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

# STATE OF WEST VIRGINIA
# SUPREME COURT OF APPEALS

***In re* N.E.**

**No. 24-365** (Wayne County CC-50-2023-JA-65)

**and**

***In re* N.E.**

**No. 24-372** (Wayne County CC-50-2023-JA-65)

## MEMORANDUM DECISION

Petitioner Father D.E. and Petitioner Mother K.B.[1] appeal the Circuit Court of Wayne County's June 24, 2024, order terminating their parental rights to N.E.,[2] arguing that the circuit court erred in denying their motions for extensions of their respective improvement periods and in terminating their parental rights. 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 2023, the DHS filed a petition alleging that N.E. was an abused and neglected child because the petitioners were homeless, abused cannabis to the extent that they were unable to properly care for the child, and neglected the child's medical issues. The DHS alleged that the petitioners medically neglected the child, then eleven months old, by leaving him in a bed for

[1] Petitioner Father appears by counsel Kerry A. Nessel. Petitioner Mother appears by counsel Kimberly E. McGann. The West Virginia Department of Human Services appears by counsel Attorney General John B. McCuskey and Assistant Attorney General Wyclif S. Farquharson. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel. Counsel Juston H. Moore appears as the child's guardian ad litem. Upon motion by the petitioners, the Court has consolidated these matters for resolution.

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).

significant periods of time and by failing to take the child to his medical appointments and administer his prescribed medication. The DHS further alleged that K.B. admitted to a DHS case worker that she and D.E. were not caring for the child because they were abusing drugs and that they failed to follow-up on the child's medical needs and required therapies. According to the record, the child was diagnosed with plagiocephaly, a curved spine, chronic torticollis, and right side hemidiaphragm paralysis. In addition, the record indicates that the child's ribs were "dented in" from being left in a bed or a seat too long, which caused dysfunction of the right side of his body.

In September 2023, the court held an adjudicatory hearing, during which K.B. stipulated that she did not have appropriate housing and that her drug abuse impaired her ability to parent, and D.E. stipulated that he did not have appropriate housing.[3] However, the petitioners refused to admit to the allegations of medical neglect. As a result, the DHS presented evidence showing that the child had multiple medical conditions affecting his head, spine, and ribs; that the child was not born with any of those medical conditions; that the child's doctors believed the conditions were caused by the child "being left to lay in one position for very long periods of time" as an infant; that he was developmentally delayed; and that the petitioners failed to take the child to therapy appointments through West Virginia Birth to Three.

The petitioners denied that they failed to interact with the child or get him appropriate medical care. Instead, D.E. testified that the child's plagiocephaly was the result of a congenital "breathing issue," which he described as "something to do with [the child's] airway, the flap that allow[ed] him to breathe was too big." D.E. explained that the child was unable to breathe when laying on his back or stomach, so he "had to sit up in . . . a little rocking chair." However, D.E. indicated that the child had "throat surgery" at some point as an infant to correct the issue. K.B. also testified and agreed with the petitioner's testimony. She also stated that when the child was in their care, he received therapy services three times a week for one month through West Virginia Birth to Three. Finally, she admitted to telling the case worker that she and D.E. had been using drugs and not caring for their child. At the conclusion of the hearing, the circuit court adjudicated K.B. as a neglecting parent due to drug abuse, unsuitable housing, and medical neglect, and adjudicated D.E. as a neglecting parent due to unsuitable housing and medical neglect.

At a hearing in November 2023, the court granted the petitioners six-month post-adjudicatory improvement periods. The terms thereof were incorporated into their respective case plans and included, among other things, that they participate in parental fitness evaluations, submit for weekly drug screens, obtain appropriate housing, obtain employment,[4] participate in parenting and adult life skills services, participate meaningfully in visitations with the child, and participate in all of the child's medical appointments. During the hearing, K.B. proffered that she obtained a medical cannabis card at some point after the adjudicatory hearing. The DHS case worker testified that drug screens positive for cannabis would not be an issue for either of the petitioners, as long as their use of cannabis did not "affect their parenting ability."

[3] D.E. also admitted to testing positive for cannabis but proffered that he had a valid medical cannabis card.

[4] D.E. was not required to obtain employment.

