

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

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

In re N.M., B.M., C.M., P.M., A.H., and Z.H.

No. 24-718 (Harrison County CC-17-2023-JA-151, CC-17-2023-JA-152, CC-17-2023-JA-153, CC-17-2023-JA-154, CC-17-2023-JA-155, and CC-17-2023-JA-156)

MEMORANDUM DECISION

Petitioner Mother N.S.¹ appeals the Circuit Court of Harrison County’s November 15, 2024, order terminating her parental, custodial, and guardianship rights to N.M., B.M., C.M., P.M., A.H., and Z.H., arguing that the circuit court erred by denying her motion for a post-dispositional improvement period, terminating her parental rights, and denying post-termination contact with the children.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 November 2023, the DHS filed a petition alleging that the petitioner abused and neglected the children by allowing her then-boyfriend, D.S.,³ to physically abuse N.M. The DHS specifically alleged that D.S. struck then-eleven-year-old N.M. with an open hand across the child’s face, resulting in bruising. As such, the DHS claimed that the petitioner failed to protect N.M. from physical abuse and that all of the children were abused and neglected because they resided in the same home at the time of the incident.

In January 2024, the petitioner stipulated, in writing, that D.S. abused N.M. by using inappropriate physical discipline and that she failed to protect N.M. from said abuse. Her stipulation acknowledged that the other children resided in the same home when the abuse occurred, thus, all of the children were abused. Accordingly, the court adjudicated the petitioner as an abusing parent and the children as abused and neglected.

In February 2024, the petitioner moved for and was granted a post-adjudicatory improvement period. The terms included, among other things, that the petitioner submit to a

¹ The petitioner appears by counsel Allison S. McClure. The West Virginia Department of Human Services (“DHS”) appears by Attorney General John B. McCuskey and Assistant Attorney General Andrew T. Waight. Counsel Ashley Joseph Smith 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).*

³ The petitioner and D.S. married shortly after the petition was filed.

parental fitness evaluation and follow the recommendations therein, participate in drug screens, complete parenting and life skills classes, attend supervised visits with the children, follow service provider recommendations, maintain a stable and clean home, refrain from drug and alcohol use, stay in contact with the DHS, engage in individual and marital counseling, and submit to a psychiatric evaluation.

In March 2024, Dr. Erin Teaff evaluated the petitioner's parental fitness. Dr. Teaff concluded that while the petitioner's prognosis for improved parenting was fair, she currently did not have the capacity to parent and care for her children. Dr. Teaff provided several recommendations that could assist the petitioner in gaining necessary parental skills, namely, that she engage in individual, marital, and family therapy; take her mental health medications as prescribed; participate in parenting classes; and follow the court's instructions in order to demonstrate her commitment to improving her parenting.

In June 2024, A.H. and Z.H.'s nonabusing father alleged that the petitioner breached the confidentiality of the proceedings by posting certain details on a crowd-funding platform and other social media sites. The circuit court subsequently warned the petitioner to cease sharing details about the proceedings. That same month, the petitioner underwent a psychiatric evaluation performed by Dr. Alina Abascal who diagnosed the petitioner with major depressive disorder; recurrent, generalized anxiety disorder; and Cluster B personality disorder. Dr. Abascal recommended that the petitioner engage in therapy, specifically dialectical behavioral therapy, and cognitive behavioral therapy, and take medication as directed by her prescribing physician.

In October 2024, the court held a dispositional hearing at which several witnesses testified to the petitioner's performance during her improvement period. First, Dr. Abascal testified that the petitioner refused to sign a release of her medical records, delaying her written psychiatric evaluation report. Next, Dr. Don Worth, who provided individual and marital counseling to the petitioner and D.S., testified that the petitioner missed several therapy appointments and stopped all contact with his office after May 2024. Dr. Worth concluded that the petitioner failed to complete individual and marital counseling. A Harrison County Day Report employee testified that the petitioner missed five scheduled drug screens, and a Harrison County Community Corrections employee testified that the petitioner failed to complete anger management classes. N.M.'s foster parent testified that the petitioner had unpermitted contact with N.M. and made several more attempts to contact N.M. A Child Protective Services ("CPS") worker testified that the petitioner and D.S. drove around a DHS building yelling obscenities at the father of several of the children, necessitating the implementation of "strict" visitation guidelines, which the petitioner went on to violate. The CPS worker opined that the petitioner was unsuccessful in completing her improvement period and recommended that the court terminate her parental rights. Finally, the petitioner testified, admitting that she failed to maintain stable housing, disrespected service providers, and had conflicts with the children's placements.

