

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re J.D.

No. 25-457 (Monongalia County CC-31-2024-JA-51)

MEMORANDUM DECISION

Petitioner Mother A.D.¹ appeals the Circuit Court of Monongalia County’s May 16, 2025, order terminating her parental rights to J.D., arguing that the circuit court erred in failing to grant her an improvement period before terminating her rights and declining to permit additional services.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.

Upon the birth of J.D. in April 2024, the DHS filed an abuse and neglect petition alleging that the petitioner’s intellectual disabilities inhibited her ability to properly care for the child.³ Specifically, the DHS described concerns from hospital staff about the petitioner’s inability to parent J.D. due to her extensive medical history which left the petitioner mentally impaired and paralyzed on the right side of her body.⁴

At the adjudicatory hearing, which concluded in November 2024, J.D.’s attending physician testified that the petitioner had issues caring for him after birth and often forgot instructions or became distracted even after multiple people redirected her to the task at hand. Next, the circuit court heard from an occupational therapist who educated the petitioner on how to safely care for J.D. at the hospital. This witness testified that the petitioner failed to properly hold the child, could not change J.D.’s diaper without cues and hands on assistance, and did not understand instructions regarding feeding and other developmental activities. The petitioner’s parental fitness evaluator also testified that, due to her illnesses, the petitioner had executive

¹ The petitioner appears by counsel Andrew N. Frye III. The West Virginia Department of Human Services (“DHS”) appears by counsel Attorney General John B. McCuskey and Assistant Attorney General Lee Niezgoda. Counsel Stephanie Shepherd appears as the child’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).

³ The petition also referenced the petitioner’s older child who is not at issue on appeal.

⁴ The petitioner’s medical history included, among other things, various treatments and brain surgeries to treat cancer and a stroke.

functioning deficits and lacked “abilities that are necessary for independent living . . . and for caring for anyone else,” such as critical thinking and reasoning. The evaluator further confirmed that it was not reasonably likely that the petitioner would be able to improve her parenting skills based on her “lack of awareness and also an unwillingness to identify issues” with her parenting approach and that her medical records indicated such deficits would worsen over time. The evaluator confirmed that services would not remedy the issue, as the petitioner would essentially need a “live-in caregiver” to provide her with continuous assistance to be able to parent independently. Ultimately, the court adjudicated the petitioner as an abusing and/or neglecting parent of J.D. The petitioner, by counsel, then filed a motion for a post-adjudicatory improvement period.

At the dispositional hearing, which concluded in April 2025, the petitioner’s parenting class and supervised visitation service providers testified. Cumulatively, this testimony outlined that such services were implemented in May 2024, and that concerns remained with the petitioner’s balance (as she stumbled and fell occasionally when holding J.D.), memory, and ability to process information. Because of these concerns, the service providers highlighted that they were uncomfortable with the petitioner receiving unsupervised time with J.D. and that it would be necessary to have someone check on the petitioner in that scenario. The visitation supervisor specifically noted that she observed little to no improvement and highlighted that, during one visit, J.D. was injured because the petitioner failed to properly support the child’s body when J.D. was sitting upright, despite receiving child safety instructions on numerous occasions. A DHS worker also testified that, based on the reports of the petitioner’s service providers, the DHS did not believe the petitioner showed improvement and that there were no additional services that the DHS could provide to assist the petitioner in correcting the deficits. The petitioner testified that she had community members who were willing to help her care for the child; confirmed that she had an older child who was currently in a guardianship because Child Protective Services “decided that [she] was not a fit mother”; denied any issues with her parenting; and explained that she was participating in speech, physical, and occupational therapy, as confirmed by the testimony of her respective therapists. Based on the petitioner’s testimony, the circuit court found that she was “unable to fully understand her shortcomings, which present[ed] an imminent danger to the minor child, J.D., if returned to her care, custody, and control.” The court further found that, despite participating in numerous services, the petitioner remained unable to independently parent her child as she never progressed to unsupervised visitation due to safety concerns; that services had been exhausted for the petitioner because only live-in assistance—a service not required of the DHS or, in fact, even available—could possibly lead to reunification; and that the petitioner overall could not improve. Thus, the court denied the petitioner an improvement period and found that there was no reasonable likelihood that the petitioner could correct the conditions of abuse and/or neglect in the near future. Considering the child’s then one year old age, safety, and need for stability, the court further found that termination of the petitioner’s parental rights was necessary for J.D.’s welfare. Accordingly, the circuit court terminated the petitioner’s parental rights to J.D.⁵ It is from the court’s dispositional order that the petitioner now appeals.

