

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

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

***In re* I.R. and E.B.**

No. 24-496 (Gilmer County CC-11-2024-JA-5 and CC-11-2024-JA-6)

MEMORANDUM DECISION

Petitioner Mother C.C.¹ appeals the Circuit Court of Gilmer County’s August 7, 2024, order terminating her parental rights to I.R. and E.B, arguing that the circuit court erred in terminating her parental rights instead of granting her an improvement period.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 March 2024, the DHS filed a petition alleging that the petitioner and the father, T.B., locked I.R. in a bedroom, which he escaped by removing a window screen.³ I.R., then four years old, was later found by a neighbor, who witnessed him playing alone outside in the cold. The DHS further alleged that both parents admitted to routinely smoking marijuana and methamphetamine in the residence. Additionally, the DHS found the home to be unsafe and unsanitary, with knives and drug paraphernalia left out in the open, feces smeared on the walls, and rotting food in the kitchen. Consequently, both parents were arrested and charged with child neglect. Prior to the preliminary hearing, the petitioner filed a motion for an improvement period, of any kind. In April

¹ The petitioner appears by counsel Andrew B. Chattin. The West Virginia Department of Human Services appears by counsel Attorney General John B. McCuskey and Assistant Attorney General Kristen E. Ross. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel. Counsel Mackenzie Anne Holdren 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).

³ T.B. is the biological father of E.B. and is identified in the petition as the “psychological father” of I.R. The biological father of I.R. is deceased. For the purposes of this decision, T.B. is simply referred to as “the father.”

2024, the court held an adjudicatory hearing, during which the petitioner and the father admitted to most of the allegations in the DHS's petition, including that they abused drugs and that the home was in an unsafe condition. On the basis of their stipulations, the court adjudicated the petitioner and the father as abusive and neglectful parents. The court did not rule on the petitioner's motion for an improvement period at the adjudicatory hearing.

The circuit court held the dispositional hearing in July 2024. Dr. Megan L. Green of Hudson Psychological Services, who conducted the adult respondents' forensic psychological evaluations, testified telephonically regarding the reasons why her prognosis for the petitioner to attain minimally adequate parenting was "guarded." A Child Protective Services ("CPS") worker testified that the petitioner was participating in therapy and treatment, had obtained employment, and had tested negative on all drug screens. Further, the CPS worker recommended that the petitioner receive an improvement period. Regarding the father, the DHS recommended termination of his parental rights because of his long history of drug abuse, two prior involuntary terminations due to drug use and noncompliance with services, and his current incarceration. On cross-examination, the CPS worker later testified that she was unaware that the petitioner and the father intended to continue their relationship and that her recommendation for an improvement period had been partly based on the petitioner's assurance to the DHS that she was ending her relationship with the father.

Next, the petitioner testified to her ongoing participation in services. She also testified that she was still in a committed relationship with the father and requested that he receive an improvement period. When questioned about whether she would end contact with the father if the court ordered her to do so, the petitioner cried and agreed to end their relationship, although she repeatedly stated her opposition. Additionally, the petitioner testified that she was bothered by the father's prior involuntary terminations, but still wished to coparent the children together. Finally, the father testified that he and the petitioner were in a committed relationship and had spoken on the phone every day while he was incarcerated.

Despite the initial recommendation by the DHS, during closing argument, the prosecutor stated that he was "very hesitant" to stand in support of an improvement period after hearing the petitioner's testimony about her relationship with the father. The guardian ad litem recommended denial of the petitioner's motion for an improvement period based on the testimony during the dispositional hearing.

In its subsequent dispositional order terminating the petitioner's parental rights, the circuit court found that there were "no reasonable grounds to believe that the father respondent and the mother respondent [would] improve the issues addressed in the petition in the foreseeable future." Specifically, the circuit court found that while the petitioner made some efforts to address her addiction and parenting issues, those efforts were insufficient because she failed to terminate her relationship with the father. Ultimately, the court concluded that the best interests of the children

necessitated termination of the petitioner's rights.⁴ 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). Before this Court, the petitioner argues that the circuit court erred in denying her motion for an improvement period. The petitioner argues that there "was a reasonable likelihood" that she would comply with the terms of an improvement period, as evidenced by the fact that she had obtained employment, made efforts to obtain suitable housing, had clean drug screens, and had been compliant with services. Additionally, the petitioner points to her testimony during the dispositional hearing that she would leave respondent father, if necessary, to prevent losing her parental rights.

