

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re K.A., A.L., C.A., and A.A.

No. 25-560 (Nicholas County CC-34-2024-JA-108, CC-34-2024-JA-109, CC-34-2024-JA-110, and CC-34-2024-JA-111)

MEMORANDUM DECISION

Petitioner Father R.A.¹ appeals the Circuit Court of Nicholas County’s August 25, 2025, order terminating his parental and custodial rights to K.A., A.L., C.A., and A.A., arguing that the court erred by not granting him a post-dispositional improvement period and in denying him post-termination visitation 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.

The DHS filed an abuse and neglect petition in November 2024, alleging that the petitioner threatened the children’s health, safety, and welfare by committing acts of domestic violence in their presence. The allegations arose after the petitioner discharged a firearm during a dispute with the mother outside the children’s bedrooms as they slept. Responding law enforcement officers observed the petitioner to be heavily intoxicated. The DHS further alleged that the petitioner failed to provide the children with a suitable home (due to recurrent domestic violence) and excessively consumed alcohol.

At an adjudicatory hearing in January 2025, after answering various questions from the circuit court, the petitioner stipulated to “all of the allegations contained within the [p]etition.”³ On this basis, the court adjudicated the petitioner of abusing and neglecting K.A., A.L., C.A., and A.A. The petitioner moved for a post-adjudicatory improvement period, which the court granted following a hearing in February 2025. The terms and conditions of the petitioner’s improvement period required, among other things, that he maintain sobriety, obtain/maintain suitable housing and employment, and participate in drug and alcohol screens and substance abuse treatment as well as supervised visitation with the children.

¹ The petitioner appears by counsel Joseph M. Mosko. The Department of Human Services (“DHS”) appears by counsel Attorney General John B. McCuskey and Assistant Attorney General Heather L. Olcott. Counsel Susan Hill 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).

³ The petitioner did not include a transcript of the adjudicatory hearing in the record on appeal.

Shortly after this hearing, on February 16, 2025, the petitioner was incarcerated after being charged with five counts of harassment in violation of a protective order. In light of this development, in March 2025, the DHS moved to revoke the petitioner's improvement period. That same month, the petitioner was released on bond. In April 2025, the DHS specifically moved to terminate the petitioner's visitation because he had threatened "to inflict violence on the . . . mother and children" in violation of his criminal bond, also noting that the petitioner's bond conditions prohibited contact with the children. The circuit court promptly granted the motion and terminated visitation. The court considered the DHS's motion to revoke the petitioner's improvement period at a hearing in June 2025. The petitioner testified that he left a substance abuse program before completing treatment and was subsequently incarcerated for violating a protective order. On cross-examination, the petitioner admitted that he tested positive for cocaine after he was released on bond and, as a result, was placed on home confinement. The petitioner also admitted that he then violated the terms of his home confinement by testing positive for alcohol and returned to jail. Based on the petitioner's testimony, the court terminated his improvement period due to noncompliance, at which time the petitioner proceeded to yell obscenities and was removed from the courtroom.

At a dispositional hearing in August 2025, the assigned DHS worker recommended termination of the petitioner's parental and custodial rights, noting his noncompliance with the terms of his improvement period. The worker further recommended denying post-termination visitation, despite the children's bond with the petitioner, as further contact would delay their permanency and was not in their best interests. The worker also noted that the children had not shown any negative signs when visitation ceased. The petitioner testified that he was participating in a residential substance abuse program and acknowledged that he was a "chronic alcoholic." The court admitted into evidence a progress report from the facility, in which the petitioner's therapist described his meaningful progress in treatment. The petitioner testified to his strong bond with the children and acknowledged that he recently contacted K.A. in violation of a no-contact order. He further admitted that he did not have a home, a vehicle, or employment. In closing, the petitioner's counsel requested that the court reinstate the petitioner's post-adjudicatory improvement period or grant him a post-dispositional improvement period, or, alternatively, grant him post-termination visitation.⁴ The DHS argued, and the guardian agreed, that post-termination visitation was inappropriate given the petitioner's repeated violations of court orders. The guardian also noted that the petitioner continued to blame others for his problems.

From the bench, the circuit court noted that, during his improvement period, the petitioner "led a charmed criminal life[.]" violating a protective order and testing positive for cocaine and alcohol. More recently, the petitioner violated another order by contacting one of the children. Although the petitioner was, at that time, enrolled in a substance abuse treatment program, the court observed that, earlier in the proceedings, he left a similar program prior to completion. The

⁴ According to the docket sheet included in the petitioner's appendix record, the petitioner filed a motion requesting this relief prior to the dispositional hearing. However, this motion to reinstate the petitioner's post-adjudicatory improvement period (and/or requesting a post-dispositional improvement period) was not included in the record on appeal.

court also found that the petitioner “was aggressive and belligerent and cursing everyone around him” following the hearing when his improvement period was terminated, and, at that time, had “no home, no transportation, or job.” In the resulting written order, the court found, among other things, that the petitioner had abused and was addicted to alcohol and drugs and had not responded to or followed through with treatment to improve his parental functioning. The court concluded that the petitioner could not care for the children, 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 needed continuity of care and caretakers. Having considered the dispositional alternatives set forth in West Virginia Code § 49-4-604, the court terminated the petitioner’s parental and custodial rights to K.A., A.L., C.A., and A.A., finding this to be in the children’s best interests.⁵ The court also ruled that it was not in the children’s best interests to have post-termination visitation because it would delay permanency. In reaching this conclusion, the court also considered the petitioner’s criminal behavior and incarceration during the proceedings as well as the nature of the original abuse, noting that the petition was filed after the petitioner discharged a firearm in the home. The petitioner now appeals from this dispositional order.

