

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

*In re C.B.-1, R.B., B.B., W.B., and C.B.-2*

**No. 25-592** (Calhoun County CC-07-2024-JA-25, CC-07-2024-JA-26, CC-07-2024-JA-27, CC-07-2024-JA-28, and CC-07-2024-JA-29)

**MEMORANDUM DECISION**

Petitioner Mother E.R.<sup>1</sup> appeals the Circuit Court of Calhoun County’s June 13, 2025, order terminating her parental rights to C.B.-1, R.B., B.B., W.B., and C.B.-2,<sup>2</sup> arguing that the court abused its discretion in denying her motion for a post-adjudicatory improvement period and erred in terminating her parental rights based on issues outside the scope of her adjudication. 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.

On June 18, 2024, the DHS filed an abuse and neglect petition alleging that the petitioner and the father (“the parents”) neglected the children. The DHS alleged that, during a meeting with her probation officer the week before, then-sixteen-year-old C.B.-1 had a black eye and a broken nose after being physically assaulted by her twenty-one-year-old boyfriend. The DHS also alleged that C.B.-1 admitted to using methamphetamine and marijuana and tested positive for the same. The DHS noted that there were two prior abuse and neglect proceedings involving the family in 2016 and 2021, and that C.B.-1 tested positive for amphetamine and THC in the latter. Based on the foregoing, the DHS asserted that the parents failed to provide adequate supervision for C.B.-1, failed to protect her, and failed to seek medical treatment for her. The parents subsequently waived the preliminary hearing and moved for supervised visitation, which the circuit court granted.

In July 2024, the circuit court entered an agreed order continuing adjudication based upon the parties’ request. In December 2024, the DHS filed an amended petition alleging that the parents exposed the children to inappropriate individuals who had extensive and known substance abuse issues, including the parents’ adult son and his girlfriend, V.C. The DHS further alleged that V.C.’s parental rights to her children had been terminated. Following another continuance requested by the parties, the court held an adjudicatory hearing in January 2025, where the petitioner admitted

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<sup>1</sup> The petitioner appears by counsel John J. Balenovich. The West Virginia Department of Human Services (“DHS”) appears by counsel Attorney General John B. McCuskey and Assistant Attorney General Andrew T. Waight. Counsel Gerald R. Lacy appears as the children’s guardian ad litem (“guardian”).

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

to exposing her children to inappropriate individuals. Based on this stipulation, the court adjudicated the petitioner as neglectful of the children. The petitioner subsequently moved for a post-adjudicatory improvement period.

The circuit court addressed the petitioner's motion for an improvement period and the DHS's motion to terminate the petitioner's parental rights at an April 2025 dispositional hearing. The petitioner testified in support of her motion, asserting that she actively participated in supervised visitation and that she would not allow her adult son to be around the children if granted an improvement period, although she disagreed that he was an inappropriate person. She acknowledged her prior involvement in abuse and neglect proceedings, including her adjudication for failing to protect her children from the father—who abused controlled substances and provided those substances to the children—in 2021 and her receipt of parenting and life skills classes during those proceedings. As to the instant proceedings, the petitioner denied being told that her adult son and V.C. could not be around the children, but admitted to knowing of her son's marijuana use, his criminal history, and the termination of V.C.'s parental rights. The petitioner further testified that she lacked knowledge of the allegations underlying the original petition. When asked why she did not request additional services beyond supervised visitation, the petitioner indicated that she did not believe additional parenting services were necessary due to having already completed similar services. A Child Protective Services ("CPS") worker testified that she met with the petitioner following a July 2023 referral, at which time she told the petitioner that neither the petitioner's adult son nor V.C. was to be around the children due to their ongoing methamphetamine use. The CPS worker further stated that she informed the petitioner of C.B.-1's suspected substance abuse in early June 2024 and that known drug users were visiting the home of C.B.-1's boyfriend. The CPS worker then testified that the petitioner declined parenting services and that the petitioner's failure to show improvement despite being provided extensive services demonstrated her inability and unwillingness to correct the underlying issues. The court also heard from C.B.-1's probation officer, who testified regarding the child's injuries and the authenticity of certain photos taken from C.B.-1's phone. One photo showed C.B.-1 in a vehicle with the petitioner and V.C. in December 2023, with the officer stating that V.C. was constantly intoxicated around the time the photo was taken. Two other photos showed C.B.-1 with her adult brother upon his release from Central Regional Jail in January 2024, following his incarceration for drug-related charges.

Based upon the evidence presented, the circuit court found that, despite having an extensive history of CPS involvement and prior participation in services, the petitioner failed to supervise her children and exposed them to inappropriate individuals. The court also found that, although the petitioner asserted that she would participate in court-ordered services, her testimony demonstrated that "she never fully acknowledged that she needed the services" or the underlying issues of neglect. As a result, the court concluded that the petitioner's actions and testimony demonstrated that there was no reasonable likelihood that the conditions of neglect could be corrected. The court also considered the children's wishes, as represented by the guardian, and concluded that termination of the petitioner's parental rights was in the children's best interests. Based upon the foregoing, the circuit court denied the petitioner's motion for a post-adjudicatory

improvement period and terminated her parental rights to the children. It is from this dispositional order that the petitioner appeals.<sup>3</sup>

