

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

***In re* B.L., B.J., B.B., Q.B., S.B., T.B., and K.B.**

No. 23-519 (Doddridge County CC-09-2022-JA-16, CC-09-2022-JA-17, CC-09-2022-JA-18, CC-09-2022-JA-19, CC-09-2022-JA-20, CC-09-2022-JA-21, and CC-09-2022-JA-22)

MEMORANDUM DECISION

Petitioner Father E.B.¹ appeals the Circuit Court of Doddridge County’s August 3, 2023, order terminating his custodial rights to B.L. and B.J., and his parental rights to B.B., Q.B., S.B., T.B., and K.B., arguing that the circuit court abused its discretion in denying his motion for a post-adjudicatory improvement period and in terminating his rights.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 July 2022, the DHS filed an abuse and neglect petition alleging that the petitioner perpetrated domestic violence against the mother of B.J. and K.B. (hereinafter “the mother”)³ in the presence of the children, which resulted in his arrest, and that the home was unsanitary and in deplorable condition. Additionally, the children were infested with lice, appeared dirty, and smelled of urine and body odor. An amended petition was filed in October 2022 following forensic interviews with the children. The children disclosed physical abuse by the mother and an uncle

¹ The petitioner appears by counsel Jordan West. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Katica Ribel. Counsel Keith White, Sara B. Hall, and Dreama Sinkkanen appear as the children’s guardians ad litem (“guardians”).

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).

³ The mother of B.L., B.B., Q.B., S.B., and T.B. had her parental rights terminated due to her abandonment of the children and failure to participate in the proceedings. These children were in the care of the petitioner and the mother of B.J. and K.B. at the time of the filing of the abuse and neglect petition.

who sometimes resided in the home, and that the petitioner was aware of the abuse but failed to protect them. In January 2023, the petitioner stipulated to subjecting the children to unsanitary living conditions and failing to protect them from domestic violence and abuse by the mother. Therefore, the circuit court adjudicated the petitioner of abusing and neglecting the children. The petitioner thereafter filed a written motion for a post-adjudicatory improvement period.

The circuit court held a dispositional hearing in June 2023, at which time the DHS and the guardians supported termination of the petitioner's parental and custodial rights. The court admitted the children's forensic interviews into evidence and considered testimony of the petitioner and a Child Protective Services ("CPS") worker. The CPS worker discussed the petitioner's CPS history beginning as early as 2001. She testified that CPS received more than twenty referrals throughout the years regarding allegations of sexual abuse, failure to supervise, hygiene issues, domestic violence, and unsuitable living conditions. The petitioner was a respondent in two prior abuse and neglect proceedings related to those allegations. Although the petitioner participated in services and successfully completed improvement periods in those cases, the CPS worker stated that the petitioner "has a pattern of abuse at this point" because "the allegations are . . . almost word for word the same" and "he has had parenting services twice in the past and there are still issues going on." On the other hand, the petitioner explained that his job required him to be out of town for days or weeks at a time and claimed that there were no problems when he was home. The petitioner testified that he was unaware of the abuse taking place or the home's poor conditions until the children later told him. According to the petitioner, upon learning of these issues, he quit his job to be home with the children and refurbish the home. The petitioner further stated that he separated from the mother; however, on cross-examination he admitted that the mother initiated the divorce proceedings and that the two had recently been on dates.

The circuit court did not find the petitioner's testimony credible, particularly in light of the children's forensic interviews, which revealed that the children disclosed the abusive behaviors by the mother and uncle and that the petitioner did nothing to stop the abuse. In fact, the children specifically reported being directed not to talk to CPS and told "what happens in the house stays in the house." The court further found that the petitioner had "a years-long history of allowing inappropriate caregivers around the children and failing to protect them from those caregivers [and] forcing them to live in deplorable conditions, while simultaneously claiming his lack of knowledge about the same" and that "each time CPS became involved, conditions improved for a while then fell back into the same or worse conditions than before." Furthermore, the court noted that services had been provided to the petitioner in the past and that he places blame on others "evidencing his inability to reform" his abusive and neglectful behaviors. Therefore, the court denied the petitioner's motion for a post-adjudicatory improvement period and terminated his parental and custodial rights, finding no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future and that termination was necessary for the children's welfare.⁴ 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*

⁴ The court also terminated the mothers' parental and custodial rights. The permanency plan for the children is adoption by foster placement.

Cecil T., 228 W. Va. 89, 717 S.E.2d 873 (2011). The petitioner argues that the circuit court abused its discretion by denying his motion for a post-adjudicatory improvement period. Upon our review, we disagree. In order to obtain a post-adjudicatory improvement period, the petitioner was required to demonstrate that he was likely to fully participate. *See* W. Va. Code § 49-4-610(2)(B). The petitioner argues that he satisfied this burden by improving the home's condition, separating from the mother, and quitting his job. However, the petitioner ignores the fact that the circuit court specifically found that the petitioner's testimony was not credible, and we refuse to disturb that finding on appeal. *See Michael D.C. v. Wanda L.C.*, 201 W. Va. 381, 388, 497 S.E.2d 531, 538 (1997) ("A reviewing court cannot assess witness credibility through a record. The trier of fact is uniquely situated to make such determinations and this Court is not in a position to, and will not, second guess such determinations."). Further, it is in the circuit court's 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). The record supports the circuit court's decision because there was ample evidence of the petitioner's pattern of abusive and neglectful behavior dating back to 2001. We, therefore, find no error in the circuit court's denial of the petitioner's motion for an improvement period.

We further find no error in the circuit court's ultimate decision to terminate the petitioner's parental and custodial rights based on his failure to acknowledge the existence of a problem. *See In re Timber M.*, 231 W. Va. 44, 55, 743 S.E.2d 352, 363 (2013) ("[I]n order to remedy the abuse and/or neglect problem, the problem must first be acknowledged." (quoting *In re Charity H.*, 215 W. Va. 208, 217, 599 S.E.2d 631, 640 (2004))). During the dispositional hearing, the petitioner maintained that he was unaware of the mother's abusive behavior and the conditions of the home, despite evidence that these issues persisted for years. Therefore, the court's conclusion that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future and that termination was necessary for the welfare of the children was proper. *See* W. Va. Code § 49-4-604(c)(6) (allowing courts to terminate parental rights "upon a 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 August 3, 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