

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

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

In re G.J.

No. 24-482 (Kanawha County CC-20-2023-JA-305)

MEMORANDUM DECISION

Petitioner Father M.J.¹ appeals the Circuit Court of Kanawha County’s July 18, 2024, order terminating his parental rights to G.J., arguing that the circuit court erred in terminating his parental rights instead of considering less restrictive alternatives and in denying him post-termination visitation.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 September 2023, the DHS filed a petition alleging that the petitioner engaged in domestic violence against G.J.’s mother; emotionally and physically abused another child in the home, T.J.;³ and neglected the basic needs of his children.⁴ At a hearing in November 2023, the petitioner moved for supervised visitation with G.J., specifically, to attend the child’s upcoming birthday party. The circuit court informed the petitioner that participation in reunification services was a prerequisite to any visitation. After consulting with his counsel, the petitioner represented

¹ The petitioner appears by counsel Jason S. Lord. The West Virginia Department of Human Services appears by counsel Attorney General John B. McCuskey and Assistant Attorney General Heather L. Olcott. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel. Counsel Sharon K. Childers appears as the child’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 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).

³ T.J. was the subject of separate abuse and neglect proceedings involving the petitioner and was not subject to this appeal.

⁴ The underlying proceedings involved additional children who are not subject to this appeal.

that he would not participate in any services. The court held the petitioner's motion in abeyance, specifically denying the petitioner's request to attend the birthday party. At a December 2023 hearing, the guardian represented to the court that the petitioner had attended the party and that G.J. had spent the weekend with the petitioner, in violation of the court's orders.

At an adjudicatory hearing in January 2024, the DHS presented the testimony of a Child Protective Services worker regarding the petitioner's physical and emotional abuse of T.J. and allegations that, while in the home with the children present, the petitioner engaged in domestic violence, substance abuse, and drug dealing. Following this testimony, the DHS moved the court to consider the in camera testimony of T.J., then 16 years old, who described the petitioner yelling and screaming at her while intoxicated and hitting her with a belt. The court also heard from the petitioner, who admitted to "swatting" T.J. with a belt five times and smoking marijuana. The petitioner denied that he sold drugs or engaged in domestic violence and, despite records to the contrary, stated that he had completed services required in a prior abuse and neglect proceeding in Oklahoma. The petitioner also admitted to attending G.J.'s birthday party and sporting events with the children in violation of the court's orders. After considering this evidence, the court adjudicated the petitioner of abusing and neglecting G.J. The court also ordered that the petitioner be provided with services, including drug and alcohol screening, parenting classes, supervised visitation, and a parental fitness evaluation.

After two continuances, the court held the dispositional hearing in June 2024. At this hearing, the DHS presented evidence that, with the exception of the parental fitness evaluation, the petitioner refused to participate in any of the services offered and refused to give his address to the DHS. Following the DHS testimony, the court heard from the petitioner, who denied having abused or neglected the children and admitted to his noncompliance with services, stating "my private life . . . has nothing to do with the way I interact with my children." The guardian then presented the testimony of the forensic interviewer who had conducted the petitioner's parental fitness evaluation. The forensic interviewer stated that the petitioner did not accept responsibility for exposing the children to domestic violence and physical abuse and that the petitioner had not benefited from past parenting services. The forensic interviewer also reported that the petitioner's risk of relapse was high. Based upon this testimony and the prior evidence presented, the circuit court found that there was no reasonable likelihood that the conditions of neglect or abuse could be corrected in the near future and that termination of the petitioner's parental rights to G.J. was in the child's best interest. The court also found that the petitioner was likely still in active addiction and that his failure to address his domestic violence and anger, as well as the petitioner's apparent detachment from the child, presented a threat to G.J.'s safety. Accordingly, the circuit court entered an order terminating the petitioner's parental rights to the child and denying post-termination visitation. It is from this dispositional order that the petitioner appeals.⁵

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 first argues that the circuit court erred by terminating his parental rights instead of imposing a less drastic alternative. This Court

⁵ The permanency plan for G.J. is to remain in the custody of his nonabusing mother.

