

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

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

In re A.J., K.S.-1, R.D., and K.S.-2

No. 24-535 (Kanawha County CC-20-2023-JA-82, CC-20-2023-JA-83, CC-20-2023-JA-84, and CC-20-2024-JA-116)

MEMORANDUM DECISION

Petitioner Mother H.H.¹ appeals the Circuit Court of Kanawha County’s August 13, 2024, order terminating her parental rights to A.J., K.S.-1, R.D., and K.S.-2, arguing that the circuit court erred by denying her motions for an improvement period and terminating her parental rights instead of employing a less restrictive alternative.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.

On March 15, 2023, the DHS filed a petition alleging that the petitioner abused and neglected the children by using drugs to the detriment of her parenting abilities. Specifically, the DHS alleged that the petitioner admitted to using drugs while pregnant with A.J., resulting in the child being born drug-affected. At a March 28, 2023, preliminary hearing, the petitioner waived her right to the same and the circuit court ordered her to submit to drug screens, begin drug treatment, and participate in parenting and adult life skills classes, among other services. After the preliminary hearing, the petitioner began drug screening and consistently tested positive for methamphetamine and amphetamine.

¹ The petitioner appears by counsel Sandra K. Bullman. The West Virginia Department of Human Services appears by Attorney General John B. McCuskey and Assistant Attorney General Kristen Ross. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel. Counsel J. Rudy Martin 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 two children share the same initials, we use numbers to differentiate them.

In May 2023, the circuit court held an adjudicatory hearing at which the petitioner stipulated to abusing methamphetamine to the detriment of her parenting abilities and represented that she had begun inpatient drug treatment. Based upon her stipulation, the court adjudicated the petitioner as an abusing parent and the children as abused and neglected children. After the adjudicatory hearing, the petitioner filed a written motion requesting a post-adjudicatory improvement period. However, at a July 2023 multidisciplinary treatment team meeting, the parties were apprised that the petitioner had left inpatient drug treatment; began using methamphetamine again, as evidenced by a recent drug screen; and ceased communication with the DHS and service providers. Drug tests in the record indicate that the petitioner consistently tested positive for methamphetamine and amphetamine from June 2023 to October 2023.

In October 2023, the circuit court held a dispositional hearing at which it noted that the petitioner was pregnant and testing positive for “extremely high” levels of methamphetamine. The court continued the hearing because the petitioner did not appear. In March 2024, the petitioner gave birth to K.S.-2 and the DHS filed an amended petition alleging that the petitioner abused and neglected the child, as she admitted to using methamphetamine approximately two weeks prior to giving birth. In May 2024, the court held an adjudicatory hearing on the amended petition and, upon the petitioner’s stipulation, adjudicated her of abusing and neglecting K.S.-2 by abusing drugs during her pregnancy. After the hearing, the petitioner filed a second written motion requesting a post-adjudicatory improvement period.

In August 2024, the court held a dispositional hearing at which the petitioner failed to appear. A DHS worker testified that the DHS recommended termination of the petitioner’s parental rights because she was noncompliant with services, failed to complete drug rehabilitation, and made no effort to correct the conditions of abuse and neglect for which she was adjudicated. In the resulting dispositional order, 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 made no effort to comply with remedial services. The court further found that the petitioner failed to follow through with her reasonable family case plan and other rehabilitative services, as evidenced by her continued drug abuse. Finally, the court found that the children’s best interests required termination in light of their need for permanency. Ultimately, the court terminated the petitioner’s parental rights to the children. It is from the dispositional order that the petitioner appeals.³

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 erroneously denied her motions for a post-adjudicatory improvement period because she attended rehabilitation programs but was unable to “overcome her addiction.” However, to receive a post-adjudicatory 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(2)(B). Ample evidence of the petitioner’s failure to comply with

³ A.J., K.S.-1, and K.S.-2’s fathers’ parental rights were terminated below. R.D.’s father is deceased. The permanency plan for the children is adoption in the current placement.

services, absence at hearings, and continual drug use supports the court's conclusion that the petitioner was unlikely to participate in an improvement period. As such, we decline to disturb the circuit court's decision 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 termination of her parental rights was erroneous, and a less restrictive alternative was appropriate. On appeal, the petitioner contends that the children could have achieved permanency through legal guardianships in their familial placements. However, we have explained that "[t]ermination of parental rights . . . may be employed without the use of intervening less restrictive alternatives when it is found that there is no reasonable likelihood . . . 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 does not challenge the circuit court's findings that there was no reasonable likelihood that the conditions of neglect or abuse could be substantially corrected in the near future and that termination was necessary for the children to obtain permanency. *See* W. Va. Code § 49-4-604(c)(6) (permitting termination of parental rights upon these findings). Moreover, there is no reasonable likelihood conditions can be corrected when the parent is "addicted to . . . drugs, to the extent that proper parenting skills have been seriously impaired and the [parent] . . . ha[s] not responded to or followed through the recommended and appropriate treatment." *Id.* § 604(d)(1). Here, ample evidence shows that the petitioner continually abused drugs throughout the proceedings, failed to participate in services, and never completed a rehabilitation program. The circuit court found that the children's need for permanency necessitated termination of the petitioner's parental rights. The petitioner's argument does not establish that the circuit court abused its discretion when it terminated her parental rights, and she is entitled to no relief.

For the foregoing reasons, we find no error in the decision of the circuit court, and its August 13, 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