In order to be granted a post-adjudicatory improvement period under West Virginia Code § 49-4-610(2)(B),⁶ the parent must first "demonstrate[], by clear and convincing evidence, that the [parent] is likely to fully participate in the improvement period." "West Virginia law allows the circuit court discretion in deciding whether to grant a parent an improvement period." *In re M.M.*, 236 W. Va. 108, 115, 778 S.E.2d 338, 345 (2015); *see also In re Tonjia M.*, 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002) (holding that a circuit court has the discretion to deny a motion for an improvement period when no improvement is likely).

During the dispositional hearing, the circuit court heard testimony from the DHS indicating that the most critical term of an improvement period for the petitioner would be no contact with the father, a term that the court determined the petitioner was unlikely to satisfy. Indeed, the evidence before the court supported the DHS's contention that the father contributed significantly to the petitioner's abusive and neglectful conduct, such as enabling her substance abuse. The petitioner cites her own testimony as proof that she would end her relationship with the father if ordered to do so. However, the court heard this testimony and found it lacked credibility. This Court generally refuses to disturb a circuit court's credibility determinations on appeal. *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

⁴ The father's parental rights were also terminated. The permanency plan is for the children to be adopted in the current placement.

⁵ Although the petitioner appeals from the August 7, 2024, dispositional order, we note that the court subsequently entered an amended dispositional order on August 20, 2024.

⁶ In her motion for improvement period, the petitioner moved for an improvement period "either being a pre-adjudicatory, post-adjudicatory or post-dispositional improvement period." Each type of improvement period is addressed by a separate subsection of West Virginia Code § 49-4-610. Although not specified in the motion or in the petition for appeal, it appears that the petitioner objects to the denial of a post-adjudicatory improvement period. Therefore, this Court addresses the issue presented under West Virginia Code § 49-4-610(2).

determinations.”). As such, we conclude that the circuit court did not err in denying the petitioner’s motion for an improvement period.

Likewise, we find that the circuit court did not err in terminating the petitioner’s parental rights to the children. Pursuant to West Virginia Code § 49-4-604(c)(6), a circuit court may 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 that termination is necessary for the welfare of the children. West Virginia Code § 49-4-604(d) provides that there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected when “based upon the evidence before the court, the abusing adult or adults have demonstrated an inadequate capacity to solve the problems of abuse or neglect on their own or with help.” In its dispositional order, the circuit court found that the petitioner could not correct the conditions of abuse and neglect in the near future. Notably, we have held that “it is possible for an individual to show ‘compliance with specific aspects of the case plan’ while failing ‘to improve . . . [the] overall attitude and approach to parenting.’” *In re Jonathan Michael D.*, 194 W. Va. 20, 27, 459 S.E.2d 131, 138 (1995) (quoting *W. Va. Dep’t of Human Serv. v. Peggy F.*, 184 W. Va. 60, 64, 399 S.E.2d 460, 464 (1990)). Here, the record supports the court’s conclusion that the petitioner’s inability to separate from the father resulted in her inability to correct her substance abuse and parenting issues. Additionally, the circuit court found that the best interests of the children necessitated termination of the petitioner’s parental rights, a finding which the petitioner fails to challenge on appeal. This Court has held that

[t]ermination of parental rights, the most drastic remedy under the statutory provision covering the disposition of neglected children, [West Virginia Code § 49-4-604] . . . 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 § 49-4-603(d)] . . . that conditions of neglect or abuse can be substantially corrected.

Syl. Pt. 5, *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)). As the circuit court’s requisite findings are supported by the record and not clearly erroneous, we find no error in the termination of the petitioner’s parental rights.

For the foregoing reasons, we find no error in the decision of the circuit court, and its August 7, 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