

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

***In re* G.H. and B.Q.**

No. 25-609 (Fayette County CC-10-2023-JA-153 and CC-10-2023-JA-154)

MEMORANDUM DECISION

Petitioner Mother J.Q.¹ appeals the Circuit Court of Fayette County’s August 7, 2025, order terminating her parental and custodial rights to G.H. and B.Q., arguing that the court erred in finding that she was unsuccessful in her improvement period and in terminating her rights upon issues for which she was not adjudicated and without considering less restrictive alternatives.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 a petition alleging that the petitioner failed to properly supervise G.H. (then five years old) and B.Q. (then four years old) and neglected the children’s hygiene. The DHS also alleged that the home was unsuitable, as a Child Protective Services (“CPS”) worker observed garbage and dirt throughout the home and one toilet had overflowed and soaked the carpet in the hall. Based on the petitioner’s behavior during the CPS investigation and a referral alleging that she abused drugs, she was ordered to drug screen but failed to do so. Accordingly, the DHS alleged that the petitioner abused and/or neglected the children. The petitioner thereafter failed to appear for the preliminary hearing, although she was represented by counsel.

The circuit court then held a series of adjudicatory hearings. The petitioner failed to appear for the first hearing in February 2024, although she was again represented by counsel. During this hearing, the parties proffered that the petitioner was involved in a prior abuse and neglect case related to her substance abuse and that she subsequently began a medication-assisted treatment (“MAT”) program in which she continued to participate. The court continued the next hearing in March 2024 in order to afford the petitioner, who finally appeared, an opportunity to consult with counsel and then held an additional hearing to admonish the petitioner for unauthorized contact with the children at the maternal grandmother’s house. The court held a final adjudicatory hearing

¹ The petitioner appears by counsel Chantel R. Kidd. The West Virginia Department of Human Services (“DHS”) appears by counsel Attorney General John B. McCuskey and Assistant Attorney General Heather L. Olcott. Counsel Vickie L. Hylton appears as the children’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).

in April 2024, at which the petitioner stipulated to her adjudication³ and “acknowledge[d] that at the time of the petition the home in which she and the children were residing was unsafe and/or unsanitary and not appropriate.” The petitioner “also acknowledge[d] and [was] allowing the [DHS] and guardian to reserve the fact that she is a participant in [a MAT] program and that her continued recovery from substance use disorder is an issue that will be addressed in any improvement period.” Accordingly, the court adjudicated the petitioner of abusing and neglecting the children.

The circuit court subsequently held two hearings on the petitioner’s motion for a post-adjudicatory improvement period. The petitioner failed to appear at the first hearing in June 2024, although she was represented by counsel. The court noted that her whereabouts were unknown. After this hearing, the court ordered the petitioner to undergo a psychological evaluation, citing concerns about her behavior during a multidisciplinary team (“MDT”) meeting. At the second hearing in July 2024, the court granted the petitioner a post-adjudicatory improvement period. Among other things, the petitioner agreed to voluntarily enter into and remain a participant in good standing with family treatment court (“FTC”), follow all FTC directives and rules, and obtain and maintain suitable housing. However, by October 2024, the petitioner had requested to withdraw from FTC at an MDT meeting. Regarding the petitioner’s behavioral issues, the DHS indicated at a review hearing that same month that the parties were awaiting the results of the petitioner’s psychological evaluation “to tell [them] the correct course of action to make.” Ultimately, the court granted the petitioner an extension of her improvement period. The petitioner underwent her psychological evaluation that same month. During the evaluation, the petitioner “claim[ed] she [did] not experience enough symptoms” for any psychological diagnosis. Citing the petitioner’s dishonesty, the psychologist ultimately deferred a diagnosis. The psychologist additionally concluded that it was “unlikely that [the petitioner would] be compliant with treatment,” especially given her numerous requests to be removed from FTC because “it [was] too much for her to do.”

In November 2024, the FTC held a hearing on the petitioner’s removal from the program. Several individuals testified to the petitioner’s participation, including one provider who explained that the petitioner’s visits with the children did not go well, as the petitioner displayed disinterest in the children and often left visits early. Another provider testified that the petitioner participated in parenting and adult life skills services and attempted to implement what she was taught during visits with the children. However, a CPS worker testified to the petitioner’s apparent irritation at being required to visit the children, noting that the petitioner “would wander outside” and “took frequent breaks” after giving the children phones to occupy them. Despite attempts by the CPS worker to encourage the petitioner to engage with the children, she refused. Witnesses also testified that the petitioner fell asleep during visits and refused to permit CPS to count her MAT prescription, creating concern that she was abusing the medication. Finally, the petitioner testified and admitted that her improvement period had not been successful, although she claimed that reports about her problems with visits and prescription checks were “lies.” The petitioner claimed that she did not have a substance abuse problem because she had been sober for two years and

³ The petitioner did not include a copy of her written stipulation in the appendix record on appeal.

claimed that she had anxiety and depression but managed those conditions. The petitioner was clear that she did not wish to remain in FTC, so the court dismissed her from the program.

