

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

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

In re E.M. and K.M.

No. 25-849 (Wood County CC-54-2024-JA-3 and CC-54-2024-JA-4)

MEMORANDUM DECISION

Petitioner Mother T.M.¹ appeals the Circuit Court of Wood County’s November 17, 2025, order terminating her parental rights to E.M. and K.M., arguing that the circuit court erred by basing termination on an issue for which she was not adjudicated and that termination was not 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 January 2024, the DHS filed an abuse and neglect petition alleging, in pertinent part, that the petitioner and the children’s stepfather abused substances (specifically methamphetamine) while caring for the children, that their substance abuse impaired their parenting, and that the petitioner had entered into an inpatient rehabilitation program.³ At the adjudicatory hearing in March 2024, the circuit court accepted the petitioner’s stipulation to abusing substances and adjudicated her as an abusing and neglecting parent of both children. The court then granted the petitioner a post-adjudicatory improvement period that required her, in relevant part, to participate in individualized counseling, multidisciplinary team (“MDT”) meetings, hearings, adult life skills classes, substance abuse treatment, and drug screening.

At review hearings over the next several months, the circuit court admitted into evidence various DHS case plans detailing the petitioner’s progress, including her successful completion of inpatient substance abuse treatment and subsequent transfer to an intensive outpatient (“IOP”) program. According to the DHS, the petitioner tested positive for alcohol in March 2024 but denied drinking. In April 2024, the petitioner was discharged from her IOP rehabilitation program for failure to attend therapy and meetings. After her discharge, the petitioner tested positive for

¹ The petitioner appears by counsel Thomas B. Karr. The West Virginia Department of Human Services (“DHS”) appears by counsel Attorney General John B. McCuskey and Assistant Attorney General Lee Niezgoda. Counsel Keith White 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).

³ The DHS subsequently amended its petition to include allegations against the children’s biological father as well.

methamphetamine. The next month, the petitioner attended another IOP program but left without completing the program shortly thereafter. In June 2024, the petitioner informed the DHS that she had signed up for a third IOP program and resumed drug screening. The DHS stated that the petitioner graduated from this third IOP program in July 2024. However, by August 2024, the petitioner refused to participate in drug screening and had ceased contact with the DHS. Furthermore, the DHS raised concerns about the petitioner's relationship with the children's stepfather due to their shared history with substance abuse and the stepfather's arrest in September 2024 for a new felony charge of possession with intent to deliver fentanyl and methamphetamine, leading to his incarceration. Eventually, the DHS recommended that the court terminate the petitioner's post-adjudicatory improvement period.

However, at a hearing in November 2024 and after the petitioner's post-adjudicatory improvement period naturally expired, the circuit court granted the petitioner's motion for a post-dispositional improvement period and again directed her to participate in drug screening. At a review hearing in March 2025, the DHS moved to terminate the petitioner's improvement period due to, in relevant part, her continued contact with the stepfather and physical threats she made toward MDT members during recorded phone calls with the stepfather. On the record, the court noted that when testifying at a prior hearing, the petitioner had lied about ceasing contact with the stepfather, despite the court's order that she abstain from contacting him. Ultimately, the court terminated the petitioner's improvement period.

The circuit court continued the initial dispositional hearing in July 2025 because the petitioner failed to appear. At the reconvened dispositional hearing in September 2025, the petitioner again failed to appear but was represented by counsel. The court admitted into evidence a DHS report that stated the petitioner had repeatedly misrepresented the status of her relationship with the stepfather, threatened MDT members in recorded phone calls, failed to show remorse for her improper actions, and failed to maintain contact with the DHS since June 2025. Furthermore, the DHS noted the petitioner's lack of progress despite receiving services for several months and, during closing argument, highlighted how the petitioner left or was discharged from various rehabilitation programs and periodically refused to drug screen. Additionally, upon the DHS's motion, the court took judicial notice of the entire case file as it pertained to the petitioner. Ultimately, the court found that the petitioner failed to successfully complete her improvement period, lied to MDT members and to the court regarding her relationship with the stepfather, and stopped participating in the proceedings as she had failed to appear and communicate with the DHS. Based on her overall noncompliance, the court concluded that there was no reasonable likelihood that the petitioner could successfully correct the conditions of abuse and neglect in the near future. In considering the children's need for stability and best interests, the court further found that termination was necessary for the children's welfare. Accordingly, the court terminated the petitioner's parental rights to both E.M. and K.M.⁴ It is from this order that the petitioner now appeals.

⁴ The biological father's parental rights remain intact as he participates in an improvement period. The stepfather's custodial rights were terminated. The permanency plan for the children is either reunification with their biological father or adoption in the current placement.

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). To begin, the petitioner argues that the circuit court erred by terminating her rights for an issue upon which she was not adjudicated—that being her continued contact with the stepfather. We disagree. As we have explained, “termination of parental rights may not be fundamentally premised on conditions of abuse and/or neglect upon which a parent has not been properly adjudicated.” *In re K.L.*, 247 W. Va. 657, 666, 885 S.E.2d 595, 604 (2022). Here, the petitioner was adjudicated for her substance abuse, and the court’s dispositional decision referenced, in part, the fact that she and the stepfather shared a history of substance abuse, which led to the initiation of these proceedings. Further, the court noted that the stepfather was arrested for drug-related charges during the pendency of the case. The court also considered evidence regarding the petitioner’s substance abuse issues when terminating her parental rights, which included her denial of drinking despite a positive screen for alcohol; failure to complete two substance abuse treatment programs; positive drug screen for methamphetamine; refusal to drug screen multiple times; and failure to participate in the case in the months leading to disposition. To the extent that the court considered her continued contact with the stepfather in reaching its dispositional decision, the petitioner overlooks her violation of the court’s directive to discontinue contact with him and her dishonesty in that regard to both the circuit court and MDT members—all of which the circuit court was permitted to consider in reaching disposition. Accordingly, the petitioner is not entitled to relief.

The petitioner also asserts that the circuit court erred because termination was not the least restrictive dispositional alternative. We again disagree. West Virginia Code § 49-4-604(c)(6) allows circuit courts to terminate parental rights without the use of a less restrictive alternative “[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.” *See also* Syl. Pt. 5, *In re Kristin Y.*, 227 W. Va. 558, 712 S.E.2d 55 (2011) (permitting termination of rights “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” (quoting Syl. Pt. 2, *In re R.J.M.*, 164 W. Va. 496, 266 S.E.2d 114 (1980))). “‘No 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.” W. Va. Code § 49-4-604(d). As indicated above, the court had extensive evidence concerning the petitioner’s lack of progress and overall noncompliance with substance abuse treatment despite receiving services for months. The court was informed that the petitioner misrepresented the level of contact she maintained with the stepfather, made threatening remarks toward MDT members, ceased contact with the DHS, and failed to appear for her dispositional hearings. As such, we conclude that the circuit court had ample evidence to find that there was no reasonable likelihood that the petitioner could substantially correct the conditions of abuse and neglect in the near future. The court also considered the children’s need for stability and best interests when finding that termination was necessary for their welfare—a finding the petitioner does not challenge on appeal. Thus, we conclude that the circuit court did not err in terminating the petitioner’s parental rights to E.M. and K.M.

For the foregoing reasons, we find no error in the decision of the circuit court and affirm the circuit court’s November 17, 2025, dispositional order.

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