

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

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

In re T.P., S.P., M.P., E.P., and A.P.-1

No. 24-440 (Fayette County CC-10-2023-JA-129, CC-10-2023-JA-130, CC-10-2023-JA-131, CC-10-2023-JA-132, and CC-10-2023-JA-133)

MEMORANDUM DECISION

Petitioner Mother A.P.-2¹ appeals the Circuit Court of Fayette County’s August 29, 2024, order terminating her parental and custodial rights to T.P., S.P., M.P., E.P., and A.P.-1, arguing that the circuit court lacked jurisdiction to proceed on the DHS’s petition, erred in adjudicating her, and erred in terminating her parental and custodial 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.

Prior to the initiation of the proceedings giving rise to this appeal, the petitioner and her husband adopted all the children after their biological parents’ parental rights were terminated in several different abuse and neglect proceedings. Thereafter, in October 2023, the DHS filed a petition alleging that the petitioner physically attacked S.P., physically abused all the children, and failed to provide T.P. and M.P. with proper education. The DHS further alleged that then-seventeen-year-old T.P. weighed only sixty-six pounds.³ According to the DHS, a social worker at S.P.’s school reported that the child feared her parents and gave details of the petitioner’s attack. S.P. also explained that the children had previously been instructed to lie to Child Protective Services (“CPS”) or face repercussions at home. During the investigation, the petitioner stated that she believed S.P. was “making things up to try and get CPS in the home because [S.P.] got in trouble for sneaking out and seeing an eighteen-year-old boy.” The petitioner denied hitting S.P. and claimed that she “had to get on top” of the child in self-defense. M.P. then confirmed that the

¹ The petitioner appears by counsel Brandon L. Gray. The West Virginia Department of Human Services (“DHS”) appears by counsel Attorney General John B. McCuskey and Assistant Attorney General Andrew T. Waight. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel. Counsel Elizabeth K. Campbell appears as the children’s guardian ad litem (“guardian”).

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 one child and the petitioner share the same initials, we use numbers to differentiate them.

³ The petitioner did not include the original petition in the appendix record on appeal. However, the DHS later amended the petition to include additional allegations in regard to T.P.’s diagnosis of failure to thrive, and that document is in the appendix record.

mother struck S.P. and disclosed an incident in which T.P. was seen with a black eye after he was heard screaming while the father gave him a bath. Some of the children also disclosed issues with the parents failing to provide T.P. with adequate food. A CPS worker also observed the assignments of the homeschooled children, T.P. and M.P., but was presented with little completed work. Further, a neighbor disclosed that her daughter reported witnessing the petitioner “beat the shit out of” S.P.

In January 2024, the court conducted in camera interviews with the children. According to the circuit court, the children testified to physical abuse by the parents, including excessive corporal punishment and physical attacks. Additionally, T.P. described asking his siblings to provide him with food and that if the parents provided him food it would be different than what they provided to his siblings. Several of the other children corroborated T.P.’s statements and described further withholding, with one child claiming that T.P. would be deprived of food for days at a time. E.P., however, disputed T.P.’s claims of not being fed, as she described that he would be fed foods he did not like. Several of the children testified to having been homeschooled, with one child indicating that she did no schoolwork when her parents took over her education.

Over the course of two days in May 2023, the circuit court held the adjudicatory hearing. During the hearings, the petitioner claimed that the children lived with her in Raleigh County but that she would take them to the father’s home in Fayette County every morning for school. She denied ever physically or emotionally abusing the children and claimed that the children who were homeschooled were provided with appropriate schoolwork. She further denied that she treated T.P. differently than the other children and claimed that he often refused to eat prepared meals, theorizing that T.P.’s large dose of Adderall caused a lack of appetite. The petitioner claimed that T.P. stopped gaining weight when he began extended residential treatment at Fox Run Center, but admitted that she never expressed concerns with the facility about the child’s weight. Despite medical records to the contrary, the petitioner claimed that she was never instructed to seek a nutritionist or gastroenterologist to treat T.P. and that no medical providers had concern over the child’s weight. Further, the petitioner claimed that the allegations against her were “a conspiracy by the older children to be removed from the home” and, when confronted with the fact that the younger children’s testimony corroborated the older children’s disclosures, claimed that the older children had convinced the younger children to lie. The father testified and also denied the allegations. The court heard from several other witnesses, including a CPS worker and two medical professionals, who explained that T.P. began gaining weight subsequent to his removal. One witness indicated that T.P. had a healthy appetite and enjoyed many different foods. Brittany Menei, a nurse practitioner who cared for T.P. after his removal, testified that she diagnosed him with failure to thrive upon several factors, including “concerning” bloodwork results that demonstrated malnutrition. Additionally, pill counts revealed issues with the child’s medications not being taken appropriately. Ms. Menei expressed concerns over the large dosage of Adderall the child was prescribed, as the drug can be an appetite suppressant. However, a registered nurse who previously treated T.P. testified that the child gained weight even when taking his Adderall prescription. Then, the court heard from several witnesses, including several of the petitioner’s adult children and a close family friend. These witnesses generally testified to having observed no abuse or neglect or that several of the children had a history of lying.

