FILED
March 6, 2024
C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

***In re* J.H. and R.C.-1**

No. 23-228 (Cabell County 21-JA-190 and 21-JA-191)

MEMORANDUM DECISION

Petitioner Father R.C.-2[1] appeals the Circuit Court of Cabell County's March 24, 2023, order terminating his parental rights to the children, J.H. and R.C-1.[2] He argues that the evidence did not support termination. 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 2021, the DHS filed an abuse and neglect petition alleging that petitioner abused and neglected the children by knowingly allowing the children's mother's boyfriend, a registered sex offender, to physically abuse the children. The petition further alleged disclosures by R.C.-1 that she saw petitioner punch her mother in the eye when they previously lived together. A preliminary hearing was then held in January 2022, at which time petitioner was ordered to participate in drug screening.

The court held an adjudicatory hearing regarding the mother in February 2022. The mother testified that petitioner's involvement in the children's lives was sporadic, he physically abused

[1]Petitioner appears by counsel Steven T. Cook. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrisey and Assistant Attorney General Brittany N. Ryers-Hindbaugh. Counsel Moriah N. Myers appears as the children's guardian ad litem ("guardian").

Additionally, pursuant to West Virginia Code § 5F-2-1a, the agency formerly known as the West Virginia Department of Health and Human Resources was terminated. It is now three separate agencies—the Department of Health Facilities, the Department of Health, and the Department of Human Services. *See* W. Va. Code § 5F-1-2. For purposes of abuse and neglect appeals, the agency is now the Department of Human Services ("DHS").

[2]We use initials where necessary to protect the identities of those involved in this case. *See* W. Va. R. App. P. 40(e). Additionally, because one child and petitioner share the same initials, we refer to them as R.C.-1 and R.C.-2, respectively.

her in the presence of the children multiple times, he beat the family dog to death in the presence of the children, and he was verbally abusive to J.H. Petitioner was thereafter ordered to undergo a parental fitness evaluation. According to petitioner's appellate brief, he later stipulated and was adjudicated as an abusing and neglecting parent following a hearing in October 2022.

The court proceeded to disposition in March 2023, at which time the DHS and guardian supported termination of petitioner's parental rights. During the dispositional hearing, petitioner testified that he believed he was a "super parent," that he did not need to change any aspects of his parenting, and that transportation would be the only DHS service from which he could benefit. Petitioner denied ever harming the mother or the children and blamed the mother as the reason he had not seen the children in over two years. Petitioner admitted to killing the family dog in the presence of the children but maintained that he was justified in so doing. Evidence revealed that petitioner tested positive for marijuana on multiple occasions during the proceedings, and he admitted that he did not have a prescription or medical marijuana card but that he used marijuana twice a month to aid mild seizures. A Child Protective Services ("CPS") worker testified that petitioner's last three drug screens were positive for marijuana and that he was not regularly screening as ordered. Additionally, the CPS worker stated that petitioner last saw the children in January 2022 and that the children did not want to see him due to the trauma he caused.

The court also heard testimony from a psychologist who conducted a parental fitness evaluation of petitioner. The psychologist concluded that petitioner's inability to properly parent would place the children at high risk if placed in his care. She further testified to his poor prognosis, stating that it was based, in part, on petitioner's belief that he did not do anything wrong and lack of motivation to improve. Despite this testimony, a service worker who helped petitioner with housing assistance testified that she "see[s] absolutely nothing wrong with his parenting skills." However, she admitted she only intermittently saw petitioner with the children approximately three and one half years prior. Considering the weight of the evidence, the court found this worker's testimony biased and not credible. The court found that petitioner failed to comply with services and failed to acknowledge any issue with his parenting. Therefore, the court found no reasonable likelihood that the conditions of neglect and/or abuse could be substantially corrected in the near future and that it was necessary for the welfare of the children to terminate petitioner's parental rights.[3] It is from the dispositional order that petitioner appeals.

On appeal from a final order in an abuse and neglect proceeding, this Court reviews the circuit court's findings of fact for clear error and its conclusions of law de novo. Syl. Pt. 1, *In re Cecil T.*, 228 W. Va. 89, 717 S.E.2d 873 (2011). Petitioner argues that the circuit court erred in terminating his parental rights when the DHS failed to provide any services and petitioner screened clean for a significant period of time. Upon our review of the record, we find no merit in petitioner's argument, and we conclude that termination was proper based on petitioner's failure to acknowledge the existence of a problem. In that regard, we have held,

[3]The children's mother voluntarily relinquished her parental rights, and the permanency plan is adoption by the foster placement.

> [i]n order to remedy the abuse and/or neglect problem, the problem must first be acknowledged. Failure to acknowledge the existence of the problem, i.e., the truth of the basic allegation pertaining to the alleged abuse and neglect or the perpetrator of said abuse and neglect, results in making the problem untreatable and in making an improvement period an exercise in futility at the child's expense.

In re Timber M., 231 W. Va. 44, 55, 743 S.E.2d 352, 363 (2013) (citation omitted). Not once during the proceedings did petitioner recognize any issues with his parenting; rather he believed he was a "super parent" despite overwhelming evidence to the contrary. Moreover, petitioner ignores the fact that he was provided services, such as drug screens and a psychological evaluation, yet he failed to comply with screens as ordered. Further, it is disingenuous to argue on appeal that the DHS's services were lacking when petitioner testified below that the only service needed would be transportation assistance—a service that petitioner did not request and only suggested for the first time at disposition—and that he otherwise did not need to change any aspects of his parenting. To the extent petitioner argues he should have been granted the opportunity for a post-adjudicatory improvement period, we further find no merit as petitioner did not file a written motion for one at any point during the proceedings. *See* Syl. Pt. 4, in part, *State ex rel. P.G.-1 v. Wilson*, 247 W. Va. 235, 878 S.E.2d 730 (2021) ("[a] circuit court may not grant a post-adjudicatory improvement period under W. Va. Code § 49-4-610(2) . . . unless the respondent to the abuse and neglect petition files a written motion requesting the improvement period.").

Furthermore, although petitioner argues that he produced clean drug screens on occasion, the evidence revealed that he did not consistently appear for drug screens in order to be permitted visitation with his children. Indeed, petitioner had not seen the children in over two years as a result of his noncompliance. "[T]he 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).[4] Ultimately, the circuit court correctly found termination to be proper, and we find no reason to disturb that finding on appeal. *See* W. Va. Code § 49-4-604(c)(6) (permitting 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 child's welfare); *see also* Syl. Pt. 5, in part, *In re Kristin Y.*, 227 W. Va. 558, 712 S.E.2d 55 (2011) (permitting termination of parental rights "without the use of intervening less restrictive alternatives when it is found that there is no reasonable likelihood . . . that conditions of neglect and abuse can be substantially corrected") (citation omitted).

Accordingly, for the foregoing reasons, we find no error in the decision of the circuit court, and its March 24, 2023, order is hereby affirmed.

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[4]To the extent petitioner challenges the termination by relying on the service worker's testimony that she believed petitioner was a proper parent, we find no error based on the circuit court's credibility determination of that witness. As we have held, "[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." *Michael D.C. v. Wanda L.C.*, 201 W. Va. 381, 388, 497 S.E.2d 531, 538 (1997).

Affirmed.

ISSUED: March 6, 2024

CONCURRED IN BY:

Chief Justice Tim Armstead
Justice Elizabeth D. Walker
Justice John A. Hutchison
Justice William R. Wooton
Justice C. Haley Bunn