In January 2024, the court held a review hearing, during which the DHS case worker testified that the petitioners were moderately compliant with the terms of their improvement periods because they failed to meaningfully participate in visits with the child. She explained that the child was hospitalized, placed on a ventilator for two weeks, required a blood transfusion, and "almost died." During his hospitalization, the DHS permitted the petitioners to have unlimited visits with the child and offered them transportation to and from the hospital. Despite these accommodations and the child's critical condition, the petitioners only visited with the child "three-to-four" times, with D.E.'s longest visit lasting ten minutes and K.B.'s lasting about thirty minutes. The case worker also noted that the petitioners missed four parenting sessions and refused to participate in several supervised visits with the child because of a disagreement over the location of the visits. Nevertheless, the case worker recommended continuing the petitioners' improvement periods because they were otherwise compliant. As such, the court found that the petitioners had been moderately compliant and allowed their improvement periods to continue.

In March 2024, the court held a second review hearing. The court heard testimony from the case worker that the petitioners failed to attend seven of the child's medical appointments since the previous hearing. The case worker explained that their involvement at the child's appointments was critical because they have "to find out how they can properly care for [the child.]" The case worker further testified that the petitioners ended two visits with the child early because he was not feeling well instead of caring for the child by taking his temperature or giving him medication. As a result, the court again found that the petitioners were moderately compliant with the terms of their improvement periods.

In May 2024, the court held the dispositional hearing. The DHS recommended terminating the petitioners' parental rights to the child and presented testimony of the case worker and visitation service provider. The case worker testified that while the petitioners participated in nearly all aspects of their case plans, they failed to improve upon their ability to properly care for the child. She explained that, despite knowing that the child could not be around smoke because of his complex medical conditions affecting his lungs and airway, the petitioners continued to smoke cannabis and cigarettes and would smell of both while visiting the child. She also reported that the petitioners left their cannabis "pen and accessories" within the child's reach during visits and left the child, who was nineteen months old at the time, alone to smoke outside. The case worker further testified that the petitioners' visitations with the child were decreased from three visits per week to one visit per week because she received reports from the visitation service provider that D.E. emotionally and verbally abused the child. The case worker recounted an incident from April 2024 where D.E. yelled and cussed at the child for crying, called the child a "cry-baby," taunted him with fake crying, and told him to "shut the 'F' up" multiple times. Finally, the case worker testified that improvement of the conditions of neglect was unlikely because the petitioners had failed to implement what they learned from nearly six months of parenting classes during their visits with the child. The visitation service provider testified that she observed a minimal bond between K.B. and the child and no bond between D.E. and the child. She explained that K.B. did not nurture the child, and D.E. verbally abused the child by screaming and cussing at him and calling him derogatory names when the child did not listen or became upset.

K.B. testified that she had participated in the child's medical appointments. However, when asked if she understood "any special care that [the child] needs relative to his diagnoses," she replied, "I mean, I don't know. I've never been shown how to give him his new medicine." And, when asked to list the child's diagnoses, she stated, "I know he has a paralyzed right lung. He has asthma. Other than that, I don't really remember everything." Further, K.B. denied that D.E. ever screamed or cussed at the child and accused the service provider of lying. She stated that she would like additional time to "fix the issues that [the DHS] ha[d]," which she believed were "being with [D.E.] and living with [D.E.]" Finally, K.B. confirmed that she would remain in a relationship with D.E. despite the negative impact he had on her overall improvement. Similarly, D.E. testified that he never screamed or cussed at the child, accused the service provider of lying, and stated that he did not understand why their visits were reduced. He also testified that he had made "remarkable improvement" but needed more time to learn the child's "needs." When asked what he needed to improve on, D.E. replied, "I think that I need to, maybe, bond with [the child] a little bit more, try to teach him a little bit more things, try to get his dietary, like, what foods he likes, what he don't [sic] like, what's best for him to drink."

