

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

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

***In re G.A.***

**No. 24-533** (Mercer County CC-28-2021-JA-40)

**MEMORANDUM DECISION**

Petitioner Mother A.A.<sup>1</sup> appeals the Circuit Court of Mercer County’s September 4, 2024, order terminating her parental rights to G.A., arguing that the circuit court should have granted her a “full” improvement period and implemented a less restrictive dispositional alternative.<sup>2</sup> 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 January 2021, a petition was filed alleging that the petitioner and the father left then six-month-old G.A. alone in a motel room while they partied on New Year’s Eve.<sup>3</sup> When the petitioner was located, she was highly intoxicated and admitted that she had taken Xanax and alcohol. The father was later arrested and charged with numerous offenses including domestic assault, attempted kidnapping, child abuse, and possession with intent to deliver marijuana. The petitioner was adjudicated an abusive and neglectful parent as to G.A., based on her stipulation, and granted an improvement period. In December 2021, the DHS filed an amended petition

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<sup>1</sup> The petitioner appears by counsel David B. Kelley. The West Virginia Department of Human Services appears by counsel Attorney General John B. McCuskey and Assistant Attorney General Andrew T. Waight. Counsel Thomas Janutolo Jr. appears as the child’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”).

<sup>2</sup> We use initials where necessary to protect the identities of those involved in this case. *See* W. Va. R. App. P. 40(e).

<sup>3</sup> The case was originally filed in Virginia and then transferred to West Virginia. The circuit court properly transferred jurisdiction under the UCCJEA on the basis of inconvenient forum. *See* W. Va. Code § 48-20-207(a). The original petition only included G.A. An amended petition later included the petitioner’s other children who are not at issue in this appeal.

alleging that the petitioner was homeless and abused alcohol and drugs.<sup>4</sup> The petitioner also tested positive for alcohol, marijuana, and cocaine in September 2021. The matter progressed as the court monitored the petitioner's participation in services and eventually adjudicated her in regard to her two other children, N.C. and M.C. At a hearing in August 2022, a DHS worker testified that the petitioner sporadically participated in services, had not drug screened for eight months, and had not improved other than obtaining housing. At that time, the court took the petitioner's oral motion for an improvement period, as to the amended petition, under advisement, and noted that the post-adjudicatory improvement period for G.A. was "nine months in." In December 2023, the petitioner's estranged boyfriend murdered the oldest child, N.C., and then committed suicide. The murder occurred in the home of N.C. and M.C.'s familial placement. Neither G.A. nor the petitioner was present at the time.

The dispositional hearing occurred in June 2024. A DHS worker testified that the petitioner sporadically participated in services but did not successfully complete her improvement period. Specifically, the petitioner failed to meaningfully participate in the case plan, did not have consistent employment, and did not complete mental health or substance abuse treatment. The petitioner was also arrested for driving under the influence in July 2022 and was on probation for criminal charges originating in Virginia. The DHS worker recommended termination of the petitioner's rights to G.A., noting that G.A. had not been in custody of the petitioner since she was six months old, and they did not have a strong bond.

Next, the petitioner testified that she had started counseling, had been employed for a month, and had begun medication-assisted treatment. According to the petitioner, she would visit with G.A. in the car on the days her mother drove her to work. However, she admitted that she had not been compliant with the case plan including only completing a few drug screens and her continuous use of marijuana. The petitioner attributed much of her noncompliance to her violent relationship with the boyfriend who murdered N.C. When asked about her wishes for disposition, the petitioner testified that she was not ready to take care of the children and requested that only her custodial and guardianship rights be terminated.

At the conclusion of the dispositional hearing, the circuit court found on the record that, in over three years, the petitioner had not adequately addressed the issues that led to the filing of the petition and that, by the petitioner's own admission, she was not ready for the children to come back to her care. Ultimately, the court found that there was no reasonable likelihood that the conditions of neglect could be corrected in the near future and it was necessary for the welfare of G.A. to terminate the petitioner's parental rights. Therefore, the circuit court terminated the petitioner's parental rights to G.A.<sup>5</sup> It is from the dispositional order that the petitioner appeals.

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<sup>4</sup> The amended petition included two of the petitioner's older children, N.C. and M.C., who are not at issue in this appeal. However, the circumstances and underlying facts involving the other two children are closely connected with the resolution of the petitioner's arguments concerning G.A. and therefore must be discussed.

<sup>5</sup> The father's parental rights were also terminated. The permanency plan for G.A. is adoption in the current placement.

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 should have granted her a "full" post-adjudicatory or post-dispositional improvement period. At the outset, we note that the petitioner was granted a post-adjudicatory improvement period. However, to the extent that she argues that she was entitled to a post-adjudicatory improvement period on the amended petition or a post-dispositional improvement period, the petitioner cites no portion of the appendix record demonstrating that she filed a written motion for an improvement period. This is in violation of Rule 10(c)(7) of the Rules of Appellate Procedure, which requires that a petitioner's brief "must contain appropriate and specific citations to the record on appeal, including citations that pinpoint when and how the issues in the assignments of error were presented to the lower tribunal." Further, this Court has previously held that "[a] circuit court may not grant a[n] . . . improvement period under W. Va. Code § 49-4-610 . . . unless the respondent to the abuse and neglect petition files a written motion requesting the improvement period." Syl. Pt. 4, in part, *State ex rel. P.G.-I v. Wilson*, 247 W. Va. 235, 878 S.E.2d 730 (2021). Accordingly, the circuit court did not err in denying the petitioner's oral request for an additional post-adjudicatory or post-dispositional improvement period.

The petitioner also argues that the circuit court erred by terminating her parental rights because a less restrictive alternative was appropriate. In support of her argument, the petitioner states that she "did expend some energy to fulfill the terms of the family case plan." However, the petitioner ignores the fact that "[t]ermination of parental rights . . . may be employed without the use of less restrictive alternatives when it is found that there is no reasonable likelihood under [W. Va. Code § 49-4-604(c)(6)] 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)). There is no reasonable likelihood that the conditions of abuse or neglect can be substantially corrected when "the abusing adult . . . [has] demonstrated an inadequate capacity to solve the problems of abuse or neglect on their own or with help," including where "[t]he abusing 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). There is sufficient evidence to support the circuit court's finding that there was no reasonable likelihood that the petitioner could substantially correct the conditions of neglect in the near future, including the petitioner's admission to being non-compliant with the case plan, sporadic participation in services, and continued drug use over three years while the matter was pending. Additionally, the court found that termination of the petitioner's parental rights was necessary for the child's welfare. Circuit courts are permitted to terminate parental rights upon these findings. *See* W. Va. Code § 49-4-604(c)(6) (permitting circuit courts to terminate parental rights upon finding "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"). Therefore, 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 September 4, 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