

STATE OF WEST VIRGINIA  
SUPREME COURT OF APPEALS

*In re* K.L.-1

No. 23-594 (Ohio County CC-35-2020-JA-91)

MEMORANDUM DECISION

Petitioner Father K.L.-2<sup>1</sup> appeals the Circuit Court of Ohio County’s September 15, 2023, order terminating his parental, custodial, and guardianship rights to the child, arguing that the circuit court erroneously terminated his rights.<sup>2</sup> 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.

Although this matter was previously before this Court, it is unnecessary to fully recount the procedural history prior to our remand, given that the DHS subsequently filed an amended petition and the proceedings, essentially, began anew. Instead, it is sufficient to note that we vacated the circuit court’s January 2022 order terminating the petitioner’s rights because termination was based upon issues which were not the subject of adjudication, namely, drug use, and the petitioner’s post-dispositional improvement period was not properly implemented. *In re* K.L., 247 W. Va. 657, 670, 885 S.E.2d 595, 608 (2022). Further, we remanded the matter with instructions including, but not limited to, amending the petition, reopening adjudication, and/or implementing a new post-dispositional improvement period. *Id.*

Upon remand, the DHS filed an amended petition in January 2023 alleging that the petitioner medically and educationally neglected the child and used drugs to the detriment of his

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<sup>1</sup> The petitioner appears by counsel Michael A. Kuhn. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Katherine Campbell. Counsel David Mascio appears as the child’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”).

<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). Additionally, because the petitioner and the child share the same initials, we will refer to them as K.L.-2 and K.L.-1, respectively.

parenting abilities. The petition alleged that the petitioner had not seen the child in over a year, refused to attend a multidisciplinary treatment team (“MDT”) meeting to develop the terms of his post-dispositional improvement period, and continually screened positive for drugs since the initiation of the proceedings. The petition further detailed that the petitioner was arrested for possession of a deadly weapon; continued to be in a relationship with and live with the child’s mother, whose rights to the child were previously terminated; and associated with inappropriate individuals.

In February 2023, the court held an adjudicatory hearing. The court later entered an order in which it recounted the history of the case and noted that the petitioner had failed to attend most of his drug screens and was found with what appeared to be synthetic or another individual’s urine at the screening facility. The court found that the petitioner had a substance abuse problem that impaired his ability to effectively parent, abandoned the child during the pendency of the case, and demonstrated a refusal or inability to supply the child with necessary food, clothing, shelter, supervision, medical care, or education, which harmed or threatened the child’s health. Thus, the court adjudicated the petitioner of abusing and neglecting the child. Then, the court granted the petitioner’s written motion for a post-adjudicatory improvement period, the terms of which included, among other things, that he follow the recommendations in his parental fitness evaluation, submit to drug screens, participate in supervised visits with the child, go to family therapy, attend parenting services, obtain employment, and contact the DHS worker assigned to his case on a weekly basis. The day after the adjudicatory hearing, the petitioner was charged with driving under the influence (“DUI”), having tested positive for methamphetamine following a traffic stop.

In April 2023, the petitioner underwent a parental fitness evaluation which concluded that he had a “very poor prognosis” for improved parenting. The evaluator recommended a six-month or longer residential rehabilitation program followed by a sober living program and continued outpatient services. The evaluator further recommended that the petitioner should have no unsupervised access to the child until he was “verifiably sober.” In June 2023, the petitioner agreed to modified post-adjudicatory improvement period terms. The terms were largely the same as the previous terms, but specifically required, among other things, that the petitioner gain admission to a long-term residential treatment program and, upon completion of the residential treatment program, gain admission into a sober living program. Later in June 2023, the petitioner pled guilty to the above-mentioned DUI charge. In July 2023, the guardian filed a motion to terminate the petitioner’s post-adjudicatory improvement period because the petitioner failed to gain admission to a rehabilitation program, missed two drug screens, screened for synthetic urine once, failed to provide proof of employment, was discharged from parenting services due to noncompliance, and was arrested during the improvement period. In preparation for the dispositional hearing, the DHS filed a family case plan.

