

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

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

***In re* K.M.-1 and K.M.-2**

No. 25-766 (Berkeley County CC-02-2025-JA-13 and CC-02-2025-JA-14)

MEMORANDUM DECISION

Petitioner Mother T.M.¹ appeals the Circuit Court of Berkeley County’s October 16, 2025, order terminating her parental rights to K.M.-1 and K.M.-2, arguing that the court erred in adjudicating her and terminating her parental rights instead of imposing a less restrictive alternative and without requiring compliance with certain rules and statutes.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.

On December 23, 2024, S.H. (the petitioner’s neighbor) filed a petition seeking legal guardianship of K.M.-1 and K.M.-2.³ The petition was based on concerns over the petitioner’s substance abuse, the condition of her home, and her pending incarceration, among other things. According to the record, despite barely knowing S.H., the petitioner left the children in S.H.’s custody on two occasions, including one instance in which she threatened to send her children to foster care if S.H. did not care for them. At the time, the petitioner was forced to enter a drug detoxification program after testing positive for cocaine and fentanyl on a recent drug screen, which constituted a violation of her probation in Virginia. S.H. described another incident in which the petitioner was “clearly intoxicated” and going in and out of consciousness but drove to S.H.’s home with the children in her car (then-one-year-old K.M.-1 rode in the petitioner’s lap). S.H. also described the petitioner’s home as filthy and covered in cat urine. When S.H. assumed custody of the children, they were malnourished and sick, with K.M.-1 being later diagnosed with a double ear infection, an upper respiratory infection, and croup. As a result of the allegations underlying

¹ The petitioner appears by counsel Cameron T. LeFevre. The West Virginia Department of Human Services (“DHS”) appears by counsel Attorney General John B. McCuskey and Assistant Attorney General A. Tyler Reseter. Counsel Rebecca J. Hess appears as the children’s guardian ad litem. Respondent S.H. appears by counsel Jared M. Adams.

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 two children share the same initials, we use numbers to differentiate them.

³ The petition for legal guardianship was not included in the appendix record on appeal. However, the guardian ad litem’s subsequent abuse and neglect petition references the contents thereof.

S.H.'s petition, the court appointed a guardian ad litem for the children to investigate. Less than one month later, on January 17, 2025, the guardian ad litem filed an abuse and neglect petition in the circuit court based upon allegations of, among other things, drug use, neglect, the conditions of the home, and the petitioner's extensive criminal history. By this time, S.H. had been granted temporary guardianship over the children.⁴

The petitioner failed to appear for the preliminary hearing in February 2025, though she was represented by counsel. At the time, the petitioner was incarcerated after she left her court-ordered substance abuse program without approval. At a status hearing in March 2025, the petitioner indicated that she was prepared to make certain admissions, including that she abused drugs. However, the court did not accept the stipulations and, among other things, directed that the parties convene a multidisciplinary team meeting. Also in March 2025, S.H. filed a motion for a protective order upon allegations that the petitioner was harassing her in violation of a no-contact provision set forth in the order filing the original petition. As a result, the court entered an order in April 2025 clarifying the prohibition on contact between the petitioner and the children and outlining potential penalties for contempt of that order.

The petitioner thereafter filed an answer in which she admitted to certain allegations, including that she was "using and abusing drugs to the extent that her proper parenting skills ha[d] been compromised" and that her drug use resulted in the children's neglect. The petitioner thereafter failed to appear for the next status hearing in May 2025, though she was represented by counsel, who was unsure why she failed to appear (it appears that the petitioner had been released from incarceration by this point). At the hearing, the DHS and the guardian ad litem explained that they believed that the scope of the petitioner's admission was insufficient and asked for a contested adjudicatory hearing. That same month, S.H. moved for a finding of contempt by the petitioner upon assertions that she repeatedly drove past S.H.'s home, harassed witnesses, and called in a false welfare check on the children.

Also in May 2025, the petitioner underwent a substance abuse assessment and a psychological evaluation. During the substance abuse assessment, the petitioner admitted to a lengthy substance abuse history, including abuse of cocaine and methamphetamine and one overdose. The petitioner also reported a lengthy criminal history, including convictions for possession of fentanyl and multiple counts of domestic assault. The evaluator recommended, among other things, that the petitioner continue participating in outpatient substance abuse treatment at the Day Report Center. Despite making several recommendations to improve the petitioner's ability to parent, the evaluator expressed concern about lasting change given that the petitioner had "successfully completed a [Child Protective Services ("CPS")] case in the past." As for her psychological evaluation, the psychologist diagnosed the petitioner with severe stimulant use disorder related to her cocaine use, among other diagnoses. The psychologist reported "a fair, but guarded" prognosis for improvement if the petitioner was willing to fully comply with a wide range of recommendations.