⁵ The father voluntarily relinquished his parental rights, and the child’s permanency plan is adoption in the current placement.

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 are reviewed de novo. Syl. Pt. 1, *In re K.S.*, -- W. Va. --, 930 S.E.2d 400 (2026). The petitioner asserts that the court erred by failing to grant her an improvement period and additional services before terminating her parental rights. However, “West Virginia law allows the circuit court discretion in deciding whether to grant a parent an improvement period.” *In re M.M.*, 236 W. Va. 108, 115, 778 S.E.2d 338, 345 (2015); *see also 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.”). Furthermore, pursuant to West Virginia Code § 49-4-604(c)(6), circuit courts are permitted to terminate parental rights without the use of a less restrictive alternative “[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.” *See also* Syl. Pt. 5, *In re Kristin Y.*, 227 W. Va. 558, 712 S.E.2d 55 (2011) (permitting termination of rights “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” (quoting Syl. Pt. 2, *In re R.J.M.*, 164 W. Va. 496, 266 S.E.2d 114 (1980))). Here, the DHS provided the petitioner with intensive supervised visitation, parenting classes, and a psychological evaluation. The petitioner also testified that she participated in speech, physical, and occupational therapy. Yet, despite receiving these services for months, the petitioner exhibited little to no improvement and consistently refused to recognize her parenting deficiencies, which we have held to be an important first step in treating the issues at hand. *See In re Timber M.*, 231 W. Va. 44, 55, 743 S.E.2d 352, 363 (2013) (“Failure 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.”) (quoting *In re Charity H.*, 215 W. Va. 208, 217, 599 S.E.2d 631, 640 (2004)). Additionally, the petitioner’s psychological evaluator testified that, due to her medical conditions, the petitioner’s deficits would worsen over time. The circuit court found that, based on the evidence, there was no reasonable likelihood that the petitioner could substantially correct the conditions of neglect or abuse in the near future and, in accounting for the child’s young age, safety, and need for stability, that termination was necessary for J.D.’s welfare—findings that the petitioner does not challenge on appeal. Accordingly, the court had ample evidence upon which to deny the petitioner an improvement period before proceeding to termination and, therefore, did not err.

The petitioner also argues that the circuit court misapplied our holding in *In re Maranda T.*, 223 W. Va. 512, 678 S.E.2d 18 (2009) when it declined to permit additional services. In that case, we discussed the duty imposed by Syllabus Point 4 in *Billy Joe M.*, 206 W. Va. 1, 521 S.E.2d 173 (1999), to ensure that in cases “[w]here allegations of neglect are made against parents based on intellectual incapacity . . . , termination of rights . . . occur[s] only after the social services system makes a thorough effort to determine whether the parent(s) can adequately care for the children with intensive long-term assistance.” Further, “the determination of whether the parents can function with such assistance should be made as soon as possible in order to maximize the child(ren)’s chances for a permanent placement.” *Id.* However, we clarified that around the clock, in-home “services are neither required by *Billy Joe M.* nor would [such] further services benefit a permanent placement finding for [the child at issue.]” *In re Maranda T.*, 223 W. Va. at 519, 678 S.E.2d at 25. As outlined above, the DHS provided the petitioner with extensive services. Although testimony determined that continuous in-home assistance could possibly help the petitioner reunite

with the child, the DHS was not required to provide such additional service. Furthermore, the record shows that this determination was made in a timely fashion and that the court considered J.D.'s need for permanency. Thus, both the DHS and the court complied with our holding in *In re Maranda T.* and we, therefore, conclude that the court did not err.

For the foregoing reasons, we find no error in the decision of the circuit court, and its May 16, 2025, order is hereby affirmed.

Affirmed.

ISSUED: August 25, 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