

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re H.S. and A.S.

No. 25-628 (Barbour County CC-01-2023-JA-67 and CC-01-2023-JA-68)

MEMORANDUM DECISION

Petitioner Mother J.C.¹ appeals the Circuit Court of Barbour County’s August 27, 2025, order terminating her parental, custodial, and guardianship rights to H.S. and A.S., arguing that the court erred in denying her a post-dispositional improvement period and in failing to employ a less restrictive disposition.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 initial petition in October 2023, listing the petitioner as a non-offending parent and alleging that the father’s rights to other children had been involuntarily terminated. The DHS further alleged that the father had failed to support H.S. and A.S., who were residing with the petitioner in a homeless shelter. The circuit court terminated the father’s parental rights to H.S. and A.S. in June 2024. That same month, the DHS amended the petition to allege that the petitioner, who remained homeless and had been receiving services, left the shelter with the children without notice and was not responding to attempts to contact her. The DHS filed a second amended petition in November 2024, stating that the petitioner had “actively conceal[ed] the children from [Child Protective Services (“CPS”)], neglected their medical care to ensure that they remained hidden, and facilitated [the children’s] contact with the terminated father knowing that such contact was prohibited.”

At an adjudicatory hearing in January 2025, the petitioner submitted a written stipulation, signed by all parties, admitting to the allegations in the second amended petition and identifying her problems and deficiencies to be addressed at disposition—which included her failure to exercise proper judgment and assure a safe environment for the children. On this basis, the circuit court adjudicated the petitioner as an abusing and neglecting parent and found H.S. and A.S. to be abused and/or neglected children. The court also granted the petitioner’s motion for a post-adjudicatory improvement period and required her to, among other things, fully and honestly

¹ The petitioner appears by counsel Dean R. Morgan. The Department of Human Services (“DHS”) appears by counsel Attorney General John B. McCuskey and Assistant Attorney General Wyclif S. Farquharson. 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).

cooperate with service providers and participate in individual therapy and parenting and adult life skills classes. The court specifically ordered that the petitioner have no contact with the father.

At a dispositional hearing in July 2025, the court considered the petitioner's motion for a post-dispositional improvement period.³ During her testimony, the petitioner acknowledged that she had remained in daily contact with the father, despite advising all parties that she was not and knowing that this conduct violated the terms of her post-adjudicatory improvement period. She further admitted that she had disclosed the time and location of one of her supervised visits with the children to the father. The father reportedly appeared at a neighboring business during the visitation in an agitated state, armed, and threatening to shoot the petitioner, the children, and the visitation supervisor, all of whom had to be barricaded in a bathroom until the father was arrested. The petitioner admitted that she then lied to CPS workers, telling them that she did not know how the father learned of the visit. The petitioner further admitted that, before the visit, she had attempted to end the relationship and that the father had threatened her. Even though she was aware of his violent propensities, the petitioner stated that she did not warn anyone. The petitioner testified that the father had been physically abusive to her in the past and stated that she now considered him to be a dangerous and erratic person who should not be in the children's lives. The assigned DHS worker and the visitation supervisor also testified, and the DHS recommended termination.

Based on this evidence, the circuit court denied the petitioner's motion for a post-dispositional improvement period. The court found that the petitioner had "no insight into correcting the abuse for which she was . . . adjudicated" and that she had failed to show that she could comply with court orders or that an additional improvement period was in the children's best interest. Conversely, the court stated that permitting an additional improvement period posed "too great" a risk, as the petitioner's prior failure "to follow [its] directives" and her choice to continue associating with the father "placed the lives of the children in extreme danger." The court had "no faith in [the petitioner's] ability to protect [the] children[.]" even under supervised conditions. Noting the petitioner's repeated dishonesty regarding her relationship with the father, which occurred while she participated in services, the court concluded that there was no reasonable likelihood that she could correct the conditions of neglect and/or abuse in the near future. After finding that termination was in H.S. and A.S.'s best interest and that no less restrictive alternative existed, the court terminated the petitioner's parental, custodial, and guardianship rights.⁴ 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). Further, "[w]e review a circuit court's decision to grant or deny a[n] . . . improvement period under an abuse of discretion standard." Syl. Pt. 1, *In re K.A.*,

³ Contrary to Rule 7(d)(5) of the West Virginia Rules of Appellate Procedure, the petitioner did not include a transcript of the dispositional hearing, or excerpts therefrom, in the record on appeal. Therefore, we must rely on the arguments contained in the petitioner's motion for a post-dispositional improvement period as well as the circuit court's dispositional order.

