

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

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

In re B.M.

No. 25-753 (Wood County CC-54-2023-JA-328)

MEMORANDUM DECISION

Petitioner Father N.D.¹ appeals the Circuit Court of Wood County’s October 8, 2025, order terminating his parental, custodial, and guardianship rights to B.M., arguing that the circuit court erred by adjudicating him as an abusing parent, denying his motion for an improvement period, and failing to employ the least restrictive dispositional 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 2023, the DHS filed an initial petition alleging that the petitioner abused and neglected B.M., who was born that month. According to the DHS, the petitioner’s rights to two other children were involuntarily terminated in May 2023.³ Further, copies of the mother’s medical records indicated that the mother was positive for marijuana upon admission to the hospital. After several continuances and status hearings, the DHS filed an amended petition in February 2025 specifying that the prior termination of the petitioner’s parental rights to two older children was based on the petitioner and the mother continuously engaging in domestic violence. Further, the DHS alleged that the petitioner repeatedly refused to take custody of the two other children during the prior proceedings because he wished to continue living with the mother, despite the domestic violence between them. The DHS also alleged that since B.M. was born, the petitioner and the mother continued engaging in domestic violence, and the DHS detailed several incidents that occurred during the pendency of these proceedings that resulted in law enforcement intervention. One of these incidents resulted in the mother’s incarceration, during which the petitioner and the mother had over 160 phone calls, indicating their intention to continue their relationship. The DHS concluded that the child’s safety would be in jeopardy if returned to the petitioner and that there

¹ The petitioner appears by counsel Thomas B. Karr. The West Virginia Department of Human Services (“DHS”) appears by Attorney General John B. McCuskey and Assistant Attorney General Katica Ribel. Counsel Keith D. White 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 petitioner appealed the termination of his parental rights to these children, and this Court affirmed. *See In re A.D.*, No. 23-307, 2024 WL 4751654 (W. Va. Nov. 12, 2024) (memorandum decision).

had been no change of circumstances since the termination of the petitioner's rights in the prior proceeding.

On March 4, 2025, the circuit court held an adjudicatory hearing at which four law enforcement officers testified to their interactions with the petitioner and the mother, which were consistent with the allegations in the amended petition. The adjudicatory hearing reconvened on May 13, 2025, and the petitioner testified that he remained in regular phone contact with the mother but admitted that she was a danger to him, herself, and their child. He further testified that he had obtained a protective order against the mother after a domestic battery incident. The petitioner claimed that he had no intention of continuing a relationship with the mother and testified that her arrest and incarceration in July 2024 was a substantial change in circumstances despite his continued contact with her while she was incarcerated and later hospitalized.

In August 2025, the circuit court entered an adjudicatory order finding that the petitioner's parental rights to two other children were involuntarily terminated and that he continued to reside with the mother despite his knowledge that the children could not be placed in his care if he continued to live with her. The court further found that during both the prior and current proceedings, the petitioner and the mother engaged in domestic violence, requiring law enforcement intervention on multiple occasions. The court noted that the petitioner "categorically refused" to agree to end his relationship with the mother. Ultimately, the court found that the DHS demonstrated by clear and convincing evidence that the child's health and welfare were harmed or threatened by the continued domestic violence between the parents. Accordingly, the court adjudicated the petitioner of abusing and neglecting the child by continually engaging in domestic violence and demonstrating his intent to "continue [the] abusive relationship [with the mother] without regard to the health and safety of the child." Thereafter, the petitioner filed a motion requesting a post-adjudicatory or post-dispositional improvement period.

On September 17, 2025, the circuit court held a dispositional hearing at which the petitioner testified in support of his motion for an improvement period, claiming that he would comply with the terms thereof. When asked if he would be willing to keep the child away from the mother, he stated that she would be a ward of the state and therefore could not contact the child. Next, the mother testified that she was opposed to the petitioner being granted an improvement period and alleged that he was the aggressor in many of the incidents of domestic violence between them. In the resulting order, the circuit court found that the petitioner remained in contact with the mother "despite numerous abuse and neglect proceedings, prior terminations, criminal proceedings (to include multiple no-contact bond violations), and DVPO proceedings, all stemming from episodes of domestic violence" between them. The court denied the petitioner's request for an improvement period, citing his "patent unwillingness to abide by the orders of the courts of this state." The court explained that the petitioner and the mother "demonstrated their continued intent to prioritize an unhealthy and dangerous relationship over the wellbeing of their child[]." Considering the child's need for continuity of care and caretakers and the amount of time required to integrate the child into a stable and permanent home, the court concluded that returning to the petitioner's home was not in the child's best interests. The court found that the petitioner failed to demonstrate an intent to correct the conditions of abuse and neglect and that there was no evidence that the petitioner could correct those conditions in the near future. Ultimately, the court terminated the petitioner's

parental, custodial, and guardianship rights. The petitioner appeals from the circuit court's dispositional order.⁴