The court issued an order finding that the children's testimony was credible, as it considered their manner and emotions while testifying. Further, the children completed forensic interviews prior to their testimony, and the court found that the children's disclosures remained consistent. In regard to the witnesses who challenged the children's credibility, the court noted that "many had difficulty recalling other past events" and that each of these witnesses had a significant familial relationship with the petitioner, "thereby putting their impartiality in question." Regarding the theory that the children were involved in a conspiracy to be removed from the home, the court concluded that this was unfounded, as it would be untenable to provide consistent statements or influence the younger children to lie in such a scenario. Critically, the court concluded that the children's disclosures and testimony were "wholly conflicting [with] and contradictory" to the testimony of the parents and their witnesses. Further, the court explicitly found the children more credible than the parents. The court also found that the evidence that the children were not doing any schoolwork while homeschooled was un rebutted. Accordingly, the court found that the petitioner physically abused T.P., S.P., and M.P. and educationally neglected T.P. and M.P. Turning to T.P.'s failure to thrive, the court stressed that the petitioner's claim that the child's weight loss was caused by Fox Run Center was undercut by the fact that she never raised concerns while the child was under treatment there and that the child did not gain weight after he left that facility and returned to the petitioner's care. The court also found that the petitioner's arguments about the child's prescriptions and attempts to blame medical providers were unfounded, given that T.P. consistently gained weight once removed from her care. In fact, the court stressed that T.P. gained nearly sixty pounds since his removal. Accordingly, the court adjudicated the petitioner of neglecting to provide T.P. appropriate nutrition. However, the court declined to adjudicate the petitioner of medical neglect, concluding that the DHS failed to meet its burden in this regard. The court also found that E.P. and A.P., although not physically abused, were abused children by virtue of residing in the home. Accordingly, the court adjudicated all the children as abused and neglected.

Subsequently, the petitioner filed a motion for a post-adjudicatory improvement period and a motion for an independent evaluation of all the children. The matter came on for disposition in July 2024. At the outset, counsel for the petitioner argued in support of the motion for evaluations, noting that "throughout the whole course of this case my client has maintained her innocence of this that she did not do these things to these children." Additionally, counsel noted that S.P. contacted the petitioner by text message and indicated a desire to return to the home. Counsel for the petitioner claimed that this demonstrated "that the children [were] backtracking" on their claims and, essentially, continued to contest the petitioner's adjudication. Counsel then admitted that the petitioner would not be entitled to an improvement period if the motion for evaluations was denied. Ultimately, the court denied the petitioner's motion for additional evaluations of the children, finding that they were unnecessary given their extensive in camera testimony. Counsel for the petitioner then claimed that the motion for an improvement period was moot because "this is a type of case to where [sic] an Improvement Period is not possible. It's an aggravated circumstances case." The court then proceeded to disposition, at which point the DHS indicated that it had no witnesses and requested to proceed straight to argument, which the court permitted and took judicial notice "of everything that has been filed in this case" in making its dispositional decision. The DHS argued in support of termination of the petitioner's rights, given her failure to accept responsibility. The guardian agreed with the DHS's position. In arguing against termination, the petitioner again claimed the children fabricated the allegations against her. The court then made

