

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re B.M.-1 and O.M.

No. 25-713 (Jefferson County CC-19-2024-JA-134 and CC-19-2024-JA-135)

MEMORANDUM DECISION

Petitioner Father B.M.-2¹ appeals the Circuit Court of Jefferson County’s September 29, 2025, order terminating his parental rights to B.M.-1 and O.M., arguing that the court erred by denying his motion for a post-adjudicatory improvement period, terminating his parental rights based upon improper evidence, and failing to impose a less restrictive alternative.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 December 2024, the DHS filed a petition alleging that the petitioner abused and neglected the children by, among other things, engaging in a pattern of domestic violence and chronic physical abuse of O.M.’s mother in the children’s presence, inflicting emotional harm on the children, abusing controlled substances and alcohol in the children’s presence to the extent that his parenting skills were impaired, and offering controlled substances to other children in the home.³ Immediately upon the filing of the petition, the circuit court entered an order placing the children in the custody of their nonabusing mothers and prohibiting any contact between the petitioner and the children.

The petitioner filed an answer admitting to engaging in domestic violence and being under the influence of controlled substances in the presence of the children. However, he denied the remaining allegations, including any physical abuse of O.M.’s mother or using controlled substances in the children’s presence. The petitioner further moved for a post-adjudicatory improvement period. The circuit court held four adjudicatory hearings between March and July

¹ The petitioner appears by counsel Haixia Doris Yang. The West Virginia Department of Human Services (“DHS”) appears by counsel Attorney General John B. McCuskey and Assistant Attorney General A. Tyler Reseter. Counsel Jared M. Adams 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). Further, because one of the children and the petitioner share the same initials, we refer to them as B.M.-1 and B.M.-2, respectively.

³ The proceedings below concerned additional children and adult respondents who are not at issue on appeal.

2025, where it took judicial notice of the petitioner's history of domestic violence and criminal proceedings—including the petitioner's conviction for violating a protective order during the pendency of the proceedings—and received further evidence in support of the allegations. This evidence included recordings of forensic interviews with B.M.-1's maternal half-siblings and the testimony of the petitioner, B.M.-1 and O.M.'s mothers, and a Child Protective Services ("CPS") worker. Based upon this evidence and the stipulations in the petitioner's answer, the court adjudicated the petitioner of abusing and neglecting the children and found that the petitioner's actions amounted to chronic abuse, constituting aggravated circumstances. At a subsequent hearing in August 2025, the court found the petitioner to be in contempt after receiving evidence that the petitioner contacted O.M. and the child's mother multiple times following the entry of the December 2024 order prohibiting the same.

The circuit court held a dispositional hearing in September 2025. A CPS worker testified that the DHS recommended termination of the petitioner's parental rights, noting the court's previous finding of aggravated circumstances and stating that the petitioner neither requested assistance in setting up services nor participated in any services aside from court-ordered drug screening. The CPS worker further testified that the petitioner's violation of the court's no contact order demonstrated that he would not comply with the terms of an improvement period. Next, the petitioner testified that he had completed a four-week inpatient drug and alcohol treatment program in January 2025 after testing positive for alcohol, marijuana, and cocaine during prior abuse and neglect proceedings involving B.M.-1. The petitioner further stated that, during his incarceration between March and June 2025, he received three weeks of services that included therapy. The petitioner represented that he did not participate in any services following his release due to a lack of guidance from the DHS, but acknowledged that multiple services were discussed at multidisciplinary team meetings he attended. The petitioner also admitted to violating the court's no contact order on multiple occasions. B.M.-1's mother then testified that the child was doing better after being removed from the petitioner's care, as he no longer got into fights at school and generally seemed happier.

Ultimately, the circuit court found that the petitioner's disregard of court orders demonstrated that he was not likely to comply with the terms of an improvement period. In addition to the petitioner's violation of the no contact order in the instant proceedings, the court took judicial notice of the petitioner's criminal history, which resulted in his incarceration during the proceedings, and his extensive history of domestic violence proceedings—involving multiple victims and at least thirteen domestic violence petitions filed against him. The court further found that the petitioner had made only minimal efforts to address his parenting deficiencies and failed to acknowledge that his violent behavior harmed the children. Based upon these findings, the court concluded that there was no reasonable likelihood that the petitioner could substantially correct the conditions of neglect and abuse in the near future and that termination of his rights was necessary for the children's welfare. Accordingly, the court denied the petitioner's motion for a post-adjudicatory improvement period and terminated his parental rights to B.M.-1 and O.M.⁴ It is from the dispositional order that the petitioner appeals.

