

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

***In re* L.L. and H.L.**

No. 25-778 (Kanawha County CC-20-2025-JA-150 and CC-20-2025-JA-151)

MEMORANDUM DECISION

Petitioner Mother A.C.¹ appeals the Circuit Court of Kanawha County’s October 28, 2025, order terminating her parental rights to L.L. and H.L., arguing that the court erred in denying her request to continue the matter for additional time to participate in services and in not imposing a less 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.

The DHS filed a petition in May 2025 alleging that the petitioner educationally neglected both children, as L.L. had twenty-five unexcused absences from school and H.L. had eighteen unexcused absences from school. Further, the petitioner pled guilty to one count of truancy in March 2024. The DHS alleged that then-seven-year-old L.L.’s academic progress had been so severely impacted that he could not count higher than ten and needed to repeat kindergarten. The DHS also alleged that the parents were abusing drugs, fraudulently using food stamps to pay rent, and not providing sufficient food to the children. At the preliminary hearing, the circuit court ordered the petitioner to submit to random drug screens. In June 2025, the DHS filed an amended petition alleging that the petitioner tested positive for amphetamine and methamphetamine and failed to drug test on two occasions. At an adjudicatory hearing in July 2025, the court found that the petitioner was an abusing and neglecting parent due to substance abuse and educational neglect.

The circuit court held a dispositional hearing in October 2025. A DHS case manager testified that the petitioner had not complied with services or drug screens. Specifically, the case manager testified that the petitioner only completed six of the forty-eight required drug screens, all of which were positive for illicit substances including amphetamine and methamphetamine, and failed to attend any parenting skills classes outside of the intake. Additionally, the petitioner reportedly declined inpatient drug treatment and did not participate in any visits with the children.

¹ The petitioner appears by counsel Rebecca Stollar Johnson. The West Virginia Department of Human Services (“DHS”) appears by counsel Attorney General John B. McCuskey and Assistant Attorney General Carl E. Hostler. Counsel Jennifer R. Victor 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).

The petitioner then testified that she had “messed up” and should have started changing her life earlier, but that she remained sober for the past month and would enter any treatment required of her. At the conclusion of the hearing, the petitioner moved the court to continue the dispositional hearing for thirty days and hold its ruling in abeyance to allow her to enter inpatient drug treatment.

The circuit court denied the petitioner’s motion to continue disposition, finding that it “would be an exercise in futility because the parents have had many opportunities to cooperate with services and failed” and that no good cause was shown to support a continuance. The court found that the petitioner failed to participate in the services offered and, on the few occasions she participated in drug screens, tested positive for illicit substances. The court emphasized that the petitioner’s most recent drug test results contradicted the petitioner’s testimony that she remained clean for the month prior to disposition. Additionally, the petitioner did not participate in supervised visitation with the children. Ultimately, the court found that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future and that termination of the petitioner’s parental rights was necessary for the welfare of the children. Therefore, the court terminated the petitioner’s parental rights to the children.³ 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 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 argues that the circuit court erred in denying her motion to continue disposition and hold the dispositional hearing in abeyance to allow her additional time to comply with services.⁴ This Court has held that a motion to continue is at “the sound discretion of the trial court, and its ruling will not be disturbed on appeal unless there is a showing that there has been an abuse of discretion.” Syl. Pt. 3, in part, *In re Mark M.*, 201 W. Va. 265, 496 S.E.2d 215 (1997) (quoting Syl. Pt. 2, *State v. Bush*, 162 W. Va. 168, 255 S.E.2d 539 (1979)). “Whether there has been an abuse of discretion in denying a continuance must be decided on a case-by-case basis in light of the factual circumstances presented, particularly the reasons for the continuance that were presented to the trial court at the time the request was denied.” *Id.* at 266, 496 S.E.2d at 216, Syl. Pt. 4, in part (quoting *Bush*, 163 W. Va. at 169, 255 S.E.2d at 540, Syl. Pt. 3). The petitioner argues that her testimony claiming that she would enter treatment was sufficient to support a continuance. However, the petitioner’s reason for the continuance was not compelling,

³ The father’s parental rights were also terminated. The permanency plan for the children in adoption in a kinship placement.

⁴ In her argument, the petitioner asserts that the circuit court should have awarded her an improvement period. However, the petitioner does not cite to or include a written motion for an improvement period in the record on appeal, nor does it appear from the record that she filed such a motion. See W. Va. R. App. P. 10(c)(7) (requiring the petitioner’s brief to include “citations that pinpoint when and how the issues in the assignments of error were presented to the lower tribunal”). As we have explained, “[a] circuit court may not grant an . . . improvement period . . . unless the respondent to the abuse and neglect petition files a *written* motion requesting the improvement period.” Syl. Pt. 5, *State ex rel. P.G.-I v. Wilson*, 247 W. Va. 235, 878 S.E.2d 730 (2021) (emphasis added). As such, the petitioner is entitled to no relief.

given that it was, essentially, an admission to having failed to participate in the proceedings thus far. Further, the court found that the petitioner's testimony lacked credibility, and we refuse to disturb the court's credibility determinations on appeal. *Michael D.C. v. Wanda L.C.*, 201 W. Va. 381, 388, 497 S.E.2d 531, 538 (1997) ("A reviewing court cannot assess witness credibility through a record. The trier of fact is uniquely situated to make such determinations and this Court is not in a position to, and will not, second guess such determinations."). Given that the record supports the court's conclusion that a continuance would be an "exercise in futility" because of the petitioner's history of failing to participate in services, we conclude that the circuit court did not abuse its discretion in denying the petitioner's motion.

The petitioner also argues that the circuit court erred in terminating her parental rights instead of terminating only her custodial rights. However, we have 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)). West Virginia Code § 49-4-604(d) provides that there is no reasonable likelihood that the conditions of abuse or neglect can be substantially corrected when a parent has "habitually abused or [is] addicted to alcohol, controlled substances or drugs, to the extent that proper parenting skills have been seriously impaired" and the parent has "not responded to or followed through the recommended and appropriate treatment which could have improved the capacity for adequate parental functioning." Here, the circuit court's finding that there was no reasonable likelihood such conditions could be corrected in the near future is supported by the record. As discussed above, the record reflects that the petitioner continued to use drugs throughout the case and did not participate in services or visitation with the children. *See In re Katie S.*, 198 W. Va. 79, 90 n.14, 479 S.E.2d 589, 600 n.14 (1996) ("We 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." (citation omitted)). In addition to finding that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected, the court found that termination of the petitioner's parental rights was necessary for the children's welfare—a finding that the petitioner does not challenge on appeal. *See* W. Va. Code § 49-4-604(c)(6) (allowing a court to terminate parental rights "[u]pon a finding that there is no reasonable likelihood that the conditions of neglect or abuse and be substantially corrected in the near future and[] when necessary for the welfare of the child"). As such, the court did not err in terminating the petitioner's parental rights.

For the foregoing reasons, we find no error in the decision of the circuit court, and its October 28, 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