

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

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

In re J.P.

No. 24-617 (Berkeley County CC-02-2023-JA-126)

MEMORANDUM DECISION

Petitioner Mother S.P.¹ appeals the Circuit Court of Berkeley County's September 22, 2024, order terminating her parental rights to J.P., arguing that the court erred in failing to impose a less restrictive dispositional 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.*

In July 2023, the DHS filed a petition after the petitioner gave birth to J.P., who was drug affected. According to the DHS, the petitioner admitted to abusing drugs while pregnant, including cocaine, heroin, and fentanyl. Further, the petitioner was incarcerated on felony drug charges at the time. The petitioner thereafter filed an answer in which she admitted to several allegations in the petition, including that she abused drugs while pregnant. At an adjudicatory hearing in August 2023, the circuit court adjudicated the petitioner of abusing and neglecting J.P. based on her admissions.

Thereafter, the petitioner filed a written motion for a post-adjudicatory improvement period, and the circuit court granted the motion at a hearing in January 2024. After the petitioner was released from incarceration, the court held a hearing in May 2024, during which it noted the petitioner's participation in a substance abuse treatment program and her intention to move to a sober living facility following her successful completion of treatment. The following month, the petitioner moved for an extension of her improvement period. However, in August 2024, the petitioner tested positive for cocaine and was arrested and reincarcerated for violating the terms of her probation.

At the dispositional hearing in September 2024, the DHS presented testimony that confirmed the petitioner tested positive for cocaine. Further, a DHS worker testified that, although the petitioner successfully completed a short-term substance abuse treatment program, the DHS

¹ The petitioner appears by counsel Jason T. Gain. The West Virginia Department of Human Services appears by counsel Attorney General John B. McCuskey and Assistant Attorney General Wyclif S. Farquharson. Counsel Page Croyder appears as the child's guardian ad litem.

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

recommended termination of the petitioner's parental rights because she had violated the terms of her improvement period and probation. According to the DHS worker, the petitioner's positive drug screen was concerning because "it show[ed] that her drug use has not changed even though she's been through prison and treatment." Finally, the petitioner testified and denied using cocaine. Instead, the petitioner claimed that she was sexually intimate with a man who used cocaine, which caused her positive result. The petitioner also admitted that she previously completed substance abuse treatment and relapsed. On cross-examination, the petitioner admitted that she voluntarily relinquished her parental rights to older children due to her substance abuse and that she was previously convicted for possession with intent to distribute cocaine. Further, the petitioner refused to accept responsibility for her conduct, and instead blamed her drug addiction on a car accident and subsequent prescription of pain medication, blamed the DHS for her decision to undergo short-term substance abuse treatment instead of long-term, and claimed that her only mistake in the case was demonstrating "poor judgment" for being romantically involved with a drug user.

Based on the evidence, the court highlighted its concern that the petitioner "accept[ed] no responsibility for anything" in the proceedings, including denying past involvement in drug distribution because she entered a "no contest" plea to that charge. Critically, the court found that "when a person puts the needs of herself above others, they typically fail in drug abuse rehabilitation." As such, the court found that the petitioner failed to substantially comply with her improvement period and that there was no less restrictive alternative than to terminate her parental rights. The court additionally found that the child had been out of the petitioner's care for fifteen months, although it noted that the child was in the father's custody "during some of that time." Regardless, the court concluded that "[w]hile the statutory strict rule regarding that period may not apply, the basic concept does apply." Finding it in the child's best interests, the court then 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). Before this Court, the petitioner raises a single assignment of error in which she claims that termination of her parental rights was in error. In support, the petitioner first claims that "the court's aside about being out of the mother's care for fifteen . . . months is legally not applicable to this case" because it applies when a child has been placed in foster care. We begin by noting that neither the circuit court nor the petitioner cites to any authority about this "provision"—as the petitioner calls it. As such, this Court is left to assume that this is in reference to West Virginia Code § 49-4-610(9), which, absent certain exceptions, states that "no combination of any improvement periods or extensions thereto may cause a child to be in foster care more than fifteen months of the most recent twenty-two months." Regardless of whether the child was in foster care the entire period, we conclude that this statute is not at issue, given that the petitioner presents no argument on appeal that she should have been entitled to additional time under an improvement period. Instead, the petitioner argues only that disposition under West Virginia Code § 49-4-604(c)(5) would have been appropriate. As such, it is unnecessary to address the circuit court's apparent consideration of a statute that governs improvement periods.

