

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

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

***In re* N.M. and J.M.-1**

No. 23-571 (Marion County CC-24-2023-JA-25 and CC-24-2023-JA-26)

MEMORANDUM DECISION

Petitioner Father J.M.-2¹ appeals the Circuit Court of Marion County’s August 28, 2023, order terminating his parental and custodial rights to N.M. and J.M.-1, arguing that the circuit court erred by terminating his rights without granting his motion for a post-adjudicatory improvement period.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 March 2023, the DHS filed an abuse and neglect petition alleging that the petitioner abused illicit substances, failed to protect the children from domestic violence perpetrated by the children’s mother,³ and exposed the children to deplorable living conditions. The matter was initiated after the petitioner reported to law enforcement that he and the mother had gotten into a physical altercation, which resulted in the petitioner filing a domestic violence petition and the mother being briefly placed in jail. During their investigation, Child Protective Services (“CPS”) workers learned that the mother was often the aggressor of the domestic violence and that she had given the petitioner a black eye two weeks earlier. A CPS worker interviewed the older child,

¹ The petitioner appears by counsel Michael Safcsak. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Heather L. Olcott. Counsel Amanda Adams Leslie appears as the children’s guardian ad litem (“guardian”).

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 one of the children and the petitioner share the same initials, we refer to them as J.M.-1 and J.M.-2, respectively.

³ J.M.-1’s mother is A.M., and N.M.’s mother is deceased. N.M. resided with the petitioner and A.M. at the time of the filing of the petition, and for purposes of this memorandum decision, we refer to her as “the mother.”

N.M., who disclosed that the police often came to the house, his parents yelled and hit each other, and he gets scared when this occurs.

The circuit court then held two adjudicatory hearings in April and June 2023, at which time the court heard testimony from CPS workers and a law enforcement officer, both of whom confirmed the allegations in the DHS's petition. The petitioner also testified, denying that the mother "laid a hand on" him or gave him a black eye, and insisted that the child made false statements to CPS. The petitioner claimed that he did not intend to file a domestic violence petition against the mother; rather, he intended to file it against his own mother, who also lived in the home and was "an instigator." Furthermore, although he admitted using cannabis three to four times a week since he was sixteen for alleged anxiety, insomnia, neuropathy, and an eating disorder, the petitioner had not obtained a medical cannabis card. The court did not find the petitioner's testimony credible and, based on the evidence presented, adjudicated the petitioner as an abusing and neglecting parent for drug use and exposing the children to domestic violence. Thereafter, the petitioner filed a written motion for a post-adjudicatory improvement period.

The circuit court proceeded to a dispositional hearing in August 2023, during which the DHS and guardian supported termination of the petitioner's parental rights. A CPS worker testified regarding the petitioner's participation in the case. The worker explained that she had no direct contact with the petitioner throughout the proceedings, as the mother served as the only point of contact. She further stated that the petitioner had not drug screened since May 2023, and one week prior to disposition, he requested a continuous monitoring device for screening. Because of his failure to produce consistent negative drug screens, the petitioner had not visited the children since their removal. According to the worker, despite the petitioner's failure to admit any wrongdoing, she set up parenting and life skills services. The petitioner initially participated but recently ceased, stating that "he was sick and tired of dealing with this." The petitioner did not testify or present any evidence during this hearing. Based on the evidence presented, the court denied the petitioner's motion for an improvement period and terminated his parental rights, finding 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 in the children's best interests. It is from the dispositional order that the petitioner appeals.⁴

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). The petitioner argues that the circuit court erred by terminating his parental rights without first affording him the opportunity to participate in an improvement period. 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) (placing the burden on the parent to demonstrate that he or she is likely to fully participate in the improvement period by clear and convincing evidence). Despite this burden, the petitioner presented no evidence in support of his motion. The petitioner argues that he demonstrated his likelihood of participation by requesting a continuous monitoring device for drug screening

⁴ The mother's custodial rights to N.M. and her parental rights to J.M.-1 were also terminated by this same order. The permanency plan for the children is adoption by their current foster placement.

purposes and participating in DHS services including parenting and life skills classes. However, the CPS worker's testimony reveals that the petitioner was noncompliant with drug screening and services. Specifically, his last drug screen was more than two months before disposition, and it was only a week prior to that hearing that he requested the continuous monitoring device. While the petitioner may have initially attended some classes, according to the CPS worker, he willfully stopped attending. It is in the circuit court's discretion to deny an improvement period when no improvement is likely, and we see no abuse of discretion here. *See In re Tonjia M.*, 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002) (explaining that the circuit court has discretion to deny an improvement period when no improvement is likely).

It follows that we find no error in the circuit court's ultimate decision to terminate the petitioner's parental rights due to the petitioner's failure to fully participate or acknowledge any wrongdoing. We have explained 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 . . . results in making the problem untreatable." *In re Timber M.*, 231 W. Va. 44, 55, 743 S.E.2d 352, 363 (2013) (citation omitted). The CPS worker testified that, at the dispositional stage, the petitioner still had not recognized any issues. Furthermore, as a result of the petitioner's failure to participate, the petitioner had not visited the children since their removal. *See In re Katie S.*, 198 W. Va. 79, 90 n.14, 479 S.E.2d 589, 600 n.14 (1996) (citations omitted) ("[T]he level of interest demonstrated by a parent in visiting his or her children while they are out of the parent's custody is a significant factor in determining the parent's potential to improve sufficiently and achieve minimum standards to parent the child."). Therefore, the court correctly found that there was no reasonable likelihood the petitioner could substantially correct the conditions of abuse or neglect in the near future. *See* W. Va. Code § 49-4-604(d) (permitting a court to make such a finding when "based upon the evidence before the court, the abusing adult or adults have demonstrated an inadequate capacity to solve the problems of abuse or neglect on their own or with help"). The court also found that termination was in the children's best interests. Circuit courts are permitted to terminate parental rights upon these findings, and we conclude that the circuit court did not err. *See* W. Va. Code § 49-4-604(c)(6) (allowing courts to terminate parental rights "[u]pon 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 28, 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

