

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

In re D.C.

No. 25-718 (Kanawha County CC-20-2024-JA-146)

MEMORANDUM DECISION

Petitioner Father N.C.¹ appeals the Circuit Court of Kanawha County’s September 26, 2025, order terminating his parental rights to D.C., arguing that the court erred in denying him an improvement period before terminating his parental rights.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 April 2024, alleging that the petitioner had abandoned D.C. and failed to protect the child from the mother’s abuse. The DHS further alleged that the petitioner failed to provide D.C. with food or financial support and had not ensured that the child received an adequate education. Later that month, the DHS filed an amended petition, alleging that the petitioner was incapable of taking care of D.C. due to mental impairment.³

At a hearing in September 2024, the circuit court ordered that the DHS provide services to the petitioner, including drug screening, a psychological evaluation, and supervised telephone visits with the child. The report from the petitioner’s psychological evaluation was filed with the court in January 2025. The evaluator concluded that the petitioner’s prognosis for attaining minimally adequate parenting was poor, citing, among other things, the petitioner’s “lack of recent parental contact or involvement with [D.C.] [and] his apparent poor relationship with [D.C.],” as well as reports of his inappropriate behavior on phone calls with both the child and the DHS. In February 2025, the petitioner moved for a post-adjudicatory improvement period.

¹ The petitioner appears by counsel Alan J. Nichols. The Department of Human Services (“DHS”) appears by counsel Attorney General John B. McCuskey and Assistant Attorney General Andrew T. Waight. Counsel Jennifer R. Victor appears as the child’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 In June 2024, the DHS filed a second amended petition to include additional allegations against the mother.

After numerous continuances, the circuit court held an adjudicatory hearing in June 2025.⁴ The investigating DHS worker testified that the petitioner did not live in the home, had not been involved in D.C.'s life since he was very young, and that the child "didn't really know what his dad's name was." A Kanawha County Schools employee testified to the child's absences, and another DHS worker testified that the petitioner had made only one involuntary child support payment during the child's life. The mother testified that the petitioner had been part of D.C.'s life until the child was three years old but had been "totally absen[t]" thereafter, except for occasional phone contact. She confirmed that she had "only ever received one payment" from the petitioner, who otherwise "never helped with anything." The mother acknowledged taking D.C. to see the petitioner once in 2021 but stated that they did not visit regularly.

The petitioner testified that he made "a lot" of child support payments, though he lacked records to support this. He admitted to being absent from D.C.'s life, partly due to a period of incarceration, but also stated that visiting D.C. was difficult because he lacked a driver's license, lived in another county, and the mother sometimes denied him contact. The petitioner averred that he was currently employed and residing in a sober living facility, though he "didn't feel like [he] needed to be [there]." He admitted to prior struggles with substance abuse (alcohol and methamphetamines) but noted that his drug screens during the proceedings had been negative. He acknowledged that he had suffered a traumatic brain injury in an accident, had once been found incompetent to stand trial on criminal charges, and had been diagnosed with an intellectual functioning disorder and depression—though he did not believe these diagnoses were accurate.

Based on this evidence, the circuit court found that the petitioner failed to provide food, clothing, shelter, supervision, medical care, or support to D.C. and had abandoned the child. The court noted that this abandonment constituted aggravated circumstances. The court also found that the petitioner had mental health problems that negatively affected his parenting abilities, as well as a history of substance abuse. On this basis, the court adjudicated the petitioner as an abusing parent and found D.C. to be an abused and neglected child. The court did not rule on the petitioner's motion for a post-adjudicatory improvement period but ordered the DHS to provide the petitioner with parenting and adult life skills classes. The court also ordered the petitioner to sign a release permitting the DHS to obtain his medical records.

In September 2025, the petitioner filed an amended motion for a post-adjudicatory improvement period. At a dispositional hearing that same month,⁵ a DHS worker testified that the petitioner had not rectified his lack of relationship with D.C. She specified that telephone visits between D.C. and the petitioner had not gone well and had to be stopped, as the petitioner was unable to engage in appropriate conversation with the child. The petitioner had also attempted to call the child at his placement in the middle of the night. The worker further testified that the

⁴ At the outset of the hearing, the petitioner's appointed guardian ad litem indicated that the petitioner had "a basic intellectual capacity" and understood the proceedings and "what's at stake."

⁵ At the outset, the petitioner's guardian ad litem indicated that the petitioner had no objection to proceeding to disposition.

petitioner had not signed a medical release and had mental health issues. The worker reported that while the petitioner tested negative for drugs throughout the proceedings, he did not understand why he was in a sober living facility and expressed his belief that he did not need to be there. A second DHS worker corroborated her colleague's testimony and also testified that the petitioner had participated in individualized parenting classes. The petitioner testified to his involvement in D.C.'s early life and again claimed that he had tried to continue their relationship but was thwarted by the mother and the difficulty of traveling. He reported that he had maintained his employment and was participating in substance abuse treatment at the sober living facility, which included weekly therapy, but stated "I [don't] really have too much of a substance history, anyway." He further admitted that he did not have a home where the child could live. Ultimately, the DHS and the guardian recommended termination as being in D.C.'s best interest; the child's guardian specifically noted that the child did not wish to have any contact with the petitioner.

