

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

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

In re A.E. and L.J.

No. 24-675 (Logan County CC-23-2022-JA-13 and CC-23-2022-JA-14)

MEMORANDUM DECISION

Petitioner Mother E.J.¹ appeals the Circuit Court of Logan County’s October 7, 2024, order terminating her parental rights to A.E. and L.J., arguing that the circuit court erred by failing to accept her proposed stipulation, adjudicating her on allegations of mental health, denying her a post-adjudicatory improvement period, terminating her parental rights, failing to require the DHS to conduct a home and employment investigation, failing to properly weigh the evidence, and granting numerous continuances.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 January 2022, the DHS responded to a call from law enforcement officers stating that they arrested the petitioner for child neglect after observing the petitioner and her children, A.E. and L.J., living out of her vehicle. The children did not have any winter attire despite the cold temperatures. Additionally, both children were dirty and had a foul odor. Then-one-year-old L.J. had dried food in his hair, a dirty diaper, and was covered in feces, which resulted in blistering around his private area. When law enforcement asked about the children’s condition, the petitioner responded that someone had been following her, and she could not stop the vehicle because they were in danger. When the DHS questioned her about her arrest, the petitioner repeatedly stated that she did not understand why she was being detained. On January 23, 2022, the DHS took the children into its emergency custody pending the filing of a petition and filed an application for

¹ The petitioner appears by counsel Kaitlyn Adkins. The petitioner’s prior appellate counsel filed a brief in accordance with Rule 10(c)(10)(b) of the West Virginia Rules of Appellate Procedure and a motion for the petitioner to file a self-represented supplemental brief. After this Court granted that motion, the petitioner filed a self-represented supplemental brief. The West Virginia Department of Human Services (“DHS”) appears by counsel Attorney General John B. McCuskey and Assistant Attorney General James Wegman. Counsel Rebecca Mick appears as the children’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).

ratification of the same pursuant to West Virginia Code § 49-4-303³ on January 25, 2022. A court ratified the DHS's emergency custody of the children that same day. Thereafter, on January 27, 2022, the DHS filed an abuse and neglect petition alleging that the petitioner was "out of touch with reality and placing her children in harm's way," reiterating the above conditions of abuse and neglect alleged in the petition along with her abnormal behavior.

At the preliminary hearing in June 2022,⁴ the petitioner appeared with court-appointed counsel and a guardian ad litem. The petitioner argued that there was a conflict of interest due to her appointed counsel's representation of L.J.'s paternal grandmother in a separate action. When the circuit court asked counsel about this representation, counsel stated "I don't know who [the father's] family is for sure. If [one of the fathers'] mother's name is [M.], I have represented a lady by that name in the past on some issues that are totally unrelated to this." However, the petitioner continued to express a desire to retain a different attorney, requesting a continuance to do so. Despite granting the petitioner a continuance, she appeared for the reconvened preliminary hearing without having hired a different attorney. As such, the court allowed the petitioner's court-appointed counsel to proceed on her behalf as it did not believe there was a conflict. The court took testimony regarding the DHS's allegations, which raised concerns about the petitioner's mental health. Thus, the court ordered that the petitioner submit to a psychological evaluation. Ultimately, the court found that these circumstances justified emergency removal as they presented an imminent threat of harm to the children pursuant to West Virginia Code § 49-4-602.⁵ Afterwards, the petitioner hired several different attorneys to represent her at various points in the proceedings.

At the adjudicatory hearing in January 2023,⁶ the petitioner presented a written stipulation admitting that she lacked adequate housing and was in a crisis situation at the time of the allegations in the petition. However, when asked if she would be willing to make admissions

³ Under this statute, the DHS is permitted to take a child into emergency custody when a child is "in an emergency situation which constitutes an imminent danger to [their] physical well-being" or the caseworker has "probable cause to believe the child . . . will suffer additional child abuse or neglect." *Id.* § 49-4-303(1)-(2). In these circumstances, the DHS then applies for an order ratifying custody. *Id.* § 49-4-303.

⁴ The preliminary hearing was continued approximately three times, all at the petitioner's request. The continuances were granted to ensure that she was represented by counsel and a guardian ad litem, as well as to allow the petitioner to obtain new counsel, as detailed above.

⁵ Pursuant to this statute, at the preliminary hearing, "the court may order that the [children] be delivered into the temporary care, custody, and control of the [DHS]" upon finding that based on the facts alleged in the petition, imminent danger to the children existed. *Id.* § 49-4-602(b).

