

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re S.D. and C.D.

No. 23-366 (Mason County CC-26-2022-JA-34 and CC-26-2022-JA-35)

MEMORANDUM DECISION

Petitioner Father A.D.¹ appeals the Circuit Court of Mason County’s May 30, 2023, order terminating his parental rights to S.D. and C.D., arguing that the court erred in revoking his improvement period, terminating his parental rights, and denying his motion for post-termination visitation.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.

The DHS initiated the proceedings below by filing a petition in April 2022 alleging, primarily, conduct by adult respondents not at issue in this appeal. At the time, the allegations against the petitioner were that he permitted his children to be exposed to abuse and drug use in the mother’s home. Nonetheless, the DHS initially placed the children in the petitioner’s physical custody. However, in August 2022, the circuit court granted the guardian’s motion to remove the children from the petitioner’s custody after they reported the petitioner and his partner “fight constantly.” According to the children, the petitioner and his partner would “yell[] and scream[]” starting early in the morning, and the petitioner “frequently threatens that he is going to kill himself during his arguments . . . in front of and directly to the children.” S.D. was so traumatized by these threats that “she was crying just talking about it” with the guardian. Later in August 2022, the guardian filed a supplemental abuse and neglect petition to add additional allegations against the petitioner, including that his anger management issues resulted in his behavior described above.

¹ The petitioner appears by counsel Robert W. Bright. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General James Wegman. Counsel Tanya Hunt Handley 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).

On August 24, 2022, the court held a hearing at which the petitioner admitted to the allegations against him, and the circuit court adjudicated him of abusing and neglecting the children on the basis of his anger management issues and resulting aggressive conduct. Thereafter, the court granted the petitioner's motion for a post-adjudicatory improvement period which required him to complete anger management and Batterer Intervention and Prevention Program ("BIPP") courses, attend parenting and adult life skills classes, and submit to random drug screens.

In February 2023, the guardian filed a motion to revoke the petitioner's improvement period due to his noncompliance. At a hearing on the motion on February 6, 2023, a witness indicated that the petitioner missed twenty drug screens between November 2022 and February 2023. The witness also confirmed that the petitioner attended only one BIPP class and three anger management classes and had not participated in those services since October 2022. The petitioner admitted that he was not in "full compliance" with the terms of his improvement period and that he simply did not "call every day" regarding his required drug screens. Based on the evidence of the petitioner's lack of compliance, the circuit court revoked the improvement period.

In March 2023, the court held a dispositional hearing, during which a witness testified that, since the February 6, 2023, hearing, the petitioner missed three drug screens, four BIPP classes, and four anger management classes. Further, a Child Protective Services worker explained that she had not heard from the petitioner since the prior hearing. The petitioner testified and disputed testimony regarding his missed screens and classes. Based on the evidence, the court found that there was no reasonable likelihood that the petitioner could substantially correct the conditions of abuse and neglect in the near future. Further, citing their need for a stable and permanent home environment, the court found that the children's welfare required termination of the petitioner's parental rights. The petitioner moved for post-termination visitation, which the court held in abeyance. Following a hearing on the issue in April 2023, the court denied the petitioner's motion based on the children's statements to the guardian that the petitioner's conduct caused them emotional distress and placed them in potentially physically dangerous situations.³ The petitioner appeals from the May 30, 2023, dispositional order.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 first argues that the circuit court erred in terminating his improvement period. West Virginia Code § 49-4-610(7) governs termination of improvement periods and permits a circuit court, upon a motion by any party, to take such action "when the court finds that respondent has failed to fully participate in the terms of the improvement period." On appeal, the petitioner specifically admits that he "did not comply with all of the requirements" of his improvement period, yet he asserts that the circuit

³ The mother's custodial rights were also terminated. The permanency plan for the children is legal guardianship with a relative.

