

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

C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

In re G.P.

No. 23-328 (Randolph County CC-42-2022-JA-72)

MEMORANDUM DECISION

Petitioner Father S.P.¹ appeals the Circuit Court of Randolph County’s May 8, 2023, order terminating his parental rights to G.P., arguing that the circuit court erroneously terminated his parental rights.² 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 October 2022, the DHS filed a petition alleging that the petitioner abused and neglected the child by using drugs and failing to protect the infant from the mother’s drug use during pregnancy. The petition alleged that when the child was born, the mother tested positive for amphetamines, cannabis, fentanyl, opiates, and oxycodone and admitted to recent heroin use. The child tested positive for amphetamines and fentanyl at birth and suffered symptoms of withdrawal. The petition further alleged that the petitioner and the mother were removed from the hospital for inappropriate behavior and smoking in the room.

In December 2022, the circuit court held an adjudicatory hearing at which the petitioner stipulated that he abused and neglected the child by using drugs to the detriment of his parenting abilities and he knew of the mother’s drug use while pregnant with the child. Thus, the court adjudicated the petitioner of abusing and neglecting the child. It appears from the record that the petitioner filed a written motion for a post-adjudicatory improvement period shortly after the hearing.

¹ The petitioner appears by counsel Timothy H. Prentice. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General James W. Wegman. Counsel Heather M. Weese appears as the child’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”).

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

After two continuances due to the petitioner being in various substance abuse treatment facilities, the court held a dispositional hearing in April 2023, at which the petitioner did not appear.³ A registered nurse who worked at one of the many treatment facilities that the petitioner attended testified that he was a patient at her facility for four days, “did not participate in the program at all,” and was kicked out of the program after assaulting another patient. Next, a Child Protective Services (“CPS”) employee testified as to the eight treatment facilities the petitioner attended during the pendency of the case. The petitioner did not complete any treatment program as he was kicked out of three facilities, checked himself out of two facilities, and left another two facilities against medical advice. The CPS employee further testified that the petitioner did not drug screen and did not request visits with the child. In its May 8, 2023, dispositional order, the court noted the petitioner’s “lack of commitment to treatment” as evidenced by his numerous and short stays at different treatment facilities and his noncooperation at each facility. The court noted that this was the third dispositional hearing that the petitioner failed to attend due to his admission into different inpatient treatment facilities and asserted that the matter could not be delayed any longer, finding that “[a]t some point, it stops being about parents and addressing their problems and has to be about the repeated delays and [the] impact[] on the children.” The court also found that the petitioner demonstrated his inability to resolve the circumstances leading to the abuse and neglect, that he was unwilling or unable to provide for the child, that there was no reasonable likelihood that the conditions of neglect and abuse could be substantially corrected in the future, and that the child needed continuity in care and caretakers. Ultimately, the court terminated the petitioner’s parental rights. It is from the dispositional order that the petitioner appeals.⁴

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 argues that the circuit court erred by terminating his parental rights rather than granting him an improvement period because he was in substance abuse treatment while the dispositional hearing was being held.⁵ We disagree. The petitioner cites to no portion of the record indicating that he was unable

³ The petitioner was represented by counsel at this hearing. In his brief, the petitioner claims that the treatment facility at which he was staying would not transport him to the dispositional hearing. His attorney represented that the petitioner called approximately two hours prior to the dispositional hearing advising that he had been admitted to another treatment facility that day.

⁴ The mother’s rights were relinquished. The permanency plan is adoption in the current placement.

⁵ The petitioner further asserts, without any corroborating evidence, that he “complet[ed] his rehabilitation program since the Notice of Appeal was filed.” Clearly, the petitioner can cite to no evidence in the record to support this claim, given that he had not completed any substance abuse treatment at the time of the dispositional hearing. *See* W. Va. R. App. P. 10(c)(7) (requiring that arguments “contain appropriate and specific citations to the record on appeal, including citations that pinpoint when and how the issues in the assignments of error were presented to the lower tribunal.”); *see also* W. Va. Code § 49-4-604(d) (permitting circuit courts to find “no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected . . . based on the evidence before the court.”) (emphasis added). Accordingly, this assertion is irrelevant to the circuit court’s determination below and we disregard it on appeal.

to obtain transportation to the hearing.⁶ However, the record does show that the petitioner failed to comply with treatment facility directives or simply left each treatment facility that he attended throughout the proceedings below. The court noted that it continued disposition twice due to the petitioner's admission into new facilities and that the child's best interests were not served by the delays. A circuit court may grant an improvement period when, among other things, "[t]he respondent demonstrates, by clear and convincing evidence, that the respondent is likely to fully participate in the improvement period." W. Va. Code § 49-4-610(2)(B). Here, the court specifically found that the petitioner was not likely to participate in an improvement period due to his poor performance and lack of cooperation at the numerous treatment facilities he attended. In addition, the petitioner failed to participate in drug screens, further demonstrating his unwillingness to abide by the court's directives. Accordingly, we find no abuse of discretion in the denial of the petitioner's motion. *See In re M.M.*, 236 W. Va. 108, 115, 778 S.E.2d 338, 345 (2015) ("West Virginia law allows the circuit court discretion in deciding whether to grant a parent an improvement period.").

Inasmuch as the petitioner argues that termination of his parental rights was erroneous, we also disagree. A circuit court may terminate parental rights "[u]pon a finding that there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future and[] when necessary for the welfare of the child." W. Va. Code § 49-4-604(c)(6). The court made these findings based upon substantial evidence, including the petitioner's overall lack of cooperation with substance abuse treatment at multiple facilities and the child's need for stability. Before this Court, the petitioner makes no attempt to challenge these findings. Accordingly, the circuit court properly terminated the petitioner's parental rights, and we decline to disturb its decision. *See* Syl. Pt. 5, in part, *In re Kristin Y.*, 227 W. Va. 558, 712 S.E.2d 55 (2011) ("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 . . . 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))).

For the foregoing reasons, we find no error in the decision of the circuit court, and its May 8, 2023, order is hereby affirmed.

Affirmed.

ISSUED: August 27, 2024

⁶ The petitioner cites to no authority to argue that he should have been entitled to yet another continuance of the dispositional hearing, so we decline to address the issue. *See State v. Larry A.H.*, 230 W. Va. 709, 716, 742 S.E.2d 125, 132 (2013) ("[I]ssues . . . mentioned only in passing but . . . not supported with pertinent authority[] are not considered on appeal." *State v. LaRock*, 196 W. Va. 294, 302, 470 S.E.2d 613, 621 (1996)"). Moreover, in its order scheduling the final dispositional hearing, the court notified the parties that it would move forward in their absence in light of the dispositional hearing having already been continued twice.

CONCURRED IN BY:

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