

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re F.H., H.H., and J.H.-1

No. 23-316 (Hardy County CC-16-2022-JA-47, CC-16-2022-JA-48, and CC-16-2022-JA-50)

MEMORANDUM DECISION

Petitioner Father J.H.-1¹ appeals the Circuit Court of Hardy County’s May 2, 2023, order terminating his parental rights to the children, F.H., H.H., and J.H.-1.² He argues that the circuit court erred by denying him an opportunity to complete an improvement period. Upon our review, we determine that oral argument is unnecessary and that a memorandum decision affirming, in part, vacating, in part, and remanding the circuit court’s November 28, 2022, and May 2, 2023, orders is appropriate in accordance with the “limited circumstances” requirement of Rule 21(d) of the West Virginia Rules of Appellate Procedure.

In September 2022, the DHS filed an abuse and neglect petition alleging that the petitioner exposed the children to domestic violence toward the mother of F.H. and H.H. in the home and that he was likely abusing illicit substances. The petition also included an allegation that the petitioner threatened to “knock the child [F.H.’s] teeth down her throat.” While the petition was clear that both F.H. and H.H. resided in the home and were subjected to the alleged conduct, it is unclear from the petition whether J.H.-1 resided in the home at this time or was otherwise exposed to the abuse and neglect alleged in the petition. Furthermore, the DHS listed the petitioner’s Child Protective Services (“CPS”) history, including three substantiated allegations of abuse in past years.

¹ The petitioner appears by counsel Jeremy B. Cooper. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Kristen E. Ross. Counsel Marla Zelene Harman 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). Because one of the children and the petitioner share the same initials, we will refer to them as J.H.-1 and J.H.-2, respectively. Additionally, two other children have since reached the age of eighteen and are therefore no longer part of this case.

The petitioner waived his right to a preliminary hearing, and prior to the adjudicatory hearing, a multidisciplinary treatment team (“MDT”) meeting was held. According to a DHS report, the petitioner “became upset” and left the meeting. The circuit court then held an adjudicatory hearing in November 2022. The petitioner stipulated to the allegations in the petition and the court adjudicated the petitioner as an abusing and neglecting parent, finding all the children to be abused and neglected. It must be noted, however, that although F.H. and H.H. were clearly exposed to the behavior to which the petitioner stipulated, the court made no specific findings as to J.H.-1, a child whose exposure to the petitioner’s abuse and neglect was unclear. . The court ordered that another MDT meeting be held, and that a case plan would be approved at a hearing set for December 2022. The petitioner thereafter filed a motion for a post-adjudicatory improvement period.

During the December 2022 hearing, the circuit court was advised that a case plan could not be formulated because the petitioner once again left the MDT meeting. Therefore, the court found that the petitioner had not demonstrated a willingness to comply with terms of an improvement period, thereby denying his motion. The court proceeded to schedule the matter for disposition. Prior to the dispositional hearing, the petitioner filed a motion for a post-dispositional improvement period.

At the dispositional hearing held in February 2023, a CPS worker testified regarding the MDT team’s inability to formulate a case plan due to the petitioner’s conduct during MDT meetings. At the conclusion of the testimony, the circuit court found that the petitioner failed to participate in this proceeding by leaving MDT meetings on two occasions in a “hostile fashion” and that he had illustrated no interest in identifying or rectifying the issues. Therefore, the court denied the petitioner’s motion for a post-dispositional improvement period. The court further found no reasonable likelihood that the conditions of abuse or neglect could be substantially corrected in the near future and that it was in the children’s best interests to terminate the petitioner’s parental rights to the children, F.H. and H.H. The court entered an order terminating the petitioner’s parental rights to F.H. and H.H.; however, as to J.H.-1, the court held its decision in abeyance because she was fourteen years old and had not yet conveyed her wishes regarding termination.

Thereafter, the circuit court set the matter for hearing in March 2023, at which time the guardian recommended the court consider modifying its dispositional order to allow the petitioner the chance to participate in an improvement period based on a perceived “change of heart” and his presence at the hearing. Considering the guardian’s recommendation, the court indicated it would contemplate modification at the next hearing and would allow the parties time to formulate a plan in the interim.

