

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

C. CASEY FORBES, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

*In re* T.S.

No. 25-751 (Ohio County CC-35-2024-JA-114)

**MEMORANDUM DECISION**

Petitioner Father Z.S.<sup>1</sup> appeals the Circuit Court of Ohio County’s October 6, 2025, order terminating his parental rights to T.S., arguing that the court erred in denying him a post-adjudicatory improvement period and in terminating his parental rights.<sup>2</sup> 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 2024, alleging that the petitioner was permitting T.S. to reside with the mother in violation of the circuit court’s 2020 order prohibiting contact between her and the child.<sup>3</sup> In addition, the child disclosed an incident of physical abuse perpetrated by the mother’s boyfriend. Accordingly, the DHS alleged that the petitioner displayed “poor judgement and impaired parenting skills,” had repeatedly violated the court’s no-contact order, and failed to protect T.S. from inappropriate people. The DHS filed an amended petition in November 2024, adding that the petitioner had neglected T.S.’s mental health needs.

At an adjudicatory hearing in February 2025, the petitioner stipulated to failing to protect T.S. and to allowing contact between the child and the mother. On this basis, the circuit court adjudicated the petitioner as a neglectful parent and found T.S. to be a neglected child. The petitioner subsequently moved for a post-adjudicatory improvement period, which the court considered at a lengthy evidentiary hearing in March 2025. In addition to testimony from several

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<sup>1</sup> The petitioner appears by counsel Marshall Foster. The Department of Human Services (“DHS”) appears by counsel Attorney General John B. McCuskey and Assistant Attorney General Lee Niezgoda. Counsel Joseph J. Moses appears as the child’s guardian ad litem (“guardian”).

<sup>2</sup> We use initials where necessary to protect the identities of those involved in this case. *See* W. Va. R. App. P. 40(e).

<sup>3</sup> The circuit court terminated the mother’s parental rights to T.S. in 2020. It is undisputed that the petitioner was aware of the circuit court’s subsequent no-contact order. The appendix record indicates that the petitioner was present at the hearing at which the circuit court granted him custody of T.S. upon “the condition that he . . . not allow any contact between [the mother] and the child.” Further, during the proceedings below, the petitioner testified to his knowledge of the court’s prohibition of the mother’s contact with T.S.

other witnesses, the court considered the petitioner's testimony regarding his efforts to "vet" the mother—to ensure her sobriety—before re-introducing her to T.S. in 2023, noting that he initially supervised their visits. The petitioner justified his knowing violation of the no-contact order by stating that he thought T.S. needed her mother, but acknowledged that his conduct caused the child harm, including her repeated removal from his custody.<sup>4</sup> The petitioner also admitted to having unauthorized, unsupervised contact with T.S. during the current case while the child was placed with the paternal grandmother. The petitioner testified that if he were granted an improvement period, he would abide by the court's orders and expressed his intent to seek modification of the order barring contact between T.S. and the mother. However, the petitioner acknowledged that the mother attempted to have her parental rights reinstated in May 2023 and that the court dismissed her motion. The petitioner testified that, at that time, the mother's attorney instructed him that he could try to modify the no-contact order by "fill[ing] out some paperwork" at the courthouse. He acknowledged that he should have followed the attorney's advice, but did not. The petitioner informed the court that he was attending therapy, averred that the mother's boyfriend was "a good guy," and claimed that T.S. never told him that she feared the boyfriend or that he harmed her. The mother testified that she was in recovery, had been sober for three years, and began regularly visiting with T.S. in 2023. She reported that she and the petitioner co-parented T.S. and that the child spent weekends at her home but denied that T.S. lived with her full-time. She also testified that T.S. told her that the disclosures about the boyfriend's abuse were untrue.

T.S.'s after-school care teacher and the investigating DHS worker each testified to the child's report that the boyfriend had "thrown her" and to the petitioner's subsequent claims that the child was lying. A second DHS worker testified that she opposed an improvement period, citing the petitioner's conduct during the proceedings, including his failure to provide requested employment records and his unauthorized contact with the child on two separate occasions. Finally, T.S.'s evaluating psychologist testified that the petitioner's repeated defiance of court orders resulted in multiple removals of the child. This "pattern of disrupted caregiver attachments" caused severe impairment in T.S.'s interpersonal functioning and behavior and disrupted her ability to form a secure attachment to anyone—particularly the petitioner. The psychologist averred that granting the petitioner an improvement period was not in T.S.'s best interest and would be "a futile effort," noting that the child required a stable, supportive environment. Based on this evidence, the circuit court denied the petitioner's motion for a post-adjudicatory improvement period,<sup>5</sup> finding that his "repeated and intentional" violations of the no-contact order "psychologically damage[d]" the child. The court concluded that an improvement period would

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<sup>4</sup> The petitioner admitted to allowing prohibited contact between T.S. and the mother during the 2020 abuse and neglect proceeding, which led to him being named a respondent and working through improvement periods before being reunified with the child. The petitioner further acknowledged permitting the mother to be around T.S. in 2021, resulting in a second proceeding in Ohio in which he again temporarily lost custody.