From the bench, the circuit court denied the petitioner's motions for a post-adjudicatory improvement period, finding "that [his] behavior . . . during the pendency of the[] proceedings indicate[d] that [he] would not benefit from an improvement period and could not comply with one." The court also noted that the petitioner had abandoned D.C. and would likely still be absent from the child's life had the DHS not initiated the proceedings. In a subsequent written order, the court observed that the petitioner had participated in substance abuse treatment and therapy in the sober living facility where he resided, provided negative drug screens, and obtained employment. However, he "failed to abide by the [c]ourt's order regarding supervised visits" and had not signed a medical release. Ultimately, the court found that the petitioner lacked a relationship with D.C., had significant mental health problems, and had a history of substance abuse. The court explained that although the petitioner resided in a sober living facility, he "[did] not know why he [was] living there or why he need[ed] therapy." The court therefore concluded that the petitioner "failed to acknowledge or to rectify the problems of child abuse and neglect," lacked the ability to care for D.C., and that there was no reasonable likelihood that the conditions of child abuse and neglect could be substantially corrected in the near future. After finding that termination was "the most reasonable [dispositional] alternative" and necessary for D.C.'s welfare, the court terminated the petitioner's parental rights.⁶ 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 for clear error, and issues of law de novo. Syl. Pt. 1, *In re K.S.*, -- W. Va. --, 930 S.E.2d 400 (2026). In his sole assignment of error, the petitioner asserts that the circuit court erred in terminating his parental rights because it denied him an improvement period despite his documented sobriety and participation in services throughout the proceedings. The petitioner correctly notes that a circuit court may grant a post-adjudicatory improvement period when the requesting parent "demonstrates, by clear and convincing evidence, that [he] is likely to fully participate." W. Va. Code § 49-4-610(2)(B). However, "the granting of an improvement period is within the circuit court's discretion," and an improvement period need not be granted when no improvement is likely. *In re Tonjia M.*, 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002). Further, "when the conduct forming the basis of the

⁶ The circuit court also terminated the mother's parental rights. The child's permanency plan is adoption.

abuse and/or neglect allegations consists of abandonment, such parental recalcitrance is perceived as so egregious as to warrant the virtually automatic denial of an improvement period.” *In re Emily*, 208 W. Va. 325, 336, 540 S.E.2d 542, 553 (2000); *see also* Syl. Pt. 2, *James M. v. Maynard*, 185 W. Va. 648, 408 S.E.2d 400 (1991) (holding that “[a]bandonment of a child by a parent[] constitutes compelling circumstances sufficient to justify the denial of an improvement period”). While the petitioner highlights his residence in a sober living facility, negative drug screens, and employment, he fails to address other conduct that the circuit court properly considered—including that he had abandoned D.C., behaved inappropriately during supervised telephone visits, and failed to sign a medical release. Accordingly, we discern no error, as the court acted within its discretion in denying the petitioner an improvement period.⁷

Moreover, “[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)). Pursuant to West Virginia Code § 49-4-604(d)(4), one circumstance in which there is no such likelihood is when a parent “ha[s] abandoned the child.” Given the circuit court’s finding of abandonment, it did not err in finding that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected. The court also found, upon ample evidence, that termination was necessary for D.C.’s welfare. Circuit courts are permitted to terminate a parent’s rights upon these findings. *See* W. Va. Code § 49-4-604(c)(6) (permitting termination upon findings that “there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future” and that termination is “necessary for the welfare of the child”).

For the foregoing reasons, we find no error in the decision of the circuit court and its September 26, 2025, order is affirmed.

Affirmed.

ISSUED: July 28, 2026

⁷ The petitioner’s additional argument that the DHS failed to provide him with reunification services adapted to address his cognitive limitations and needs similarly lacks merit. Given the circuit court’s finding of abandonment—a statutorily recognized aggravated circumstance—the DHS was not required to make reasonable efforts to preserve the family. *See* W. Va. Code § 49-4-604(c)(7)(A) (“[T]he [DHS] is not required to make reasonable efforts to preserve the family if the court determines[] . . . [that] [t]he parent has subjected the child . . . to aggravated circumstances, [such as] . . . abandonment.”); *see also In re K.V.*, 251 W. Va. 418, 426, 914 S.E.2d 517, 525 (2025) (“[The] DHS has a statutory obligation to provide services . . . unless one of the subsections of West Virginia Code § 49-4-604(c)(7) applies to absolve it of that duty.”).

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