findings from the bench, including that the petitioner was not forthright with the court during the proceedings. The court found that the petitioner was motivated by the subsidy she received each month for the children and noted that she continued to receive that money after the children were removed. The court stressed that for “several months [the parents] got this large sum of money to take care of children that they did not have custody of.” Based on the evidence, the court found that there was no reasonable likelihood that the petitioner could correct the conditions of abuse and neglect in the near future. The court then entered an order in which it denied the petitioner’s motion for an improvement period, finding that the petitioner, even during her attempt to obtain the improvement period, refused to acknowledge any wrongdoing and that an improvement period would not be in the children’s best interests. The court also noted that, as someone who adopted these children subsequent to prior abuse and neglect proceedings, the petitioner “would have had to have gone through the foster parent training in order to be a certified foster placement” and that further services would not be effective. Turning to disposition, the court continued its focus on the petitioner’s failure to acknowledge her abuse and neglect of the children, noting the petitioner’s attempts to interview the children in the hope that they “would change their story” and questioning whether the petitioner “ha[d] not contacted the children promising and hoping they would change their story.” Finding that it was necessary for the children’s welfare, the court then terminated the petitioner’s parental and custodial rights to the children.⁴ 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). Before this Court, the petitioner first challenges the circuit court’s jurisdiction to proceed on the DHS’s petition, arguing that West Virginia Code § 49-4-606(b) and Rule 45 of the West Virginia Rules of Procedure for Child Abuse and Neglect Proceedings limit jurisdiction to the “court of origin” that presided over the children’s original abuse and neglect proceedings in other counties (with the exception of S.P.). The petitioner is correct that West Virginia Code § 49-4-606(b) requires, in relevant part, that when a child is removed from an adoptive home after an abuse and neglect case has been dismissed, the parties are required to, among other things, “promptly report the matter to the circuit court of origin” after which the court and the DHS are required to take further steps in regard to the change in placement. What the petitioner ignores, however, is that this Court has previously rejected this interpretation of West Virginia Code § 49-4-606. Indeed, we have explained that “West Virginia Code § 49-4-606(b) does not limit jurisdiction of an abuse and neglect case against adoptive parents to the circuit court that presided over the abuse and neglect involving the biological parents.” *In re A.F.-1*, No. 21-0712, 2022 WL 3949414, at *4 (W. Va. Aug. 31, 2022) (memorandum decision). There, we stressed that West Virginia Code § 49-4-606(b) “implicitly references a situation where the child’s permanency is the only issue—not where new issues of abuse and neglect are raised.” 2022 WL 3949414, at *5. We further indicated that an interpretation of the statute like the petitioner advances on appeal here “does not comport generally with a respondent’s right to due process

⁴ The father’s rights were also terminated. T.P. and S.P. have reached the age of majority. The permanency plan for the remaining children is adoption in their current placement.

pursuant to West Virginia Code § 49-4-601.” 2022 WL 3949414, at *5. As such, the petitioner is entitled to no relief.⁵

Next, the petitioner argues that the circuit court erred in adjudicating her because the evidence was insufficient. West Virginia Code § 49-4-601(i) requires clear and convincing evidence to support a finding of abuse and/or neglect. “Clear and convincing evidence means that more than a mere scintilla of evidence has been presented to establish the veracity of the allegations of abuse and/or neglect, but it does not impose as exacting an evidentiary burden as criminal proceedings which generally require proof beyond a reasonable doubt.” *In re A.M.*, 243 W. Va. 593, 598, 849 S.E.2d 371, 376 (2020) (citations omitted). Finally, a circuit court’s findings of abuse and neglect “shall not be set aside by a reviewing court unless clearly erroneous.” Syl. Pt. 1, in part, *In re Tiffany Marie S.*, 196 W. Va. 223, 470 S.E.2d 177 (1996). In challenging her adjudication, the petitioner focuses mostly on the determination that she failed to provide T.P. with appropriate food, citing to various evidence that she claims demonstrated that the child was underweight as a result of legitimate medical complications. However, as in the circuit court, the petitioner’s arguments on appeal ignore critical discrepancies. This includes the fact that, if T.P.’s weight loss were caused when he was a long-term residential patient outside of the petitioner’s care, as she claims, the petitioner never raised concerns while the child was under treatment. Similarly, the petitioner fails to grapple with the fact that the child did not gain weight *after* he left this treatment and returned to her care. Similarly, the petitioner’s arguments that the child’s prescriptions caused him to be underweight are contradicted by testimony from a medical professional that the child gained weight while taking the medication. Simply put, the evidence overwhelmingly demonstrated that when T.P. was removed from the petitioner’s care, the seventeen-year-old-child underwent a dramatic transformation by nearly doubling his weight. As such, it is clear that the circuit court had ample evidence upon which to find that the petitioner neglected T.P. by failing to provide him with appropriate food.

