

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

*In re S.C.*

**No. 23-441** (Cabell County 22-JA-56)

**MEMORANDUM DECISION**

Petitioner Father J.C.<sup>1</sup> appeals the Circuit Court of Cabell County’s June 23, 2023, order terminating his parental rights to the child, S.C., arguing that the circuit court improperly terminated his parental rights because he corrected the conditions of abuse and neglect.<sup>2</sup> 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 May 2022, the DHS filed an abuse and neglect petition alleging that the petitioner was unaware the mother gave birth and failed to provide appropriate housing and basic needs for the child. The petitioner stipulated to the allegations in the petition at an adjudicatory hearing held in August 2022. He further admitted that he was residing with his mother who had an extensive Child Protective Services (“CPS”) history, including his own removal from her home when he was a child. However, the petitioner asserted that he was working at a fast-food restaurant so he could purchase a house. During this hearing, the guardian proffered additional concerns. Specifically, during visits with the child, the petitioner seemed uninterested by scrolling his cell phone, allowing his girlfriend to do the majority of interacting, and leaving early. The circuit court acknowledged the petitioner’s petulance and stated that “it was easy to see that he could appear disinterested with his child, as he appeared to be disinterested during this hearing.” Ultimately, the court adjudicated the petitioner as a neglectful parent based on unstable housing posing an imminent risk to the child. The court further ordered the petitioner to participate in random drug screening.

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<sup>1</sup> The petitioner appears by counsel Steven T. Cook. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Heather L. Olcott. Counsel Allison Huson 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”).

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

The circuit court scheduled the matter for a dispositional hearing in October 2022; however, the petitioner was not present, and his counsel requested a continuance. The guardian objected to the continuance based on the petitioner's refusal to drug screen, failure to appear for visits with the child, and overall defiance. Despite the guardian's objection and noting that the petitioner had been disrespectful of the proceedings, the court found it appropriate to continue the hearing to later that month. At the next hearing, the petitioner apologized for his behavior and requested a post-adjudicatory improvement period, which the court granted.

In January 2023, the circuit court held a review hearing, during which the DHS and guardian requested the court terminate the petitioner's improvement period and schedule disposition. A CPS worker testified that the petitioner missed four of the six scheduled visits; he left the two visits he did attend early; had only submitted to one drug screen; and even though the worker had prepared a Family Unification Program ("FUP") letter to assist him in obtaining housing, he was still residing in his mother's home. The petitioner claimed that he missed visits due to sicknesses and accidents. He further explained that he worked forty hours per week and that his employer would not allow him to miss work for visits. He admitted failing to drug screen because, "I know that I don't do drugs . . . that wasn't, like, my big concern." He further claimed that he and his sister were getting an apartment. At the conclusion of the testimony, the court held the termination of the petitioner's improvement period in abeyance, advising the petitioner that this would be his last chance to prove to the court that he could improve.

A second review hearing was held in March 2023. The same CPS worker testified and stated that since the last hearing, the petitioner missed four drug screens, and a hair follicle test was positive for THC. Furthermore, the petitioner failed to appear for three visits with the child, had not worked in two months, and still lived with his mother. The petitioner insisted that he was trying to obtain housing and was about to be hired for a new job. He further explained that he only tested positive for THC because his brother smokes marijuana but maintained that he had not used the drug in two years. Based on the foregoing, the circuit court ordered that visitation with the child cease but allowed the petitioner to continue the remainder of his improvement period, setting disposition upon its expiration.

The dispositional hearing was held in April 2023, at which time the DHS and guardian supported termination of the petitioner's parental rights due to the petitioner's continued noncompliance. The CPS worker testified that the petitioner missed several parenting service meetings, did not have stable employment, did not obtain housing, and did not drug screen. The circuit court found there was no likelihood that the conditions of abuse or neglect could be corrected due to the petitioner's failure to cooperate to improve his parenting deficiencies. Further finding it to be necessary for the child's welfare, the court terminated the petitioner's parental rights.<sup>3</sup> The court memorialized this ruling in its June 23, 2023, dispositional order, from which the petitioner appeals.

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<sup>3</sup> The mother's parental rights were also terminated. The permanency plan for the child is adoption by her foster placement.

