

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re B.S.

No. 23-477 (Harrison County CC-17-2023-JA-37)

MEMORANDUM DECISION

Petitioner Father M.C.¹ appeals the Circuit Court of Harrison County’s July 12, 2023, order terminating his parental rights to the child, B.S., arguing that the circuit court erred by denying his motion for an improvement period and terminating his parental rights rather than implementing a less restrictive dispositional alternative.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.*

Prior to the filing of the instant petition, the DHS filed an initial abuse and neglect petition in August 2021 against the parents of B.S. Following their adjudication as abusing and neglecting parents based on their stipulations to domestic violence, substance abuse, and deplorable living conditions, the parents successfully completed post-adjudicatory improvement periods. In September 2022, the case was dismissed, and the child was returned to the parents’ custody.

Then, in March 2023, the DHS filed the instant abuse and neglect petition after the petitioner was arrested for violating the terms of his probation by engaging in domestic violence. In addition to the allegations of domestic violence, the petition further alleged that the petitioner admitted to using drugs the month prior and tested positive for methamphetamine, amphetamine, and fentanyl when screened. Upon investigation, a Child Protective Services (“CPS”) worker observed the home to be unsafe for the child. Therefore, the DHS alleged that the child was abused and neglected.

¹ The petitioner appears by counsel Heidi M. Georgi Sturm. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Kristen E. Ross. Counsel Allison S. McClure 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).*

During the May 2023 adjudicatory hearing, the court admitted into evidence photos of the home, an order revoking the petitioner's deferred adjudication and accepting his guilty plea in the pending criminal proceeding, and the petitioner's positive drug screen results. The petitioner admitted to relapsing in February 2023 on fentanyl while the child was in his care upon return from daycare. The petitioner further admitted to relapsing again in March 2023. Considering the evidence presented, the court found the child to be neglected and adjudicated the petitioner as a neglectful parent based on his substance abuse issues and the deplorable housing conditions. The petitioner later filed a motion for a post-adjudicatory improvement period.

At the final dispositional hearing held on June 26, 2023, the DHS and guardian ad litem supported termination of the petitioner's parental rights. The petitioner requested a continuance of disposition to await the outcome of his criminal case, which the circuit court denied. The DHS presented evidence concerning petitioner's criminal proceeding, including testimony that the petitioner was initially unsuccessful on a deferred adjudication. As a result, the petitioner was sentenced to one to five years of incarceration, though the sentence was suspended, and he was granted a three-year period of supervised probation that required him to complete a substance abuse treatment program. After submitting to treatment, the petitioner was discharged from the program on June 12, 2023, for violating the program's rules by failing to appear for groups and meetings with no explanation of his whereabouts, vaping inside the building, and possessing prohibited electronic devices. Furthermore, the petitioner was generally dishonest and was considered a threat to the recovery of other individuals. Following discharge from the program, a petition to revoke the petitioner's probation was filed in the criminal case, which remained pending at the time of the dispositional hearing in the instant matter. A CPS worker testified that the petitioner was not taking recovery seriously stating his "misconception that going to a treatment facility or going to ten facilities is compliance . . . you have to actually show that you're dedicated to sobriety and working the program." Regarding his success in the prior abuse and neglect proceeding, the CPS worker explained that "we're in the same boat as before," and "he's been through all of this, he knows what he is supposed to do . . . if [he's] not going to follow the rules of probation . . . I don't really think there's any evidence you're going to follow those to regain custody of your child."

