

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re J.P.-C.

No. 23-186 (Wood County CC-54-2022-JA-264)

MEMORANDUM DECISION

Petitioner Father L.C.¹ appeals the Circuit Court of Wood County’s March 1, 2023, order terminating his parental rights to J.P.-C.,² arguing that the circuit court erred in terminating his parental rights instead of granting a post-dispositional improvement period or another less restrictive alternative. 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 September 2022, the DHS filed an abuse and neglect petition alleging that petitioner neglected his child due to his substance abuse. The petition alleged that in the course of a different matter, petitioner was drug tested and the results were positive for methamphetamines, amphetamines, THC, and MDMA. A Child Protective Services worker interviewed petitioner, and he admitted to recently using methamphetamines. At a preliminary hearing held in September 2022, the circuit court granted both parents supervised visitation as long as they were screening for alcohol and drugs.

The circuit court proceeded to adjudication in October 2022, and found by clear and convincing evidence that petitioner neglected the child due to his substance use. During

¹Petitioner appears by counsel Courtney L. Ahlborn. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Andrew Waight. Counsel Michael D. Farnsworth Jr. appears as the child’s guardian ad litem. Respondent Mother E.M. appears by counsel Eric K. Powell.

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”).

²We use initials where necessary to protect the identities of those involved in this case. *See* W. Va. R. App. P. 40(e).

petitioner's testimony, he admitted to using substances in August 2022, while the child was in petitioner's care. Accordingly, the court adjudicated petitioner as a neglectful parent by order entered October 26, 2022. Petitioner was granted a post-adjudicatory improvement period. The terms of petitioner's improvement period included remaining drug and alcohol free, participating in drug screening and parenting and life skills classes, completing a parental fitness and substance abuse evaluation, attending supervised visits with the child, and participating in individual therapy, among others.

The circuit court held a dispositional hearing in February 2023. Evidence showed that, over the course of petitioner's improvement period, he missed several drug screens and consistently tested positive for methamphetamines. During his testimony, petitioner admitted to using methamphetamines as recently as one week before the dispositional hearing. Petitioner participated in supervised visitation, parenting classes, and adult life skills classes. However, petitioner did not complete any individual therapy or substance abuse evaluations. During the hearing, petitioner's counsel moved for a post-dispositional improvement period. The court denied this motion, finding that petitioner was not likely to fully participate based on his failure to substantially comply with the terms of his post-adjudicatory improvement period and his continued drug use. Based on this same evidence, the court found there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future and that it was contrary to the welfare of the child to remain with petitioner. Accordingly, the court terminated petitioner's parental rights to the child.³ It is from this 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). First, petitioner argues the circuit court should have granted him a post-dispositional improvement period. However, in order to have obtained a second improvement period, West Virginia Code § 49-4-610(3)(D) required petitioner to demonstrate, by clear and convincing evidence, that "since the initial improvement period, [he] ha[d] experienced a substantial change in circumstances" and "due to that change in circumstances, [he was] likely to fully participate in the improvement period." The circuit court found that petitioner did not demonstrate that he was likely to participate in a post-dispositional improvement period, and this finding is well-supported by petitioner's failure to seek individual therapy, complete a substance abuse evaluation, comply with drug screening, and remain substance free. Further, petitioner failed to identify any evidence to demonstrate he experienced a substantial change in circumstances. Accordingly, we find no error. *See In re Tonjia M.*, 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002) (explaining that a circuit court has discretion to deny an improvement period when no improvement is likely).

Second, petitioner argues that the circuit court should have considered a less restrictive alternative to terminating his parental rights, like terminating his custodial rights. However, we have previously explained that termination of parental rights "may be employed without the use of intervening less restrictive alternatives when it is found that there is no reasonable likelihood under [West Virginia Code § 49-4-604(c)(6)] that conditions of neglect or abuse can be

³The permanency plan for the child is reunification with the mother.

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)). Further, West Virginia Code § 49-4-604(d)(1) provides that “there is no reasonable likelihood that the conditions of neglect . . . can be substantially corrected” where the parent has habitually abused controlled substances “to the extent that proper parenting skills have been seriously impaired” and the parent has not “followed through [with] the recommended and appropriate treatment.” The record is replete with petitioner’s missed drug screens and positive drug screens for methamphetamines, including petitioner’s own admission to using methamphetamines in the weeks prior to the dispositional hearing. The record additionally shows petitioner’s failure to participate in therapy, a substance abuse evaluation, or any substance abuse treatment. As such, we find no error in the court’s termination of petitioner’s parental rights. *See In re R.J.M.*, 164 W. Va. at 496, 266 S.E.2d at 114, Syl. Pt. 1, in part (“[C]ourts are not required to exhaust every speculative possibility of parental improvement before terminating parental rights where it appears that the welfare of the child will be seriously threatened . . .”); *see also In re Cesar L.*, 221 W. Va. 249, 258, 654 S.E.2d 373, 382 (2007) (“Ensuring finality for these children is vital to safeguarding their best interests so that they may have permanency . . .”).

For the foregoing reasons, we find no error in the decision of the circuit court, and its March 1, 2023, order is hereby affirmed.

Affirmed.

ISSUED: April 15, 2024

CONCURRED IN BY:

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