A final hearing was held in April 2023. The petitioner was not present but was represented by counsel. The circuit court heard testimony from service workers who administered the petitioner’s drug screens, and advised that the petitioner had recently tested positive for methamphetamine, amphetamine, cocaine, and THC. Further, the petitioner was offered counseling, anger management courses, a batterer intervention and prevention program, drug screening, adult life skills classes, and parenting services; however, he failed to participate other

than attending one therapy session and the one drug screen in which he tested positive for illicit substances. Additionally, the service workers communicated with J.H.-1, who expressed her wishes that the petitioner's parental rights be terminated. Based on the foregoing, the court ratified its previous ruling, denied the guardian's motion to modify the dispositional order, and further denied the petitioner's motion for a post-dispositional improvement period. The court also terminated the petitioner's parental rights to J.H.-1, considering the child's wishes and that the petitioner "has not seen [J.H.-1] for years and has in essence abandoned the child." The court found that there was no reasonable likelihood that the conditions of neglect could be substantially corrected in the near future and that termination was in this child's best interests. It is from the final dispositional order that the petitioner appeals.³

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). The petitioner argues that the circuit court erred in terminating his parental rights without granting an improvement period. Upon our review, we find no error in the denial of an improvement period, as it was within the court's discretion to deny an improvement period when no improvement was likely. See *In re Tonjia M.*, 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002). Here, the court found that the petitioner did not demonstrate that he would comply with improvement period terms based on his uncooperative conduct throughout the proceedings. The court noted the petitioner's failure to participate in MDT meetings, making it impossible to formulate a case plan. Despite initially finding this behavior sufficient to terminate his parental rights, the court nevertheless gave the petitioner another opportunity to prove he could cooperate with the DHS. However, the petitioner did not participate in services offered and at the one drug screen he appeared for, he tested positive for several illicit substances. Under these circumstances, the court did not abuse its discretion by denying the petitioner an improvement period. It follows that the court did not err in terminating the petitioner's parental rights to the children F.H. and H.H., as the court correctly found that the petitioner's actions demonstrated no reasonable likelihood that the conditions of abuse or neglect could be substantially corrected in the near future and that termination was in the children's best interests. 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 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))).

However, we must address an ostensible error in the circuit court's adjudication and subsequent termination regarding J.H.-1, as it does not appear that the court properly exercised

³ The mother of F.H. and H.H. also had her parental rights terminated, and the permanency plan for those children is adoption by foster placement. The mother of J.H.-1 was nonabusing and the permanency plan for this child is to remain in her mother's custody.

jurisdiction over this child.⁴ As we have stated, “[t]o exercise subject matter jurisdiction, the court must make specific factual findings explaining how each child’s health and welfare are being harmed or threatened” and “generalized findings applicable to all children named in the petition will not suffice” *See* Syl. Pt. 3, in part, *In re B.V.*, 248 W. Va. 29, 886 S.E.2d 364 (2023). Here, the court made a generalized finding at adjudication that all the children were abused and neglected, without specifically explaining how J.H.-1’s health and welfare was harmed or threatened. Upon our review of the record, it is unclear whether J.H.-1 was present in the home subject to the abusive and neglectful behavior exhibited by the petitioner at the time the DHS’s petition was filed. This Court is unable to undertake a proper review of whether the circuit court appropriately exercised jurisdiction over J.H.-1 due to the absence of findings at adjudication as well as the dearth of evidence in the record on appeal as to whether the child was exposed to the abuse and neglect perpetrated by the petitioner. Therefore, we find clear error in the adjudication of the petitioner as it relates to J.H.-1 and, to this extent, the circuit court’s adjudicatory order of November 28, 2022, must be vacated and remanded. It follows that termination of the petitioner’s parental rights to J.H.-1 was error, as a circuit court cannot proceed to consider disposition without first making the necessary findings at adjudication. *See* Syl. Pt. 3, *In re A.P.-I*, 241 W. Va. 688, 827 S.E.2d 830 (2019).

For the foregoing reasons, we affirm that portion of the May 2, 2023, order terminating the petitioner’s parental rights to the children, F.H. and H.H.; however, as to J.H.-1, we vacate the circuit court’s November 28, 2022, adjudicatory order and May 2, 2023, dispositional order, and remand for further proceedings consistent with this decision.⁵ The Clerk is directed to issue the mandate contemporaneously herewith.

Affirmed, in part; vacated, in part; and remanded, with directions.

ISSUED: May 13, 2024

CONCURRED IN BY:

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

⁴Although not raised by petitioner as an assignment of error, we have recognized that “the court should sua sponte address the issue [of jurisdiction] as early in the proceeding as possible.” Syl. Pt. 5, in part, *In re Z.H.*, 245 W. Va. 456, 859 S.E.2d 399 (2021).

⁵The circuit court’s November 28, 2022, order adjudicated the mother of F.H. and H.H. as an abusing and neglecting parent, and her parental rights were terminated to those two children by an order dated February 17, 2023. The mother did not appeal those decisions; therefore, the portions of the orders being vacated and remanded herein will remain in full force and effect inasmuch as they relate to the mother of F.H. and H.H., who is not the mother of J.H.-1.