

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

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

In re L.H.

No. 23-424 (Kanawha County 21-JA-655)

MEMORANDUM DECISION

Petitioner Father F.H.¹ appeals the Circuit Court of Kanawha County’s June 15, 2023, order terminating his parental rights to L.H., arguing that the court erred in terminating his parental rights without affording him additional time to demonstrate improvement.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 proceedings were initiated upon the filing of a petition in November 2021 alleging abuse and neglect by the child’s mother when she tested positive for fentanyl, amphetamine, and methamphetamine upon giving birth to L.H. The following month, the DHS filed an amended petition alleging that the petitioner failed to protect the child from the mother’s drug use during pregnancy. At a hearing in January 2022, the circuit court ordered the petitioner to participate in services, including parenting and adult life skills education, random drug screens, and supervised visits upon the completion of three clean drug screens.

However, the petitioner’s participation was poor from the outset, as visitation supervisors indicated that the petitioner was not prepared for visits with the child although he had been given extensive instructions about how to care for children born after exposure to drugs. Despite repeated instructions, the petitioner was reluctant to care for the child. Further, by May 2022, it was reported that the petitioner was not attending parenting or adult life skills services. As a result, at a hearing

¹ The petitioner appears by counsel Jason S. Lord. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General James Wegman. Counsel Sandra K. Bullman appears as the child’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).

in June 2022, the court found that the petitioner was noncompliant with services and visitation, yet it ordered that the petitioner's services continue. Despite the court's order for continued services, correspondence from a provider later in June 2022 indicated that the petitioner was not compliant with his educational services "and ha[d] not seen the baby for months" because the provider "lost contact with him." By July 2022, the petitioner's service provider recommended termination of his parental rights due to noncompliance, especially considering that the petitioner had not seen the child for approximately three months, had no bond with the child, and could provide no explanation for his failures.

Over the next several months, the petitioner continued in his failure to fully comply with services, though he submitted to a parental fitness evaluation. In April 2023, after receiving the results of the evaluation, the DHS indicated that it opposed the granting of an improvement period because of the petitioner's "extremely poor" prognosis for improved parenting. Further, during the evaluation, the petitioner admitted that he stopped attending parenting services because he moved, but went on to explain that, even after moving back to his original residence, he still failed to participate in services. By the time of his evaluation, the petitioner had not seen the child for over one year.

After having continued adjudication several times, the court held a final adjudicatory hearing on April 13, 2023. Based on the evidence, the court found that the petitioner "failed to protect the child from the mother's substance abuse even though he knew that she was using substances during her pregnancy." As a result, the court found that the petitioner abused and/or neglected the child. The petitioner orally moved for a post-adjudicatory improvement period, but the court denied the same, finding that the petitioner had not been substantially compliant with the previously ordered services. Following adjudication, both the DHS and the guardian recommended termination of the petitioner's parental rights, with the DHS noting that the petitioner's minimal compliance with services and visitation indicated that he was "not . . . sufficiently motivated to parent" the child.

In May 2023, the court held the final dispositional hearing, during which the court heard evidence that the petitioner tested positive for THC just one week prior to the hearing. Further, a Child Protective Services worker testified that the DHS recommended termination of the petitioner's parental rights because he did not comply with services when offered and failed to respond to attempts at contact. During his testimony, the petitioner admitted that he chose to stop complying with services and claimed that he had no explanation for his recent positive drug screen. The petitioner requested additional time to participate in services, but the court found that he was "provided ample time to do all of the things" necessary to remedy the conditions of abuse and neglect. Based on the petitioner's failure to participate, the court found that there was no reasonable likelihood that he could substantially correct the conditions of abuse and neglect. The court also found that the child's best interests required termination of the petitioner's parental rights. Accordingly, the court terminated the petitioner's parental rights to the child.³ The petitioner appeals from the dispositional order.

³ The mother's parental rights were also terminated. The permanency plan for the child is adoption in the 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). Before this Court, the petitioner raises a single assignment of error, in which he alleges that the circuit court erred in terminating his parental rights "[w]ithout the opportunity to 'improve'" or "address parental shortcomings." The petitioner's argument, however, has no basis in law or fact. Indeed, as the circuit court correctly noted, the petitioner had ample time to participate in remedial services, yet willfully failed to participate or even remain in contact with the DHS.⁴ It was this failure to comply with services that formed the basis for the circuit court's finding that there was no reasonable likelihood that the petitioner could substantially correct the conditions of abuse and neglect in the near future. This was in accordance with West Virginia Code § 49-4-604(d)(3), which sets forth that 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." Additionally, the record shows that at the time of disposition, the petitioner had not visited the child for more than one year. As we have explained, "the level of interest demonstrated by a parent in visiting his or her children while they are out of the parent's custody is a significant factor in determining the parent's potential to improve sufficiently and achieve minimum standards to parent the child." *In re Katie S.*, 198 W. Va. 79, 90 n.14, 479 S.E.2d 589, 600 n.14 (1996) (citations omitted). Further, the court found that termination of the petitioner's parental rights was in the child's best interests. 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 that "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).

For the foregoing reasons, we find no error in the decision of the circuit court, and its June 15, 2023, order is hereby affirmed.

Affirmed.

ISSUED: August 27, 2024

⁴ Although not assigned as a specific error, the petitioner nonetheless relies on authorities related to the granting of improvement periods in support of his argument that termination was in error. However, we note that the petitioner failed to include citation to the record to demonstrate that he filed a written motion in support of his request for a post-adjudicatory improvement period, in violation of Rule 10(c)(7) of the Rules of Appellate Procedure. As we have explained, "[a] circuit court may not grant a post-adjudicatory improvement period . . . unless the respondent . . . files a written motion requesting the improvement period" in accordance with West Virginia Code § 49-4-610(2). Syl. Pt. 4, in part, *State ex rel. P.G.-I v. Wilson*, 247 W. Va. 235, 878 S.E.2d 730 (2021). As such, the petitioner is entitled to no relief regarding the denial of the motion for a post-adjudicatory improvement period, to the extent he is arguing the same before this Court.

CONCURRED IN BY:

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