

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re H.L.-1 and H.L.-2

No. 23-492 (Mason County CC-26-2022-JA-97 and CC-26-2022-JA-98)

MEMORANDUM DECISION

Petitioner Father J.L.¹ appeals the Circuit Court of Mason County’s July 18, 2023, order terminating his parental rights to the children, H.L.-1 and H.L.-2, arguing that the circuit court erred by revoking his improvement period and terminating his parental rights because the conditions of abuse and neglect had been corrected.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.

In August 2022, the DHS filed an abuse and neglect petition alleging that the petitioner neglected the educational needs of the children and refused to cooperate with Child Protective Services (“CPS”) in their efforts to develop an in-home safety plan. Specifically, the older child, H.L.-1, missed approximately sixty-eight days of school that year and had a history of excessive unexcused absences, which resulted in the initiation of a separate truancy case. The DHS did not request removal of the children at this time. However, the children were later placed with their paternal grandmother due to the petitioner’s noncompliance with the DHS and alleged drug use while the children were present in the home.

The petitioner stipulated to the allegations in the petition at an adjudicatory hearing held in October 2022. Therefore, the circuit court adjudicated the petitioner as an abusive and neglectful parent and found the children to be abused and neglected, stating that the petitioner failed “to supply the necessary education for the infant children and ha[d] made no efforts to correct [H.L.-1’s] truancy.” The court ordered that the petitioner appear for multidisciplinary team (“MDT”)

¹ The petitioner appears by counsel Nic Dalton. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Jake Wegman. Counsel Tanya Hunt Handley 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). Additionally, because the children share the same initials, we refer to them as H.L.-1 and H.L.-2.

meetings and participate in a parental fitness exam. The petitioner thereafter moved for a post-adjudicatory improvement period, which the court granted at a hearing in November 2022. Improvement period terms included participation in a parental fitness evaluation, MDT meetings, drug screening, and adult life skills and parenting classes.

In March 2023, the circuit court held a hearing on the DHS's motion to revoke the petitioner's improvement period. The petitioner did not appear for the hearing but was represented by counsel, who indicated he was unaware of the petitioner's whereabouts. A CPS worker testified to the petitioner's noncompliance and unresponsiveness throughout the case. Specifically, the worker described multiple attempts of scheduling court-ordered parental fitness evaluations for which the petitioner never appeared; the petitioner's failure to appear for adult life skills and parenting classes; his lack of contact with the children since being removed from his care; and his nonappearance at MDT meetings scheduled by the court. Based on the foregoing testimony, the court terminated the petitioner's improvement period finding that he failed to comply with improvement period terms.

The circuit court proceeded to disposition in April 2023. The petitioner was once again not present for the hearing but was represented by counsel. The same CPS worker testified that the petitioner's behavior had not changed since the last hearing. While the CPS worker conceded on cross-examination that the older child began attending school, he stated that the petitioner did not have a role in remedying the educational neglect issue because "[i]t's been the grandmother the entire time. Once the grandmother put her foot down, [the child] started going to school. It was not due to [the petitioner]." Following this testimony, the court acknowledged that "this was an educational neglect case and that [H.L.-1] is doing better in school. However, the court also recognizes that this is solely through the efforts of the grandmother with the services provided to the grandmother." The court further noted that the petitioner's noncompliance had not changed, and that he failed to appear for recent hearings. Therefore, the court found that there was no reasonable likelihood that the conditions of neglect or abuse could be substantially corrected in the near future and that it was in the best interests of the children to terminate the petitioner's parental rights. It is from the dispositional order that the petitioner appeals.³

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 circuit court erred by revoking his improvement period and terminating his parental rights. Both arguments are premised on the petitioner's faulty assertion that he remedied the conditions of abuse and neglect because H.L.-1 began attending school. However, upon our review, we find no merit to these arguments.

First, regarding the petitioner's argument that the circuit court erred by revoking his improvement period, we find no error. Although the petitioner concedes that he did not follow the improvement period terms, he argues that the court erred by revoking his improvement period because he satisfied the goal of the improvement period, that being the child's school attendance.

³ The mother's parental rights were terminated by the same order. The permanency plan for the children is adoption by their foster placements.

On appeal, the petitioner claims that he was the individual who assured the child's school attendance; however, he points to no evidence that this was the case, and our review of the record reveals that it was in fact the children's grandmother who was responsible for any educational improvement. *See* W. Va. R. App. P. 10(c)(7) (requiring that a petitioner's "argument must contain appropriate and specific citations to the record on appeal, including citations that pinpoint when and how the issues in the assignments of error were presented to the lower tribunal"). Furthermore, pursuant to West Virginia Code § 49-4-610(7), the court shall terminate any improvement period granted pursuant to this section when the court finds that respondent has failed to fully participate in the terms of the improvement period. Additionally, we have explained, "a circuit court always has the authority to terminate an improvement period if there is evidence that the parent is not following the conditions prescribed or is failing to make improvement." *In re C.C.*, No 21-0505, 2021 WL 5177693, at *3 (W. Va. Nov. 8, 2021) (memorandum decision) (quoting *In re Brian D.*, 194 W. Va. 623, 636, 461 S.E.2d 129, 142 (1995)). Here, the court terminated the petitioner's improvement period based on his failure to comply with its terms. The court considered the unopposed testimony of the CPS worker, who detailed the petitioner's noncompliance with all of the terms of his improvement period, including parental fitness evaluations, MDT meetings, drug screening, and adult life skills and parenting classes. Therefore, we can discern no error in the court's decision to revoke the petitioner's improvement period.

Second, regarding the petitioner's argument that it was error for the circuit court to terminate his parental rights when he asserts that he corrected the conditions of abuse and neglect, we, likewise, find no error. We have held that termination is appropriate "without the use of intervening less restrictive alternatives 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.' Syllabus point 2, *In re R.J.M.*, 164 W.Va. 496, 266 S.E.2d 114 (1980)." Syl. Pt. 5, in part, *In re Kristin Y.*, 227 W. Va. 558, 712 S.E.2d 55 (2011). Here, the court properly found that there was no reasonable likelihood that the conditions of neglect or abuse could be substantially corrected. Although it's true that H.L.-1 began attending school, there is no evidence that the petitioner participated in the correction of this issue. Rather, it was after the children were removed from the petitioner's care that the court found there was improvement in the child's education solely due to the grandmother's efforts. The court's ultimate decision to terminate the petitioner's parental rights was based on the petitioner's overall lack of participation and interest in this case. We find that the record supports this determination as it was in the children's best interests.

Accordingly, we find no error in the decision of the circuit court, and its July 18, 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