In further support of her assignment of error concerning adjudication, the petitioner argues that the circuit court “failed to give adequate consideration to the testimony of Petitioner’s testimony [sic], witnesses, and records” that proved she was a fit parent. This argument cannot entitle the petitioner to relief, as this Court will not reweigh the evidence or disturb the circuit court’s credibility determinations. *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 determinations.”); *State v. Guthrie*, 194 W. Va. 657, 669 n.9, 461 S.E.2d 163, 175 n.9 (1995) (“An appellate court may not decide the credibility of witnesses or weigh evidence as that is the exclusive function and task of the trier of fact.”). Indeed, the court

⁵ In advancing her jurisdictional argument, the petitioner also attacks the propriety of venue in Fayette County. It is unnecessary to address the petitioner’s specific arguments, however, because she does not dispute that the children’s father lived in Fayette County at all relevant times. According to West Virginia Code § 49-4-601(a), the DHS is permitted to file a petition “in the county in which the custodial respondent or other named party abuser resides.” Given that the father, a Fayette County resident, was named as a party abuser, it is clear that venue in the Circuit Court of Fayette County was appropriate.

made several key credibility determinations below, including that the children’s testimony was credible in light of their consistency across multiple disclosures and that the parents and their witnesses lacked credibility, especially considering the petitioner’s close familial relationships with these witnesses raised questions about their impartiality and many exhibited difficulty recalling specific past events. Upon reviewing all of the evidence, the court found that the testimony from the petitioner and her witnesses was completely contradictory to the children’s testimony and accorded that evidence the weight it deemed appropriate. Further, aside from her extended challenge to her adjudication for failing to provide T.P. adequate food, the petitioner spends little time addressing the findings of physical abuse, other than to cite to testimony from her witnesses in which they claimed that they never witnessed such abuse. As the petitioner cannot be entitled to relief upon a reweighing of the evidence or challenges to credibility determinations, we find no error in her adjudication for physical abuse. Finally, we note that the petitioner presents no argument addressing the circuit court’s finding that the evidence that the children who were homeschooled were not doing any schoolwork was unrebutted. Therefore, we affirm the petitioner’s adjudication on this ground as well.

In her last assignment of error, the petitioner argues that the circuit court erred in terminating her parental rights without imposing a less restrictive dispositional alternative. Specifically, the petitioner argues that she should have been entitled to an improvement period. However, at the outset we must stress that in the circuit court, the petitioner essentially abandoned her motion for an improvement period by claiming that it was mooted by the court’s denial of her motion for additional evaluations of the children, a ruling she does not challenge on appeal. As a result, the petitioner failed to present any evidence in support of her motion. Despite this failure, we nonetheless address her arguments on the merits given that the circuit court ultimately denied the motion. Critical to the resolution of this assignment of error is the fact that the petitioner repeatedly denied any abusive and/or neglectful conduct. As the circuit court noted, even at disposition the petitioner continued to deny any wrongdoing. As we have explained, “[i]n order to remedy the abuse and/or neglect problem, the problem must first be acknowledged.” *In re Timber M.*, 231 W. Va. 44, 55, 743 S.E.2d 352, 363 (2013) (quoting *In re Charity H.*, 215 W. Va. 208, 217, 599 S.E.2d 631, 640 (2004)). Further, “[f]ailure to acknowledge the existence of the problem, . . . results in making the problem untreatable and in making an improvement period an exercise in futility at the child’s expense.” *Id.* Given the petitioner’s refusal to acknowledge any wrongdoing, it is clear that the circuit court did not err in denying her motion for an improvement period.⁶ See *In re Tonjia M.*, 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002) (recognizing that circuit courts have discretion to deny an improvement period when no improvement is likely).

This same evidence supports the circuit court’s finding that there was no reasonable likelihood that the petitioner could substantially correct the conditions of abuse and neglect. According to West Virginia Code § 49-4-604(d) “[n]o reasonable likelihood that conditions of neglect or abuse can be substantially corrected’ means that . . . the abusing adult . . . [has]

⁶ The petitioner also takes issue with the circuit court’s finding that, as an adoptive parent, the petitioner would have been required to undergo specific training that would be similar to those services offered during an improvement period. It is unnecessary to address this argument, however, as the petitioner’s refusal to acknowledge any wrongdoing is dispositive of the issue.

demonstrated an inadequate capacity to solve the problems of abuse or neglect on their own or with help.” Again, given the petitioner’s refusal to admit any wrongdoing, the conditions for which she was adjudicated are untreatable, thereby demonstrating that there was no reasonable likelihood that she could correct them in the near future. Further, the court found that termination of the petitioner’s parental rights was necessary for the children’s welfare. Circuit courts are permitted to terminate parental rights upon these findings. *See id.* § 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 . . . can be substantially corrected in the near future and, when necessary for the welfare of the child”). Finally, 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)) (emphasis added). 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 29, 2024, order is hereby affirmed.

Affirmed.

ISSUED: November 25, 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