⁴ The DHS later filed two amended petitions, including one that added another of the petitioner's children to the proceedings. That child is not at issue on appeal.

In July 2025, the court held an adjudicatory hearing. At the time, the petitioner “was incarcerated on new assault charges in Virginia,” though she appeared telephonically. The DHS presented testimony from D.R., one of the petitioner’s neighbors, who stated that the petitioner previously overdosed in front of her own home and admitted to D.R. that she abused cocaine. According to D.R., the petitioner “bragg[ed] about having to receive Narcan twice at the time she overdosed.” D.R. further explained that the petitioner asked her and others for their urine in order to defeat drug screens. S.H. also testified consistently with the allegations outlined above, including having seen the petitioner intoxicated and losing consciousness after having driven the children to S.H.’s home. The petitioner’s probation officer also testified to her multiple convictions for drug and violent crimes. The officer confirmed that the petitioner attempted to “defeat drug screens,” which prompted the officer to arrive at her home for an unannounced drug screen to “catch her off guard.” The petitioner tested positive for fentanyl and cocaine, which led to her arrest. Finally, the petitioner testified, claiming that S.H. watched her children on only one occasion for approximately two hours. The petitioner admitted to abusing cocaine and to a history of substance abuse but denied using drugs in the children’s presence or being under the influence around them. She further denied that there was animal urine in her home. Ultimately, the court found that there was clear and convincing evidence that the petitioner abused and neglected the children “due to the knowing and intentional use and abuse of illegal substances in the presence of the [i]nfants to such a degree that her proper parenting skills have been compromised, thereby posing an imminent risk to the health and safety of the [i]nfants.” The court additionally adjudicated the petitioner of neglecting the children due to the condition of the home, among other findings. Following this hearing, the petitioner filed a motion for a post-adjudicatory improvement period.

The court held the dispositional hearing in September 2025. According to the record, the petitioner was again incarcerated at this time. Counsel for the petitioner objected to the DHS’s case plans “on many grounds, to include the extent to which the [DHS] investigated potential kinship placements.” The court held a ruling on the objection in abeyance and turned to disposition. A CPS worker testified that the petitioner had been engaged in services through the Day Report Center but chose to cease services after approximately one month. Despite CPS offering the petitioner a second chance to engage in these services, the petitioner failed to report, after which she was incarcerated on assault charges. According to the CPS worker, the petitioner failed to reach out to the DHS about any additional services despite the DHS making referrals for substance abuse treatment, parenting and adult life skills education, and anger management classes. Based on her failure to comply with the services offered, the CPS worker did not believe that the petitioner would be likely to participate in an improvement period. Following this testimony, the court ordered the DHS to modify its case plans, after which it filed modified plans that incorporated the petitioner’s substance abuse assessment and psychological evaluation, among other modifications. Ultimately, the court denied the petitioner’s motion for an improvement period and terminated her parental rights, finding that she left rehabilitation without completing treatment; failed to resume services with the Day Report Center despite being given a second chance; committed additional criminal acts during the pendency of the case, which resulted in multiple incarcerations; and harassed S.H. in violation of the court’s no-contact order and continued to do so after the court reiterated she was to have no contact with S.H. or the children. As such, the court concluded that there was no reasonable likelihood that the petitioner could substantially correct the conditions of abuse and neglect in the near future because she demonstrated an inadequate

capacity to solve the problems on her own or with help. Further, the court highlighted the children's need for permanency and safety in concluding that termination of the petitioner's rights was necessary for their welfare. As such, the court terminated the petitioner's parental rights to the children.⁵ 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 first argues that the circuit court erred in basing her adjudication on a finding that she abused drugs in the children's presence.⁶ In regard to adjudication, we have explained that West Virginia Code § 49-4-601(i), "requires the [DHS] . . . to prove 'conditions existing at the time of the filing of the petition . . . by clear and convincing [evidence].'" Syl. Pt. 1, in part, *In re Joseph A.*, 199 W. Va. 438, 485 S.E.2d 176 (1997) (quoting Syl. Pt. 1, *In re S.C.*, 168 W. Va. 366, 284 S.E.2d 867 (1981)). "[T]he clear and convincing standard is 'intermediate, being more than a mere preponderance, but not to the extent of such certainty as is required beyond a reasonable doubt as in criminal cases.'" *In re F.S.*, 233 W. Va. 538, 546, 759 S.E.2d 769, 777 (2014) (quoting *Cramer v. W. Va. Dep't of Highways*, 180 W. Va. 97, 99 n.1, 375 S.E.2d 568, 570 n.1 (1988)).

