

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

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

In re M.M.

No. 25-835 (Upshur County CC-49-2025-JA-1)

MEMORANDUM DECISION

Petitioner Mother B.M.¹ appeals the Circuit Court of Upshur County’s November 10, 2025, order terminating her parental rights to M.M., arguing that the court erred in denying her motion for a post-adjudicatory improvement period and in terminating her parental rights.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 February 2025, alleging that the petitioner inappropriately kissed then-fourteen-year-old M.M. while she and the child were standing in the middle of a road and the petitioner was under the influence of amphetamines. According to the petition, the temperature was around thirty degrees at the time of the incident and the child was not wearing socks, shoes, or a coat. The DHS further alleged that the child was severely autistic and functioning at the level of a four-year-old. The DHS further recounted the petitioner’s extensive history of abuse and neglect, as she had been involved in four prior abuse and neglect cases. In 2003, the petitioner voluntarily relinquished her rights to a child following allegations that she was unable to care for the child due to her substance abuse. In 2009, sole custody of another of the petitioner’s children was given to the child’s father following allegations the petitioner had emotionally abused and neglected the child while abusing substances. In 2017, the DHS filed a petition concerning M.M., alleging that the petitioner had neglected the child due to substance abuse and, as a result, was convicted of child neglect creating risk of injury. The petitioner stipulated to the allegations in the 2017 petition and regained custody of M.M. after she successfully completed a post-adjudicatory improvement period and the case was dismissed. In 2019, the DHS filed another petition concerning M.M., alleging that the petitioner drove under the influence of diphenhydramine hydrochloride with the child in the car, crossed the center line of the road, and struck an oncoming vehicle. The petitioner stipulated to the allegations in the 2019 petition and, once again, regained custody of M.M. after she successfully completed a post-adjudicatory improvement period and the case was dismissed. In the current matter, the circuit court held an

¹ The petitioner appears by counsel Jeremy B. Cooper. The West Virginia Department of Human Services (“DHS”) appears by counsel Attorney General John B. McCuskey and Assistant Attorney General Katika Ribel. Counsel Keith Skeen 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).

adjudicatory hearing in May 2025, during which the court adjudicated the petitioner upon her stipulation to the allegations in the petition. In September 2025, the petitioner filed a motion for a post-adjudicatory improvement period.

The circuit court held a dispositional hearing in September 2025. A Child Protective Services (“CPS”) supervisor testified to the petitioner’s extensive substance abuse history and the petitioner’s four prior abuse and neglect cases. The court took judicial notice of all of the petitioner’s prior cases and admitted the petitions and orders from the petitioner’s 2009, 2017, and 2019 cases. The CPS supervisor testified that the petitioner had completed all required drug screens and did not test positive for any illicit substances. However, the supervisor testified that the DHS recommended termination of the petitioner’s parental rights due to her pattern of relapsing after complying with case plans in past cases in order to regain custody. Specifically, the petitioner was adjudicated of abuse and neglect due to substance abuse in 2017 and 2019, successfully completed improvement periods in those cases, but relapsed after the child was returned to her. Further, the supervisor testified that the child was “extremely autistic” and required a high level of care. A DHS caseworker also testified that, although the petitioner was participating in services on her own, she received services in her previous cases and continued to relapse, resulting in the DHS filing five abuse and neglect petitions against her since 2003.

The petitioner testified and admitted to using methamphetamine during the incident alleged in the petition. However, the petitioner claimed that she was sober from amphetamine and methamphetamine for nine years prior to that incident and had remained sober since the petition was filed. She testified that in 2019, she did not relapse on methamphetamine but had accidentally taken too much sleep medication (diphenhydramine hydrochloride), causing the wreck that led to the filing of the 2019 petition. Further, the petitioner testified that since the child was removed, she participated in therapy, counseling, Narcotics Anonymous, and Alcoholics Anonymous; remained employed; took 117 drug tests; remained clean from drugs; and participated in parenting classes specializing in autism. A case manager for a service provider, Coordinating Council for Independent Living, testified that she visited the petitioner’s home once a quarter from May 2023 until the 2025 petition was filed and that the petitioner appeared to adequately care for the child. Further, several of the petitioner’s friends and family members testified that the petitioner was a loving parent and it would be in the best interests of the child for the petitioner to receive an improvement period and the child to be returned to her. Therefore, the petitioner requested that the court grant her motion for a post-adjudicatory improvement period.