The petitioner testified and denied that he was uncooperative with the substance abuse treatment program, insisting "it just wasn't for me" because of its religious approach to recovery. The petitioner pointed to the fact that he began a new twenty-eight-day treatment program that week in support of his likelihood of success in an improvement period. At the conclusion of the testimony, the circuit court denied the petitioner's motion for an improvement period. The circuit court found that the petitioner would not be likely to participate in an improvement period when he did not fully participate in substance abuse treatment in his criminal matter and exhibited a consistent pattern of noncompliance. The court further noted the petitioner's dishonesty, stating that "at points I feel that he is truly trying to con the court." The court ultimately 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 child's welfare.³ 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 first argues that the circuit court erred by denying his motion for a post-adjudicatory improvement period. Upon our review, we find no error as the court has discretion to deny an improvement period when no improvement is likely. *See In re Tonjia M.*, 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002).⁴ Although the petitioner started a new substance abuse treatment program approximately one week before disposition, this seemingly last-ditch effort was not enough to demonstrate a likelihood of improvement and overcome the petitioner's pattern of noncompliance throughout the proceedings and his criminal matter. Indeed, the record shows that the petitioner participated in an improvement period in the prior abuse and neglect proceeding regarding the same child and relapsed on several illicit substances only five months after reunification. When given the opportunity to participate in substance abuse treatment, the petitioner was dishonest, noncompliant, and ultimately discharged less than two weeks before disposition. These facts, coupled with the CPS worker's testimony that the petitioner "knows what he is supposed to do" support the circuit court's decision to deny the petitioner's motion for an improvement period. Therefore, the petitioner is entitled to no relief.⁵

³ The child's mother is currently participating in an improvement period. The permanency plan for the child is reunification with the mother with a concurrent permanency plan of adoption by the child's current foster placement.

⁴ In support of this argument, the petitioner asserts that the mother received an improvement period and that they were similarly situated. However, the record reveals that the mother had been actively participating in substance abuse treatment since the onset of the case, while the petitioner was discharged from his treatment program for noncompliance. In any event, the posture of the mother's proceeding is irrelevant to the circuit court's decisions regarding the petitioner. *See In re Emily*, 208 W. Va. 325, 344, 540 S.E.2d 542, 561 (2000) (guiding that simply because one parent's parental rights remain intact, it does not automatically entitle the child's other parent to be treated similarly).

⁵ The petitioner further argues that because of the "hastiness" of the proceedings, he was unable to fully participate in services. However, we find no merit in the petitioner's argument as we have repeatedly emphasized that child abuse and neglect cases "must be resolved as expeditiously as possible." *See In re D.P.*, 245 W. Va. 791, 797, 865 S.E.2d 812, 818 (2021) (citing Syl. Pt. 5, in part, *In re Carlita B.*, 185 W. Va. 613, 408 S.E.2d 365 (1991)). To the extent that the petitioner argues that the court erred by denying his motion for a continuance in order to await the outcome of his criminal proceeding, we further find no error pursuant to Rule 5 of the West Virginia Rules of Procedure for Child Abuse and Neglect Proceedings, which mandates that, "[u]nder no circumstances shall a child abuse and neglect proceeding be delayed pending the initiation, investigation, prosecution, or resolution of any other proceeding, including, but not limited to, criminal proceedings."

The petitioner further argues that the circuit court erred by terminating his parental rights, rather than implementing a less restrictive dispositional alternative. However, the petitioner's argument ignores our direction that this "most drastic remedy" is appropriate "when it is found that there is no reasonable likelihood under [West Virginia Code § 49-4-604(c)(6)] that conditions of neglect or abuse can be substantially corrected." Syl. Pt. 5, *In re Kristin Y.*, 227 W. Va. 558, 712 S.E.2d 55 (2011) (quoting Syl. Pt. 2, *In re R.J.M.*, 164 W. Va. 496, 266 S.E.2d 114 (1980)). Here, the circuit court specifically found that there was no reasonable likelihood that the conditions of neglect could be substantially corrected in the near future based upon the petitioner's refusal to participate in his recovery despite being afforded treatment services. We, therefore, refuse to disturb the court's findings on appeal. The evidence further supports the court's determination that termination was necessary for the child's welfare. *See* W. Va. Code § 49-4-604(c)(6) (permitting termination upon 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").

Accordingly, we find no error in the decision of the circuit court, and its July 12, 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