

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

***In re K.E.***

**No. 23-493** (Kanawha County 22-JA-491)

**MEMORANDUM DECISION**

Petitioner Father L.P.<sup>1</sup> appeals the Circuit Court of Kanawha County’s July 19, 2023, order terminating his parental rights to K.E.,<sup>2</sup> arguing that the circuit court erred in terminating his parental rights instead of granting him an improvement period. 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 DHS filed an abuse and neglect petition in November 2022 following disclosures by the child, then eleven years old, that she was sexually abused by a relative. An amended petition was filed in January 2023 adding allegations of sexual abuse by the petitioner. According to the amended petition, the petitioner made the child “touch his genitals” for several years. The amended petition further alleged that the petitioner had his parental rights terminated to other children in 2009. The amended petition also noted that no father was listed on the child’s birth certificate.<sup>3</sup>

A contested adjudicatory hearing was held in June 2023. The DHS presented expert testimony regarding the child’s disclosures of sexual abuse by the petitioner. The petitioner then testified on his own behalf. He explained that when the child was born, he did not sign the birth certificate because he believed the DHS would take custody of the child due to termination of his parental rights to his other children. The petitioner confirmed he was previously charged with felony child abuse and that he received some mental health treatment for sexually deviant thoughts.

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<sup>1</sup> The petitioner appears by counsel Jason S. Lord. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Deputy Attorney General Steven R. Compton. Counsel Sharon K. Childers 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”).

<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).

<sup>3</sup> A paternity test was ordered and confirmed the petitioner’s paternity.

Upon the DHS's request, the circuit court took judicial notice of the petitioner's 2009 abuse and neglect case. At the conclusion of the evidence, the circuit court found that the petitioner's parental rights to other children were previously involuntarily terminated and that the child's disclosures of sexual abuse were credible.<sup>4</sup> As such, the circuit court adjudicated the petitioner as an abusive and neglectful parent.

In July 2023, a dispositional hearing was held. A DHS worker testified that termination of the petitioner's parental rights was recommended because there were no services that could be offered to him due to the nature of the abuse. Next, the petitioner testified. He stated that the child's mother was mentally and emotionally abusive to not only the child, but also to him. The petitioner explained that the mother would often tell the child that he was a "child molester," which he believed influenced the child's thinking. The petitioner denied abusing the child and disclosed that he started going to therapy every two weeks and planned to request a referral to a psychiatrist. He requested that the circuit court give him more time to improve his parenting capacity and build a relationship with the child. Based on the evidence presented, the circuit court found that the petitioner's limited mental health treatment was not clear and convincing evidence that the petitioner "could participate in any sort of improvement period or correct the conditions giving rise to the filing of the Petition." Therefore, the circuit court found that termination of the petitioner's parental rights was in the child's best interest and was the least restrictive dispositional alternative available. Accordingly, the circuit court terminated the petitioner's parental rights.<sup>5</sup> 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 circuit court erred in terminating his parental rights instead of granting him an improvement period. In support of this argument, the petitioner contends that because he began therapy after the petition was filed, he demonstrated that he was likely to fully participate in an improvement period. *See* W. Va. Code § 49-4-610 (requiring that, in order to obtain an improvement period, the parent must demonstrate by clear and convincing evidence that he or she is likely to fully participate). However, the petitioner ignores the fact that,

[i]n order to remedy the abuse and/or neglect problem, the problem must first be acknowledged. Failure to acknowledge the existence of the problem, i.e., the truth of the basic allegation pertaining to the alleged abuse and neglect or the perpetrator of said abuse and neglect, results in making the problem untreatable and in making an improvement period an exercise in futility at the child's expense.

*In re Timber M.*, 231 W. Va. 44, 55, 743 S.E.2d 352, 363 (2013) (quoting *In re Charity H.*, 215 W. Va. 208, 217, 599 S.E.2d 631, 640 (2004)). Despite the circuit court's finding that the child's disclosures of sexual abuse were credible, and despite the circuit court's adjudication of the

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<sup>4</sup> It is not clear from the record on appeal what the basis was for the petitioner's prior involuntary termination of parental rights.

<sup>5</sup> The mother is deceased. The permanency plan for the child is adoption.

petitioner as abusive and neglectful on that basis, the petitioner continually denied sexually abusing the child. Instead of acknowledging the problem and accepting any responsibility, he placed the blame on the child's deceased mother for "influencing" the child's thought process. As such, there was no error in the circuit court's denial of the petitioner's motion for an improvement period.

Similarly, the petitioner's denial of the abuse shows that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future. The evidence further supports the circuit court's determination that termination was necessary for the child's welfare. As such, the circuit court had a sufficient basis upon which to make the findings necessary to terminate the petitioner's parental rights to the child. *See* W. Va. Code § 49-4-604(c)(6) (permitting termination of parental rights upon finding "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 child). Accordingly, termination of the petitioner's parental rights was not in error.

For the foregoing reasons, the circuit court's July 19, 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