuit court erroneously denied his verbal request for a post-dispositional improvement period because he expressed a willingness to comply with services. First, the petitioner's request was verbal; however, "in order to obtain a post-dispositional improvement period, a parent must first 'move[] in writing for the improvement period.'" *In re A.H.*, No. 19-1074, 2020 WL 3470348, at \*3 (W. Va. June 25, 2020) (memorandum decision) (quoting W. Va. Code § 49-4-610(3)(A)). Furthermore, the court may only grant an additional improvement period if the parent "demonstrates that since the initial improvement period, the respondent has experienced a substantial change in circumstances" and "that due to that change in circumstances, the [parent] is likely to fully participate in the improvement period" W. Va. Code § 49-4-610(3)(D). The petitioner fails to identify a substantial change in circumstances that would entitle him to a further improvement period. Based upon ample evidence of the petitioner's utter failure to participate in his family case plan, it is clear that the circuit court did not abuse its discretion in denying the petitioner's motion. *See In re Tonjia M.*, 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002) ("The

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

circuit court has the discretion to refuse to grant an improvement period when no improvement is likely.”). As such, we decline to disturb the circuit court’s decision.

Finally, the petitioner argues that the circuit court erred by terminating his parental, custodial, and guardianship rights and should have instead employed a less restrictive alternative. We disagree, as “[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 . . . 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, custodial, and guardianship rights upon finding no reasonable likelihood conditions of neglect can be substantially corrected in the near future and when necessary for the child’s welfare). There is no reasonable likelihood that conditions of neglect can be substantially corrected 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). As set forth above, the court heard ample evidence of the petitioner’s failure to follow through with his family case plan, including his refusal to participate in services. As such, the court correctly found that there was no reasonable likelihood that the petitioner could correct the conditions of neglect. Further, the court did not err in finding that the child’s welfare necessitated termination of his parental, custodial, and guardianship rights, a finding that the petitioner does not specifically challenge on appeal. As such, we decline to disturb the circuit court’s decision.

For the foregoing reasons, we find no error in the decision of the circuit court, and its January 18, 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