

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

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

In re A.A.-1, A.A.-2, and A.A.-3

No. 24-480 (Marshall County CC-25-2023-JA-36, CC-25-2023-JA-37, and CC-25-2023-JA-38)

MEMORANDUM DECISION

Petitioner Mother H.D.¹ appeals the Circuit Court of Marshall County’s July 23, 2024, order terminating her parental rights to the children, A.A.-1, A.A.-2, and A.A.-3.,² arguing that the circuit court erred in terminating her parental rights in the absence of notice of the dispositional hearing. 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 the petitioner abused and neglected the children by abusing drugs, neglecting their basic needs, and leaving them in the care of a registered sex offender. At an adjudicatory hearing in February 2024, the petitioner submitted a written stipulation admitting to the allegations against her and filed a motion requesting a post-adjudicatory improvement period. The circuit court adjudicated the petitioner as an abusing and neglecting parent as to all the children. In March 2024, the petitioner failed to appear for a status hearing, and the court scheduled a hearing on her pending motion for an improvement period for May 10, 2024. However, the petitioner also failed to appear for that hearing. As a result, the court entered an order on May 22, 2024, denying the petitioner’s motion for an improvement period and advising that “[a] dispositional hearing [would] be held . . . on Monday, June 24, 2024, at 3:00 PM, located at the Marshall County Courthouse.” The order directed the circuit clerk to provide

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 David C. White 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). Because the children share the same initials, we use numbers to differentiate them.

copies to “the [DHS], all counsel of record, CASA for Children, Inc., the Prosecutor’s Office, and to any pro se parties and persons entitled to notice, including foster parents and/or caretakers.”

On June 24, 2024, the court held the dispositional hearing. The petitioner failed to appear, but she was represented by counsel.³ Before the hearing commenced, the petitioner’s counsel asked the court if he could “take a quick look and see if [the petitioner] did show up” because “[s]he may be here.” After the petitioner’s counsel confirmed her absence, the DHS presented evidence that the petitioner failed to attend any multidisciplinary team meetings, submit for drug screens, participate in services, visit with the children, or communicate with the case worker. The DHS also proffered that the petitioner had knowledge of the hearing. Ultimately, the court found that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future because the petitioner “failed to participate in any meaningful way during any stage of the proceedings” and had not seen the children since the case commenced. The court further found that termination of the petitioner’s parental rights was necessary for the children’s welfare because they needed continuity in caretakers and required a significant amount of time to be integrated into a stable and permanent home. As such, the court terminated the petitioner’s parental rights to the children.⁴ It is from the dispositional order that the petitioner appeals.

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 erred in terminating her parental rights to the children because she was not provided notice of the dispositional hearing in contravention of Rule 31 of the West Virginia Rules of Procedure for Child Abuse and Neglect Proceedings.⁵ We find no merit to the petitioner’s argument. Rule 31 of the West Virginia Rules of Procedure for Child Abuse and Neglect Proceedings provides that “[n]otice of the date, time, and place of the disposition hearing shall be given to all parties, their counsel, and persons entitled to notice and the right to be heard.” Here, the petitioner readily admits that her counsel had notice of the dispositional hearing and represented her at that hearing. However, she makes no allegation that she was not in communication with her counsel or that her counsel failed to inform her of the date, time, and place of the dispositional hearing. In fact, the record indicates that her counsel did give her notice because he anticipated her appearance at the hearing. Moreover, the petitioner failed to appear for every hearing held after the adjudicatory hearing, but she does not allege that her failure to appear at those hearings was due to a lack of notice. We have concluded that sufficient notice of

³ The petitioner was represented by counsel Dean E. Williams at all hearings before the circuit court.

⁴ The court also terminated the parental rights of the children’s father. The permanency plan for the children is adoption in their current placements.

⁵ In support of her argument, the petitioner also relies on Syl. Pt. 2, *In re Travis W.*, 206 W. Va. 478, 525 S.E.2d 669 (1999), in which we addressed circuit courts’ compliance with Rule 31 of the West Virginia Rules of Procedure for Child Abuse and Neglect Proceedings. However, the petitioner’s reliance on *In re Travis* is misplaced because that case was decided under a prior version of Rule 31.

dispositional hearings was given to parties under similar circumstances. *See In re C.B.*, No. 16-1159, 2017 WL 2609050, at *2 (W. Va. June 16, 2017) (memorandum decision) (finding that the petitioner was provided notice of the dispositional hearings in accordance with Rule 31 because the date, time, and place of the hearings were contained in orders issued by the court and were stated on the record in the presence of the petitioner’s counsel); *In re J.F.*, No. 14-0091, 2014 WL 4347145, at *2 (W. Va. Aug. 19, 2014) (memorandum decision) (finding no merit to the petitioner’s argument that she did not receive notice of the dispositional hearing because she “failed to communicate with her attorney, the DHHR, and otherwise attend hearings and participate” and was represented by counsel throughout the proceedings below” who “received proper notice of all hearings”); *In re M.L.*, No. 14-0125, 2014 WL 2723881, at *2 (W. Va. June 16, 2014) (memorandum decision) (finding that proper notice was provided to all parties pursuant to Rule 31 because the petitioner’s counsel was present at the hearing where the dispositional hearing was scheduled and the petitioner made “no allegation that she was not in communication with counsel”); *In re G.F.*, No. 14-0127, 2014 WL 2723879, at *2 (W. Va. June 16, 2014) (memorandum decision) (finding that the petitioner received proper notice of the dispositional hearing because the court scheduled the dispositional hearing on the record in the presence of the petitioner’s counsel). Accordingly, the petitioner is entitled to no relief.

For the foregoing reasons, we affirm the circuit court’s July 23, 2024, order.

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