

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

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

In re D.A. and R.A.

No. 24-612 (Mingo County CC-30-2023-JA-96 and CC-30-2023-JA-97)

MEMORANDUM DECISION

Petitioner Mother M.A.¹ appeals the Circuit Court of Mingo County’s October 1, 2024, order terminating her parental rights to D.A. and R.A., arguing that the circuit court erred by denying her an improvement period and subsequently terminating her parental rights.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.

The DHS filed a petition in October 2023 alleging that the petitioner abused and neglected the children because she had not provided them with safe living conditions.³ Additionally, the DHS alleged that the petitioner was involved in a prior abuse and neglect case in 2018 for similar issues, although she ultimately retained her parental rights.⁴

In November 2023, the circuit court held a preliminary hearing. The petitioner was not present but was represented by counsel. According to the evidence, prior to the filing of the

¹ The petitioner appears by counsel Susan Van Zant. The West Virginia Department of Human Services appears by counsel Attorney General John B. McCuskey and Assistant Attorney General James W. Wegman. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel. Counsel Diana Carter Wiedel 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”).

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 Although the original petition is not included in the record, the parties do not dispute its contents. Moreover, the record adequately reflects the nature of the unsafe living conditions, including pervasive clutter, unsafe structure, and cockroach and other insect infestation.

⁴ The 2018 abuse and neglect case only involved D.A., as R.A. had not yet been born.

petition, the DHS provided several months of services to the petitioner in 2022 to correct the deplorable living conditions. Specifically, a Child Protective Services (“CPS”) worker testified that the petitioner was noncompliant with those services, as the condition of the home continued to deteriorate. Evidence showed that clutter was so extensive that the court questioned if children would be able to move freely in their own rooms. At the conclusion of the hearing, the court found that there was probable cause that the petitioner had committed abuse and/or neglect. Shortly after this hearing, the court ordered the petitioner to complete psychological, parenting, and substance abuse evaluations.

In February 2024, the circuit court held an adjudicatory hearing. The petitioner did not appear but was represented by counsel. After taking judicial notice of all prior testimony, the court found by clear and convincing evidence that the petitioner had abused and/or neglected the children. Shortly thereafter, the circuit court entered a second order directing the petitioner to submit to a psychological evaluation. The petitioner filed a general response to the petition and motion for a post-adjudicatory improvement period on July 2, 2024 denying that she abused or neglected the children but admitting that she had a cluttered home. Shortly thereafter, the petitioner became a respondent in a mental hygiene proceeding, prompting the court to appoint a guardian ad litem on her behalf and reschedule disposition.

The dispositional hearing occurred in August 2024 and was the first hearing the petitioner attended. The petitioner testified that she attempted to improve her home by ripping up the carpet and purchasing lumber to replace the flooring, but claimed that financial limitations prevented her from completely repairing the flooring. She explained that some of the issues with her home were due to the grief she experienced following the death of her husband in 2021, noting that he had previously assisted her with maintenance. She further testified that the mental hygiene proceeding was initiated because one of her providers feared that if the petitioner’s parental rights were terminated, she would harm herself. However, she asserted that she was mentally and physically able to take care of the children, seeking mental health treatment, and taking medication as prescribed by her doctor. The circuit court also heard evidence from the DHS that, despite being provided with services, the petitioner was noncompliant with the case plan. The petitioner had little to no contact with the DHS and did not participate in the multidisciplinary team (“MDT”) meetings, court proceedings, or any psychological evaluation despite the DHS twice scheduling appointments. Despite extensive services designed to help the petitioner keep her home free of clutter, bugs, hazards, and inappropriate people, the living conditions had not improved. Moreover, this was the second abuse and neglect case for the petitioner for the same issue. After reviewing the evidence, the court found that the petitioner had made minimal efforts to participate in the proceedings and with services and was unwilling or unable to correct the conditions of abuse and neglect. Ultimately, the court concluded that there was no reasonable likelihood that the petitioner could correct the conditions in the near future and that termination of her rights was in the children’s best interests. Accordingly, the court terminated the petitioner’s parental rights to the children. It is from the dispositional order that the petitioner appeals.⁵

⁵ The children’s father is deceased. The permanency plan is for the children to be adopted in the current familial 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 a post-adjudicatory improvement period was warranted. West Virginia Code § 49-4-610(2)(B) provides that a parent *may* be granted an improvement period if they “demonstrate[], by clear and convincing evidence, that [he or she] is likely to fully participate in the improvement period.” The petitioner cites only to her own testimony at disposition regarding her limited efforts to perform repairs to the home as proof that she would cooperate with services and participate in an improvement period. However, she provides no explanation for her failure to comply with court-ordered evaluations, attend MDT meetings and court hearings, or improve the overall conditions of the home. Based on these failures, the court found that the petitioner made minimal efforts to participate in the proceedings or services and concluded that the petitioner's full participation was unlikely. As this Court has explained, a circuit court has discretion to deny an improvement period when no improvement is likely. *See In re Tonjia M.*, 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002). Therefore, we conclude that the circuit court did not err in denying the petitioner's motion for an improvement period.

Next, the petitioner challenges the termination of her parental rights, arguing that the circuit court should have taken her mental health issues into account. However, the record demonstrates that the court gave substantial consideration to her mental health. Specifically, the court ordered two separate psychological evaluations—which the petitioner failed to attend—and appointed a guardian ad litem on her behalf. Moreover, at disposition, the petitioner testified that she was mentally capable of taking care of the children, that she was participating in mental health treatment, and taking prescribed medication. As such, the petitioner's argument lacks merit.

We find that the circuit court terminated the petitioner's parental rights based on her almost total failure to participate or make meaningful improvements to her home, finding that there was no reasonable likelihood that she could substantially correct the conditions of abuse and neglect. This is consistent with West Virginia Code § 49-4-604(d)(3), which provides that such conditions exist when a parent has

not responded to or followed through with a reasonable family case plan or other rehabilitative efforts . . . designed to reduce or prevent the abuse or neglect of the child, as evidenced by the continuation or insubstantial diminution of conditions which threatened the health, welfare, or life of the child.

Here, the petitioner had a prior abuse and neglect case involving the same issues and received several months of services through DHS. Despite this, the condition of the home worsened. Further, the petitioner failed to complete required psychological evaluations, participate in MDT meetings, or attend any hearings leading up to disposition. Circuit courts are permitted to terminate parental rights upon finding that “there is no reasonable likelihood the conditions of neglect or abuse can be substantially corrected in the near future” and that termination is “necessary for the welfare of the child.” W. Va. Code § 49-4-604(c)(6); *see also* 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))). The circuit court made such findings, and those findings were supported by the record. Therefore, we decline to disturb the court's order.

For the foregoing reasons, we find no error in the decision of the circuit court, and its October 1, 2024, order is hereby affirmed.

Affirmed.

ISSUED: September 10, 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