After the presentation of evidence, the petitioners requested an extension of their improvement periods arguing that they went to all of the multi-disciplinary team meetings, completed their parental fitness evaluations, submitted for drug screens, participated in visits with the child, and obtained housing. The circuit court denied their request, and, instead, terminated their parental rights to the child. The court found that the petitioners were moderately compliant with the terms of their improvement period because they failed "to develop the skills necessary to meet [the child's] needs" as required by their case plans. The court explained that, despite "demonstrat[ing] a knowledge of understanding the skills," the petitioners were unable "to implement those skills to deal with [the child's] needs." Additionally, the court found the visitation service provider's testimony credible and that D.E. was verbally abusive of the child during supervised visits. The court further found that K.B. chose to remain in a relationship with D.E. despite his verbal abuse. As a result, the court found there was no reasonable likelihood that the petitioners could correct the circumstances of neglect in the near future and that termination of their parental rights was in the child's best interest.[5] It is from the dispositional order that the petitioners appeal.

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 petitioners argue that the circuit court erred in terminating their parental rights instead of extending their post-adjudicatory improvement periods. They contend that the court should have allowed them "the opportunity and time to continue to correct their shortcomings" because they participated in all classes and therapy, maintained appropriate housing, completed their parental fitness evaluations, passed drug screens, and "adhered to most, if not all, of the lower Court's orders and directives." We disagree.

West Virginia Code § 49-4-610(6) provides, in part, that "[a] court may extend any improvement period . . . when the court finds the respondent has *substantially complied* with the terms of the improvement period." (Emphasis added). While it is true that the petitioners complied

[5] The permanency plan for the child is adoption in his current placement.

with some terms of their improvement periods, they ignore the circuit court's finding that they were only "moderately compliant" because they failed to comply with two critical terms thereof—meaningful participation in all of the child's medical appointments and meaningful participation in visits with the child. The court's moderate compliance finding is well-supported by the record as they failed to attend at least seven of the child's medical appointments, failed to meaningfully visit the child while he was hospitalized, and failed to properly care for the child during supervised visits. Thus, the circuit court did not abuse its discretion in denying the petitioners' request for an extension of their improvement periods.

We likewise discern no error in the court's decision to terminate the petitioners' parental rights to the child. While we acknowledge that the petitioners complied with some aspects of their case plans, "it is possible for an individual to show 'compliance with specific aspects of the case plan' while failing 'to improve . . . [the] overall attitude and approach to parenting.'" *In re Jonathan Michael D.*, 194 W. Va. 20, 27, 459 S.E.2d 131, 138 (1995) (citation omitted). Here, despite participating in six months of parenting classes and supervised visits with the child, the petitioners were still unable to identify all of the child's medical diagnoses, explain the specialized care that he required, administer his medication, or appropriately care for the child during mealtimes and bathtimes. In fact, at the dispositional hearing, the petitioners refused to acknowledge their inability to properly care for the child and his medical needs. Instead, D.E. testified that the *only* issues he needed to work on were bonding with the child and learning what he likes to eat, and K.B. testified that she needed time to fix the issues *that the DHS had* with D.E. As we have explained, a parent's "[f]ailure to acknowledge the existence of the problem . . . results in making the problem untreatable." *In re Timber M.*, 231 W. Va. 44, 55, 743 S.E.2d 352, 363 (2013) (citation omitted).

Even on appeal, the petitioners *still* refuse to acknowledge their medical neglect of the child or how their neglect exacerbated the child's preexisting medical conditions. In fact, notably absent from the petitioners' brief is any discussion of the child's complex medical diagnoses, that they were required to meaningfully participate in all of the child's appointments, or that they failed to comply with that requirement. This omission underscores the petitioners' inability to appreciate the fragility of the child's health, the seriousness of his diagnoses, the scope of his treatment, and the importance of their participation in every medical appointment. As such, the record supports the circuit court's findings that there was no reasonable likelihood that the conditions of neglect could be substantially corrected in the near future and that termination was in the best interest of the child. *See* W. Va. Code § 49-4-604(d)(3) (providing that "no reasonable likelihood that conditions of abuse or neglect could be substantially corrected" includes circumstances where an abusing parent has "not responded to or followed through with a reasonable family case plan or other rehabilitative efforts of social, medical, mental health, or other rehabilitative agencies"). Circuit courts are permitted to terminate parental rights upon these findings. *See* W. Va. Code § 49-4-604(c)(6). Accordingly, the petitioners are entitled to no relief.

For the foregoing reasons, the circuit court's June 24, 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