The circuit court found that the petitioner had been the subject of multiple abuse and neglect cases dating back to 2003, all of which stemmed from her substance abuse issues, and that three of the abuse and neglect cases involved M.M. The court noted that the petitioner received multiple services during her previous cases but continued to engage in a pattern of returning to drugs, acting inappropriately with the child, and putting the child’s safety at risk. Further, the court found that although several witnesses testified on the petitioner’s behalf, none had knowledge of the most recent incident of abuse and neglect that led to the filing of the 2025 petition. Therefore, the court denied the petitioner’s motion for a post-adjudicatory improvement period. Ultimately, the court found that the petitioner was unable to remedy the conditions of abuse and neglect on her own or with help and that termination of the petitioner’s parental rights was in the best interests of

the child. Therefore, the court terminated the petitioner's parental rights to M.M.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 for a post-adjudicatory improvement period. At the outset, we reiterate that the decision to grant or deny an improvement period is in the sound discretion of the circuit court. *See In re M.M.*, 236 W. Va. 108, 115, 778 S.E.2d 338, 345 (2015) ("West Virginia law allows the circuit court discretion in deciding whether to grant a parent an improvement period"); *In re Tonjia M.*, 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002) (explaining that a circuit court has the discretion to deny a motion for an improvement period when no improvement is likely). Further, a parent *may* be granted an improvement period if they "demonstrate[], by clear and convincing evidence, that [they are] likely to fully participate in the improvement period." W. Va. Code § 49-4-610(2)(B). While the petitioner asserts that she complied with services and sought out treatment, the record shows that the petitioner was afforded and successfully completed many services to address her substance abuse in the prior abuse and neglect cases. Despite these opportunities, the petitioner continued to abuse substances, which led to the repeated abuse and neglect of her severely autistic child. Because of this pattern, the court denied the petitioner's motion. We have "frequently found improvement periods futile and . . . improper where parents have previously received services, yet continue their behaviors unabated." *State ex rel. W. Va. Dep't of Health & Hum. Res. v. Dyer*, 242 W. Va. 505, 520, 836 S.E.2d 472, 487 (2019). Accordingly, the circuit court did not err in denying the petitioner's motion for an improvement period and proceeding to termination. *See In re J.D.-I*, 247 W. Va. 270, 279, 879 S.E.2d 629, 638 (2022) (concluding that the circuit court did not err in denying an improvement period due to the petitioner's history of completing improvement periods then repeating the conditions of abuse and neglect after the children were returned to their care).

The petitioner also argues that the circuit court erred in terminating her parental rights instead of implementing a less restrictive dispositional alternative. 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)(1) 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 petitioner was subject to five abuse and neglect proceedings stemming from her substance abuse issues, three of which involved M.M. The petitioner successfully completed

³ The father's parental rights were terminated in a previous proceeding. The child is currently placed in a residential facility for children with special needs.

improvement periods in 2017 and 2019 but returned to abusing substances after those cases were dismissed and the child was returned to her care. Therefore, we discern no error in the circuit court's determination. *See In re G.L.-I*, No. 25-608, 2026 WL 1244690, at *2-3 (W. Va. May 6, 2026) (memorandum decision) (affirming termination of parental rights when the parent successfully completed two improvement periods in prior abuse and neglect cases but returned to substance abuse once the children were returned to his care). 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 in the child's best interests. *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 can 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 November 10, 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