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). Before this Court, the petitioner argues that the circuit court erred in denying her motion for a post-adjudicatory improvement period. We disagree. Under West Virginia Code § 49-4-610(2)(B), a parent may be granted a post-adjudicatory improvement period if they "demonstrate[], by clear and convincing evidence, that [they are] likely to fully participate in the improvement period." However, we have explained that a parent's "[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)). In support of her argument, the petitioner asserts that her testimony established a willingness to seek and complete parenting services that would improve her ability to parent. However, this argument fails to acknowledge the evidence presented to the circuit court showing that the petitioner refused services offered to her at the outset of the underlying proceedings and facilitated contact between C.B.-1 and individuals actively using methamphetamine, despite being warned by the DHS. Further, the court found that the petitioner's conduct and testimony demonstrated a failure to acknowledge either the need for services or the underlying issues, and we refuse to disturb this finding 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 . . . weigh evidence as that is the exclusive function and task of the trier of fact."). Therefore, we conclude that the circuit court did not abuse its discretion in denying the petitioner's motion for an improvement period and proceeding to termination. *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.").

The petitioner further argues that the circuit court erred in terminating her parental rights because the court did so based upon "grounds that fell entirely outside the scope" of her stipulated adjudication, including the prior abuse and neglect proceedings and her alleged negligent supervision of C.B.-1. In support of her argument, the petitioner asserts that this case mirrors that of *In re Lilith H.*, 231 W. Va. 170, 744 S.E.2d 280 (2013), where this Court reversed a circuit court's termination of parental rights based on allegations and issues which were never properly made the subject of adjudication. *Id.* at 180, 744 S.E.2d at 290 ("[T]his Court takes notice of the plain error permeating the disposition wherein the circuit court terminated the parental rights on the basis of allegations and issues which were never properly made subject of the adjudication."); *see also In re K.L.*, 247 W. Va. 657, 666, 885 S.E.2d 595, 604 (2022) (recognizing that the petitioner was not adjudicated of having a substance abuse problem and stating that "at no time was substance abuse legally determined to constitute a 'condition[] of neglect or abuse' requiring acknowledgment or correction as pertained to petitioner"). However, upon our review, we find the

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<sup>3</sup> The circuit court also terminated the father's parental rights. The permanency plan for R.B., B.B., W.B., and C.B.-2 is adoption in their current placements. C.B.-1 reached the age of majority during the pendency of this appeal.

petitioner's argument to be misplaced, as the termination of her parental rights was premised on the conditions of neglect upon which she was adjudicated: her exposure of the children to inappropriate individuals with extensive and known substance abuse issues. The petitioner's history with abuse and neglect proceedings, including her adjudication for failure to protect the children from the father's substance abuse and the parenting services she received, directly related to the petitioner's ability to protect her children from substance abuse in the instant matter. Likewise, the evidence regarding the petitioner's supervision of C.B.-1 demonstrated that she allowed—and perhaps even facilitated—contact between the child and individuals who she had been warned were inappropriate. As a result, rather than being “extraneous information,” as the petitioner contends, such evidence bore directly on the petitioner's ability to solve the issue of neglect in this case. *See* W. Va. Code § 49-4-604(d) (“No reasonable likelihood that 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.”). Accordingly, we discern no error in the circuit court's reliance on this evidence to conclude that there was no reasonable likelihood that the petitioner could correct the conditions of neglect. Moreover, the court found that termination of the petitioner's parental rights was in the children's best interests, which the petitioner does not challenge. As such, we conclude that the circuit court did not err in terminating the petitioner's parental rights. *See* W. Va. Code § 49-4-604(c)(6) (allowing the termination of parental rights “[u]pon a finding that there is no reasonable likelihood that the conditions of neglect . . . can be substantially corrected in the near future and, when necessary for the welfare of the child”).<sup>4</sup>

For the foregoing reasons, we find no error in the decision of the circuit court, and its June 13, 2025, order is hereby affirmed.

Affirmed.

**ISSUED:** June 24, 2026

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<sup>4</sup> The petitioner raises an additional assignment of error alleging that the circuit court erred in issuing numerous continuances delaying the adjudicatory and dispositional hearings beyond the deadlines established by the Rules of Procedure for Child Abuse and Neglect Proceedings. However, a review of the record shows that some of the continuances were made with the agreement of the petitioner and, therefore, cannot constitute a valid basis for relief. *See Maples v. W. Va. Dep't of Com., Div. of Parks & Recreation*, 197 W. Va. 318, 319, 475 S.E.2d 410, 411 (1996) (“A litigant may not silently acquiesce to an alleged error, or actively contribute to such error, and then raise that error as a reason for reversal on appeal.”). Further, the petitioner fails to cite to any portion of the record where she objected to any of the continuances, in violation of Rule 10(c)(7) of the West Virginia Rules of Appellate Procedure. As we have long held, “[o]ur general rule is that nonjurisdictional questions . . . raised for the first time on appeal, will not be considered.” *Shaffer v. Acme Limestone Co., Inc.*, 206 W.Va. 333, 349 n.20, 524 S.E.2d 688, 704 n.20 (1999). *Noble v. W. Va. Dep't of Motor Vehicles*, 223 W. Va. 818, 821, 679 S.E.2d 650, 653 (2009). Accordingly, the petitioner is entitled to no relief on this basis.

**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