However, following the entry of this order, the petitioner retained new counsel for purposes of an appeal and filed a motion in circuit court requesting modification of the dispositional order in July 2023. In support of the motion, the petitioner submitted a hair follicle test, which indicated that the petitioner screened negative for all substances. Additionally, the petitioner submitted a letter from his current employer stating that he had started employment on July 12, 2023. The court held a hearing on the petitioner's motion on July 20, 2023. The petitioner testified at the hearing and stated that he secured an apartment, was employed, and had "a lot more drive." The court took the motion under advisement and ordered the petitioner to drug screen immediately following the hearing. According to appellate records, the petitioner's drug screen returned positive for THC. It is important to note that the court's ruling on the petitioner's motion was not included in the appendix record on appeal and the petitioner does not challenge the court's ruling on this motion.

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). The petitioner argues that the circuit court erred by terminating his parental rights, asserting that he corrected the conditions for which he was adjudicated. We find the petitioner's argument without merit as the record supports the court's decision.

West Virginia Code § 49-4-604(c)(6) permits the circuit court to terminate an individual's parental rights upon finding no reasonable likelihood that the conditions of abuse or neglect can be substantially corrected in the near future and when necessary for the child's welfare. Here, the court properly made these findings given that, at the time of disposition, the petitioner continued to live with his mother, whose home was deemed inappropriate because of her CPS history. This was the exact issue for which the petitioner was adjudicated, and he had not demonstrated any likelihood that this would be corrected throughout the case despite the court affording him numerous chances to utilize the DHS's assistance. Furthermore, it was clearly necessary for the child's welfare to terminate the petitioner's parental rights based on the petitioner's inconsistent participation and failure to exhibit any interest in visitation with the child. *See In re Katie S.*, 198 W. Va. 79, 90 n.14, 479 S.E.2d 589, 600 n.14 (1996) ("We have previously pointed out that 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." (citation omitted)). While the petitioner insists that he remedied the conditions of abuse and neglect, he relies on the evidence submitted in July 2023 in support of his motion for modification, months after the court terminated his parental rights at disposition.<sup>4</sup> However, *at the time of disposition*, the petitioner had not remedied the

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<sup>4</sup> We again point out that the petitioner is not challenging the circuit court's ruling regarding the motion for modification on appeal. However, to the extent the petitioner argues error regarding his motion for modification of the dispositional order, we have held, "[a] person whose parental rights have been terminated by a final order . . . does not have standing as a 'parent,' . . . to move for a modification of disposition of the child with respect to whom his . . . parental rights have been terminated." Syl. Pt. 6, in part, *In re Cesar L.*, 221 W. Va. 249, 654 S.E.2d 373 (2007). Thus, we refuse to address the petitioner's arguments pertaining to his motion for modification of disposition or consider the evidence relied upon in support thereof.

conditions for which he was adjudicated, as stated herein, and the court gave the petitioner multiple opportunities to remedy those issues before terminating his parental rights.<sup>5</sup> *See State ex rel. Amy M. v. Kaufman*, 196 W. Va. 251, 260, 470 S.E.2d 205, 214 (1996) (“Although it is sometimes a difficult task, the trial court must accept the fact that the statutory limits . . . dictate that there comes a time for decision, because a child deserves resolution and permanency.”).<sup>6</sup>

Accordingly, we find no error in the decision of the circuit court, and its June 23, 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

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<sup>5</sup> The petitioner further argues that the circuit court failed to recognize that he corrected the conditions of abuse and neglect without DHS assistance; however, we disagree based on our review of the record, which reveals that the DHS provided assistance specifically with his housing efforts by preparing a FUP letter for this purpose. The DHS further provided services such as drug screening, individualized parenting classes, and visitation, with which the petitioner did not comply. Therefore, the petitioner is entitled to no relief.

<sup>6</sup> While not asserted as an assignment of error, the petitioner argues in passing that the circuit court should have extended his improvement period or granted a post-dispositional improvement period. However, upon our review of the record, the petitioner did not move the court for either form of relief; therefore, we refuse to address this argument on appeal. *See Noble v. W. Va. Dep’t of Motor Vehicles*, 223 W. Va. 818, 821, 679 S.E.2d 650, 653 (2009) (“‘Our general rule is that nonjurisdictional questions . . . raised for the first time on appeal, will not be considered.’ *Shaffer v. Acme Limestone Co., Inc.*, 206 W.Va. 333, 349 n. 20, 524 S.E.2d 688, 704 n. 20 (1999).”).