has held that termination of parental rights “may be employed without the use of intervening less restrictive alternatives when it is found that there is no reasonable likelihood under [West Virginia Code § 49-4-604] 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 asserts that the circuit court could have “simply limited contact” between himself and G.J. and refers to the fact that G.J.’s mother retained her parental rights and custody of the child. Critically, however, the petitioner does not challenge any of the factual findings underlying the court’s decision to terminate his parental rights, including his continued contact with the children in violation of the court’s orders and his refusal to participate in services. Moreover, the petitioner continued to deny that he had abused and neglected the children or otherwise take responsibility for the issues giving rise to the petition. *See In re Timber M.*, 231 W. Va. 44, 55, 743 S.E.2d 352, 363 (2013) (“Failure to acknowledge the existence of a problem . . . results in making the problem untreatable” (quoting *In re Charity H.*, 215 W. Va. 208, 217, 599 S.E.2d 631, 640 (2004))). The fact that the child’s mother retained her parental rights and custody has no bearing on the circuit court’s ability to terminate the petitioner’s parental rights. *See In re Emily*, 208 W. Va. 325, 344, 540 S.E.2d 542, 561 (2000) (“[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.”). Therefore, we conclude that the petitioner is entitled to no relief on this basis.

The petitioner also argues that the circuit court erred in denying him post-termination visitation. In support of his position, the petitioner asserts that “he is a fit parent and able to properly have visits with his child.” This Court has held that

“[w]hen parental rights are terminated due to neglect or abuse, the circuit court may nevertheless in appropriate cases consider whether continued visitation or other contact with the abusing parent is in the best interest of the child. Among other things, the circuit court should consider whether a close emotional bond has been established between parent and child and the child’s wishes, if he or she is of appropriate maturity to make such request. The evidence must indicate that such visitation or continued contact would not be detrimental to the child’s well being and would be in the child’s best interest.” Syl. Pt. 5, *In re Christina L.*, 194 W. Va. 446, 460 S.E.2d 692 (1995).

Syl. Pt. 11, *In re Daniel D.*, 211 W. Va. 79, 562 S.E.2d 147 (2002).⁶ Contrary to the petitioner’s assertions, the record shows that the petitioner was unable and unwilling to participate in supervised visitation throughout the entirety of the underlying proceedings and that he continuously violated the circuit court’s orders prohibiting him from having contact with G.J. Further, as stated by the circuit court, the record contains no evidence showing that post-

⁶ We apply the standards in place at the time of the entry of the circuit court’s order denying post-termination visitation, but note that after its entry this Court provisionally amended Rule 15 of the West Virginia Rules of Procedure for Child Abuse and Neglect Proceedings and “adopt[ed] appropriate standards for consideration of post-termination visitation outside of a fact-based context.” *In re Z.D.-I*, 251 W. Va. 743, --- n.21, 916 S.E.2d 375, 382 n.21 (2025).

termination visitation would be in G.J.’s best interests but, rather, that the petitioner’s actions presented a threat to the child. Combined with the petitioner’s refusal to take responsibility for his actions, the circuit court had sufficient evidence to determine that post-termination visitation was not in the child’s best interest, and we refuse to disturb this determination on appeal. *See In re D.S.*, 251 W. Va. 466, ---, 914 S.E.2d 701, 707 (2025) (Explaining, on review in an abuse and neglect appeal, that the Court does “not reweigh the evidence or make credibility determinations.”); *State v. Guthrie*, 194 W. Va. 657, 669 n.9, 461 S.E.2d 163, 175 n.9 (1995) (“An appellate court may not decide the credibility of witnesses or weigh evidence as that is the exclusive function and task of the trier of fact.”).⁷

For the foregoing reasons, we find no error in the decision of the circuit court, and its July 18, 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

⁷ In further support of his argument, the petitioner asserts that he “was adjudicated for his alleged actions with . . . T.J.” and that “[n]othing in the record suggested that he was abusing or neglectful to . . . G.J.” However, this ignores that the definition of an “abused child” is “[a] child whose health or welfare is being harmed or threatened by . . . [a] parent . . . who knowingly or intentionally inflicts . . . physical injury or mental or emotional injury, upon the child *or another child in the home.*” W. Va. Code § 49-1-201 (emphasis added). As a result, this argument is without merit.