

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

***In re* B.H., S.H., E.H., and N.H.**

No. 24-100 (Randolph County CC-42-2023-JA-2, CC-42-2022-JA-12, CC-42-2022-JA-15, and CC-42-2022-JA-16)

MEMORANDUM DECISION

Petitioner Mother L.H.¹ appeals the Circuit Court of Randolph County’s January 22, 2024, order terminating her parental rights to B.H., E.H., N.H., and her custodial rights to S.H., arguing that the circuit court erred in terminating those rights instead of imposing a less restrictive alternative.² 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.

After filing three petitions³ concerning, among other things, the father of three of the children perpetrating domestic violence on the petitioner, the DHS filed a third amended petition in January 2023 adding B.H. as a subject child and alleging that the petitioner was involved in a relationship with a violent felon. The DHS alleged that the petitioner’s new boyfriend had an extensive criminal history, including a conviction for second-degree murder, and perpetrated domestic violence in the home. DHS workers told the petitioner that her boyfriend could not be around the children, but she refused to separate from him. The DHS further alleged that the petitioner was abusing drugs, impairing her ability to parent.

¹ The petitioner appears by counsel Jeremy B. Cooper. The West Virginia Department of Human Services appears by counsel Attorney General John B. McCuskey and Assistant Attorney Lee Niezgoda. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel. Counsel Heather M. Weese appears as the children’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”).

² We use initials where necessary to protect the identities of those involved in this case. *See* W. Va. R. App. P. 40(e).

³ The proceedings below concerned additional respondents not at issue on appeal.

At an adjudicatory hearing in May 2023, the petitioner stipulated⁴ to having abused and neglected the children, and, as a result, the circuit court adjudicated her as an abusing and neglecting parent. Following the petitioner's written motion for a post-adjudicatory improvement period, the circuit court set a hearing for June 2023. The petitioner failed to appear. After several continuances, the court ultimately held an evidentiary hearing in November 2023, during which the petitioner admitted to failing to participate in drug screens and missing visits with her children, whom she had not seen since the prior hearing. The petitioner attempted inpatient treatment for drug abuse in April 2023 but admitted that she left early with her abusive boyfriend waiting outside. The petitioner acknowledged that DHS workers offered her several opportunities to leave the boyfriend, which she refused, and that she had been accepted into family treatment court but also refused to participate. At the hearing, the petitioner referred to her relationship in the past tense—"I was in an abusive relationship"—but the court found her "candor . . . suspect." The petitioner also testified that she had completed approximately two weeks of a thirty-day inpatient drug treatment program and intended to complete treatment before transitioning into a sober living facility. The court denied her motion, finding that "being two weeks into a treatment program after ten months of your children being removed . . . is not sufficient to convince me [that the petitioner] is . . . likely [to] fully participate in any of the treatment programs." Following this denial, the petitioner filed a written motion for a post-dispositional improvement period.

The matter came on for a dispositional hearing in January 2024. The petitioner failed to appear. The court heard from a witness from the sober living facility to which the petitioner transitioned after her completion of the thirty-day inpatient program. The witness testified that the petitioner appeared to have been in treatment *with* the boyfriend during the thirty days, as the witness transported the couple from the inpatient center to the sober living facility where they then checked in together. The boyfriend was subsequently dismissed following a physically violent altercation with the petitioner at the facility. The witness stated that the petitioner had been discharged the night before, due to her continued contact with the boyfriend in violation of the facility's rules. The petitioner was invited to stay one last night, to ensure her transportation to court for her hearing. She refused and left. No other witnesses testified, though the guardian asked the court to take judicial notice of the testimony presented at the November 2023 evidentiary hearing.

Based on the evidence, the court denied the petitioner's request for an improvement period, as she deliberately failed to appear at the hearing and demonstrated that she was not likely to fully comply. Moreover, the court stated she would not have been successful even if she had appeared, given her discharge from the sober living facility and continued contact with her boyfriend. The court found that the petitioner was dishonest about the ongoing violent relationship, which she chose over her children. The court further found that the petitioner repeatedly rejected opportunities for treatment and help. As such, the court found that the petitioner was presently unwilling or unable to provide for the children's needs and that there was no reasonable likelihood that the conditions of neglect and abuse could be substantially corrected in the near future. Based on its consideration of the dispositional alternatives set forth in West Virginia Code § 49-4-604(c), and the best interests and welfare of the children, the court terminated the petitioner's parental

⁴ The petitioner did not include her written stipulation in the appendix record on appeal.

rights to B.H., E.H., and N.H., and her custodial rights to S.H.⁵ The petitioner appeals from the dispositional order.

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 asserts that the circuit court erred in terminating her parental rights instead of granting an improvement period or utilizing another less severe dispositional alternative.⁶ However, the circuit court has discretion to deny an improvement period when no improvement is likely. *See In re Tonjia M.*, 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002). Moreover, "[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 . . . that conditions of neglect or abuse can be substantially corrected." Syl. Pt. 5, *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)). Ample evidence supports the circuit court's finding that no improvement was likely, and those same facts indicate there was no reasonable likelihood that the petitioner could substantially correct the conditions of abuse and neglect. According to West Virginia Code § 49-4-604(d)(3), a situation in which there is no reasonable likelihood that conditions of abuse and neglect can be substantially corrected includes when "[t]he abusing parent . . . [has] not responded to or followed through with a reasonable family case plan or other rehabilitative efforts . . . designed to reduce or prevent the abuse or neglect of the child." Here, the petitioner was dishonest about her continued relationship with her abusive boyfriend, despite knowing that continuing in the relationship jeopardized her rights to her children. Further, the petitioner twice failed to respond to or follow through with substance abuse treatment and failed to appear for her dispositional hearing. The court further found that termination was necessary for the children's welfare, as risking further exposure to the boyfriend's violence posed a serious threat. Circuit courts are permitted to terminate a parent's rights upon these findings. *See* W. Va. Code § 49-4-604(c)(6); Syl. Pt. 1, *In re R.J.M.*, 164 W. Va. at 496, 226 S.E.2d at 114 ("[C]ourts are not required to exhaust every speculative possibility of parental improvement before terminating parental rights where it appears that the welfare of the child will be seriously threatened.").

For the foregoing reasons, we find no error in the decision of the circuit court, and its January 22, 2024, order is hereby affirmed.

⁵ All parents' parental rights were terminated. The permanency plan for the children is adoption by their current placement. Further, we note that the circuit court's dispositional order specifically stated that "[t]o the extent that [the petitioner] may have had any rights to [S.H.] as a psychological parent, those rights are also TERMINATED." The record demonstrates that prior to the initiation of the proceedings the petitioner exercised only custodial rights to S.H. Accordingly, we will treat the circuit court's ruling as a termination of the petitioner's custodial rights to S.H.

⁶ The petitioner also asserts that the circuit court gave insufficient weight to certain facts in reaching its decision. As we have previously noted, this argument "displays a fundamental misunderstanding of our role as a reviewing court. We review the circuit court's decision under . . . deferential standards . . . and do not reweigh the evidence or make credibility determinations." *In re D.S.*, -- W. Va. --, --, 914 S.E.2d 701, 707 (2025).

Affirmed.

ISSUED: June 26, 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