

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re S.H.-1, S.H.-2, and R.H.

No. 23-394 (Hampshire County CC-14-2022-JA-6, CC-14-2022-JA-7, and CC-14-2022-JA-8)

MEMORANDUM DECISION

Petitioner Father J.H.¹ appeals the Circuit Court of Hampshire County’s May 12, 2023, order terminating his parental and custodial rights to S.H.-1, S.H.-2, and R.H.,² arguing that the circuit court erred by making a finding at adjudication that the petitioner committed sexual abuse. 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 a petition alleging that the petitioner abused and neglected the children based upon allegations of deplorable conditions of the home and alleged inappropriate touching of S.H.-1. Specifically, the petition alleged that S.H.-1, then twelve years old, disclosed during a forensic interview that the petitioner had been “touching her inappropriately on her chest and on her buttocks since she was about eight years old.” After new disclosures were made by S.H.-2, then eleven years old, a second forensic interview was conducted in July 2022. During this interview, S.H.-2 disclosed that the petitioner touched her “chest and butt,” and that she was aware

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 Lee Niezgoda. Counsel Joyce E. Stewart appears as the children’s guardian ad litem.

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”).

Further, prior to the petition’s filing, J.H. was believed to be the father of all three children. At the end of the proceedings below, evidence indicated that J.H. was not the biological father of any of the children and paternity testing was ordered. Because the petitioner was treated as the father during the majority of the proceedings below and the later paternity testing has no bearing on the petitioner’s appeal, we refer to him as the father.

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

the petitioner also touched S.H.-1. She reported that the contact was both over and under her clothes. Based on these new disclosures, the DHS filed an amended petition in July 2022.

The circuit court held an adjudicatory hearing in August 2022. A Child Protective Services worker testified to the disclosures of sexual abuse by S.H.-1 and S.H.-2 and regarding the deplorable conditions of the home. The forensic interviewer testified and confirmed the children's disclosures as set forth in the petitions. The petitioner testified and denied the allegations of sexual abuse, stating that he did not believe his children. He further admitted to having a history of sexual misconduct and a criminal conviction requiring him to register as a sex offender. The circuit court found that the children were credible in their forensic interviews and that the petitioner's testimony was "largely not credible and self-serving." Further, the court found that the petitioner sexually abused S.H.-1 and S.H.-2 "by engaging in sexual contact, to wit: touching them on their breasts and buttocks" and that the petitioner abused and neglected his children due to the deplorable living conditions in the home. Accordingly, the circuit court adjudicated the petitioner as an abusing and neglecting parent. In February 2023, the petitioner entered a *Kennedy*³ plea to three felony counts of gross child neglect creating substantial risk of bodily injury and one count of third-degree sexual abuse stemming from the same set of facts that prompted the abuse and neglect petitions. After several dispositional hearings culminating in a final hearing in April 2023, the court terminated the petitioner's parental and custodial rights to the children.⁴ It is from this order that the 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). Before this Court, the petitioner is expressly clear that he does not challenge "the merits" of his adjudication for sexual abuse, which appears to mean that he believes there was sufficient evidence upon which to find that he sexually abused at least two of the children. Instead, the petitioner challenges only the sufficiency of the circuit court's findings pertaining to sexual abuse at adjudication. Essentially, the petitioner argues that the circuit court's finding that he sexually abused S.H.-1 and S.H.-2 was error *only* because the court did not make an explicit finding that the touching was for the purpose of sexual gratification.⁵ The circuit

³ See Syl. Pt. 1, *Kennedy v. Frazier*, 178 W. Va. 10, 357 S.E.2d 43 (1987) ("An accused may voluntarily, knowingly and understandingly consent to the imposition of a prison sentence even though he is unwilling to admit participation in the crime, if he intelligently concludes that his interests require a guilty plea and the record supports the conclusion that a jury could convict him.").

⁴ The mother's parental rights were also terminated. The children are placed in a kinship placement while the circuit court continues proceedings regarding the suspected biological fathers.

⁵ The petitioner also argues that the petition was insufficient because it did not make an explicit statement regarding sexual gratification. However, the petitioner fails to cite to any portion of the record wherein he challenged the petition on any grounds, in violation of Rule 10(c)(7) of the Rules of Appellate Procedure which requires that a petitioner's "argument must contain appropriate and specific citations to the record on appeal, including citations that pinpoint when

court’s adjudicatory order found that the petitioner sexually abused S.H.-1 and S.H.-2 by engaging in sexual contact, and this finding is supported by the record. Accordingly, we find no merit in the petitioner’s argument.

Further, the petitioner does not challenge his adjudication based upon the deplorable conditions of the home. Even assuming, *arguendo*, that the petitioner was improperly adjudicated for sexual abuse, he would still be entitled to no relief. Pursuant to West Virginia Code § 49-4-601(i), “[a]t the conclusion of the adjudicatory hearing, the court shall make a determination based upon the evidence and shall make findings of fact and conclusions of law as to whether the child is abused or neglected and whether the respondent is abusing [or] neglecting.” The statute further requires that “[t]he findings must be based upon conditions existing at the time of the filing of the petition and proven by clear and convincing evidence.” *Id.* Here, the court made the finding that the petitioner abused and neglected the children due to the deplorable and unsafe living conditions, and the record supports this finding. As such, we find that the court had clear and convincing evidence upon which to properly adjudicate the petitioner in regard to all of the children. Thus, the petitioner is entitled to no relief.

For the foregoing reasons, we find no error in the decision of the circuit court, and its May 12, 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

and how the issues in the assignments of error were presented to the lower tribunal.” Accordingly, we decline to address this argument.