⁶ The adjudicatory hearing was continued approximately five times, the majority of which were at the petitioner's request. The reason for granting these continuances ranged from there being a death in the petitioner's family to allowing the petitioner's newly hired counsel to become acquainted with the case.

regarding her mental health, the petitioner stated that she did not believe her mental health was an issue. The petitioner also argued that there was no formal diagnosis to demonstrate that mental health was in fact a concern as the results of the psychological evaluation were not yet available. Upon the petitioner's failure to acknowledge the effect that her mental health had on the conditions alleged in the petition, the court refused to accept her stipulation. The DHS then presented evidence that demonstrated the petitioner's abnormal behavior as well as paranoia that she was being followed. Multiple witnesses testified to the event giving rise to the petition. The court found that the evidence detailed the petitioner's "erratic and irrational behavior" and, as a result, the petitioner's mental health issues were "the root of the symptoms that [were] observ[ed] in both her and the child[ren]" as it interfered with her parenting. The court further found that the petitioner's lack of care for her children led to L.J. being physically harmed. As such, the court adjudicated the petitioner an abusing and/or neglecting parent and found that both A.E. and L.J. were abused and/or neglected children. The petitioner then filed a motion for a post-adjudicatory improvement period. The court subsequently denied the petitioner's motion, finding that the petitioner was unlikely to participate in an improvement period as she failed to acknowledge her mental health issues.

At the dispositional hearing, which concluded in April 2024,⁷ the DHS presented testimony from the psychologist who conducted the petitioner's psychological evaluation. This expert testified that, based upon the records provided to her along with the various tests she conducted, the petitioner had a personality disorder with borderline features due to the presence of maladaptive traits. Furthermore, this expert also highlighted how the petitioner consistently deflected responsibility and displayed an "appalling lack of concern for how the children have been affected by her actions" by denying the existence of any problem with her mental health. This deflection also impacted the petitioner's ability to be completely forthright and honest during her evaluation. Because of this defiance, the petitioner also refused to seek any mental health treatment. Additionally, the evidence showed that the petitioner remained combative with her service providers, making little to no progress in her parenting skills services. The petitioner denied that her children were found covered in feces, dirty, and emitting a foul odor, expressing that the allegations in the petition were largely exaggerated. She testified that although she understood that the petition contained mental health allegations, this was not an issue and that because of these proceedings, people were following and laughing at her. The petitioner then presented expert testimony about her independent psychological evaluation which instead diagnosed her with a mild anxiety disorder. However, the court found this evidence unpersuasive because the results of this separate evaluation were based entirely on the petitioner's characterization of the events and without the benefit of reports from law enforcement and Child Protective Services at the time of

⁷ At the time of the dispositional hearing, the petitioner had been represented by five different attorneys. The dispositional hearing was continued approximately seven times, the majority of which were at the petitioner's request. Specifically, the court granted continuances to resolve the petitioner's two separate motions to disqualify the presiding judge, to allow the petitioner to receive the results of her independent psychological evaluation, and to give the petitioner's subsequently retained counsel time to become acquainted with the case. As a result, the dispositional hearing, which initially commenced in June 2023, concluded in April 2024, despite the petitioner's efforts to continue the hearing again.

removal, along with other evidence of the petitioner's irrational behavior. In consideration of the evidence presented, the circuit court found that the petitioner suffered from an untreated mental health disorder, as she "continues to exhibit paranoid, defiant, and erratic behaviors." However, because of her failure to be forthright and honest with the evaluators, the disorder remained unspecified. Finding that the petitioner continued to deny or treat her mental health, the court found that there was no reasonable likelihood that the petitioner could substantially correct the conditions of abuse and neglect in the near future and that termination of her parental rights was necessary for the children's welfare. Therefore, the court terminated the petitioner's parental rights to both children.⁸ The petitioner now appeals from the court's 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).⁹

⁸ According to the respondents, the permanency plan for A.E. is adoption by her paternal grandparents once her father relinquishes his parental rights. Permanency for L.J. has been achieved as the child remains in his father's care.

⁹ Exercising our discretion under the Rules of Appellate Procedure, we decline to address the petitioner's assignments of error where the petitioner assigns error to (1) permitting counsel to represent her during the preliminary hearing despite her allegations that counsel had a potential conflict of interests; (2) holding the preliminary hearing before the psychological evaluation was complete, and (3) allowing closing arguments to proceed despite having new counsel. These arguments lack citation to the appendix record or controlling authority. Not only does Rule of Appellate Procedure 10(c)(7) permit this Court to "disregard errors that are not adequately supported by specific references to the record on appeal," but 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 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 we also 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.'"

