

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

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

In re J.H., J.M., T.K., and R.K.

No. 24-541 (Randolph County CC-42-2023-JA-67, CC-42-2023-JA-68, CC-42-2023-JA-69, and CC-42-2023-JA-70)

MEMORANDUM DECISION

Petitioner Mother M.K.¹ appeals the Circuit Court of Randolph County’s August 19, 2024, order terminating her parental rights to J.H., J.M., T.K., and R.K., arguing that the circuit court erred in terminating her parental rights without affording 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 August 2023, the DHS filed a petition alleging that the petitioner abused and neglected the children by exposing them to K.H., the father of two of the children. According to the DHS, K.H.’s parental rights to his children had previously been terminated during a prior abuse and neglect proceeding and he was barred from contact with the children. The petitioner was also a respondent in the earlier proceeding, but the children were returned to her care after her successful completion of an improvement period. According to the DHS, K.H. had a history of domestic violence, which included physically attacking the petitioner during an earlier pregnancy. The DHS later amended the petition to include allegations of, among other things, the petitioner’s substance abuse after she tested positive for methamphetamine, amphetamine, and marijuana.

At an adjudicatory hearing in February 2024, the petitioner stipulated that she neglected the children by exposing them to K.H. and as a result of her substance abuse. The court accepted

¹ The petitioner appears by counsel Timothy H. Prentice. The West Virginia Department of Human Services appears by counsel Attorney General John B. McCuskey and Assistant Attorney General Lee Niezgoda. Counsel Melissa T. Roman appears as the children’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 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).

the stipulation and adjudicated the petitioner as an abusing and neglecting parent. The petitioner also moved for a post-adjudicatory improvement period, but the court held the motion in abeyance pending further evidence of the petitioner's participation in services, including drug screens. The following month, the petitioner filed a letter with the court in which she admitted to not being fully compliant with services and denied continued drug use despite a recent positive screen. At a hearing in April 2024, the DHS indicated that the petitioner failed to consistently submit to drug screens. In May 2024, the guardian filed a motion to terminate the petitioner's parental rights because of her failure to submit to substance abuse treatment or acknowledge her substance abuse. Further, the guardian alleged that the petitioner continued to test positive for drugs and failed to remain in contact with the DHS. Finally, the guardian alleged that the petitioner visited the children only once during the proceedings, roughly nine months prior to the filing of the motion.

The matter came on for a dispositional hearing in August 2024. The petitioner was not present for the hearing, although she was represented by counsel. The DHS presented evidence of the petitioner's extensive noncompliance during the proceedings, including her failure to regularly visit the children, continued positive drug screens, failure to drug screen as directed, and failure to acknowledge her substance abuse. The court then denied the petitioner's pending motion for a post-adjudicatory improvement period, finding that she failed to fully participate in offered services, missed multiple hearings, and failed to appear "during the most crucial hearing" to establish that she would be likely to fully comply with an improvement period. Turning to disposition, the court found that the petitioner abandoned the proceedings, failed to take advantage of services offered to her, denied having a drug problem despite repeatedly testing positive for multiple substances, and failed to recognize the conditions that led to the removal of her children. As such, the court found that the petitioner demonstrated that she could not correct the conditions of abuse and neglect and that there was no reasonable likelihood the conditions could be substantially corrected in the near future. Citing the children's need for stability in care, the court also found that termination of the petitioner's parental rights was in their best interests. Accordingly, the court terminated the petitioner's parental rights.³ The petitioner appeals from the dispositional order.

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). At the outset, we must stress that the petitioner cites to no authority governing improvement periods or disposition in abuse and neglect proceedings and, therefore, also fails to present any argument applying that authority. This is in violation of Rule 10(c)(7) of the West Virginia Rules of Appellate Procedure, which requires that a "brief must contain an argument clearly exhibiting the points of . . . law presented" and "cit[e] the authorities relied on." Additionally, in an Administrative Order entered December 10, 2012, *Re: Filings That Do Not Comply With the Rules of Appellate Procedure*, the Court specifically noted that "[b]riefs that lack citation of authority [or] fail to structure an argument applying

³ The court also terminated the parental rights of the father of J.H. and J.M. The permanency plan for J.H. and J.M. is adoption in their current placement. The permanency plan for T.K. and R.K. is to remain with their father upon successful completion of an improvement period, or, alternatively, adoption by their grandparents.

applicable law” and “[b]riefs with arguments that do not contain a citation to legal authority to support the argument presented” are not in compliance with this Court’s rules. In that order, the Court went on to instruct that “all of the requirements of the Rules must be strictly observed by litigants” because “[t]he Rules are not mere procedural niceties; they set forth a structured method to permit litigants and this Court to carefully review each case.” In ordering that all litigants before this Court must comply with the Rules of Appellate Procedure, the Court cautioned that “[p]ursuant to Rule 10(j), failure to file a compliant brief ‘may result in the Supreme Court refusing to consider the case, denying argument to the derelict party, dismissing the case from the docket, or imposing such other sanctions as the Court may deem appropriate.’”

Despite the failure to comply with this Court’s rules, we nonetheless exercise our discretion to address the petitioner’s lone assignment of error, in which she alleges that it was error to terminate her parental rights “without affording her any recognized form of an improvement period at all.” In order to obtain a post-adjudicatory improvement period, the petitioner was required to, among other things, demonstrate that she was likely to fully comply with the terms thereof. *See* W. Va. Code § 49-4-610(2)(B). As the record clearly shows, the petitioner failed to comply with services the DHS offered, including participating in drug screens. The petitioner also missed hearings, failed to acknowledge her substance abuse, and continued to abuse drugs throughout the proceedings. Based on her lack of compliance, we conclude that the circuit court did not abuse its discretion in denying her motion. *See In re M.M.*, 236 W. Va. 108, 115, 778 S.E.2d 338, 345 (“West Virginia law allows the circuit court discretion in deciding whether to grant a parent an improvement period.”).

In regard to termination, we similarly find no error. Again, the petitioner argues that she was sufficiently motivated to correct the conditions of abuse and neglect. Contrary to the petitioner’s arguments, the circuit court expressly found that she failed to comply with the remedial services offered. According to West Virginia Code § 49-4-604(d)(3), situations in which there is no reasonable likelihood that conditions of abuse and neglect can be substantially corrected include when “[t]he abusing parent . . . [has] not responded to or followed through with a reasonable family case plan or other rehabilitative efforts.” Further, the petitioner only visited the children twice during the extended pendency of the proceedings, and we have explained that “the level of interest demonstrated by a parent in visiting his or her children while they are out of the parent’s custody is a significant factor in determining the parent’s potential to improve sufficiently and achieve minimum standards to parent the child.” *In re Katie S.*, 198 W. Va. 79, 90 n.14, 479 S.E.2d 589, 600 n.14 (1996) (citations omitted). The circuit court additionally found that the children required stability in their care, thereby necessitating termination of the petitioner’s parental rights. Circuit courts are permitted to terminate parental rights upon these findings. *See* W. Va. Code § 49-4-604(c)(6) (permitting termination of parental rights “[u]pon a finding that there is 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”); Syl. Pt. 5, *In re Kristin Y.*, 227 W. Va. 558, 712 S.E.2d 55 (2011) (“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 . . . that conditions of neglect or abuse can be substantially corrected.” (quoting Syl. Pt. 2, *In re R.J.M.*, 164 W. Va. 496, 266 S.E.2d 114 (1980))). As such, 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 August 19, 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