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 him of abusing the child because the child was not present in the home when the domestic violence between the petitioner and the mother occurred. In rendering adjudication, courts must "make a determination . . . as to whether the child is abused or neglected and whether the [parent] is abusing [or] neglecting," with the further requirement that "[t]he findings must be made upon conditions existing at the time of the filing of the petition and proven by clear and convincing evidence." W. Va. Code § 49-4-601(i). An "abused child" is, in relevant part, one "whose health or welfare is being harmed or threatened by . . . [d]omestic violence." W. Va. Code § 49-1-201(1)(D). Furthermore, where a parent has a prior termination of parental rights, the court must inquire whether "[t]here [are] specific allegations and evidence of abuse or neglect of [the child], which could include demonstrating that [the child] was abused and/or neglected by showing the petitioner failed to correct the conditions that led to the prior termination." *In re K.L.*, 233 W. Va. 547, 554, 759 S.E.2d 778, 785 (2014). Here, the court found that the petitioner's rights to two other children were previously terminated for similar circumstances of domestic violence and that he continued to engage in domestic violence during the instant proceedings—resulting in law enforcement intervention and the entry of a protective order against the mother. Further, the court found that the subject child's health and welfare was threatened by "prior, ongoing, and subsequent episodes of domestic violence between the Respondent Parents, and their stated desire to continue the relationship," which is a valid basis for adjudication upon a failure to correct conditions that led to a prior involuntary termination of parental rights. *See In re B.J.*, -- W. Va. --, --, 931 S.E.2d 717, 725 (2026) (affirming a parent's adjudication because "sufficient evidence supported[] the court's conclusion that Father had his rights previously terminated and that [the child] was abused and neglected because Father had not had a change in circumstances since that prior termination"). Put simply, the petitioner continued to engage in the same behaviors that led to the prior termination of his parental rights. As such, we find no error in the circuit court's adjudication of the petitioner.

Next, the petitioner argues that the circuit court erred by denying his motion for an improvement period, arguing that he expressed a willingness to participate and that his high level of interest in visiting with the child was a strong indication of his willingness to participate. *See In re Katie S.*, 198 W. Va. 79, 90 n.14, 479 S.E.2d 589, 600 n.14 (1996) (explaining that "the level of interest demonstrated by a parent in visiting his or her children while they are out of the parent's custody is a significant factor in determining the parent's potential to improve sufficiently and achieve minimum standards to parent the child"). However, to receive a post-adjudicatory or post-dispositional improvement period the petitioner must "demonstrate[] by clear and convincing evidence, that [he] is likely to fully participate in the improvement period." W. Va. Code § 49-4-610(2)(B), (3)(B). Further, we have explained that a circuit court has discretion to deny an

⁴ The mother's parental, custodial, and guardianship rights were also terminated. The permanency plan for the child is adoption in the current placement.

improvement period when no improvement is likely. *See In re Tonjia M.*, 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002). Here, the petitioner expressed no intention to protect the child from the mother and instead stated that he would be unable to contact her due to her being under constant supervision. Furthermore, the petitioner repeatedly engaged in domestic violence with the mother despite no-contact orders and the mother’s bond terms, demonstrating his inability to comply with court directives. Accordingly, the court correctly found that he was unlikely to participate in an improvement period and denied his motion for the same. As such, the petitioner is entitled to no relief.

Finally, the petitioner argues that the circuit court erred by terminating his parental, custodial, and guardianship rights rather than employing a less restrictive alternative. However, “[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 under [West Virginia Code § 49-4-604(c)(6)] that conditions of neglect or abuse can be substantially corrected” and when necessary for the welfare of the child. 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)); *see also* W. Va. Code § 49-4-604(c)(6) (permitting a circuit court to terminate parental, custodial, and guardianship rights upon finding no reasonable likelihood that the conditions of abuse and neglect can be substantially corrected in the near future and when necessary for the child’s welfare). Here, the court found that there was no such likelihood and that the child’s welfare necessitated termination—findings the petitioner does not challenge. He instead argues that termination of his custodial rights only would grant him an opportunity to later demonstrate a change of circumstances. This argument is unpersuasive and contravenes our direction that “[e]nsuring finality for these children is vital to safeguarding their best interests so that they may have permanency.” *In re Cesar L.*, 221 W. Va. 249, 258, 654 S.E.2d 373, 382 (2007). Accordingly, the petitioner is entitled to no relief.

For the foregoing reasons, we find no error in the decision of the circuit court, and its October 8, 2025, order is hereby 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