

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

***In re M.B.***

**No. 24-265** (Nicholas County CC-34-2023-JA-122)

**MEMORANDUM DECISION**

Petitioner Father J.B.<sup>1</sup> appeals the Circuit Court of Nicholas County’s April 22, 2024, order terminating his parental and custodial rights to M.B., arguing that the court erred by failing to impose a less restrictive dispositional alternative and by ordering no contact between the petitioner and the child.<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 October 2023, the DHS filed a petition alleging that M.B. was an abused and neglected child because she lived with her mother in a home that was in a deplorable condition. This was the second abuse and neglect petition filed against the mother due to housing conditions.<sup>3</sup> Additionally, the petition alleged that the petitioner failed to provide M.B. with suitable housing due to his incarceration. The petitioner stipulated to the allegations in the petition, and the circuit court adjudicated the petitioner of neglecting the child. The mother also stipulated to the allegations in the petition, and her parental and custodial rights were later terminated.

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<sup>1</sup> The petitioner appears by counsel Joseph M. Mosko. 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 Daniel K. Armstrong 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).

<sup>3</sup> The mother was previously adjudicated as an abusing parent due to unsafe housing conditions in 2020. After successfully completing an improvement period, the child was returned to the mother’s custody in June 2021.

The circuit court held a dispositional hearing in March 2024. The petitioner testified that he was incarcerated due to a parole violation relating to his conviction for burglary and was also currently charged with first-degree murder. The petitioner explained that he had three and a half years remaining on his sentence for his burglary conviction but that he was scheduled to go before the parole board in August 2024. A DHS worker testified and recommended termination of the petitioner's parental rights. The worker explained that M.B. required a high level of care due to her special needs and that terminating the petitioner's parental rights would allow the child to be adopted and to receive permanency. The worker further explained that M.B.'s special needs required predictable routines and stability and that continued contact with "an absentee father" could be confusing to her and that the "pitfalls [of post-termination contact] would outweigh any benefits." At the conclusion of the testimony, the petitioner argued that the court should grant disposition under West Virginia Code § 49-4-604(c)(5) and temporarily place the child in the DHS's custody until the petitioner was no longer incarcerated and able to take custody of the child.<sup>4</sup>

The circuit court found that, regardless of the outcome of the first-degree murder charge, the petitioner would be incarcerated for three and a half years as a sentence of his burglary conviction. The court further found that it was not in the best interests of the child to delay permanency, especially given the child's need for specialized care; that there was no reasonable likelihood that the petitioner could correct the conditions of abuse and neglect in the foreseeable future; and that it "considered the alternatives set forth in West Virginia Code § 49-4-604 and conclude[d] that there is no alternative to the termination of the parental and custodial rights" of the petitioner. Accordingly, the circuit court terminated the parental and custodial rights of the petitioner to M.B.<sup>5</sup> The court also found "any continued contact" between the child and the petitioner would not be in the child's best interests and denied post-termination visitation. It is from this 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). The petitioner argues that the circuit court erred by terminating his rights because the court should have been granted a less restrictive dispositional alternative, such as disposition under West Virginia Code § 49-4-604(c)(5). However, we have previously held 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)). The circuit court's finding that there was no reasonable likelihood such conditions could be corrected in the near future is supported by

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<sup>4</sup> With respect to disposition, West Virginia Code § 49-4-604(c)(5) provides that a circuit court may "commit the child temporarily to the care, custody, and control of the [DHS], a licensed private child welfare agency, or a suitable person who may be appointed guardian by the court" if the court finds that the parent is "presently unwilling or unable to provide adequately for the child's needs."

<sup>5</sup> The permanency plan for the child is adoption.

the record. The petition was filed in this case because both parents were unable to provide M.B. with a safe and suitable home. The court found that the petitioner would be unable to correct this condition within the near future given that his incarceration would continue for three and a half years, at a minimum. *See In re Cecil T.*, 228 W. Va. at 91, 717 S.E.2d at 875, Syl. Pt. 3 (requiring circuit court to consider, among other things, “the length of incarceration in light of the abused or neglected child’s best interests and paramount need for permanency, security, stability and continuity” when “no factors and circumstances other than incarceration are raised” in regard to a parent’s ability to correct conditions of abuse or neglect). The court further found that the termination was in the best interests of the child and that the child required permanency, especially given her special needs. *See In re B.S.*, 242 W. Va. 123, 131, 829 S.E.2d 754, 762 (2019) (“This Court has repeatedly emphasized that children are entitled to permanency to the greatest degree possible.”). Termination of parental rights is appropriate upon such findings. *See* W. Va. Code § 49-4-604(c)(6) (permitting termination of rights upon 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”). Accordingly, we conclude there was no error in the termination of the petitioner’s parental and custodial rights.

Finally, the petitioner argues that the circuit court erred by prohibiting contact between the child and the petitioner. We first note that the right to post-termination visitation belongs to the child, not the petitioner. *See In re K.S.*, 246 W. Va. 517, 530, 874 S.E.2d 319, 332 (2022) (“The Court has made clear that [post-termination] visitation is the right of the child.”). Although the circuit court is directed to consider “whether a close emotional bond has been established between parent and child and the child’s wishes,” post-termination visitation may only be granted where such visitation “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 DHS worker testified against post-termination visitation because of concern about the child’s need for consistency and routine. Based on this testimony, the court found that post-termination visitation was not in the best interests of the child, and we decline to disturb the court’s findings.

Accordingly, we find no error in the decision of the circuit court, and its April 22, 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