

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re S.B.-1 and S.B.-2

No. 23-526 (Cabell County 21-JA-199 and 21-JA-200)

MEMORANDUM DECISION

Petitioner Father E.B.¹ appeals the Circuit Court of Cabell County’s August 7, 2023, order terminating his parental, custodial, and guardianship rights to the children, arguing that the circuit 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 abused and neglected the children by abusing substances, failing to protect them from the mother’s substance abuse while pregnant, and failing to provide safe and adequate living conditions. According to the petition, the mother tested positive for amphetamines, gabapentin, and cannabinoids when she gave birth to the children. She also admitted to smoking a pack of cigarettes daily, smoking marijuana weekly, and relapsing on alcohol once during her pregnancy. The petition further alleged that a Child Protective Services (“CPS”) worker visited the petitioner’s home and observed clutter, uncleanliness, and safety hazards.

In February 2022, the circuit court held an adjudicatory hearing at which the petitioner admitted to using marijuana. Thus, the court adjudicated the petitioner of neglecting the children based upon substance abuse affecting his ability to parent. The court granted the petitioner a six-

¹ The petitioner appears by counsel Michael S. Bailey. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Katherine A. Campbell. Counsel Allison K. Huson 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 S.B.-1 and S.B.-2.

month post-adjudicatory improvement period and ordered him to submit to a parental fitness evaluation. The petitioner's case plan and the terms of his improvement period required him to, among other things, participate in drug screens, attend parenting and adult life skills services, obtain stable and appropriate housing, and attend therapy for mental health concerns. In April 2022, the petitioner's parental fitness evaluation was conducted and resulted in a guarded prognosis for improved parenting due to his history of substance abuse, minimization of domestic violence, neglect of his children's needs, and defensive responses during the evaluation. The evaluator recommended outpatient drug treatment; thus, the petitioner's case plan and improvement period terms were amended in May 2022 to require the petitioner to attend intensive outpatient drug treatment. At an August 2022 review hearing, the court found that the petitioner's improvement period had expired and that he failed to successfully complete it prior to its expiration because the home was still in a deplorable and unlivable condition, he failed to attend intensive outpatient drug treatment, and he did not begin attending mental health therapy until the improvement period had concluded.

The court held a series of dispositional hearings between March and May 2023, at which the petitioner testified that he began mental health therapy in August 2022 and denied having any drug abuse or mental health issues. The petitioner further testified that he had "cleaned up" the home by decluttering, painting, repairing the bathroom floors, and fixing issues with the roof and electricity. A CPS worker testified that the DHS recommended termination of the petitioner's parental rights due to his failure to comply with his case plan. The CPS worker testified that the petitioner was incapable of caring for children, failed to benefit from services, and consistently denied any problems with his parenting approach. The worker testified that there were no items in the petitioners' case plan that remained unaddressed, but the petitioner failed to complete any of the requirements of his improvement period during the period of time proscribed by the court; and instead, he waited until the "eleventh hour" to make improvements to the home. The worker opined that the petitioner's continuing relationship with the mother was a barrier to reunification.

In the dispositional order, the court noted that the dispositional hearing had been continued six times and that an extension of the petitioner's improvement period was inappropriate given his noncompliance. The court found that the petitioner did not comply with the terms of his improvement period, failed to remediate the conditions in the home, failed to progress beyond two hours of supervised visitation, refused to enroll in intensive outpatient drug treatment, failed to consistently attend parenting sessions, and failed to begin mental health therapy until the conclusion of his improvement period. The court further found that the petitioner did not benefit from services and failed to acknowledge the effect of his actions on the children. As such, the court concluded that there was no reasonable likelihood that the conditions of abuse and neglect could be rectified in the near future, and it was in the children's best interests to terminate the petitioner's rights. Thus, the court terminated the petitioner's parental, custodial, and guardianship rights to the children. 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*

³ The mother's parental, custodial, and guardianship rights were also terminated. The permanency plan for the children is adoption in their current placement.

Cecil T., 228 W. Va. 89, 717 S.E.2d 873 (2011). The petitioner argues that the court erroneously terminated his parental, custodial, and guardianship rights because he had corrected the conditions of neglect for which he was adjudicated.⁴ The petitioner asserts that he “corrected everything that was identified to him through his case plan.” We find the petitioner’s argument unpersuasive. We have “recognized [that] it is possible for an individual to show ‘compliance with specific aspects of the case plan’ while failing ‘to improve . . . [the] overall attitude and approach to parenting.’” *In re Jonathan Michael D.*, 194 W. Va. 20, 27, 459 S.E.2d 131, 138 (1995) (quoting *W. Va. Dept. of Human Serv. v. Peggy F.*, 184 W. Va. 60, 64, 399 S.E.2d 460, 464 (1990)). Moreover, “[t]he assessment of the overall success of the improvement period lies within the discretion of the circuit court ‘regardless of whether or not the individual has completed all suggestions or goals set forth in family case plans.’” *Id.* (quoting *In re Carlita B.*, 185 W. Va. 613, 626, 408 S.E.2d 365, 378 (1991)). The petitioner relies on the CPS worker’s testimony that none of the items identified in his case plan were left unaddressed, but he overlooks the fact that he failed to comply with the terms and conditions of his improvement period *during* the improvement period. The court found that the procedural delays in this case did not serve as an extension of the petitioner’s improvement period. We must stress that the circuit court’s finding that the petitioner was incapable of correcting the conditions of neglect was based upon the petitioner’s failure to *timely* comply with his case plan and improvement period terms.

Furthermore, “[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.” Syl. Pt. 4, *In re B.H.*, 233 W. Va. 57, 754 S.E.2d 743 (2014). Critically, the petitioner’s express testimony at disposition that he did not have a drug problem rendered the problem untreatable. See *In re Timber M.*, 231 W. Va. 44, 55, 743 S.E.2d 352, 363 (2013) (explaining that “[i]n order to remedy the abuse and/or neglect problem, the problem must first be acknowledged” because “[f]ailure to acknowledge the existence of the problem . . . results in making the problem untreatable.” (quoting *In re Charity H.*, 215 W. Va. 208, 217, 599 S.E.2d 631, 640 (2004))). As such, the record supports the circuit court’s findings that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected, and that termination was necessary for the children’s welfare. See W. Va. Code § 49-4-604(d)(3) (explaining that “no reasonable likelihood that conditions of abuse or neglect could be substantially corrected” includes circumstances where an abusing parent has “not responded to or followed through with a reasonable family case plan or other rehabilitative efforts of social, medical, mental health, or other rehabilitative agencies.”). Accordingly, we find no error in the termination of the petitioner’s parental, custodial, or guardianship rights. 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).⁵

⁴ The petitioner asserts that inadequate housing was the “sole condition of neglect found against him.” However, this is incorrect, as the court unambiguously adjudicated the petitioner of drug abuse based upon his own admission to using marijuana. Nevertheless, the petitioner’s case plan and improvement period required him to maintain stable and appropriate housing.

⁵ The petitioner baldly asserts that the DHS failed to make reasonable efforts to reunify the family and failed to consider his mother as a potential placement for the children pursuant to West Virginia Code § 49-4-114(a)(3). Given that the petitioner provides no “appropriate and specific

For the foregoing reasons, the circuit court's August 7, 2023, order is hereby affirmed.

Affirmed.

ISSUED: November 6, 2024

CONCURRED IN BY:

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

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” for either assignment of error, we decline to consider these arguments. W. Va. R. App. Proc. 10(c)(7).