Further, the petitioner challenges the children's emergency removal by citing to West Virginia Code § 49-4-301, which governs situations in which law enforcement may obtain custody of an abused and/or neglected child. However, the record reflects that the DHS took emergency custody pursuant to West Virginia Code § 49-4-303. Accordingly, the petitioner cannot be entitled to relief based upon West Virginia Code § 49-4-301. Additionally, the petitioner alleges that the circuit court erred in failing to appoint her counsel for the preliminary hearing. The record reflects that the initial preliminary hearing was continued for the purpose of appointing the petitioner counsel, and when the preliminary hearing was finally conducted, the petitioner appeared with both court-appointed counsel and a guardian ad litem. Therefore, the petitioner's argument is wholly unsupported by the record. Likewise, the petitioner alleges that the circuit court erred in

First, the petitioner argues that the circuit court erred in failing to accept her stipulation. However, she points to no authority that the circuit court was required to accept her stipulation in lieu of holding a contested adjudicatory hearing. Rule 26(a) of the Rules of Procedure for Child Abuse and Neglect Proceedings sets forth what is required of any stipulation the court accepts as a substitute for a contested adjudicatory hearing as a matter of due process, but it does not provide a *right* to stipulate simply because those requirements are met; the court retains discretion to accept or refuse it.¹⁰ Here, the petitioner was willing to agree that she lacked housing and was in crisis but the petitioner adamantly refused to acknowledge issues pertaining to her mental health. The circuit court exercised its discretion to refuse a stipulation that did not include admissions to the allegations in the petition that it considered to be the root of the abuse and neglect conditions and, if proven, those in most need of attention and correction. As such, the circuit court did not err in refusing to accept the petitioner's stipulation and placing the disputed issue before the court in a contested adjudicatory hearing.

Second, the petitioner alleges that the circuit court erred in adjudicating her on issues of mental health as these allegations were not formally stated in the petition and there was no formal diagnosis at the time, thereby violating her right to due process. Pursuant to West Virginia Code § 49-4-601(b), the petition must assert the "specific conduct" of abuse and neglect "to afford the charged parent with notice of why the termination proceeding is being conducted and . . . an opportunity to address the charge." *In re Samantha M.*, 205 W. Va. 383, 393, 518 S.E.2d 387, 389 (1999). Here, the petition explicitly stated that the petitioner abused and/or neglected the children because she was "out of touch with reality and placing her children in harm's way." Upon her arrest, the petitioner displayed paranoia and did not understand the reason for her arrest even after it was explained. This specified conduct highlighted concerns with the petitioner's mental health as it was her abnormal behavior that contributed to the abuse and neglect of her children. Because these mental health allegations were expressly stated in the petition, the circuit court did not err in allowing evidence on the matter to be presented and admitted into the record. The petitioner was aware of the contents of the petition and attempted to stipulate to some of the facts therein. As such, the petitioner had ample notice of the mental health allegations made against her. Further,

failing to preserve certain transcripts, but this is contrary to the petitioner's own supplemented appendix which contains the alleged missing records. Lastly, the petitioner asserts that she received ineffective assistance of counsel below. However, this Court has never recognized such a claim in abuse and neglect proceedings. *See, e.g., In re B.S.-1*, No. 23-252, 2024 WL 2206172, at *3 (W. Va. May 13, 2024) (memorandum decision) (declining to address ineffective assistance of counsel claim in abuse and neglect proceedings).

¹⁰ Rule 26(a) of the Rules of Procedure for Child Abuse and Neglect Proceedings states that "[a]ny stipulated or uncontested adjudication shall include the following information: (1) [a]greed upon facts supporting court involvement regarding the respondent's problems, conduct, or condition; and (2) [a] statement of respondent's problems or deficiencies to be addressed at the final disposition." Additionally, section (b) of this same rule provides, in relevant part, that before accepting a stipulation "the court shall determine . . . that the stipulation or uncontested adjudication meets the purposes of these rules and controlling statute and is in the best interests of the child." W. Va. R. P. Child Abuse & Neglect Proc. 26(b).

we have never held that a formal diagnosis is necessary to prove that conditions of abuse and neglect caused by mental health issues exist by clear and convincing evidence. The DHS presented multiple witnesses who testified about the petitioner's "erratic and irrational behavior," proving that her mental health issues existed by clear and convincing evidence. The petitioner was afforded the opportunity to cross-examine the DHS's witnesses and present her own evidence to the contrary, demonstrating that the petitioner had a meaningful opportunity to be heard on the issue of her mental health. Therefore, the circuit court did not err in adjudicating the petitioner on the basis of her mental health issues and doing so did not violate her due process rights.