⁴ Following the entry of the May 30, 2023, dispositional order, the circuit court entered an "Amended Order Disposition/Termination of Parental Rights." This order includes more detailed findings and makes reference to facts not relevant to the resolution of this appeal.

court was required to permit his improvement period to expire naturally. The petitioner's argument is not supported by the plain language of West Virginia Code § 49-4-610(7). Confusingly, the petitioner also argues that the circuit court's termination of his improvement period "reduc[ed his] opportunity to fully participate;" however, the record shows that it was the petitioner's lack of participation, such as his refusal to attend drug screens and classes for anger management and BIPP, that necessitated termination. Based on the foregoing, we find that the court did not abuse its discretion in terminating the petitioner's improvement period. *See* Syl. Pt. 2, *In re Lacey P.*, 189 W. Va. 580, 433 S.E.2d 518 (1993) ("[I]t is . . . within the court's discretion to terminate the improvement period . . . if the court is not satisfied that the [parent] is making the necessary progress.").

Next, the petitioner argues that termination of his parental rights was in error, primarily, because there was a reasonable likelihood that he could substantially correct the conditions of abuse and neglect. Situations in which there is no reasonable likelihood that conditions of abuse and neglect can be substantially corrected include when a parent has "not responded to or followed through with a reasonable family case plan or other rehabilitative efforts . . . designed to reduce or prevent the abuse or neglect of the child." W. Va. Code § 49-4-604(d)(3). In support of his argument, the petitioner again asserts that he would have made significant efforts to remedy the issues of abuse and neglect had his improvement period been permitted to continue. His arguments ring hollow, however, as the record shows that services continued following the termination of his improvement period, yet the petitioner still refused to fully comply as he missed many drug screens and classes for anger management and BIPP in the weeks following the February 6, 2023, hearing. Accordingly, we find no error in the circuit court's determination that there was no reasonable likelihood that the petitioner could substantially correct the conditions of abuse and neglect and that termination of his rights was necessary for the children's welfare, permanency, and stability. Circuit courts are permitted to terminate parental rights upon these findings, and we conclude that termination here was not in error. *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 neglect or abuse can be substantially corrected in the near future" and that termination is necessary for the welfare of the children).

Finally, the petitioner argues that it was error to deny him post-termination visitation with the children. As we have explained, after terminating parental rights, "the circuit court may nevertheless in appropriate cases consider whether continued visitation or other contact with the abusing parent is in the best interest of the child." Syl. Pt. 11, in part, *In re Daniel D.*, 211 W. Va. 79, 562 S.E.2d 147 (2002) (quoting Syl. Pt. 5, *In re Christina L.*, 194 W. Va. 446, 460 S.E.2d 692 (1995)). In making this determination, "the circuit court should consider whether a close emotional bond has been established between parent and child and the child's wishes, if he or she is of appropriate maturity to make such request." *Id.* However, most critically, "[t]he evidence must indicate that such visitation or continued contact would not be detrimental to the child's well being and would be in the child's best interest." *Id.* Here, the circuit court specifically highlighted the traumatic impact of the petitioner's conduct on the children in determining that post-termination visitation would not be in their best interests. On appeal, the petitioner argues that because he had no outbursts during supervised visits during the proceedings, this finding is in error. We do not agree, as the petitioner's refusal to address his underlying anger management issues resulted in a continued threat to the children. Further, although the court noted the bond between the petitioner

and the children, this factor is only one of several for consideration, and the court correctly concluded that the children’s best interests outweighed the existing bond. We decline to disturb this determination on appeal. *See State v. Guthrie*, 194 W. Va. 657, 669 n.9, 461 S.E.2d 163, 175 n.9 (1995) (“An appellate court may not decide the credibility of witnesses or weigh evidence as that is the exclusive function and task of the trier of fact.”).⁵ Accordingly, we find no error in the denial of post-termination visitation.

For the foregoing reasons, we find no error in the decision of the circuit court, and its May 30, 2023, order is hereby affirmed.

Affirmed.

ISSUED: July 31, 2024

CONCURRED IN BY:

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

⁵ The petitioner claims that there is no evidence the guardian asked the children whether they wished to have continued contact with the petitioner. The circuit court, however, was clear in denying post-termination visitation that “[t]he guardian ad litem has spoken with the children, and her recommendation as to no post-termination visitation took into consideration not only the children’s best interests but also the children’s wishes.”