

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

In re A.G.-1 and A.G.-2

No. 25-652 (Berkeley County CC-02-2024-JA-238 and CC-02-2024-JA-239)

MEMORANDUM DECISION

Petitioner Mother A.L.¹ appeals the Circuit Court of Berkeley County’s September 2, 2025, order terminating her guardianship and custodial rights to A.G.-1 and A.G.-2,² arguing that the circuit court erred in adjudicating her as a neglecting parent based on insufficient evidence and by denying her request for an additional improvement period. 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 October 2024, the DHS filed a child abuse and neglect petition based on, among other things, the petitioner’s failure to provide the children with necessary education, supervision, and a safe and sanitary home. According to the record, the parents were divorced and shared custody of the children.³ The parents agreed to homeschool the children, and the children were homeschooled from kindergarten through the first grade. However, after learning that the petitioner had not registered the children for homeschooling in West Virginia, the father enrolled the children in a Maryland public school for the 2023-2024 school year. In the petition, the DHS alleged that the petitioner refused to take the children to public school on her custodial days, which were Thursdays and Fridays, because the father enrolled them without her consent. She further reported to a Child Protective Services (“CPS”) worker that she homeschooled the children on those days. The children reported that their homeschooling consisted of playing an educational game on their tablets for thirty minutes one to two times a week. The children also expressed fear of the petitioner because she yelled and cussed at them and physically abused them. The DHS further alleged that the petitioner frequently left the children unsupervised and described an incident during which the petitioner’s van rolled down a hill with the children inside.

¹ The petitioner appears by counsel Jeremy B. Cooper. The West Virginia Department of Human Services (“DHS”) appears by counsel Attorney General John B. McCuskey and Assistant Attorney General Lee Niezgoda. Counsel Susan J. MacDonald 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).* Because the children share the same initials, we use numbers to differentiate them.

³ After their divorce, the father moved to Maryland.

In February 2025, the circuit court granted the petitioner a preadjudicatory improvement period, a term of which required her to complete an intensive program with Dr. Felicia Goldberg at Winchester Community Mental Health Center. At a status hearing in April 2025, Dr. Goldberg explained that, despite consistently participating in the program, the petitioner refused to acknowledge her role in the children's removal from her care. Instead, she insisted that the father had engaged in parental alienation and coerced the children into making false statements. However, after meeting with the children, Dr. Goldberg concluded that no parental alienation had occurred. Due to the petitioner's lack of progress, Dr. Goldberg paused services. The circuit court then set the matter for adjudication.

At an adjudicatory hearing in June 2025, the petitioner admitted that she did not take the children to school on Thursdays and Fridays because she homeschooled them. However, she also admitted that she never enrolled the children for homeschooling with the Berkeley County Board of Education. She claimed that her instruction of the children consisted of an educational computer application, workbooks, and "outings," but she was unable to provide any specifics on the curriculum she utilized. The petitioner also admitted that the children never completed an annual assessment nor did she have a portfolio of their work reviewed by a teacher. The petitioner admitted that the children frequently played outside alone, that they were playing unattended in her van when it rolled down the hill, and that she was in the bathroom on her phone when this occurred because that was the only room in the house that she could get an internet connection. The DHS then introduced the petitioner's psychological evaluation, which concluded that the petitioner believed that she adequately homeschooled the children, failed to "recognize [the] inherent developmental damage/distortion of uncoordinated splitting of the children's core educational experience," and had "taken no actual steps to correct it."

At the conclusion of the hearing, the circuit court found clear evidence of educational neglect as the petitioner admittedly refused to take the children to their enrolled school and did not follow the rules required to homeschool children. Additionally, the court found that, by the petitioner's own admissions, she was "somewhat oblivious" to what the children were doing while in her care because she spent a significant amount of time in the bathroom to have an internet connection. Finally, the court found that her home was unsafe, as "highlighted by the incident where the kids [were] playing in a van and it roll[ed] down a hill." Thus, the court adjudicated the petitioner as a neglecting parent and A.G.-1 and A.G.-2 as neglected children. Thereafter, the petitioner filed a motion for an additional improvement period.