In August 2023, the court held a dispositional hearing at which it considered the guardian’s motion to terminate the petitioner’s improvement period. The testimony of two law enforcement officers indicated that the petitioner had been arrested for DUI in February 2023 and arrested again in August 2023 for failure to obey a traffic control device and possession of methamphetamine. An employee from the local day report center testified that the petitioner was required to drug screen twice a week, but missed numerous screens and on one occasion, when he did screen, was

positive for methamphetamine. The witness explained that the petitioner provided a DNA sample, after refusing on multiple occasions, so that his screens could be tested to ensure the sample he provided was genuine. Next, Dr. Nick Laude, the Director of Chemistry/Toxicology for Genotox Laboratories, testified that he performed drug testing for the DHS and that of the fourteen specimens provided by the petitioner only two matched his DNA sample and those two samples were positive for methamphetamine. Dr. Laude explained that the other twelve samples were either synthetic urine or stored urine. Finally, a Child Protective Services (“CPS”) employee testified that the petitioner failed to comply with the terms of his post-adjudicatory improvement period by failing to adhere to the recommendations in the parental fitness evaluation, failing to complete parenting services due to his noncompliance, failing to contact CPS on a weekly basis, and refusing to meet with CPS personnel to locate a treatment facility. The witness explained that she attempted to contact the petitioner to formulate a family case plan, but he did not respond. Further, the witness testified that the petitioner was informed that the outpatient program he may have attended was insufficient to fulfill the terms of his improvement period. At the end of the hearing, the petitioner’s counsel made an oral motion for a post-dispositional improvement period. On the record, the court terminated the petitioner’s parental rights and denied his motion for a post-dispositional improvement period.

The circuit court entered a dispositional order following the hearing. There, the court found that the petitioner failed to comply with the terms of his improvement period by failing to complete parenting services, getting arrested for a traffic infraction and methamphetamine possession, failing to follow up with the DHS to locate an inpatient treatment center, failing to attend inpatient treatment, obtaining minimal outpatient treatment but failing to provide his psychological evaluation report to the treatment program, misrepresenting the extent of his substance abuse problem to that treatment program, failing to drug screen on multiple occasions, and using either stored or synthetic urine on multiple occasions to falsify his drug screen results. The court further found that the petitioner failed to prove that he was likely to participate in a post-dispositional improvement period, there was no reasonable likelihood that the conditions of abuse and neglect would be substantially corrected, the conditions of abuse and neglect had gotten worse based upon the petitioner’s actions, and termination of his rights was necessary for the child’s welfare, noting that the child deserved permanency. The court terminated the petitioner’s post-adjudicatory improvement period, denied his motion for a post-dispositional improvement period, and terminated his parental, custodial, and guardianship rights. It is from this order that the petitioner appeals.<sup>3</sup>

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 erroneously terminated his rights. He first asserts that his family case plan was developed without his and his counsel’s input.<sup>4</sup> Indeed, West Virginia Code § 49-4-408(b) and

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<sup>3</sup> The mother’s parental rights were previously terminated. The permanency plan for the child is adoption in the current placement.

<sup>4</sup> The petitioner also argues that the child was not permitted to assist in the formulation of the case plan, given that West Virginia Code § 49-4-408(b) provides that “the child shall also fully participate [in the development of a case plan] if sufficiently mature and the child’s participation

Rule 37 of the West Virginia Rules of Procedure for Child Abuse and Neglect Proceedings require that the family case plan be formulated with the assistance of, among other individuals, all parties and their counsel. However, we see no violation of either of these authorities, as the evidence indicated that the petitioner failed to respond to messages from the DHS asking him to meet. It is disingenuous for the petitioner to now argue that he was denied the opportunity to formulate his family case plan when he had entirely stopped complying with terms of his post-adjudicatory improvement period and made no effort to contact the DHS. Because “matters involving the abuse and neglect of children shall take precedence over almost every other matter . . . and . . . must be resolved as expeditiously as possible” the parties and the court were under no obligation to delay the formulation of the family case plan until the petitioner decided to participate. *In Interest of Carlita B.*, 185 W. Va. 613, 625, 408 S.E.2d 365, 377 (1991). Thus, the petitioner is entitled to no relief.

