

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

In re T.B., T.D., J.C.-1, and J.C.-2

No. 24-475 (Ohio County CC-35-2023-JA-145, CC-35-2023-JA-146, CC-35-2023-JA-147, and CC-35-2024-JA-22)

MEMORANDUM DECISION

Petitioner Mother M.J.¹ appeals the Circuit Court of Ohio County’s July 23, 2024, order terminating her parental and custodial rights to T.D., J.C.-1, and J.C.-2 and imposing disposition pursuant to West Virginia Code § 49-4-604(c)(5) in regard to T.B., arguing that the circuit court erred by 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 December 2023, the DHS filed a petition alleging that the petitioner abused and neglected T.B., T.D., and J.C.-1. Specifically, the DHS alleged that the petitioner and her boyfriend, J.C.-3, engaged in domestic violence in the presence of the children. According to the petition, the petitioner was pregnant with J.C.-2 when certain instances of domestic violence occurred. The DHS further alleged that T.B.’s phone contained messages describing J.C.-3 punching the petitioner and T.B.’s intervention in the fights to defend herself, her siblings, and the petitioner. According to the DHS, T.B. was “extremely distressed and scared” of the petitioner’s reaction to T.B.’s disclosures to Child Protective Services (“CPS”) and J.C.-1 reported that the petitioner directed him not to speak with CPS. The DHS further alleged that, as forms of discipline,

¹ The petitioner appears by counsel Michael B. Baum. The West Virginia Department of Human Services appears by Attorney General John B. McCuskey and Assistant Attorney General Katica Ribel. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel. Counsel Joseph J. Moses 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). Two of the children and their father share the same initials, so we refer to them as J.C.-1, J.C.-2, and J.C.-3, respectively.

the petitioner would threaten to call CPS to have T.B. taken away and would send the children to remain in their bedrooms for days at a time. Further, the children disputed the petitioner's claim that she was no longer in a relationship with J.C.-3, who was previously granted disposition pursuant to West Virginia Code § 49-4-604(c)(5) as to J.C.-1. Thus, the DHS alleged that the petitioner failed to protect the children from domestic violence and failed to provide the children with medical and mental health care. Further, the record shows that the December 2023 petition was the third abuse and neglect petition filed against the mother in West Virginia, with at least one prior case being based on the petitioner's excessive corporal punishment and failure to supervise the children. The petitioner was reunited with the children following the two prior abuse and neglect cases. Shortly after the December 2023 petition was filed, the children underwent forensic interviews during which they all disclosed witnessing domestic violence between the petitioner and J.C.-3.

At an adjudicatory hearing on January 17, 2024, the petitioner stipulated to multiple instances of domestic violence between herself and J.C.-3 in the home, her involvement in prior abuse and neglect proceedings, and her failure to provide adequate supervision, protection, and care to the children. Accordingly, the court adjudicated her of abusing and neglecting T.B., T.D., and J.C.-1. Thereafter, the petitioner filed a written motion for a post-adjudicatory improvement period which the court denied in a January 2024 order, noting that the petitioner failed to demonstrate that she was likely to fully participate in an improvement period and that the petitioner was in the middle of a high-risk pregnancy. In its order, the court further noted that the petition should be amended to include the child with whom the petitioner was pregnant once the petitioner gave birth.

In March 2024, the DHS filed an amended petition adding then-newborn J.C.-2 to the proceeding and alleging that the petitioner had failed to sign a medical authorization for the DHS to access medical records regarding her pregnancy with J.C.-2, had failed to report the birth of the child to the DHS, and had evaded CPS workers in their attempts to take custody of J.C.-2. The DHS noted that a criminal complaint for child concealment, in violation of West Virginia Code § 61-2-14d(a),³ had been filed against the petitioner. One day after the criminal complaint was filed, the petitioner contacted CPS and J.C.-2 was removed from her care. The DHS further alleged that the petitioner continually associated with J.C.-3, despite his history of domestic violence against the petitioner and the emotional damage the domestic violence caused the children; abused substances to the detriment of her parenting skills; refused to sign medical record authorizations; and failed to provide appropriate care, protection, and supervision to the children.

In May 2024, the parties convened for an adjudicatory hearing on the amended petition. The petitioner stipulated that she had yet to remedy the issues for which she was previously adjudicated and that those issues constituted abuse and neglect of J.C.-2—those issues being domestic violence in the home and the petitioner's failure to provide adequate supervision,

³ West Virginia Code § 61-2-14d(a) states that “[a]ny person who conceals, takes or removes a minor child in violation of any court order and with the intent to deprive another person of lawful custody or visitation rights shall be guilty of a felony.”

protection, and care to the children. Accordingly, the court adjudicated the petitioner of abusing and neglecting J.C.-2.

