

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

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

In re D.H., A.H., and G.W.

No. 24-739 (Webster County CC-51-2023-JA-48, CC-51-2023-JA-49, and CC-51-2023-JA-50)

MEMORANDUM DECISION

Petitioner Custodian A.M.¹ appeals the Circuit Court of Webster County’s November 15, 2024, order terminating his custodial rights to D.H., A.H., and G.W., arguing that the circuit court erroneously terminated his custodial rights without first granting him an improvement period.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 on October 13, 2023, alleging that the petitioner, the mother’s partner, neglected the children by failing to provide a fit home, failing to ensure the children’s basic needs were met, failing to provide adequate clothing and food, failing to ensure that the children regularly attended school, and failing to adequately attend to the children’s medical needs.³ The DHS alleged that the children attended school visibly dirty and smelling of body odor, urine, and feces. On October 17, 2023, the petitioner filed a written motion for an improvement period.⁴ The DHS filed an amended petition in November 2023 after obtaining additional information during its ongoing investigation into the matters alleged in the original petition, which revealed additional conduct indicative of abuse or neglect of the children, including that the

¹ The petitioner appears by counsel Andrew Chattin. The West Virginia Department of Human Services (“DHS”) appears by counsel Attorney General John B. McCuskey and Assistant Attorney General Andrew T. Waight. Counsel Mackenzie A. Holdren 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). Inasmuch as the circuit court order terminated the petitioner’s “parental rights” to the children, we note that the petitioner is not the biological father of any of the three children. Accordingly, we will refer to petitioner’s rights as “custodial rights” throughout the memorandum decision.

³ The DHS’s petition included allegations regarding another child, A.W. However, the DHS later withdrew all allegations regarding this child, and she is not at issue on appeal.

⁴ The petitioner’s “Motion for Improvement Period” requested any of the improvement periods identified in West Virginia Code § 49-4-610(1)–(3), “being a pre-adjudicatory, post-adjudicatory or post-dispositional improvement period.”

petitioner drove under the influence of alcohol with the children in the vehicle and that he failed to act after G.W. made allegations of sexual abuse against a male relative.

The circuit court held an adjudicatory hearing in January 2024, at which the petitioner denied the allegations relating to the children's uncleanliness at school and that he drove under the influence of alcohol. The petitioner stipulated to the allegations of neglect relating to the children's truancy and unmet medical needs and his failure to act in light of G.W.'s sexual abuse allegations. The court then heard the testimony of two DHS witnesses, the children's mother, and the petitioner, and reviewed portions of the children's CAC interviews. The court found that the evidence demonstrated that the petitioner drove a vehicle with the children while under the influence of alcohol and that the children came to school dirty, unkempt, and smelling of body odor. Based on this evidence and the petitioner's stipulations, the court adjudicated the petitioner of neglecting the children and ordered that he submit to a psychological/parental fitness evaluation.

The court held a dispositional hearing in August 2024, where the DHS recommended granting the petitioner an improvement period. A Child Protective Services ("CPS") worker testified that the recommendation was based on the petitioner securing full-time employment and suitable housing and on his compliance with services provided by the DHS. Next, the forensic psychologist who evaluated the petitioner testified that he had a poor prognosis for improved parenting because it was questionable whether he accepted responsibility for his neglect of the children. According to the psychologist, the petitioner stated that "he became involved with CPS because people lied." Following this, the petitioner testified that he would comply with the terms of an improvement period and that he had done everything the DHS asked of him. However, when asked what he had done wrong in this matter, the petitioner replied that he was "not sure" and stated that he disagreed with his adjudication. At the hearing's conclusion, the circuit court acknowledged the DHS's recommendation but concluded that there was insufficient evidence that the petitioner would comply with the terms of an improvement period in light of his failure to accept responsibility for his neglect of the children. Ultimately, the court found that there was no reasonable likelihood that the petitioner could substantially correct the conditions of neglect in a reasonable time and that termination was necessary to protect the welfare of the children. Accordingly, the court terminated the petitioner's custodial rights to the children.⁵ It is from the dispositional order that the petitioner appeals.

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 it was erroneous for the circuit court to terminate his custodial rights without granting him an improvement period to correct the conditions of neglect. Although the petitioner does not specify which of the three types of improvement periods he sought under West Virginia Code § 49-4-610, that statute is clear that, to receive *any* improvement period, the petitioner was required to "demonstrate[], by clear and convincing evidence, that [he was] likely to fully participate in the

⁵ The mother's parental rights were also terminated. According to the DHS, the fathers' proceedings are still ongoing. The permanency plan for all three children is adoption in their respective placements.

improvement period.” W. Va. Code § 49-4-610(1)(B), (2)(B), and (3)(B). In support of his argument, the petitioner states that the evidence presented at the dispositional hearing demonstrated that he was correcting the conditions of neglect and would continue to do so, pointing to his own testimony of his willingness to comply with any improvement period terms and the CPS worker’s testimony that he obtained full-time employment, obtained a fit home, and complied with services. However, as the petitioner notes, he also testified that “he had done nothing wrong despite his admissions” at the adjudicatory hearing, and, on appeal, he does not challenge the circuit court’s finding that he failed to accept responsibility for his neglect of the children. We have explained that the “[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 and in making an improvement period an exercise in futility at the child[ren]’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)). Accordingly, the court did not abuse its discretion in proceeding to termination of the petitioner’s custodial rights without first granting him an improvement period. *See In re Tonjia M.*, 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002) (recognizing circuit courts’ discretion to deny an improvement period when no improvement is likely).

We similarly conclude that the court did not err in terminating the petitioner’s custodial rights, as his failure to accept responsibility for his neglect of the children, despite his prior stipulation to the same, supports the circuit court’s finding that there was no reasonable likelihood that the conditions of neglect could be substantially corrected. *See* W. Va. Code § 49-4-604(d) (“‘No reasonable likelihood that the conditions of neglect or abuse can be substantially corrected’ means that . . . the abusing adult . . . [has] demonstrated an inadequate capacity to solve the problems of abuse or neglect on their own or with help.”). As the petitioner does not challenge the circuit court’s finding that termination was necessary for the children’s welfare, we conclude that the circuit court did not err in terminating the petitioner’s custodial rights to the children. *See* W. Va. Code § 49-4-604(c)(6) (allowing the termination of custodial rights “[u]pon a finding that there is no reasonable likelihood that the conditions of neglect . . . can be substantially corrected and, when necessary for the welfare of the child[ren]”); 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))).

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