

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

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

In re S.B., H.B., D.B., and N.B.

No. 24-456 (Kanawha County CC-20-2023-JA-116, CC-20-2023-JA-117, CC-20-2023-JA-118, and CC-20-2023-JA-119)

MEMORANDUM DECISION

Petitioner Mother J.B.¹ appeals the Circuit Court of Kanawha County’s July 15, 2024, order terminating her parental rights to S.B., H.B., D.B., and N.B., arguing that the circuit court erred by denying her motions for an improvement period and terminating her parental rights without employing the least 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.

In April 2023, the DHS filed a petition alleging that the petitioner physically abused the children by slapping, grabbing, throwing, and hitting the children. The DHS further alleged that the petitioner and the children’s father engaged in domestic violence in the children’s presence and that their conduct constituted extreme maltreatment of the children. In May 2023, the parties convened for a preliminary hearing at which a Child Protective Services (“CPS”) worker testified that when she initially visited the home, she observed bruises on H.B., D.B., and N.B. that were inconsistent with injuries from falls or rough play.

In July 2023, the petitioner underwent a forensic psychological evaluation wherein she claimed her mother-in-law called CPS because she did not want the petitioner to continue living

¹ The petitioner appears by counsel Benjamin Freeman. The West Virginia Department of Human Services appears by Attorney General John B. McCuskey and Assistant Attorney General Kristen Ross. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel. Counsel Jennifer R. Victor 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).

with her and stated her mother-in-law was primarily responsible for the children's discipline and physically abused the children. The evaluator noted the petitioner's "high level of defensiveness" and "tendency to present herself in a favorable light" which the evaluator opined was "likely an effort to avoid acknowledging personal deficits out of concern this would compromise her chances of having her children returned to her custody." The evaluator concluded that the petitioner was "limited in her recognition and acceptance of responsibility for her failure as a parent" and her prognosis for improved parenting was "guarded to poor."

The court held several adjudicatory hearings, culminating in a final hearing in November 2023 at which the petitioner wished to stipulate to excessively spanking the children but denied all of the other allegations. Thus, the court rejected her proposed stipulation because she "failed to acknowledge any wrongdoing and failed to admit to any child abuse and neglect." Then, a CPS worker testified as to the "fingerprint" bruises on the children, typical of being grabbed, and one child's statement that "[the petitioner] was mean" when asked how she got a scratch on her cheek. The worker further testified that the petitioner could not explain the injuries on the children other than claiming they played rough. Another CPS worker testified that the DHS did not recommend an improvement period due to the petitioner's refusal to acknowledge any issues or abuse beyond excessive spanking. In the resulting order, the court adjudicated the petitioner of abusing and neglecting the children, specifically due to her use of excessive corporal punishment and physical abuse. Further, the court found that the petitioner was not likely to fully participate in a post-adjudicatory improvement period because she refused to acknowledge her abuse of the children or any "parental shortcomings amenable to correction" and, accordingly, denied her previously filed motion for an improvement period.

In January 2024, the petitioner filed another motion requesting an improvement period. In March 2024, the matter came on for a dispositional hearing at which the petitioner testified that she never slapped any of her children. However, upon later questioning by the court, the petitioner contradicted her earlier testimony by admitting to slapping two of her children. The court continued the hearing, and the parties reconvened in May 2024 at which time the court announced its decision to terminate the petitioner's parental rights. In the resulting dispositional order, the court found that the petitioner refused to acknowledge the abuse and neglect she inflicted upon the children until the eleventh hour at disposition where she "somewhat admitted that she had disciplined the children inappropriately." However, the court opined that her admission was "belated, insincere, and unpersuasive" because she "continued to deny and minimize her violence in the home" and her admission was inconsistent with the evidence adduced at adjudication. Further, the court found that the petitioner participated in services but failed to benefit from them, failed to demonstrate she was likely to comply with the terms of an improvement period, and demonstrated an inadequate capacity to solve the abuse and neglect on her own or with help. The court determined that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future and the children's welfare necessitated termination, especially considering their young ages and need for continuity of caretakers. It is from the dispositional order that the petitioner appeals.³

³ The children's father later relinquished his parental rights at a hearing held on February 27, 2025. The permanency plan for the children is adoption in the current placement.

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 her motions for an improvement period. However, to receive a post-adjudicatory or post-dispositional improvement period the petitioner must "demonstrate[] by clear and convincing evidence, that [she] is likely to fully participate in the improvement period." W. Va. Code § 49-4-610(2)(B) and (3)(B). Critically, "[i]n order to remedy the abuse and/or neglect problem, the problem must first be acknowledged" and without acknowledgement, an improvement period is an "exercise in futility at the child's expense." *In re Timber M.*, 231 W. Va. 44, 55, 743 S.E.2d 352, 363 (2013) (quoting *In re Charity H.*, 215 W. Va. 208, 217, 599 S.E.2d 631, 640 (2004)). While the petitioner contends that she "eventually" admitted to excessive corporal punishment, the circuit court found that her admission was "belated, insincere, and unpersuasive" and inconsistent with the evidence. As such, we decline to disturb the circuit court's decision in this regard. *See Michael D.C. v. Wanda L.C.*, 201 W. Va. 381, 388, 497 S.E.2d 531, 538 (1997) ("A reviewing court cannot assess witness credibility through a record. The trier of fact is uniquely situated to make such determinations and this Court is not in a position to, and will not, second guess such determinations."); *see also In re Tonjia M.*, 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002) ("The circuit court has the discretion to refuse to grant an improvement period when no improvement is likely.").

The petitioner also argues that termination of her parental rights was erroneous because the DHS failed to prove by clear and convincing evidence that termination was warranted. In support, however, the petitioner relies solely upon her testimony that she was making efforts to correct her parental deficiencies, essentially asking this Court to make a credibility determination. Again, we refuse to do so. Finally, the petitioner argues that termination was not the least restrictive alternative and that termination of only her custodial rights was appropriate because the children's permanency plan was reunification with their father. However, West Virginia Code § 49-4-604 "permits the termination of one parent's parental rights while leaving the rights of the nonabusing parent completely intact, if the circumstances so warrant." *In re Emily*, 208 W. Va. 325, 344, 540 S.E.2d 542, 561 (2000). Further, "simply because one parent has been found to be a fit and proper caretaker for [the] child does not automatically entitle the child's other parent to retain his/her parental rights if his/her conduct has endangered the child and such conditions of abuse and/or neglect are not expected to improve." *Id.* Here, the circuit court clearly expected no improvement and, accordingly, found that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future and the children's welfare necessitated termination of the petitioner's parental rights. *See* W. Va. Code § 49-4-604(c)(6) (permitting circuit courts to terminate parental rights upon these findings). Thus, the petitioner is entitled to no relief.

For the foregoing reasons, we find no error in the decision of the circuit court, and its July 15, 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