<sup>5</sup> A copy of the circuit court's order denying the petitioner a post-adjudicatory improvement order is not included in the record on appeal. However, the court specifically references and quotes from this order in its October 6, 2025, "Disposition Hearing Order."

be “an exercise in futility at [the child’s] expense” and that “[t]he potential for further neglect . . . preclude[d] the use of resources to mitigate or resolve [the] family problems.”<sup>6</sup>

At a dispositional hearing in September 2025, a DHS worker recommended termination of the petitioner’s parental rights given his repeated noncompliance, noting that T.S. was placed in a residential treatment facility in May 2025 due to her disturbing and aggressive behavior. The worker also stated that while the child expressed attachment to the mother, she rarely mentioned the petitioner. A police officer who arrested the mother in 2021 testified that the mother was in possession of controlled substances while T.S. was in her care. The supervisor of the psychologist who evaluated T.S. testified that T.S.’s need for inpatient care at the age of six demonstrated “the severity of [the] ongoing lack of stability within her life” and that continued uncertainty would interfere with T.S.’s treatment. The guardian also recommended termination.

In the resulting dispositional order, the circuit court noted that T.S. had been removed from the petitioner’s custody three times as a result of his violations of the no-contact order and that the petitioner’s unauthorized contact with T.S. during the proceedings caused yet another placement disruption. The court emphasized the psychologists’ testimony that these disruptions caused T.S. psychological damage and that the child needed stability and consistency. The court also found that the petitioner was not supportive of T.S., as he defended the mother’s boyfriend to diminish the child’s credibility. The court concluded that the petitioner demonstrated an inadequate capacity to solve the problems of abuse and neglect on his own or with help, as “extensive court interventions, prior improvement plans, and CPS interventions” did not correct the conditions that threatened T.S.’s welfare. Given that the petitioner’s conduct had caused the child repeated emotional harm, the court found that the potential for further abuse and neglect was such that offering the petitioner “more time or more services [was] unreasonable.” Upon finding that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future, and that T.S.’s “health, safety, and well-being . . . [would] be seriously threatened if [the petitioner’s] parental rights [were] not terminated,” the court terminated the petitioner’s rights.<sup>7</sup> 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); *see also* Syl. Pt. 1, *In re K.A.*, 251 W. Va. 626, 915 S.E.2d 520 (2025) (“We review a circuit court’s decision to grant or deny a[n] . . . improvement period under an abuse of discretion standard.”). The petitioner first asserts that the circuit court erred in denying his motion for a post-adjudicatory improvement period. A court may grant an 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, courts have discretion to deny an improvement period “when no

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<sup>6</sup> The petitioner moved for a post-dispositional improvement period in April 2025. It does not appear from the appendix record that the court ruled on this motion.

<sup>7</sup> The child’s permanency plan is adoption in a suitable placement upon completion of a residential treatment program.

improvement is likely.” See *In re Tonjia M.*, 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002). Here, the record supports the court’s determination that granting an improvement period would be futile, given the petitioner’s repeated, intentional violations of the no-contact order. The petitioner’s successful completion of improvement periods in prior proceedings clearly did not result in his long-term compliance, to the child’s detriment.<sup>8</sup> Further, the record shows that the petitioner did not comply with DHS directives during the case, as he testified that he had an unauthorized, unsupervised visit with T.S. Accordingly, we discern no error, as the court acted within its discretion in denying the petitioner an improvement period.

Next, the petitioner challenges the termination of his parental rights, arguing that the circuit court failed to utilize the least restrictive disposition and erred in finding that there was no reasonable likelihood the conditions of neglect could be substantially corrected. 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 part, *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 no such likelihood when the parent has “demonstrated an inadequate capacity to solve the problems of abuse or neglect on their own or with help,” including circumstances where a parent has “not responded to . . . rehabilitative efforts . . . designed to reduce or prevent the abuse or neglect of the child” and where a parent has “repeatedly or seriously injured the child . . . and the potential for further abuse and neglect are so great as to preclude the use of resources to mitigate or resolve family problems.” W. Va. Code § 49-4-604(d)(3), (5). Sufficient evidence supports the court’s finding that there was no reasonable likelihood that the petitioner could correct the conditions of neglect in this case. As the court observed, the prior use of “extensive” resources did not change petitioner’s behavior, as he continued to permit contact between T.S. and the mother, resulting in repeated emotional harm to the child. As such, we find no error.

The petitioner also challenges the circuit court’s disposition by asserting that termination was not in T.S.’s best interest. We again disagree. Ample evidence supported the court’s finding that termination was necessary to prevent further threat to the child’s welfare. See *In re R.J.M.*, 164 W. Va. at 496, 266 S.E.2d at 114, Syl. Pt. 1 (“[C]ourts are not required to exhaust every speculative possibility of parental improvement before terminating parental rights where it appears that the welfare of the child will be seriously threatened.”). In reaching its dispositional decision, the court specifically noted that the petitioner’s conduct had caused the child psychological damage and that she required stability and consistency. Circuit courts are permitted to terminate

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<sup>8</sup> The petitioner asserts that he followed the “spirit” of the no-contact order and prioritized T.S.’s best interests by extensively vetting the mother before allowing contact. We find this argument unpersuasive, especially in light of the petitioner’s knowledge that he was violating a court order and the fact that the petitioner had previously faced serious consequences—including the child’s removal—due to violations of this same order. Further, the petitioner testified that, as of May 2023, he knew the proper process to request a modification of the order barring contact. Yet, when the petitioner moved for a post-adjudicatory improvement period in March 2025, he still had failed to do so.

parental rights upon such findings. *See* W. Va. Code § 49-4-604(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”); *see also* Syl. Pt. 4, in part, *In re N.H.*, 241 W. Va. 648, 827 S.E.2d 436 (2019) (quoting Syl. Pt. 4, in part, *In re B.H.*, 233 W. Va. 57, 754 S.E.2d 734 (2014)) (“The controlling standard that governs any dispositional decision remains the best interests of the child.”).

For the foregoing reasons, we find no error in the decision of the circuit court and its October 6, 2025, order is affirmed.

Affirmed.

**ISSUED:** September 22, 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