FILED
June 10, 2024
C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

***In re* X.M., Z.M.-1, Z.M.-2, Z.M.-3, A.M., and I.L.**

No. 23-360 (Mineral County CC-29-2022-JA-37, CC-29-2022-JA-38, CC-29-2022-JA-39, CC-29-2022-JA-40, CC-29-2022-JA-41, and CC-29-2022-JA-47)

MEMORANDUM DECISION

Petitioner Father T.C.[1] appeals the Circuit Court of Mineral County's May 16, 2023, order terminating his parental rights to X.M., Z.M.-1, Z.M.-2, Z.M.-3, A.M., and I.L., arguing that termination of his rights to I.L. was in error because the court lacked jurisdiction and that termination of his rights to the remaining children was in error because he acknowledged the conditions of abuse and neglect.[2] Upon our review, we determine that oral argument is unnecessary and that a memorandum decision affirming, in part, and vacating, in part, the circuit court's May 16, 2023, dispositional order and remanding for further proceedings is appropriate, in accordance with the "limited circumstances" requirement of Rule 21(d) of the West Virginia Rules of Appellate Procedure.

The DHS filed an initial petition in this matter in August 2022. However, the petitioner failed to include this document in the appendix record before this Court. In September 2022, the DHS filed an amended petition in which it alleged that the petitioner whipped a child in the home,[3]

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[1] The petitioner appears by counsel Jeremy B. Cooper. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrisey and Assistant Attorney General Katica Ribel. Counsel Meredith H. Haines appears as the children's guardian ad litem. Respondent Mother M.M. appears by counsel Nathan T. Bennett.

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 some of the children share the same initials, we use numbers to differentiate them.

[3] In addition to the children listed in the style of this appeal, two additional children were at issue in the proceedings below, including N.M. However, the petitioner raises no argument in regard to these two additional children, and they are not the petitioner's biological children. Accordingly, they are not at issue in this appeal.

N.M., with a belt which caused bruising to the child's ear, lower back, and left leg. During a later Child Advocacy Center ("CAC") interview, N.M., then eight years old, detailed a history of physical abuse perpetrated by the petitioner. This included the petitioner striking the child with a belt and a "thick extension cord." N.M. also disclosed that the petitioner physically abused other children in the home and perpetrated domestic violence against the children's mother. Further, the record indicates that the petitioner was later indicted criminally for the conduct giving rise to the petition. Based on the petitioner's acts, the DHS alleged that the children were abused and/or neglected. However, it should be noted that the DHS acknowledges on appeal that prior to the filing of the petition, I.L. resided with his mother in Virginia and remained there throughout the proceedings. Further, the amended petition makes no mention of how the petitioner's conduct harmed or threatened I.L.[4]

Following several continuances, the court held an adjudicatory hearing in February 2023, during which the DHS presented testimony from two law enforcement officers who investigated the petitioner's abusive conduct. One officer testified to having photographed extensive bruising on N.M.'s body and that at least one bruise appeared to have been caused "by the end of a belt." The other officer testified to having observed the children's CAC interviews and recounted their detailed disclosures. According to this officer, N.M.'s descriptions of the petitioner's physical abuse were consistent with the injuries the officer observed on that child's body. The petitioner testified and admitted to "spanking [N.M.'s] butt twice" with a belt, although he attempted to justify this conduct by citing the child's behavior. The petitioner further denied ever striking N.M. with an extension cord or observing most of N.M.'s injuries. After attempting to blame N.M.'s injuries on other children in the home, the court concluded that the petitioner "could offer no explanation as to how the child received the injury to his ear." Ultimately, the court adjudicated the petitioner of abusing and neglecting all the children. However, it is important to note that the adjudicatory order does not explain how I.L., a child who did not reside in the home, was abused and/or neglected by virtue of the petitioner's conduct.

Thereafter, the petitioner filed a motion for a post-adjudicatory improvement period. However, the court denied the motion, finding that the petitioner's testimony demonstrated a failure to acknowledge that he abused the children. In May 2023, the court held a dispositional hearing, during which a DHS employee testified to the petitioner's refusal to take responsibility for his abusive conduct. The petitioner testified and again denied knowing how N.M. received extensive bruising on his body. Ultimately, the court concluded that the petitioner's refusal to acknowledge the abuse at issue resulted in there being no reasonable likelihood that he could substantially correct the conditions of abuse at issue and that termination of his parental rights was in the children's best interests. Accordingly, the court terminated the petitioner's parental rights.[5] The petitioner appeals from the dispositional order.

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[4] The DHS later filed a second amended petition that included allegations regarding adult respondents not at issue in this appeal.

[5] The permanency plan for the children is to remain in the custody of their respective mothers.

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). Further, we have explained that substantial disregard for, or frustration of, "the process established by the [West Virginia] Rules of Procedure for Child Abuse and Neglect Proceedings and related statutes for the disposition of" abuse and neglect cases will result in "remand[] for compliance with that process." Syl. Pt. 5, in part, *In re Edward B.*, 210 W. Va. 621, 558 S.E.2d 620 (2001).