In the resulting dispositional order, the court found that the petitioner failed to drug screen and did not complete individual and marital counseling or anger management classes. The court further found that the petitioner failed to update the DHS when she moved out of state and then moved back to West Virginia and disrupted the children's placements by harassing their caretakers. The court also noted that the petitioner had not visited the children since April 2024

and, in September 2024, informed the visitation supervisor that she would no longer be attending visits. The court concluded that the petitioner failed to fully complete the terms of her improvement period and did not follow the recommendations provided in her parental fitness and psychiatric evaluations. Ultimately, the court found that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future and that the children's best interests necessitated termination. Accordingly, the court terminated the petitioner's parental, custodial, and guardianship rights to the children and, due to the petitioner's inability to refrain from contacting the children and harassment of their placements, prohibited post-termination contact between the petitioner and the children. It is from this order that the petitioner appeals.⁴

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 argues that the circuit court erred by denying her motion for a post-dispositional improvement period. In support, she claims that she substantially complied with the terms of her post-adjudicatory improvement period. We disagree. In order to receive a post-dispositional improvement period if previously granted an improvement period, a parent must "demonstrate[] that since the initial improvement period, [they have] experienced a substantial change in circumstances" that renders them likely to fully participate in the improvement period. W. Va. Code § 49-4-610(3)(D). Moreover, "[t]he circuit court has the discretion to refuse to grant an improvement period when no improvement is likely." *In re Tonjia M.*, 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002). Here, the court found that the petitioner did not comply with the terms of her post-adjudicatory improvement period because she missed drug screens, failed to comply with confidentiality requirements, failed to follow the recommendations of her parental fitness and psychiatric evaluations, failed to complete individual and couples counseling, failed to maintain employment, failed to maintain stable housing, failed to attend visits, and was untruthful with the DHS and service providers. As such, the petitioner failed to demonstrate that she experienced a substantial change in circumstances and was likely to participate, and the court did not err by denying the petitioner's motion for a post-dispositional improvement period.

The petitioner next asserts that the court erred by terminating her parental rights, arguing that there was a reasonable likelihood that she could substantially improve the conditions of abuse and neglect and that termination was not necessary for the children's welfare. We have held 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 under [West Virginia Code § 49-4-604(c)(6)] that conditions of neglect or abuse can be substantially corrected" and when necessary for the welfare of the child. 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)); see also W. Va. Code § 49-4-604(c)(6) (permitting termination of parental rights upon findings that there is no reasonable likelihood conditions of abuse or neglect can be substantially corrected in the near future and that termination is necessary for the children's welfare). There is no such likelihood when the parent has "demonstrated an inadequate capacity to solve the problems of

⁴ All parental rights were terminated and the permanency plan for the children is adoption in the current placement.

abuse or neglect on their own or with help” W. Va. Code § 49-4-604(d). As discussed above, the record shows that the petitioner failed to follow through with several terms of her post-adjudicatory improvement period and demonstrated no interest in visiting her children—a “significant factor in determining [her] potential to improve sufficiently and achieve minimum standards to parent the child[ren].” *In re Katie S.*, 198 W. Va. 79, 90 n.14, 479 S.E.2d 589, 600 n.14 (1996) (citations omitted). The record also supports the court’s finding that the children’s best interest necessitated termination so that they could achieve permanency. Accordingly, the court did not err in terminating the petitioner’s parental rights. *See In re K.L.*, 247 W. Va. 657, 667, 885 S.E.2d 595, 605 (2022) (explaining that a parent’s failure to participate in their improvement period is “a statutorily-recognized basis upon which this Court regularly affirms termination of parental rights”).

Finally, the petitioner argues that the court erred by prohibiting post-termination contact between her and the children. We have held that

[w]hen parental rights are terminated due to neglect or abuse, the circuit court may nevertheless in appropriate cases consider whether continued visitation or other contact with the abusing parent is in the best interest of the child. Among other things, the circuit court should consider whether a close emotional bond has been established between parent and child and the child’s wishes, if he or she is of appropriate maturity to make such request. The evidence must indicate that such visitation or continued contact would not be detrimental to the child’s well being and would be in the child’s best interest.

Syl. Pt. 5, *In re Christina L.*, 194 W. Va. 446, 460 S.E.2d 692 (1995).⁵ Moreover, post-termination contact should “not unreasonably interfere with [the children’s] permanent placement.” *State ex rel. Amy M. v. Kaufman*, 196 W. Va. 251, 260, 470 S.E.2d 205, 214 (1996). While the petitioner asserts that she had a significant bond with the children and that they desired continued contact with her,⁶ she expressed to a visitation supervisor that she no longer wanted visits with the children. Further, ample evidence shows that the petitioner failed to abide by visitation rules and disrupted the children’s placements by harassing their foster parents. Given the petitioner’s lack of interest

⁵ We apply the standards in place at the time of the entry of the circuit court’s order denying post-termination visitation, but note that after its entry this Court provisionally amended Rule 15 of the West Virginia Rules of Procedure for Child Abuse and Neglect Proceedings and “adopt[ed] appropriate standards for consideration of post-termination visitation outside of a fact-based context.” *In re Z.D.-1*, 251 W. Va. 743, -- n.21, 916 S.E.2d 375, 382 n.21 (2025).

⁶ The petitioner also argues that the circuit court failed to consider the children’s wishes in regard to ongoing contact. According to West Virginia Code § 49-4-604(c)(6)(C), circuit courts must “give consideration to the wishes of a child 14 years of age or older or otherwise of an age of discretion as determined by the court regarding the termination of parental rights.” The children were under the age of fourteen at the time of disposition, and the court made no findings indicating that any of them were “otherwise of an age of discretion.” Thus, the court was not required to consider the children’s wishes, and the petitioner’s argument in this regard lacks merit.

in visits during the proceedings and inability to follow visitation rules, the court did not err in disallowing post-termination contact.

For the foregoing reasons, we find no error in the decision of the circuit court, and its November 15, 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