⁴ The children's permanency plan is adoption in their current placement.

251 W. Va. 626, 915 S.E.2d 520 (2025). Before this Court, the petitioner first asserts that the circuit court erred in denying her motion for a post-dispositional improvement period. We disagree. We have previously stated that “the granting of an improvement period is within the circuit court’s discretion.” See *In re Tonjia M.*, 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002); see also *In re Charity H.*, 215 W. Va. 208, 216, 599 S.E.2d 631, 639 (2004) (noting that a parent “is not unconditionally entitled to an improvement period” (emphasis added)). A circuit court may grant a post-dispositional improvement period when the requesting parent “demonstrates that since the initial [post-adjudicatory] improvement period, [she] has experienced a substantial change in circumstances” and that, due to that change, “[she] is likely to fully participate.” W. Va. Code § 49-4-610(3)(D). Critically, the petitioner fails to reference the proper statutory standard on appeal. And although the petitioner argued in her motion before the circuit court that “[s]he ‘ha[d] undergone a complete transformation’ and ‘gained significant insight into her past behaviors,’” the court reached the opposite conclusion after hearing her testimony at disposition. We will not 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 decide the credibility of witnesses . . . as that is the exclusive function and task of the trier of fact.”); see also *In re Emily*, 208 W. Va. 325, 339, 540 S.E.2d 542, 556 (2000) (explaining that “in the context of abuse and neglect proceedings, the circuit court is the entity charged with weighing the credibility of witnesses”).

In addition to finding that the petitioner lacked insight regarding her conduct, the court found that the petitioner’s noncompliance with the terms of her post-adjudicatory improvement period put H.S. and A.S. at serious risk of further harm. It therefore concluded that an additional improvement period would not be in the children’s best interests. See Syl. Pt. 3, in part, *State ex rel. W. Va. Dep’t of Health & Hum. Res. v. Dyer*, 242 W. Va. 505, 836 S.E.2d 472 (2019) (holding that an improvement period should only be granted when doing so will “not jeopardize a child’s best interests”). The petitioner argues that, in reaching this decision, the circuit court improperly discounted her substantial compliance with the terms of her post-adjudicatory improvement period and overemphasized a single violation, noting that she had participated in therapy, parenting classes, and submitted to random drug screening. However, we have observed that “it is possible for an individual to show compliance with specific aspects of the case plan while failing to improve . . . [the] overall attitude and approach to parenting.” *In re Jonathan Michael D.*, 194 W. Va. 20, 27, 459 S.E.2d 131, 138 (1995) (citations modified). Regardless, on appeal, we “do not reweigh the evidence.” See *In re D.S.*, 251 W. Va. 466, 472, 914 S.E.2d 701, 707 (2025). Accordingly, we find that the circuit court acted within its discretion in denying the petitioner a post-dispositional additional improvement period, and as such, she is not entitled to relief.

Next, the petitioner asserts that the circuit court erred in terminating her rights instead of employing a less restrictive disposition, arguing that the evidence did not support the court’s finding that there was no reasonable likelihood the conditions of abuse or neglect could be corrected. Again, we disagree. We have long 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 . . . that conditions of neglect or abuse can be substantially corrected.” Syl. Pt. 5, *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)). There is sufficient evidence to support the circuit court’s finding that there was no reasonable likelihood that the petitioner could correct the conditions of abuse and 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, based upon the evidence before the court, the abusing adult . . . ha[s] demonstrated an inadequate capacity to solve the problems of abuse or neglect on [her] own or with help.”). The record indicates that the petitioner specifically acknowledged her need to exercise proper judgment at adjudication and agreed to provide honest information to providers. Then, while receiving services, the petitioner chose to remain in frequent contact with the father *and* to conceal their relationship, knowing this was prohibited. The court additionally found that termination was necessary and in the children’s best interest, noting that they “deserve[d] permanency and stability.” Circuit courts are permitted to terminate parental, custodial, and guardianship rights upon these findings. *See id.* § 604(c)(6) (permitting termination upon “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”).

For the foregoing reasons, we find no error in the decision of the circuit court and its August 27, 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