First, the petitioner argues that the circuit court erred in adjudicating him in regard to I.L. and terminating his parental rights to that child in the absence of appropriate jurisdiction. Given that the record plainly establishes that the child lived in Virginia prior to the filing of the petition at issue and that the circuit court failed to follow the procedures set forth in West Virginia Code §§ 48-20-101 to -404, the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"), we agree. As we have explained, the UCCJEA "demand[s] a subject-matter jurisdiction analysis before a circuit court may proceed to reach the merits of an abuse and neglect petition" and that "'West Virginia Code § 48-20-101, et seq., is a jurisdictional statute, and the requirements of the statute must be met for a court to have the power to adjudicate child custody disputes.'" *In re A.T.-1*, 248 W. Va. 484, 489-90, 889 S.E.2d 57, 62-63 (2023) (quoting Syl. Pt. 6, *Rosen v. Rosen*, 222 W. Va. 402, 664 S.E.2d 743 (2008)). Here, the court undertook no such analysis regarding I.L., and there is nothing in the record to indicate that it satisfied any of the possible four bases of jurisdiction available under the UCCJEA. *See* W. Va. Code § 48-20-201(a); *see also In re Z.H.*, 245 W. Va. 456, 464, 859 S.E.2d 399, 407 (2021) (summarizing the four bases from this statute as "1) 'home state' jurisdiction; 2) 'significant connection' jurisdiction; 3) 'jurisdiction because of declination of jurisdiction'; and 4) 'default' jurisdiction" (quoting *In re J.C.*, 242 W. Va. 165, 171, 832 S.E.2d 91, 97 (2019))). Therefore, we must vacate the circuit court's adjudicatory and dispositional orders as they relate to I.L. only and remand this case for the court to undertake an appropriate review considering the provisions of the UCCJEA.

However, as to the termination of the petitioner's parental rights to X.M., Z.M.-1, Z.M.-2, Z.M.-3, and A.M., we find no error. Before this Court, the petitioner argues that the circuit court erred in finding that he refused to accept responsibility for the conditions of abuse at issue. In this regard, we have explained that "[f]ailure to acknowledge the existence of the problem, i.e., the truth of the basic allegation pertaining to the alleged 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). The petitioner asserts that the circuit court misapplied this Court's direction in *In re Timber M.* and that this "case has been over-interpreted to its breaking point." Upon our review, we find no error.

Specifically, the record clearly demonstrates that the petitioner did not admit to the full scope of abuse established by the evidence. The petitioner's argument relies heavily on his admission at adjudication but ignores that it was limited only to twice spanking N.M. on the buttocks with a belt, which is far from an acknowledgement of the extensive abuse that was proven by clear and convincing evidence. *See* W. Va. Code § 49-4-601(i) (requiring that adjudicatory findings be based on clear and convincing evidence). Even more importantly, the petitioner justified the abuse as being in response to N.M.'s behavior. Even at the dispositional hearing, the

petitioner continued in his refusal to acknowledge that he injured the child, and his arguments on appeal that he was punished for simply theorizing as to how the injuries could have occurred in his absence ignores the evidence addressed above. Before this Court, the petitioner seeks to limit application of *In re Timber M.* to the instant matter simply because the facts are not identical, but this argument is not compelling given the broad direction that the failure to acknowledge the basic facts underlying his abuse rendered the problems untreatable. As such, we find no error.[6]

The petitioner goes on to argue that it was error to deny him an improvement period and find that there was no reasonable likelihood that he could substantially correct the conditions of abuse, but these arguments flow directly from his flawed contention that he accepted responsibility for the abuse. Given the extensive evidence set forth above, it is clear that an improvement period was not warranted, and we find no error in the denial of the petitioner's motion.[7] *See In re Tonjia M.*, 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002) (circuit courts have discretion to deny an improvement period when no improvement is likely). Similarly, the court did not err in concluding that there was no reasonable likelihood that the petitioner could substantially correct the conditions of abuse at issue, considering that his refusal to accept responsibility resulted in these conditions being untreatable. Accordingly, we find no error in the termination of the petitioner's parental rights to X.M., Z.M.-1, Z.M.-2, Z.M.-3, and A.M. *See* W. Va. Code § 49-4-604(c)(6) (permitting termination of parental rights upon finding "there is no reasonable likelihood that the conditions of . . . abuse can be substantially corrected in the near future" and that termination is necessary for the welfare of the child).

For the foregoing reasons, we vacate, in part, the circuit court's March 10, 2023, adjudicatory order and May 16, 2023, dispositional order insomuch as they pertain to I.L. only; and we remand this matter to the circuit court for further proceedings consistent with the applicable rules and statutes. With respect to X.M., Z.M.-1, Z.M.-2, Z.M.-3, and A.M., the circuit court's May 16, 2023, order is affirmed. The Clerk is directed to issue the mandate contemporaneously herewith.

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

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[6] In support of this argument, the petitioner cites to the dispositional transcript where the circuit court remarked that the petitioner had "taken up a lot of responsibility." The petitioner argues that this isolated statement, taken out of the broader context of the record as a whole, establishes error in the circuit court's finding concerning his failure to acknowledge the conditions of abuse. We note, however, that the petitioner cannot be entitled to relief in this regard, as "[i]t is a paramount principle of jurisprudence that a court speaks only through its orders." *Legg v. Felinton*, 219 W. Va. 478, 483, 637 S.E.2d 576, 581 (2006) (citation omitted).

[7] In support of the argument that denial of an improvement period was error, the petitioner cites to West Virginia Code § 49-4-602(d) to assert that he was "deprived of [his] constitutional rights without requiring the statutorily mandated reasonable efforts at reunification." However, this statute concerns the temporary care, custody, and control of children at various stages of the proceedings and has no bearing on disposition or what efforts are required prior to the termination of a parent's rights, as these issues are governed by West Virginia Code § 49-4-604.

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