While the petitioner makes much of the circuit court's specific language that she abused "illegal substances in the presence of the [i]nfants," she ignores the remaining portion of the court's adjudicatory finding that she abused substances "to such a degree that her proper parenting skills have been compromised, thereby posing an imminent risk to the health and safety of the [i]nfants." In short, it is entirely irrelevant whether the petitioner's drug *use* occurred in the children's presence, given the overwhelming evidence that the petitioner cared for the children while under the influence. *See In re S.C.*, 248 W. Va. 628, 633, 889 S.E.2d 710, 715 (2023) (reversing a circuit court's refusal to adjudicate a father of neglect for substance abuse where he claimed to have only abused drugs outside of the child's presence and directing that he be adjudicated of neglect on remand because he "admitted to abusing methamphetamine while entrusted as [his child's] physical custodian"). Indeed, a "[n]eglected child" is 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 . . . supervision." W. Va. Code § 49-1-201. As outlined above, multiple witnesses testified to the petitioner's inability to properly care for the children, including S.H., who witnessed the petitioner drive a car with the children in it (with infant K.M.-1 unrestrained on her lap) while she was so intoxicated that she was losing consciousness. The petitioner also claims that the conditions of her abuse and/or neglect did not exist at the time of the petition's filing. Contrary to this argument, the DHS's petition pled recent incidents in which the petitioner was under the influence while caring for the children, and evidence at adjudication overwhelmingly supported these allegations, regardless of S.H. obtaining temporary legal guardianship. *See In re S.C.*, 248 W. Va. at 633, 889 S.E.2d at 715 ("[A] parent with physical custody serves as a child's

⁵ The fathers' rights were also terminated. The permanency plan for the children is adoption in the current placement.

⁶ We note that the petitioner does not challenge her adjudication on any other ground, including that she failed to provide suitable housing for the children.

primary supervisor and day-to-day decision-maker” and “does not discharge his supervisory and decision-making responsibilities when he entrusts his child to a temporary caretaker.”). Accordingly, we conclude that the court did not err in finding that the petitioner’s *admitted* substance abuse harmed or threatened the children or in adjudicating her upon this conduct.

The petitioner next challenges her adjudication because she claims that the circuit court failed to comply with West Virginia Code § 49-1-601(i), which requires, in pertinent part, that “[w]here relevant, the court shall consider the efforts of the department to remedy the alleged circumstances” in reaching its adjudicatory determination. The petitioner’s argument is predicated entirely upon her assertion that the DHS provided *no* remedial services throughout the proceedings, but this argument is entirely disingenuous. For example, the petitioner claims that she sought her substance abuse assessment and psychological evaluation, while the record is clear that both were obtained through DHS referrals. Additionally, the petitioner discounts the DHS’s referral for services at the Day Report Center by claiming that she “had already been enrolled there for months.” This argument is similarly misleading, as the DHS made a referral for services at the Day Report Center *after* the petitioner willfully stopped participating in substance abuse treatment without completing the same in an effort to reestablish the petitioner’s participation in this critical service and others. Instead of taking advantage of these services, the petitioner refused to engage. As such, there is no support in the record for the petitioner’s position that the DHS failed to provide remedial services, nor is there any support for her assertion that the court failed to consider the DHS’s efforts in making its adjudicatory determination.

Next, the petitioner argues that termination was in error because it was not the least restrictive alternative. In this sparse argument, the petitioner correctly notes that other dispositional alternatives existed but fails to explain why any other alternative would have been appropriate.⁷ Instead, she simply concludes that the court’s findings that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future and that termination was necessary were inadequate. Upon our review, we conclude that the circuit court had ample evidence upon which to base these findings. According to West Virginia Code § 49-4-604(d), “[n]o reasonable likelihood that conditions of neglect or abuse can be substantially corrected’ means that . . . the abusing adult . . . [has] demonstrated an inadequate capacity to solve the problems of abuse or neglect on [her] own or with help.” Those conditions exist when the parent “ha[s] not responded to or followed through with a reasonable family case plan or other rehabilitative efforts.” W. Va. Code § 49-4-604(d)(3). Here, the court found that the petitioner was incapable of correcting the conditions of abuse and neglect, given that she failed to complete substance abuse treatment or reengage in treatment when offered by the DHS. Similarly, the petitioner refused to engage in additional rehabilitative services, such as parenting and adult life skills education. Additionally, the court noted the deterioration in the petitioner’s situation by her