³ The permanency plan for the child is to remain with the nonabusing father.

Turning to the petitioner’s argument that disposition under West Virginia Code § 49-4-604(c)(5) was more appropriate than termination, we find no error. That statute permits a court to “commit the child temporarily to the care, custody, and control of the [DHS], a licensed private child welfare agency, or a suitable person who may be appointed guardian by the court” when it finds “that the abusing parent . . . [is] presently unwilling or unable to provide adequately for the child’s needs.” *Id.* What the petitioner fails to recognize, however, is that her refusal to acknowledge any wrongdoing rendered her completely unable to remedy the conditions for which she was adjudicated. Indeed, as we have explained, “[f]ailure to acknowledge the existence of the problem, i.e., the truth of the basic allegation pertaining to the alleged abuse and neglect . . . , results in making the problem untreatable.” *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)). Here, the petitioner not only refused to acknowledge her continued substance abuse—claiming that her intimate relationship with a drug user caused her failed drug screen—she further blamed the DHS for her refusal to undergo long-term substance abuse treatment. She also claimed that her only mistake during the case was demonstrating poor judgment in romantic partners. The court stressed that her refusal to acknowledge her conduct demonstrated an inability to successfully correct her substance abuse issue. As such, imposition of a less restrictive dispositional alternative was not appropriate.

That said, we must address the petitioner’s argument that the circuit court failed to make a finding that there was no reasonable likelihood that she could substantially correct the conditions of abuse and neglect in the near future, as required for termination of parental rights by West Virginia Code § 49-4-604(c)(6). The petitioner is correct that the circuit court did not explicitly make this requisite finding. However, this Court has upheld termination of rights where “[t]he dispositional order entered by the circuit court . . . does not track the language of West Virginia Code [§ 49-4-604]” when the Court was convinced, after reviewing the record, that “the trial court first reached the conclusions required by [West Virginia Code § 49-4-604(c)(6)] before terminating” those rights. *In re Jamie Nicole H.*, 205 W. Va. 176, 184, 517 S.E.2d 41, 49 (1999). Here, we are convinced that the circuit court reached the conclusions necessary to terminate parental rights as it made several findings that speak directly to the petitioner’s inability to correct the conditions of abuse and neglect. *See* W. Va. Code § 49-4-604(c)(6) (permitting termination of parental rights upon finding that there is no reasonable likelihood that the conditions of abuse and neglect can be substantially corrected in the near future and that termination is necessary for the child’s welfare). As set forth above, the court found that the petitioner failed to acknowledge her ongoing substance abuse, blamed others for her failure to correct the conditions, and would not be successful with substance abuse treatment. *See* W. Va. Code § 49-4-604(d)(3) (providing that there is no reasonable likelihood that conditions of neglect or abuse can be substantially corrected where the abusing parent is “addicted to alcohol, controlled substances or drugs, to the extent that proper parenting skills have been seriously impaired and . . . [has] not responded to or followed through the recommended and appropriate treatment which could have improved the capacity for adequate parental functioning”). Further, the court found that termination was not only in the child’s best interests, but that no other dispositional alternative was appropriate. On appeal, the petitioner argues that the child’s placement with the nonabusing father supports a less restrictive disposition, but we have previously explained that West Virginia Code § 49-4-604 “permits the termination of one parent’s parental rights while leaving the rights of the nonabusing parent completely intact, if

the circumstances so warrant.” *In re Emily*, 208 W. Va. 325, 344, 540 S.E.2d 542, 561 (2000). As such, the petitioner is entitled to no relief.

For the foregoing reasons, we find no error in the decision of the circuit court, and its September 22, 2024, order is hereby affirmed.

Affirmed.

ISSUED: November 4, 2025

CONCURRED IN BY:

Justice C. Haley Bunn
Justice Charles S. Trump IV
Justice Thomas H. Ewing
Senior Status Justice John A. Hutchison

NOT PARTICIPATING:

Chief Justice William R. Wooton