

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re A.A., K.A., and A.R.

No. 24-474 (Hampshire County CC-14-2022-JA-62, CC-14-2022-JA-63, and CC-14-2022-JA-64)

MEMORANDUM DECISION

Petitioner Mother C.M.¹ appeals the Circuit Court of Hampshire County’s July 2, 2024, order terminating her parental rights to A.A., K.A., and A.R., arguing that the court erred in terminating her parental 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.

In December 2022, the DHS filed a petition alleging that the petitioner abused drugs in the children’s presence; exposed the children to deplorable living conditions; and failed to provide the children with proper hygiene, medical care, and supervision. At the preliminary hearing, the petitioner tested positive for THC, methamphetamine, and amphetamine and, thereafter, waived her right to a contested hearing. Following this, the circuit court entered an order providing the petitioner with supervised visitation, directing the petitioner to drug screen three times a week, and prohibiting the petitioner from consuming THC or alcohol. An adjudicatory hearing was held in January 2023. The petitioner stipulated to the allegations contained in the petition, except for her alleged failure to supervise. Based on these stipulations, the court adjudicated the petitioner of neglecting the children. In March 2023, the court granted the petitioner an improvement period, the terms of which required the petitioner to “stay drug and alcohol free,” attend parenting and life skills classes, participate in supervised visitation, maintain appropriate housing, and participate in

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 General Lee Niezgoda. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel. Counsel Joyce E. Stewart 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 the 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).

a counseling assessment. In September 2023, the petitioner moved for her improvement period to be extended. The court granted the extension over the objection of the DHS, who asserted that the petitioner had lapsed in her drug screening.

At a November 2023 hearing, the petitioner expressed a desire to voluntarily relinquish her custodial rights to the children to allow them to be placed in the legal guardianship of A.A. and K.A.'s paternal grandparents. The court then continued the hearing as to the petitioner's disposition to allow the multidisciplinary treatment team to discuss and establish the terms of the potential legal guardianship. Following several continuances, the next hearing was held in February 2024. The petitioner did not appear but was represented by counsel. At this hearing, the DHS informed the court that the parties had reached an agreement regarding the legal guardianship of the children. However, the DHS also informed the court that the petitioner had ceased drug screening following the November hearing, despite being ordered to continue, and had violated the terms of the supervised visitation plan by spending the weekend at her parents' home with the children. The court then continued the hearing to allow the petitioner to appear. Following this, the DHS filed an updated case plan recommending that the petitioner's parental rights be terminated.

The court held two dispositional hearings in March 2024. At these hearings, the DHS presented testimony from a DHS caseworker, a day report center case manager, and a parenting services provider regarding the petitioner's level of compliance during the proceedings and her improvement period. This testimony generally established that the petitioner failed to correct deficiencies in her parenting or appropriately meet the children's needs, tested positive for drugs and/or alcohol approximately twenty-seven times, failed to participate in drug screening for over two months between December 2023 and February 2024, and refused to complete inpatient drug rehabilitation. Following this, the petitioner testified, acknowledging that she had issues maintaining sobriety, but denied using any illegal substances after obtaining a medical cannabis card in February 2024. However, the petitioner refused to provide any information as to why she had a medical cannabis card and denied that she was told to continue drug screening. The petitioner also stated that she was willing to give up her custodial rights and have the children stay with A.A. and K.A.'s paternal grandparents until they were ready to return to her care, though she could not provide any timeline for potential reunification.

Based upon the testimony and evidence presented, the circuit court found that the petitioner failed to follow through with a reasonable family case plan and demonstrated an inadequate capacity to solve the conditions of neglect on her own or with help. The court also found that the children needed safety, stability, security, consistency, and permanency with fully committed adults and that a legal guardianship "would leave the children without any meaningful sense of security." Based on these findings, the circuit court concluded that there was no reasonable likelihood that the conditions of neglect could be substantially corrected in the near future and that the children's welfare required termination of the petitioner's parental rights. Accordingly, the court entered an order terminating the petitioner's parental rights to the children. It is from this order that the petitioner appeals.³

³ The parental rights of A.A. and K.A.'s father, C.A., remain intact following his successful completion of an improvement period. The parental rights of A.R.'s father were terminated. The

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 in terminating her parental rights instead of establishing a legal guardianship, to which she had previously consented. We have explained that "[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 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 petitioner's attempt to consent to an alternative disposition does not affect the circuit court's ability to terminate 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." W. Va. Code § 49-4-604(c)(6). There is no such likelihood when a parent has "demonstrated an inadequate capacity to solve the problem of abuse or neglect on their own or with help," including when the parent has "not responded to or followed through with a reasonable family case plan or other rehabilitative efforts." W. Va. Code § 49-4-604(d)(3). Here, the court was presented with ample evidence that the petitioner failed to correct the issues which led to the petition's filing despite being provided with rehabilitative services for over a year. Specifically, the petitioner continually tested positive for alcohol and controlled substances when this was prohibited under the terms of her improvement period. Thus, the court's conclusions that there was no reasonable likelihood that the conditions of neglect could be corrected in the near future and that the children's best interests necessitated termination are supported by the evidence. 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 July 2, 2024, order is hereby affirmed.

Affirmed.

ISSUED: September 30, 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

respondents indicate that C.A. will consent to an adoption of A.A. and K.A. The permanency plan for A.R. is adoption in her current placement.