⁷ The petitioner notes that it was possible for the court to have granted her an improvement period, but she advances no specific argument that the court erred in denying her motion for the same. As we have explained, “[a] skeletal ‘argument,’ really nothing more than an assertion, does not preserve a claim.” *State v. Kaufman*, 227 W. Va. 537, 555 n.39, 711 S.E.2d 607, 625 n.39 (2011) (quoting *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir.1991)). Accordingly, we will not address the court’s denial of the petitioner’s motion for an improvement period.

repeated criminal activity during the proceedings. The court also found that termination was necessary for the children's welfare based on their young ages and need for stability and safety. Contrary to the petitioner's arguments, these findings were appropriate and well supported. Further, as we have explained, "[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" and when necessary for the welfare of the children. 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 rights upon finding no reasonable likelihood conditions of abuse and neglect can be substantially corrected in the near future and when necessary for the children's welfare). Accordingly, we find no error in the termination of the petitioner's parental rights.

Next, the petitioner asserts that the circuit court erred in proceeding to disposition in the absence of a statutorily compliant case plan. According to the petitioner, the DHS "didn't even bother to submit a substantive case plan" because it never considered any plan other than adoption by S.H. and did not set forth reunification services or a "structured pathway for return." We note, however, that the petitioner's attacks on the DHS's case plan lack support in the record. Contrary to her arguments, the DHS's detailed, thirteen-page case plan is comprehensive and contains extensive information about the petitioner's overall failure to participate in the services the DHS offered to attempt to reunify the petitioner with the children. *See* W. Va. Code § 49-4-604(a) (setting forth requirements for child and family case plans in abuse and neglect proceedings). It appears that the petitioner takes issue with the fact that the DHS recommended termination of her parental rights, but this does not evidence a deficiency in the DHS's case plan. Instead, the recommendation was based on the *petitioner's* deficiencies and the necessity of terminating her parental rights to ensure safety and stability for the children. Further, the petitioner asserts that the court failed to comply with Rule 34(d) of the West Virginia Rules of Procedure for Child Abuse and Neglect Proceedings, which permits a court, upon objection, to reject a case plan, order the DHS to file a revised plan, and reschedule disposition within forty-five days. But the petitioner ignores that Rule 34(c) permits the court, upon objection to the case plan, to "enter an order . . . [m]odifying the plan in accordance with the evidence presented at the hearing," which is what the court did below. As such, the petitioner is entitled to no relief.

Finally, the petitioner argues that the DHS failed to undertake a diligent search for relative placements in accordance with West Virginia Code § 49-4-601a. We note, however, that the children were placed in a legal guardianship at the time the petition was filed and that the children's legal guardian was specifically chosen by the petitioner prior to the initiation of the proceedings. Further, on appeal the petitioner fails to identify any relatives or fictive kin who could have assumed custody of the children. The DHS highlights two individuals that the petitioner identified below, one of whom (an aunt) lived in the petitioner's home, where the children could not be placed due to its condition. The other was a prior day care provider whom the petitioner does not assert on appeal constituted fictive kin. *See* W. Va. Code § 49-4-601a ("When a child is removed from his or her home, placement preference is to be given to relatives or fictive kin of the child."); *id.* § 49-1-206 ("'Fictive kin' means an adult of at least 21 years of age, who is not a relative of the child, as defined herein, but who has an established, substantial relationship with the child, including but not limited to teachers, coaches, ministers, parents or family members of the child's

friends, or foster parents with whom the child has previously been placed.”). On appeal, the DHS confesses that it failed to file with the court “a list of all of the relatives and fictive kin of the child[ren] known to the [DHS] at the time of the filing.” W. Va. Code § 49-4-601a(2). However, the petitioner fails to allege any manner in which this failure prejudiced her. While she correctly notes that West Virginia Code § 49-4-601(a) provides that “[i]f a child requires out-of-home care, placement of a child with a relative is the least restrictive alternative living arrangement,” she makes no attempt to explain how the children’s placement would impact the circuit court’s findings upon which termination was based. Accordingly, she is entitled to no relief.

For the foregoing reasons, the circuit court’s October 16, 2025, order is hereby affirmed.

Affirmed.

ISSUED: October 14, 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