At the final dispositional hearing in February 2025, the circuit court heard testimony from several witnesses, including an FTC case coordinator, a CPS worker, and the petitioner. Based on the evidence, the court found that while the petitioner was initially compliant with services, her participation dramatically decreased after she was granted an improvement period. The petitioner often missed drug screens and, due to her refusal to consistently check in with FTC staff, ultimately “was placed on a GPS monitoring device” that revealed she was frequently dishonest about her whereabouts. The court further noted that a CPS worker described one of the petitioner’s visits with the children as “the worst visit [they] ever witnessed.” According to the court, the petitioner was “disinterested in her children, would avoid interacting with her children, and would occasionally leave the visitation requiring the service provider to ensure the children’s safety.” As a result of the petitioner’s conduct, visitation was suspended for several months prior to disposition. Evidence additionally showed that the petitioner tested positive for methamphetamine during the proceedings but denied using any controlled substances. The court also noted the petitioner’s dishonesty about an inaccurate strip count for her MAT prescription, which raised concerns that she was abusing her prescription. Critically, the court found that the petitioner claimed the housing conditions to which she stipulated at adjudication were not true and that “there was nothing she needed to change in order to make her life better.” In terminating the petitioner’s parental and custodial rights, the court noted that shortly after entering FTC, the petitioner “quickly wished to withdraw and opined that the supervision and requirements were too much for her.” The court found that the petitioner “willfully failed to participate” in her improvement period, failed to accept responsibility for her conduct, and had not undergone any change in her attitude or beliefs toward parenting. Accordingly, the court found that there was no reasonable likelihood that the conditions of abuse and neglect could be corrected in the near future and that termination was necessary for the children’s welfare, and the court terminated the petitioner’s parental and custodial rights to the children.⁴ It is from the dispositional order that the petitioner appeals.

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). Before this Court, the petitioner argues that the circuit court erred in concluding that she did not successfully complete her improvement period because it did not include services to address her mental health, which the petitioner asserts “was a critical issue at disposition.” At the outset, we note that the petitioner cites to no portion of the appendix record in which she objected to the terms and conditions of her improvement period or otherwise requested such services. As such, she has waived her right to challenge the provision of services below. See *Noble v. W. Va. Dep’t of Motor Vehicles*, 223 W. Va. 818, 821, 679 S.E.2d 650, 653 (2009) (“Our general rule is that nonjurisdictional questions . . . raised for the first time on appeal, will not be considered.” (quoting *Shaffer v. Acme Limestone Co., Inc.*, 206 W. Va. 333, 349 n. 20, 524 S.E.2d 688, 704 n. 20 (1999))); W. Va. R. App. P. 10(c)(7) (requiring a petitioner’s brief to “contain appropriate and specific citations to the record

⁴ The father’s rights were also terminated. The permanency plan for the children is adoption in their current placement.

on appeal, including citations that pinpoint when and how the issues in the assignments of error were presented to the lower tribunal). Regardless, the record does not support the petitioner's assertion that the DHS did not offer her services to address her mental health. On the contrary, the DHS provided the petitioner with a psychological evaluation, during which she refused to honestly answer questions and informed the evaluator that she did not have symptoms sufficient to support any psychological diagnosis. The petitioner similarly stressed to the circuit court that, although she believed she was anxious and depressed, she appropriately managed these conditions. Simply put, it was the petitioner's refusal to properly participate in the services offered that hindered the DHS's ability to provide additional services tailored to the petitioner's needs. As we have explained, "[t]he assessment of the overall success of the improvement period lies within the discretion of the circuit court 'regardless of whether the individual has completed all suggestions or goals set forth in family case plans.'" *In re F.N.*, 247 W. Va. 620, 626, 885 S.E.2d 558, 564 (2022) (quoting *In re Jonathan Michael D.*, 194 W. Va. 20, 27, 459 S.E.2d 131, 138 (1995)). Here, the circuit court was presented with overwhelming evidence of the petitioner's noncompliance, including her failure to participate in FTC, her disinterest in visitation, and evidence suggesting abuse of her MAT prescription. In fact, the petitioner expressly admitted that her improvement period was not successful. As such, we conclude that the court did not abuse its discretion in reaching this determination.

Next, the petitioner argues that the circuit court erred in terminating her parental and custodial rights upon issues for which she was not properly adjudicated. In support, the petitioner asserts that she was adjudicated only for the condition of the home, yet the circuit court terminated her rights upon her failure to participate in services. We find no merit to this argument, however, because this Court has been clear that an individual's failure to participate in his or her improvement period is "a statutorily-recognized basis upon which this Court regularly affirms termination of parental rights." *In re K.L.*, 247 W. Va. 657, 667, 885 S.E.2d 595, 605 (2022). Moreover, the petitioner again bases this assignment of error on her alleged mental health issues, arguing that they were the crux of the court's dispositional decision. As discussed in more detail above, the record overwhelmingly indicates that it was the petitioner's refusal to participate in a myriad of services (all of which she agreed to, including her participation in FTC and the attendant requirement that she submit to drug screens) that formed the basis for the court's decision. Critically, the court also based termination upon the petitioner's refusal to acknowledge her abusive and neglectful conduct and her disinterest in visiting the children. Regarding the former, we have explained that "[f]ailure to acknowledge the existence of the problem . . . results in making the problem untreatable." *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)). Regarding the latter, "[w]e have previously pointed out 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." *In re Katie S.*, 198 W. Va. 79, 90 n.14, 479 S.E.2d 589, 600 n.14 (1996) (citations omitted). As such, it is clear that the court based termination upon appropriate factors.

Finally, the petitioner argues that termination of her parental and custodial rights was inappropriate because the circuit court did not consider less restrictive outcomes, such as termination of her custodial rights only. We disagree, given that the court found, upon the ample evidence addressed above, that there was no reasonable likelihood that the petitioner could

substantially correct the conditions of abuse and neglect in the near future and that termination of her rights was necessary for the children’s welfare—the two findings necessary to terminate *parental* and custodial rights. *See* W. Va. Code § 49-4-604(c)(6). Indeed, we have repeatedly stressed 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 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)). Accordingly, the petitioner is entitled to no relief.

For the foregoing reasons, the circuit court’s August 7, 2025, order is hereby affirmed.

Affirmed.

ISSUED: October 14, 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