In July 2024, the court held a dispositional hearing during which the petitioner testified that she obtained a domestic violence protective order against J.C.-3 following an incident in which he punched her car window and threatened to break her jaw. However, the petitioner maintained that the children had never witnessed domestic violence despite their statements to the contrary. The children's forensic interviews and the petitioner's prenatal medical records were entered into evidence. Then, a CPS worker testified that the petitioner demonstrated a pattern of allowing J.C.-3 into her and her children's lives despite his continual domestic violence against the petitioner. The worker opined that the petitioner would continue exposing the children to J.C.-3; thus, the DHS recommended termination of the petitioner's parental rights. At the conclusion of the testimony, the guardian proffered that T.B. wanted to continue visits with the petitioner and recommended disposition pursuant to West Virginia Code § 49-4-604(c)(5) as to T.B. The guardian recommended termination of the petitioner's parental rights as to T.D., J.C.-1, and J.C.-2 due to the petitioner's minimization of domestic violence in the home and the trauma inflicted upon the children. In the resulting order, the court found that the petitioner minimized the domestic violence in the home; accused the children of lying about witnessing domestic violence; and failed to protect the children from J.C.-3. As such, the court found that there was no reasonable likelihood that the conditions of neglect or abuse could be substantially corrected in the near future, that the petitioner was unable or unwilling to correct those conditions, and that T.D., J.C.-1, and J.C.-2's best interests required termination of the petitioner's parental rights. Ultimately, the court terminated the petitioner's parental and custodial rights to T.D., J.C.-1, and J.C.-2. Regarding T.B., the court found that the petitioner was presently unable to provide for T.B.'s needs and imposed disposition pursuant to West Virginia Code § 49-4-604(c)(5) as to that child. It is from this order that the now petitioner appeals.⁴

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 court erroneously denied her motion for a post-adjudicatory improvement period.⁵ In support of

⁴ The permanency plan for T.B. is reunification with the nonabusing father. T.D.'s father's parental rights were previously terminated. J.C.-3's parental and custodial rights were terminated in the proceedings below. The permanency plan for T.D., J.C.-1, and J.C.-2 is adoption in their current placement.

⁵ The petitioner also argues that the court erred by denying her motion for a post-dispositional improvement period. However, we have held that "[a] circuit court may not grant a[n] . . . improvement period under W. Va. Code § 49-4-610[] . . . unless the [parent] files a written motion requesting the improvement period." Syl. Pt. 4, in part, *State ex rel. P.G.-1 v. Wilson*, 247 W. Va. 235, 878 S.E.2d 730 (2021). The petitioner cites to no portion of the record where she filed a written motion requesting a post-dispositional improvement period, in violation of Rule 10(c)(7) of the West Virginia Rules of Appellate Procedure. As such, the petitioner's argument on this basis is meritless.

her argument, she claims that she ended her relationship with J.C.-3, participated in therapy, and regularly attended a domestic violence support group. However, to receive an improvement period the petitioner was required to “demonstrate[] by clear and convincing evidence, that [she was] likely to fully participate in the improvement period.” W. Va. Code § 49-4-610. Here, the court explicitly found that the petitioner was unlikely to participate in the improvement period because, “[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 tepidly admitted to certain instances in which J.C.-3 engaged in domestic violence against her, she repeatedly asserted that the children never witnessed domestic violence and that their claims to the contrary were lies. As such, the petitioner is entitled to no relief in this regard. *See 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 the circuit court erred in finding that there was no reasonable likelihood that the conditions of neglect and abuse could be substantially corrected in the near future and that termination was in the children’s best interests.⁶ However, as discussed above, the record supports the court’s finding that there was no reasonable likelihood that the conditions of abuse or neglect could be substantially corrected in the near future. Furthermore, we have explained that children deserve permanency and reliable caretakers. *State ex rel. Amy M. v. Kaufman*, 196 W. Va. 251, 260, 470 S.E.2d 205, 214 (1996) (in the context of time limits on improvement periods, stressing that “a child deserves resolution and permanency in his or her life, and . . . part of that permanency must include at minimum a right to rely on his or her caretakers”). Here, the court took note of the petitioner’s unstable relationship with J.C.-3 and her repeated claim that he was not living with her, just occasionally staying with her. After concluding that the petitioner did not have the ability to protect herself or the children from domestic violence and that she was not candid with the court throughout the proceedings, the court found that the children’s welfare necessitated termination. *See* W. Va. Code § 49-4-604(c)(6) (permitting circuit courts to terminate parental rights upon 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); *In re Cecil T.*, 228 W. Va. at 91, 717 S.E.2d at 875, Syl. Pt. 4, in part (2011) (“[C]ourts are not required to exhaust every speculative possibility of parental improvement . . . where it appears that the welfare of the child will be seriously threatened.”). Accordingly, 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 23, 2024, order is hereby affirmed.

Affirmed.

⁶ The petitioner does not challenge the court’s imposition of disposition pursuant to West Virginia Code § 49-4-604(c)(5) as to T.B.

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