⁴ The permanency plan for B.M.-1 is to remain in the custody of his nonabusing mother. The permanency plan for O.M. is reunification with his mother following her completion of an improvement period.

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. --, 930 S.E.2d 400 (2026). Before this Court, the petitioner first argues that the circuit court erred by denying his motion for a post-adjudicatory improvement period. We disagree. Pursuant to West Virginia Code § 49-4-610(2)(B), a parent *may* be granted a post-adjudicatory improvement period if the parent “demonstrates, by clear and convincing evidence, that [he] is likely to fully participate.” In support of his argument, the petitioner asserts that the circuit court disregarded “undisputed evidence of rehabilitation,” including “documented proof” of his completion of inpatient alcohol and substance abuse treatment, anger management services, parenting education, and ongoing therapy. Contrary to the petitioner's representations, however, the record contains only the petitioner's testimony, yet no other documentation. Further, the record contains substantial evidence supporting the circuit court's denial of an improvement period, including the petitioner's violation of a court order prohibiting contact with O.M. and the child's mother during the underlying proceedings, and we see no basis to disturb the circuit court's evidentiary 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.”). Critically, the petitioner does not challenge the court's finding that he failed to acknowledge how his violent behavior harmed the children. We have stressed 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)). Based upon the foregoing, we conclude that the circuit court did not abuse its discretion in denying the petitioner's motion for a post-adjudicatory improvement period. *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.”).

Next, the petitioner argues that the circuit court erred in relying on evidence of his past domestic violence and related criminal proceedings in terminating his parental rights, which he asserts was “unrelated” to the issues in the underlying proceedings. We again disagree. A circuit court may terminate parental rights “[u]pon a 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.” W. Va. Code § 49-4-604(c)(6). West Virginia Code § 49-4-604(d) provides that “[n]o reasonable likelihood that conditions of neglect or abuse can be substantially corrected” means that . . . the abusing adult . . . ha[s] demonstrated an inadequate capacity to solve the problems of abuse or neglect on their own or with help.” Here, the underlying proceedings largely resulted from domestic violence perpetrated by the petitioner. Thus, his history of domestic violence and disregard of court orders entered to protect his victims was directly relevant to his capacity to address these issues moving forward, as “repeated acts of abuse and violence toward the [other parent] . . . [are] relevant to the determination of parental fitness” at disposition. *In re Carlita B.*, 185 W. Va. 613, 631, 408 S.E.2d 365, 383 (1991) (citing *Nancy Viola R. v. Randolph W.*, 177 W. Va. 710, 356 S.E.2d 464 (1987)). The circuit court was permitted to consider this history, including the petitioner's conviction for violation of protective order during the course of the underlying proceedings, in concluding that there was no reasonable likelihood that he could

substantially correct the conditions of neglect and abuse in the near future. As such, the petitioner is entitled to no relief on this basis.

Finally, the petitioner argues that the circuit court erred in terminating his parental rights without considering less restrictive alternatives. We have consistently 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)). Furthermore, “[c]ourts are not required to exhaust every speculative possibility of parental improvement . . . where it appears that the welfare of the child will be seriously threatened” before terminating parental rights. Syl. Pt. 4, in part, *In re Cecil T.*, 228 W. Va. 89, 717 S.E.2d 873 (quoting *In re R.J.M.*, 164 W. Va. at 496, 266 S.E.2d at 114, Syl. Pt. 1, in part). Here, the evidence showed that the petitioner had a long history of domestic violence, disregarded protective orders, violated a court order during the underlying proceedings, and failed to seek or participate in any services in the three months between his release from incarceration and the dispositional hearing. Compounded with these issues, the court found that the petitioner failed to acknowledge that his conduct harmed the children. As such, the court had sufficient evidence to find that there was no reasonable likelihood that the petitioner could substantially correct the conditions of neglect and abuse in the near future. Further, although the petitioner asserts that the children could have been protected through a less restrictive alternative, the record supports the circuit court’s finding that termination of the petitioner’s rights was necessary for the children’s welfare based upon the ongoing risk presented by the petitioner’s chronic domestic violence. Accordingly, we conclude that the circuit court did not abuse its discretion in terminating the petitioner’s parental rights.

For the foregoing reasons, we find no error in the decision of the circuit court, and its September 29, 2025, order is hereby affirmed.

Affirmed.

ISSUED: July 28, 2026

CONCURRED IN BY:

Chief Justice C. Haley Bunn
Justice William R. Wooton
Justice H. L. Kirkpatrick
Justice James W. Flanigan

DISQUALIFIED:

Justice Charles S. Trump IV