Second, the petitioner asserts that termination of his rights was erroneous because his improvement period was improperly implemented as he was given no assistance from the DHS. To support his argument, the petitioner references testimony from a CPS worker who attempted to assist him in finding and applying for inpatient rehabilitation facilities and argues that her assistance was not a “meaningful attempt” to help him. He contends that this purported lack of assistance amounts to a violation of West Virginia Code § 49-1-105.<sup>5</sup> However, the party receiving the improvement period “shall be responsible for the initiation and completion of all terms of the improvement period.” W. Va. Code § 49-4-610(4)(A). The petitioner ignores the court’s findings that he refused to participate in the services offered by the DHS, including drug screens and drug treatment. In fact, the petitioner attempted to thwart the DHS’s rehabilitative efforts by providing inauthentic samples at his drug screens. Moreover, the petitioner failed to acknowledge his drug abuse issues, rendering his 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). Therefore, we discern no error in this regard.

Finally, the petitioner argues that the circuit court erred by declining to grant him disposition pursuant to West Virginia Code § 49-4-604(c)(5), which allows the court to “commit the child temporarily to the care custody and control of the [DHS].” However, “[t]ermination of parental rights . . . may be employed without the use of intervening less restrictive alternatives,” such as disposition under West Virginia Code § 49-4-604(c)(5), “when it is found that there is no reasonable likelihood under [West Virginia Code § 49-4-604(c)(6)] that conditions of neglect or

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is otherwise appropriate.” In support, the petitioner claims that the guardian made statements about the child’s intelligence, maturity, and honesty that support the child’s participation. However, the petitioner does not provide “appropriate and specific 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,” as he has failed to demonstrate that the guardian made any such statements. W. Va. R. App. P. 10(c). Thus, we decline to address this argument.

<sup>5</sup> This statute sets out the purpose of Chapter 49 of the West Virginia Code and states, in relevant part, that the child welfare system shall “[a]ssure each child care, safety and guidance,” “[p]reserve and strengthen the child family ties,” and “[r]ecognize the fundamental rights of children and parents.” W. Va. Code § 49-1-105(b).

abuse can be substantially corrected” and when necessary for the welfare of the child. Syl. Pt. 5, in part, *In re Kristin Y.*, 227 W. Va. 558, 712 S.E.2d 55 (2011) (quoting Syl. Pt. 2, *In re R.J.M.*, 164 W. Va. 496, 266 S.E.2d 114 (1980)); *see also* W. Va. Code § 49-4-604(c)(6) (permitting circuit court to terminate parental, custodial, and guardianship rights upon finding no reasonable likelihood conditions of neglect or abuse can be substantially corrected in the near future and when necessary for the child’s welfare). There is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected when “[t]he abusing parent or parents have not responded to or followed through with a reasonable family case plan or other rehabilitative efforts . . . as evidenced by the continuation or insubstantial diminution of conditions which threatened the health, welfare, or life of the child.” W. Va. Code § 49-4-604(d)(3). The record supports the court’s findings that the petitioner refused to comply with the terms of his improvement period and failed to acknowledge his ongoing substance abuse issues or the abuse and neglect to which he subjected his child. *See In re Timber M.*, 231 W. Va. at 55, 743 S.E.2d at 363 (“Failure 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))). Therefore, we see no abuse of discretion in the circuit court’s finding that there was no reasonable likelihood that the conditions of abuse and neglect could be corrected, and that the child’s best interest necessitated termination of the petitioner’s rights. As such, we decline to disturb the findings of the circuit court.

For the foregoing reasons, we find no error in the decision of the circuit court, and its September 15, 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