On appeal from a final order in an abuse and neglect proceeding, this Court reviews the circuit court’s substantive rulings for abuse of discretion, factual findings are reviewed for clear error, and issues of law are reviewed de novo. Syl. Pt. 1, *In re K.S.*, -- W. Va. --, -- S.E.2d --, 2026 WL 1362143 (W. Va. May 15, 2026); *see also* Syl. Pt. 1, *In re K.A.*, 251 W. Va. 626, 915 S.E.2d 520 (2025) (“We review a circuit court’s decision to grant or deny a[n] . . . improvement period under an abuse of discretion standard.”). The petitioner first asserts that the circuit court erred by not granting him a post-dispositional improvement period.⁶ *See* W. Va. Code § 49-4-610(3)(D) (permitting circuit courts to grant an additional improvement period when a parent “demonstrates that since the initial improvement period, [he] has experienced a substantial change in circumstances” and that, due to that change, “[he] is likely to fully participate”). Critically, the petitioner fails to reference this standard and did not argue, below or on appeal, that he experienced a substantial change in circumstances. Although the petitioner had been released from incarceration and began participating in substance abuse treatment a few weeks before disposition, the record does not demonstrate that the petitioner experienced a substantial change in circumstances and likelihood of improvement, especially given his failure to comply with the terms of his post-adjudicatory improvement period. Therefore, the circuit court did not abuse its discretion in refusing to grant the petitioner a post-dispositional improvement period. *See In re Tonjia M.*, 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002) (explaining that circuit courts have “discretion to refuse to grant an improvement period when no improvement is likely”).

⁵ The court also terminated the parental and custodial rights of K.A., C.A., and A.A.’s mother. A.L.’s mother rights were terminated in a prior proceeding. The permanency plan for the children is adoption in their respective placements.

⁶ To the extent the petitioner argues that the court erred in failing to reinstate his post-adjudicatory improvement period, we stress that no authority permits a parent to move to reinstate an improvement period. *See In re J.M.*, No. 23-514, 2024 WL 3987680, at *2 (W. Va. Aug. 27, 2024) (memorandum decision).

Lastly, the petitioner asserts that the circuit court erred in finding that post-termination visitation was not in the children’s best interests, arguing that the only evidence before the court was the DHS worker’s testimony and that the court did not undertake sufficient analysis to reach its conclusion.⁷ We disagree. “[A] court may grant post-termination visitation only if it finds that such visitation is in the child’s best interests[.]” W. Va. R. P. Child Abuse & Neglect Proc. 15(b)(2)(A); *see also* Syl. Pt. 5, in part, *In re Christina L.*, 194 W. Va. 446, 460 S.E.2d 692 (1995) (noting that the evidence before the court “must indicate that [post-termination] visitation or continued contact would not be detrimental to the child[ren]’s well being and would be in the child[ren]’s best interest”). Here, the court heard testimony concerning the children’s bond with the petitioner and considered the DHS worker’s testimony that the children had not exhibited any negative signs when visitation ceased. However, the worker also testified that resuming contact with the petitioner would delay the children’s permanency and was not in the children’s best interests. The circuit court was free to afford this evidence, including the DHS worker’s recommendation against post-termination visitation, appropriate weight, and we refuse to disturb these determinations on appeal. *See 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.”). Moreover, in reaching its conclusion that post-termination visitation was not in the children’s best interest, the court specifically noted the violent nature of the abuse leading to the petition’s filing as well as the petitioner’s criminal behavior during the proceedings. Accordingly, we conclude that the court’s analysis was sufficient and that it did not err in denying post-termination visitation under these circumstances.

For the foregoing reasons, we find no error in the decision of the circuit court and its August 25, 2025, order is affirmed.

Affirmed.

ISSUED: June 24, 2026

CONCURRED IN BY:

Chief Justice C. Haley Bunn
Justice William R. Wooton
Justice Charles S. Trump IV
Justice H. L. Kirkpatrick
Justice James W. Flanigan

⁷ We note that on May 9, 2025, a few months prior to the dispositional hearing and the entry of the circuit court’s order, this Court provisionally amended Rule 15(b) of the West Virginia Rules of Procedure for Child Abuse and Neglect Proceedings to more clearly articulate and adopt appropriate standards for consideration of post-termination visitation.