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September 10, 2025
C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

***In re* E.Y. and G.S.**

No. 24-358 (Kanawha County CC-20-2024-JA-3 and CC-20-2024-JA-4)

MEMORANDUM DECISION

Petitioner Mother S.Y.[1] appeals the Circuit Court of Kanawha County's May 29, 2024, order terminating her parental rights to E.Y. and G.S., arguing that the circuit court erred in denying her motion for an improvement period and terminating her parental rights.[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.

In January 2024, the DHS filed a petition alleging that the children were abused and neglected as a result of the petitioner's substance abuse, history of domestic violence, and homelessness. The petitioner admitted to a Child Protective Services worker that she would be positive for fentanyl and methamphetamine if tested. At a preliminary hearing that same month, the court ordered the DHS to provide the petitioner with various services, including parenting and adult life skills education and drug treatment referrals. The court also ordered that the petitioner could have supervised visits with the children contingent upon two consecutive negative drug screens. The court held an adjudicatory hearing the following month. The petitioner did not attend, although she was represented by counsel. Ultimately, the court found the petitioner to be an abusing parent in regard to both children as a result of her substance abuse, perpetration of domestic battery, and inability to provide adequate shelter.

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[1] The petitioner appears by counsel Sandra K. Bullman. The West Virginia Department of Human Services appears by counsel Attorney General John B. McCuskey and Assistant Attorney General Andrew T. Waight. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel. Counsel Bryan B. Escue 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").

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

In April 2024, the petitioner filed a motion for a post-adjudicatory improvement period consisting of one sentence in which she "respectfully request[ed]" the same. That same month, the DHS filed a court summary that detailed the petitioner's noncompliance with DHS efforts, including her failure to remain in contact with the DHS or provide paperwork necessary to implement services. Because the petitioner had taken no steps to comply with services, the DHS recommended termination of her parental rights.

On April 26, 2024, the circuit court held a dispositional hearing. The DHS presented evidence that the petitioner had not participated in a single service during the proceedings, having failed to contact the DHS or otherwise engage with the services offered. Further, the petitioner never inquired about visitation with the children and had not seen them since the proceedings began. The petitioner testified and admitted that she failed to submit to drug screens or participate in services. The petitioner claimed that she would pass a drug screen although she admitted that she was not undergoing any drug treatment and, during the proceedings, had illegally purchased and abused fentanyl, thinking that it was Xanax. Ultimately, the court denied the petitioner's motion for an improvement period, finding that she did not establish that she would participate "given that she has failed to engage in any services offered" during the proceedings. The court further found that the petitioner's complete lack of compliance demonstrated that there was no reasonable likelihood that she could substantially correct the conditions of abuse and neglect in the near future. Noting the child's need for permanency through adoption, the court also found that termination of the petitioner's parental rights was in the child's best interests. Accordingly, the court terminated the petitioner's parental rights.[3] 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). First, the petitioner argues that the circuit court erred in denying her motion for an improvement period because she testified to having taken many steps toward remedying the conditions of abuse and neglect. In order to obtain a post-adjudicatory improvement period, the petitioner was required to, among other things, demonstrate that she was likely to fully comply with the terms thereof. *See* W. Va. Code § 49-4-610(2)(B). As the record clearly shows, the petitioner failed to comply with any service the DHS offered, including participating in drug screens to determine if she continued to abuse drugs. To the extent that the petitioner argues that the court should have disregarded the DHS's evidence of her total lack of compliance in favor of her uncorroborated testimony concerning her efforts to correct the conditions without DHS assistance, we note that credibility determinations and the weighing of evidence are the exclusive task of the circuit court as the finder of fact and will not be disturbed on appeal. *See In re D.S.*, -- W. Va. --, --, 914 S.E.2d 701, 707 (2025) ("We review the circuit court's decision under the [applicable] deferential standards . . . , and do not reweigh the evidence or make credibility determinations."). Based on her complete lack of compliance, we conclude that the circuit court did not abuse its discretion in denying her motion. *See In re M.M.*, 236 W. Va.

[3] Both children's fathers' parental rights were also terminated. The permanency plan for the children is adoption in their current placements.

108, 115, 778 S.E.2d 338, 345 (2015) ("West Virginia law allows the circuit court discretion in deciding whether to grant a parent an improvement period.").

Finally, the petitioner argues that it was error to terminate her parental rights, arguing that the circuit court should have imposed a less restrictive dispositional alternative. Again, the petitioner cites to her uncorroborated testimony as proof that she could have remedied the conditions of abuse and neglect in the near future, while ignoring the DHS's detailed evidence that demonstrated she had taken no steps to comply with the remedial services offered. According to West Virginia Code § 49-4-604(d)(3), situations in which there is no reasonable likelihood that conditions of abuse and neglect can be substantially corrected include when "[t]he abusing parent . . . [has] not responded to or followed through with a reasonable family case plan or other rehabilitative efforts." The evidence was uncontroverted that the petitioner refused to comply with the DHS's simple request to complete the paperwork needed to implement remedial services or with ordered drug screens. Further, the petitioner did not visit the children during the entirety of the proceedings because of her failure to drug screen, and we have explained that "the level of interest demonstrated by a parent in visiting his or her children while they are out of the parent's custody is a significant factor in determining the parent's potential to improve sufficiently and achieve minimum standards to parent the child." *In re Katie S.*, 198 W. Va. 79, 90 n.14, 479 S.E.2d 589, 600 n.14 (1996) (citations omitted). The circuit court additionally found that the children required permanency through adoption, thereby necessitating termination of the petitioner's parental rights. Circuit courts are permitted to terminate parental rights upon these findings. *See* W. Va. Code § 49-4-604(c)(6) (permitting termination of parental rights "[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"); Syl. Pt. 5, *In re Kristin Y.*, 227 W. Va. 558, 712 S.E.2d 55 (2011) ("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 . . . that conditions of neglect or abuse can be substantially corrected." (quoting Syl. Pt. 2, *In re R.J.M.*, 164 W. Va. 496, 266 S.E.2d 114 (1980))). 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 May 29, 2024, order is hereby affirmed.

Affirmed.

ISSUED: September 10, 2025

CONCURRED IN BY:

Chief Justice William R. Wooton
Justice C. Haley Bunn
Justice Charles S. Trump IV
Justice Thomas H. Ewing
Senior Status Justice John A. Hutchison