In August 2025, the circuit court held a dispositional hearing and considered the petitioner's motion. The petitioner admitted that she was not present for the children and did not know how to appropriately manage their defiant behaviors and her own stress. She also testified that her procrastination, lack of organization, and avoidance of stressful things, as well as the father's manipulation of the children, led to the children's removal from her custody. When asked if she harmed the children by neglecting their education, she responded that going to school a couple of days in Maryland and then being homeschooled the rest of the week was an unorthodox and stressful situation. Based on the evidence presented, the circuit court denied the petitioner's motion for an additional improvement period, finding that she was in the same position as when the DHS filed the petition. The court further found that, despite participating in a preadjudicatory

improvement period, the petitioner still could not acknowledge her neglect of the children. Thus, the court found that granting another improvement period was not in children's best interests and that "it [was] not substantially likely that in the next six months things [would] change." As such, the circuit court terminated the petitioner's guardianship and custodial rights.⁴ The petitioner appeals from the 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. --, 930 S.E.2d 400 (2026). Before this Court, the petitioner first argues that the circuit court erred by adjudicating her as a neglecting parent in the absence of sufficient evidence. She contends that her decision to continue homeschooling the children on a part-time basis, while unorthodox, did not deprive or threaten to deprive the children of an education as contemplated by the definition of "neglected child" in West Virginia Code § 49-1-201. The petitioner further claims that the fact that she did not properly register the children for homeschooling or properly conduct assessments is immaterial because she still provided the children educational programming. We disagree. West Virginia Code § 49-1-201 defines a "neglected child" as one "[w]hose physical or mental health is harmed or threatened by a present refusal, failure or inability of the child's parent . . . to supply the child with necessary education" but "does not mean a child whose education is conducted within the provisions of § 18-8-1 *et seq.* of this code." West Virginia Code § 18-8-1(c) exempts a child from compulsory school attendance when certain requirements related to home instruction are met, including, among other things, receiving approval from the county board of education, obtaining annual academic assessments, and instructing children in their home "no less than one hundred eighty separate instructional days."⁵ Here, the petitioner admitted that she did not provide the children an education that satisfies those requirements. Thus, contrary to the petitioner's arguments, the evidence clearly demonstrated that A.G.-1 and A.G.-2 were neglected children and the petitioner was a neglecting parent. As such, the petitioner is entitled to no relief in this regard.

Lastly, the petitioner argues that the circuit court erred by denying her request for an additional improvement period, claiming that she experienced a substantial change in circumstances because the necessary services were unavailable during her preadjudicatory improvement period. *See* W. Va. Code § 49-4-610(2)(D), (3)(D) (giving circuit courts discretion to grant a parent an additional improvement period when the parent "demonstrates that since the initial improvement period, the [parent] has experienced a substantial change in circumstances" and "is likely to fully participate in a further improvement period"). We find no merit to this argument. As we have explained, "to remedy the abuse and/or neglect problem, the problem must first be acknowledged. 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." *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)). Moreover, circuit courts have discretion to

⁴ The permanency plan for the children is to remain with their nonabusing father.

⁵ As used in West Virginia Code § 18-5-45, an instructional term is no less than 180 separate instructional days. An instructional day for grade levels kindergarten through grade five is 315 minutes of instructional time.

deny an improvement period when no improvement is likely. *See In re Tonjia M.*, 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002); *see also* Syl. Pt. 4, in part, *In re Cecil T.*, 228 W. Va. 89, 717 S.E.2d 873 (2011) (“[C]ourts are not required to exhaust every speculative possibility of parental improvement.” (alteration in original) (quoting Syl. Pt. 1, in part, *In re R.J.M.*, 164 W. Va. 496, 266 S.E.2d 114 (1980))). Here, there is no indication in the record that any services were unavailable during the petitioner’s preadjudicatory improvement period. Rather, as Dr. Goldberg testified, she stopped the petitioner’s services because of the petitioner’s refusal to acknowledge her role in the children’s educational neglect. Regardless, the record shows that there had been no change in circumstances, much less a substantial change, as the petitioner failed to take any accountability or recognize her neglect of the children’s education at any point during the proceedings. Accordingly, the circuit court did not abuse its discretion by denying the petitioner an additional improvement period.

For the foregoing reasons, we affirm the circuit court’s September 2, 2025, order.

Affirmed.

ISSUED: August 25, 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