

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

***In re E.C.-1 and E.C.-2***

**No. 23-261** (Fayette County CC-10-2022-JA-5 and CC-10-2022-JA-6)

**MEMORANDUM DECISION**

Petitioner Father M.C.<sup>1</sup> appeals the Circuit Court of Fayette County’s April 27, 2023, order terminating his parental and custodial rights to E.C.-1 and E.C.-2,<sup>2</sup> arguing that the circuit court erred in terminating his rights instead of granting a post-dispositional improvement period. 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 February 2022, the DHS filed an abuse and neglect petition alleging that E.C.-1 and E.C.-2 lived in unsafe and unsuitable housing conditions. The petition noted Child Protective Services (“CPS”) involvement beginning in October 2021, where CPS workers initially attempted to provide services. After the parents failed to comply with services and refused to allow CPS to enter the home to monitor conditions, the DHS filed the instant petition alleging that both parents abused and neglected the children.

The circuit court held an adjudicatory hearing in March 2022, where the petitioner and the mother stipulated to neglecting the children, admitting that the children had been living in unsafe and unsuitable living conditions. Accordingly, the court adjudicated the petitioner and the mother as neglecting parents. Both parents were granted post-adjudicatory improvement periods. The terms of the petitioner’s improvement period included submitting to random drug and alcohol

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<sup>1</sup> The petitioner appears by counsel Juliana C. Dotsenko. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Heather L. Olcott. Counsel Vicky L. Hylton 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”).

<sup>2</sup> 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 the children share the same initials, we refer to them as E.C.-1 and E.C.-2.

screenings, completing a psychological evaluation, completing adult life skills and parenting classes, participating in visitation with the children, remaining in contact with the DHS and case workers, and maintaining safe and suitable housing.

Based upon the representations of all parties during the hearings, both parents were participating in services and complying with their improvement periods, and the children were returned to the parents' home in August 2022. However, after a new CPS worker was assigned to the case, the CPS worker and the guardian visited the home in November 2022 and found the home to be in a deplorable condition. The children were again removed from the home. After further investigation, the CPS worker discovered that, in fact, the reports from providers regarding both parents did not reflect that the parents were participating in their improvement periods and that the providers had difficulty contacting the parents. In December 2022, the parents secured new housing after being evicted from their prior home due to a failure to pay rent and the poor condition of the home.

The circuit court held two dispositional hearings in February 2023 and March 2023. The CPS worker most recently assigned to the case testified to the deplorable conditions of the prior home during her visit in November. The home was cluttered with trash; moldy food and broken dishes were piled in the kitchen; the child's playpen was filled with trash and dirty clothes while the child was in the playpen; and the only bathroom smelled horribly due to the toilet containing excrement that could not be flushed. Due to the conditions of the home, the children were removed. The worker also testified that both parents consistently tested positive for marijuana throughout the case. Further, the oldest child was enrolled in school beginning in September 2022, and between September and November 2022 the child had over seventeen unexcused absences.

Providers testified to their difficulties in contacting the parents. One worker testified that when she began working with the parents in November 2022, they initially participated in classes and allowed visits to monitor the home. Beginning in December 2022, however, the parents failed to remain in contact with the providers or participate in classes. Between December 1, 2022, and February 2, 2023, providers made at least eleven visits to the petitioner's new residence, but no one answered the door. At each visit, the provider left a note on the door with instructions to call the provider, and the provider did not receive any follow-up communication from either parent. The petitioner testified, admitting that he knew about the notes left on the door but claimed he did not need to respond to the notes because they were not personally given to him. The petitioner's counsel requested a post-dispositional improvement period during the final dispositional hearing but did not file a written motion for a post-dispositional improvement period until April 12, 2023.

Based on the evidence presented, the circuit court found that termination of the petitioner's parental and custodial rights was in the best interests of the children and there was no reasonable likelihood that the conditions of neglect could be substantially corrected in the near future. Accordingly, the court terminated the petitioner's parental and custodial rights to the children by order entered on April 27, 2023.<sup>3</sup> It is from this order that the petitioner appeals.

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<sup>3</sup> The mother's parental rights were also terminated, and the permanency plan for the children is adoption in their current placement.

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). In the petitioner's only assignment of error, he argues that the circuit court should have granted him a post-dispositional improvement period instead of terminating his parental and custodial rights. However, in order to have obtained a second improvement period, West Virginia Code § 49-4-610(3)(D) requires the petitioner to demonstrate, by clear and convincing evidence, that "since the initial improvement period, [he] ha[d] experienced a substantial change in circumstances" and that "due to that change in circumstances, [he was] likely to fully participate in the improvement period." The petitioner argues that he did demonstrate a substantial change in circumstances by securing new housing in December 2022. However, we find that his incredibly late securing of different housing after being evicted from the prior housing is not a substantial change of circumstances, especially given how quickly the conditions of his housing deteriorated during these proceedings. This argument is disingenuous given that, in the months leading up to disposition, he ignored the service provider's attempts to monitor the conditions in the home. The petitioner fails to explain how securing new housing would demonstrate that he was now likely to fully participate in the improvement period, given his prior non-compliance. Thus, 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).

To the extent that the petitioner argues that he was misled by the prior CPS worker's representations that the parents were complying with their post-adjudicatory improvement period, we similarly find no error. The prior CPS worker was replaced in November 2022, and the children were removed from the petitioner's home in November 2022. The petitioner's failure to comply with services between November 2022 and February 2023 could not possibly be attributed to any conduct on the part of the prior CPS worker, who was no longer involved in the case. After the prior CPS worker's removal, the petitioner had an additional four months to demonstrate compliance with his improvement period and failed to do so. The circuit court found there was no reasonable likelihood that the petitioner would be able to substantially correct the conditions of neglect in the foreseeable future and that termination of parental and custodial rights was in the best interests of the children, and the record supports these findings. *See Syl. Pt. 5, in part, In re Kristin Y.*, 227 W. Va. 558, 712 S.E.2d 55 (2011) (explaining 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 . . . can be substantially corrected" (quoting Syl. Pt. 2, *In re R.J.M.*, 164 W. Va. 496, 266 S.E.2d 114 (1980))); *see also Syl. Pt. 4, in part, In re B.H.*, 233 W. Va. 57, 754 S.E.2d 743 (2014) ("The controlling standard that governs any dispositional decision remains the best interests of the child.").

For the foregoing reasons, we find no error in the decision of the circuit court, and its April 27, 2023, order is hereby affirmed.

Affirmed.

**ISSUED:** June 10, 2024

**CONCURRED IN BY:**

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