

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re E.S.

No. 24-91 (Cabell County 21-JA-195)

MEMORANDUM DECISION

Petitioner Father J.S.¹ appeals the Circuit Court of Cabell County’s January 24, 2024, order terminating his parental rights to E.S., arguing that the court erroneously terminated 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 December 2021, the DHS filed a petition alleging that the petitioner failed to provide the child with safe and adequate living conditions and failed to provide emotional and financial support to the child. The circuit court held an adjudicatory hearing in April 2022, at which the petitioner stipulated to neglecting the child by failing to provide emotional and financial support. The petitioner testified that he had not contacted the child since 2012, when the child was three years old. The petitioner also testified that he recently used methamphetamine and was serving a criminal sentence on a misdemeanor charge, which included participating in a drug treatment program. Based on his admissions, the circuit court adjudicated the petitioner of neglecting the child. The court granted the petitioner a post-adjudicatory improvement period and ordered the petitioner’s participation in the drug treatment program to be a term of his improvement period. Additionally, the petitioner was required to attend and participate in parenting classes, a psychological evaluation, visitation with the child, and drug screens.

The circuit court held several review hearings regarding the petitioner’s post-adjudicatory improvement period between July 2022 and January 2023. Overall, the evidence demonstrated the petitioner’s compliance with the terms and conditions of his improvement period. The petitioner

¹ The petitioner appears by counsel Kerry A. Nessel. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Heather L. Olcott. Counsel Robert E. Wilkinson 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).

participated in substance abuse treatment and parenting classes and consistently screened negative for substances. In January 2023, the petitioner and the child had their first visit. In February 2023, the court held an initial dispositional hearing and granted the petitioner a post-dispositional improvement period to allow him more time to build a relationship with the child.

The circuit court held a review hearing in June 2023, where the evidence indicated that the petitioner was complying with his post-dispositional improvement period. The court's order following the hearing noted that the supervised visits between the petitioner and the child were going well but that the child had expressed that she did not want to live with the petitioner. The court held another review hearing in October 2023. At the hearing, a DHS worker testified that the child, then thirteen years old, did not feel safe around the petitioner after the petitioner told the child about his criminal history and prior substance abuse. The child no longer wanted to have visits with him and expressed fear that "the judge would make her go live with him."

In January 2024, the circuit court held a final dispositional hearing. The petitioner testified regarding his success during the improvement periods. He admitted that, in 2012, he was charged with domestic violence and child abuse resulting in injury, which were later dismissed. He explained that this event ended his relationship with the child's mother and was the reason he lost contact with the child. The petitioner also admitted that when his visitations with the child in this case began, the child did not know who he was, nor did she remember having any interactions with him. A therapist testified to providing parenting therapy to the child's foster mother, which also involved sessions with both the foster mother and the child. She explained that she was asked by the multidisciplinary treatment team to speak with the child about her visits with the petitioner. The therapist reported having several conversations with the child from September to December 2023, where the child maintained that she did not want any contact with the petitioner and did not want to live with him. The therapist opined that continuing efforts to develop a relationship between the petitioner and the child would not be in the child's best interests. The psychologist who completed the petitioner's psychological evaluation also testified. She opined that the petitioner took no responsibility for his neglect of the child and that the petitioner's prognosis for improvement was poor. She further opined that attempts at reunification should be ceased if the child displayed distress.

The circuit court commended the petitioner for his individual progress during his improvement periods. However, the court also found that the child was almost fourteen years old, the petitioner had had no contact with the child since 2012, there was no history of a "father/daughter bond," and the child specifically stated that she did not want to have contact with the petitioner and feared being placed in his home. The court found that although the petitioner was granted improvement periods lasting over nineteen months, the conditions of the relationship between the petitioner and the child did not improve and there was "no reasonable likelihood that [those] conditions [would] change in the foreseeable future." Further, the court found that it was in the best interests of the child to terminate the petitioner's parental rights so that the child could achieve permanency. Accordingly, the court terminated the petitioner's parental rights to the child.³ It is from this order that the petitioner appeals.

³ The mother's parental rights were also terminated. The permanency plan for the child is adoption in the current placement.

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. In support of this, the petitioner argues that the child should have been placed in his custody because he successfully participated in his improvement periods and completed all services and programs. However, we have held that

[i]n making the final disposition in a child abuse and neglect proceeding, the level of a parent's compliance with the terms and conditions of an improvement period is just one factor to be considered. The controlling standard that governs any dispositional decision remains the best interests of the child.

Syl. Pt. 4, *In re B.H.*, 233 W. Va. 57, 754 S.E.2d 743 (2014). The circuit court acknowledged the petitioner's progress in his improvement periods. However, the court also found that the petitioner's neglect of the child for the majority of the child's life resulted in profound damage to the parent-child relationship, which continued despite nineteen months of services. Further, the court heard testimony from two mental health professionals who opined that reunification was not in the child's best interests in this case given that the child expressed fear at living with the petitioner.

Additionally, at disposition, West Virginia Code § 49-4-604(b)(6)(C) requires a circuit court to "give consideration to the wishes of a child 14 years of age or older *or otherwise of an age of discretion* as determined by the court regarding the permanent termination of parental rights." (Emphasis added); *see also* Syl. Pt. 4, *In re J.A.*, 242 W. Va. 226, 833 S.E.2d 487 (2019) (explaining that circuit courts must consider a child's preference as one factor but must make a final determination based upon the child's best interests). After considering both the child's preference and all other evidence presented, the circuit court determined the child's best interests required the termination of the petitioner's parental rights, and we cannot conclude that this finding was clearly erroneous. *See* Syl. Pt. 1, in part, *In re Tiffany Marie S.*, 196 W. Va. 223, 470 S.E.2d 177 (1996) (holding that a reviewing court shall not set aside a circuit court's finding of fact unless the finding is clearly erroneous). The circuit court further found there was no reasonable likelihood the conditions could be corrected in the near future given that the petitioner's participation in services over a period of nineteen months failed to remedy the issues, a finding the petitioner does not challenge on appeal. *See* W. Va. Code § 49-4-604(d) (finding there is no such reasonable likelihood when the parent has "demonstrated an inadequate capacity to solve the problems of abuse or neglect on their own or with help"). Circuit courts are permitted to terminate parental rights upon such findings. *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).

For the foregoing reasons, we find no error in the decision of the circuit court, and its January 24, 2024, order is hereby affirmed.

Affirmed.

ISSUED: September 24, 2024

CONCURRED IN BY:

Chief Justice Tim Armstead
Justice Elizabeth D. Walker
Justice John A. Hutchison
Justice William R. Wooton
Justice C. Haley Bunn