

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

*In re O.J.*

No. 23-635 (Webster County CC-51-2022-JA-50)

**MEMORANDUM DECISION**

Petitioner Father B.J.<sup>1</sup> appeals the Circuit Court of Webster County’s October 4, 2023, order terminating his parental and custodial rights to O.J.,<sup>2</sup> arguing that the circuit court erred in terminating his rights without granting him an improvement period. 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 November 2022, the DHS filed a petition alleging that the petitioner was addicted to controlled substances and failed to maintain an appropriate home for the child. According to the petition, the petitioner tested positive for methamphetamine, amphetamine, and benzodiazepine in October and November 2022; the child reported seeing the petitioner’s drug paraphernalia and seeing the petitioner “high”; the petitioner was staying at an apartment unsuitable for the child; and the petitioner was adjudicated as an abusing parent in 2017 for substance abuse and failing to provide a suitable home for the child.<sup>3</sup> Shortly after the petition was filed, the petitioner filed a motion requesting an improvement period.

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<sup>1</sup> The petitioner appears by counsel Andrew B. Chattin. The West Virginia Department of Human Services appears by counsel Attorney General John B. McCuskey and Assistant Attorney General Katica Ribel. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel. Counsel Mackenzie Holdren 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”).

<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).

<sup>3</sup> The case was dismissed in 2018 after the petitioner successfully completed an improvement period.

At an adjudicatory hearing in January 2023, the petitioner admitted to the allegations in the petition concerning his previous adjudication and his substance abuse, including using substances in the child's presence. The circuit court accepted the petitioner's admissions but proceeded to hear evidence concerning the petitioner's failure to maintain a suitable home for the child. Testimony was presented establishing that the petitioner was not the leaseholder for the apartment in which he alleged to live. Based on the petitioner's admissions and the evidence presented, the circuit court found that the petitioner was homeless and used controlled substances in the presence of the child. Accordingly, the circuit court adjudicated the child as "abused and/or neglected" and adjudicated the petitioner as an abusing and neglecting parent.

A dispositional hearing was held in February 2023. After hearing testimony from the case worker and the petitioner, the circuit court continued the hearing, noting that the petitioner "[came] in with a terrible attitude" and "blame[d] the [DHS] for his failure to seek substance abuse treatment and counseling for over three months." As a result, the circuit court took the petitioner's motion for an improvement period under advisement but ordered him to enter a "long term, inpatient substance abuse treatment [program] with a licensed counselor on staff," participate in drug screening, and obtain employment.

The final dispositional hearing was held in September 2023. The petitioner testified that he completed a three-month inpatient drug rehabilitation program but produced a certificate indicating that he completed an eight-week "intensive outpatient" program. The petitioner admitted to using methamphetamine and marijuana after completing the program. The petitioner further testified that he obtained full-time employment but was not able to find a place to live because he "ma[de] so much money." The petitioner also blamed his relapse, homelessness, and poor relationship with the child on his divorce and the child's mother. Finally, the petitioner denied using drugs in the child's presence, an allegation to which he previously admitted. The drug screening provider testified that the petitioner was ordered to drug screen twice a week. However, from July 31, 2023, until September 12, 2023, the petitioner only screened four times—one of which was positive for marijuana. The case worker testified that the DHS recommended termination of the petitioner's parental rights. She explained that although the petitioner was initially compliant with services, the petitioner failed to resume services or communicate with the DHS after completing the drug rehabilitation program. The case worker further explained that the rehabilitation program the petitioner completed was neither long-term nor inpatient as ordered by the court. Additionally, the case worker testified that the child, who was ten years old at the time, was "adamant" that she did not want to see the petitioner.

After considering the evidence, the circuit court found that the petitioner previously received services from the DHS for substance abuse in a prior abuse and neglect case, tested positive for methamphetamine and marijuana after completing his substance abuse treatment program, and "failed to accept responsibility for his actions and blame[d] his ex-wife and divorce case for his failings." The circuit court further found that the child did not want contact with the petitioner. Consequently, the circuit court concluded that there was "no reasonable ground to believe [the petitioner would] correct the conduct that led to the filing of the petition in the near future" and that termination of the petitioner's parental rights was in the child's best interest. Accordingly, the circuit court denied the petitioner's motion for an improvement period and

terminated the petitioner's parental and custodial rights.<sup>4</sup> The circuit court also denied the petitioner post-termination visitation with the child. 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 Cecil T.*, 228 W. Va. 89, 717 S.E.2d 873 (2011). Before this Court, the petitioner argues that the circuit court erred in terminating his parental and custodial rights without first granting him an improvement period.<sup>5</sup> West Virginia Code § 49-4-610(1)-(3) permits the circuit court to grant an improvement period when a parent "demonstrates, by clear and convincing evidence, that the [parent] is likely to fully participate in the improvement period." The petitioner contends that he would have complied with the terms and conditions of his improvement period because he "already had taken steps to correct the conditions for which he was adjudicated," including completing a substance treatment program, obtaining employment, and participating in services. We find this argument unpersuasive. While it is commendable that the petitioner made positive strides towards sobriety, the petitioner admittedly used methamphetamine and marijuana *after* completing a substance abuse treatment program and receiving services from the DHS. This is particularly significant given the petitioner had previously received services to address his substance abuse yet reverted back to abusing substances to cope with his divorce. Clearly, the petitioner is unable to internalize the services and treatments he received. In addition, the petitioner missed drug screens, failed to contact the DHS after completing the substance abuse treatment program, blamed the child's mother and their divorce proceedings for his continued use of controlled substances, and, despite his prior admission, denied using controlled substances in the presence of the child. *See In re Timber M.*, 231 W. Va. 44, 55, 743 S.E.2d 352, 363 (2013) ("[T]o 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 and in making an improvement period an exercise in futility at the child's expense." (quoting *In re Charity H.*, 215 W. Va. 208, 217, 599 S.E.2d 631, 640 (2004))). Thus, we find that the circuit court did not err by denying the petitioner an improvement period. *See In re Tonjia M.*, 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002) ("The circuit court has the discretion to refuse to grant an improvement period when no improvement is likely.").

We likewise find no error in the circuit court's decision to terminate the petitioner's parental and custodial rights. The circuit court found that termination was in the best interest of the child and that there was no reasonable likelihood that the conditions of neglect could be corrected in the near future. For the same reasons discussed above, these findings were well-supported by the record. *See* W. Va. Code § 49-4-604(c)(6) (permitting circuit court to terminate

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<sup>4</sup> The permanency plan for the child is to remain with her nonabusing mother.

<sup>5</sup> Without assigning error, the petitioner insinuates that the circuit court also erred in denying him post-termination visitation with the child. We decline to address this issue as it is an unsupported, skeletal argument. *See State, Dep't of Health v. Robert Morris N.*, 195 W. Va. 759, 765, 466 S.E.2d 827, 833 (1995) ("[A] skeletal 'argument,' really nothing more than an assertion, does not preserve a claim . . . . Judges are not like pigs, hunting for truffles buried in briefs." (quoting *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir.1991))).

parental rights upon finding no reasonable likelihood conditions of neglect can be substantially corrected in the near future and when necessary for the child's welfare).

For the foregoing reasons, the circuit court's October 4, 2023, order is hereby affirmed.

Affirmed.

**ISSUED:** January 29, 2025

**CONCURRED IN BY:**

Chief Justice William R. Wooton  
Justice Elizabeth D. Walker  
Justice Tim Armstead  
Justice C. Haley Bunn  
Justice Charles S. Trump IV