To the extent that the petitioner also argues that the circuit court erred in denying her a post-adjudicatory improvement period, we have repeatedly held that a parent *may* be granted an improvement period if they "demonstrate[], by clear and convincing evidence, that [they are] likely to fully participate in the improvement period." W. Va. Code § 49-4-610(2)(B). However, a parent must first acknowledge the problem as "[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." *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)). As detailed above, the petitioner repeatedly refused to acknowledge the problems with her mental health, making this issue ultimately untreatable. Therefore, the circuit court did not err when it denied the petitioner a post-adjudicatory improvement period. 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.").

Third, the petitioner alleges that the circuit court erred in finding that there was no reasonable likelihood that she could substantially correct the conditions of abuse and neglect in the near future and thereby erred in terminating her parental rights. Pursuant to West Virginia Code § 49-4-604(d)(3), there is no reasonable likelihood that conditions of abuse and neglect can be substantially corrected when "[t]he abusing parent . . . [has] not responded to or followed through with a reasonable family case plan or other rehabilitative efforts." Here, although the petitioner asserts that she had stable housing and employment, this does not mitigate her failure to substantially correct her mental health issues, which were the core of the abuse and neglect conditions. The DHS presented testimony showing that the petitioner continuously denied she had any mental health issues and, as a result, failed to seek any mental health treatment. In fact, the petitioner testified that she did not have any mental health issues yet still detailed paranoid feelings that people were following and laughing at her because of these proceedings, along with claiming that the conditions for which she was adjudicated were exaggerated. Paired with this adamant denial, evidence showed that the petitioner demonstrated a lack of awareness of how her actions contributed to the abuse and neglect the children suffered. Further, the DHS showed that the petitioner remained combative with her service providers and made little to no progress in her parenting services. As such, the court had ample evidence to find that there was no reasonable likelihood that the petitioner could substantially correct the conditions of abuse and neglect in the near future and that termination of her parental rights was necessary for the children's welfare. Circuit courts are permitted to terminate parental rights upon these findings without the use of less restrictive alternatives. See Syl. Pt. 5, *In re Kristin Y.*, 227 W. Va. 558, 712 S.E.2d 55 (2011) (permitting termination of rights "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)); 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”). Therefore, we conclude that the circuit court did not err in terminating the petitioner’s parental rights.¹¹ To the extent that the petitioner argues that the circuit court committed error in weighing the expert testimony and evidence, we note that this Court does not reweigh the evidence nor do we make credibility determinations. Instead, the findings of the circuit court, as the finder of fact, will not be disturbed on appeal. *In re D.S.*, 251 W. Va. 466, --, 914 S.E.2d 701, 707 (2025) (“We . . . do not reweigh the evidence or make credibility determinations.”).

Lastly, the petitioner alleges that the circuit court violated procedural rules and her due process rights by permitting extensive continuances. The circuit court retains discretion in granting a continuance of a proceeding, and abuse of this discretion is found “only when it can be seen as ‘an unreasoning and arbitrary insistence upon expeditiousness in the face of a justifiable request for delay[.]’” *In re B.S.-S.*, No. 24-338, 2025 WL 2202437, at *5 (W. Va. July 30, 2025) (memorandum decision) (quoting *In re Tiffany Marie S.*, 196 W. Va. 223, 236, 470 S.E.2d 177, 190 (1996)). While there were a concerning number of continuances, nearly all of the continuances were at the petitioner’s request and the record does not reflect any instance in which the court’s grant of a continuance was an abuse of discretion. In fact, the court’s stated reasons for granting these continuances aligned with the requirements of due process as it allowed, among other things, the petitioner to receive the results of an independent psychological evaluation and gave her several newly appointed attorneys time to become competently acquainted with the case. Therefore, the circuit court did not err in granting multiple continuances.

For the foregoing reasons, we find no error in the decision of the circuit court, and its October 7, 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

¹¹ The petitioner also argues that the circuit court committed error by failing to require the DHS to conduct an updated housing and employment investigation. However, this argument wholly disregards the fact that the petitioner’s termination was based on her failure to remedy her mental health issues. Further, the circuit court heard evidence of the petitioner’s housing and employment through her testimony. Therefore, the circuit court did not commit error in declining to require that the DHS conduct an updated housing and employment investigation before terminating the petitioner’s parental rights.