

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

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

In re I.F.-1 and I.F.-2

No. 23-463 (Lewis County CC-21-2022-JA-31 and CC-21-2022-JA-32)

MEMORANDUM DECISION

Petitioner Father I.F.-3¹ appeals the Circuit Court of Lewis County’s June 30, 2023, order terminating his parental rights to I.F.-1 and I.F.-2,² arguing that the termination was erroneous because the DHS failed to meet its burden of proof. 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 April 2022, the DHS filed an abuse and neglect petition against the parents alleging that a postal worker found then-two-year-old I.F.-1 in the road with no clothes, an incident for which the mother was charged criminally.³ The petition further alleged that the residence was in a deplorable condition, that the mother admitted to using methamphetamine to the Child Protective Services (“CPS”) worker, and that the petitioner suspected the mother was using drugs.

At an adjudicatory hearing in June 2022, the petitioner stipulated that he should have known of the mother’s drug use, that he also had issues with drug use, and that the home was not safe or habitable for the children. The circuit court accepted the petitioner’s stipulation and adjudicated him as an abusing parent. The petitioner received a post-adjudicatory improvement period that required him to submit to substance abuse counseling and drug screening. Although

¹ The petitioner appears by counsel Phil Isner. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Katica Ribel. Counsel Melissa T. Roman 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”).

² We use initials where necessary to protect the identities of those involved in this case. *See* W. Va. R. App. P. 40(e). Further, because the children and the petitioner share the same initials, we use numbers to differentiate them.

³ The proceedings below also concerned additional children who are not at issue in this appeal.

the DHS initially sought to return the children to the petitioner's custody because of his successful participation, the DHS filed a motion to terminate the petitioner's parental rights on November 21, 2022, after the petitioner and the mother relapsed. Additionally, the DHS was informed that the mother was pregnant and that the petitioner was the father.⁴

Following several continuances, the dispositional hearing was held in June 2023. At the hearing, a CPS worker testified that the petitioner submitted to a hair follicle test, which was positive for methamphetamine. The CPS worker explained that the petitioner agreed to immediately attend an inpatient rehabilitation program on November 23, 2022, but never submitted to treatment. She further explained that the petitioner was not forthcoming or honest about his drug use until the hair follicle test was confirmed to be positive. A provider who administered drug screens explained that the petitioner frequently failed to screen, particularly from September 2022 to November 2022; tested positive for controlled substances on multiple occasions; and had numerous insufficient or diluted urine samples, which are considered administrative failures. According to the provider, the mother had urine screens positive for morphine and codeine in January 2023 and methamphetamine in April 2023, in addition to hair follicle tests positive for methamphetamine in November 2022 and January 2023. The provider further noted that while the petitioner's urine screens had been negative for controlled substances since June 2022, the petitioner had hair follicle tests in August 2022, November 2022, and January 2023 that were positive for methamphetamine. Nonetheless, the provider confirmed that the petitioner and the mother produced several valid, negative drug screens, including just before the hearing. Finally, the provider explained that the drug screening facility offered to assist the petitioner with rehabilitation services but that he never requested assistance.

The petitioner testified and admitted to using methamphetamine once in September 2022 and not successfully completing his improvement period. The petitioner also admitted that he shaved the hair off his head, arms, legs, and armpits before the November hair follicle test in hopes that the new hair would not contain methamphetamine. The petitioner claimed that he was denied admittance to an inpatient drug rehabilitation facility. Instead, he enrolled in an online intensive outpatient program, but not until February 2023. In addition, the petitioner stated that he began participating, when his schedule allowed, in an online drug counseling program in March 2023 and an in-person recovery program in May 2023. However, he explained that he would not go to an inpatient rehabilitation program because he did not want to stop working nor did he think he needed it. Additionally, the petitioner maintained that the mother had not used any controlled substances since her relapse in 2022, that her positive drug screens were incorrect, and that he trusts the mother and is confident she is not using drugs.

Based on the evidence, the circuit court found that the parents did not successfully complete their improvement periods. The parents admitted to relapsing and "delayed in getting the services necessary to ensure remediation of their parenting deficiencies and drug addiction." The circuit court also stated that it did not find credible the petitioner's testimony that he only used methamphetamine on one occasion in September 2022 given the extensive evidence regarding the

⁴ The mother gave birth in May 2023 to their third child. Separate abuse and neglect proceedings were initiated for the child, and the parents' parental rights were terminated. A separate appeal is currently pending before this Court.

timeframes of his drug screens and admissions. Furthermore, the circuit court found that the petitioner continued to have a relationship with the mother and denied that the mother used drugs throughout her pregnancy, despite drug screens indicating otherwise. Thus, the circuit court determined that there had been “no substantial change of circumstances since [the parents] were granted an improvement period,” and the parents were “unwilling or unable to provide adequately for the children’s needs.” As such, the circuit court concluded that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future and that termination of the petitioner’s parental rights was necessary for the children’s welfare. Accordingly, the circuit court terminated the petitioner’s parental rights to the children.⁵ It is from the dispositional 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 argues that the evidence did not support the circuit court’s finding that there was no reasonable likelihood he could substantially correct the conditions of abuse and neglect in the near future. The petitioner contends that the circuit court “gave insufficient weight to the evidence in the record that supported [the petitioner’s] capacity to correct the conditions of abuse and neglect.” Specifically, the petitioner relies on testimony that he tested negative on many urine screens, completed an intensive outpatient program, and participated in drug counseling. We find no merit in the petitioner’s argument.

The phrase “no reasonable likelihood that conditions of abuse and neglect can be substantially corrected” includes circumstances where 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, as evidenced by the continuation or insubstantial diminution of [those] conditions.” W. Va. Code § 49-4-604(d)(3). Here, the petitioner’s admissions alone provide clear and convincing evidence supporting the circuit court’s findings. The petitioner admitted to not complying with the terms and conditions of his improvement period, which included rehabilitative services. The petitioner does not dispute that he used methamphetamine, missed drug screens because he knew he would test positive, was untruthful with the multidisciplinary team, shaved his body in an attempt to defeat a hair follicle test, and did not seek any counseling or treatment until after his improvement period ended. Moreover, while the petitioner’s recent efforts to seek treatment and maintain sobriety are commendable, the petitioner’s continued denial of the mother’s drug use while she was pregnant in the face of multiple positive drug screens is also clear and convincing proof that the conditions of abuse or neglect would not be substantially corrected in the near future, as his refusal to acknowledge the reality of her drug use continued unabated during the entirety of the proceedings. Thus, despite all of the petitioner’s efforts, the record shows that he is in the same position as when the abuse and neglect petition was filed—unable to protect the children from the mother’s and his own drug use. Further, the court found that termination of the petitioner’s parental rights was necessary for the children’s welfare. As we have explained, circuit courts are permitted to terminate an abusing parent’s parental rights upon these findings. *See* W. Va. Code § 49-4-604(c)(6); *see also* Syl. Pt.

⁵ The mother’s parental rights were also terminated. The permanency plan for I.F.-1 and I.F.-2 is adoption in their current placement.

5, *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))). Accordingly, the circuit court did not err in terminating the petitioner’s parental rights.

For the foregoing reasons, the circuit court’s June 30, 2023, order is hereby affirmed.

Affirmed.

ISSUED: August 27, 2024

CONCURRED IN BY:

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