

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

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

In re Y.K. and G.K.

No. 23-708 (Nicholas County CC-34-2023-JA-51 and CC-34-2023-JA-52)

MEMORANDUM DECISION

Petitioner Father J.K.¹ appeals the Circuit Court of Nicholas County’s November 14, 2023, order terminating his parental rights, arguing that the circuit court erred by failing to impose a less restrictive dispositional alternative.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 April 2023, the DHS filed a petition alleging that the petitioner abused and neglected the children by engaging in domestic violence in their presence. The petition further alleged that the petitioner was arrested for domestic battery against G.K.’s mother, with whom he lived. Then-thirteen-year-old Y.K., who called the police, stated that this was not the first time she witnessed the petitioner in a physical altercation with a woman and that he punched holes in the walls of the home when he became angry. The petition also noted that Y.K.’s mother, who was previously married to the petitioner, reported that she was the victim of the petitioner’s domestic violence throughout their marriage. Additionally, Y.K. reported witnessing the petitioner sell drugs. The petition also alleged that the petitioner had contact with the children after he was released from incarceration, even though a term of his bond was that he have no contact with the children.

¹ The petitioner appears by counsel Jeremy B. Cooper, who filed a brief and was granted leave for the petitioner to file a self-represented supplemental brief pursuant to Rule 10(c)(10)(b) of the West Virginia Rules of Appellate Procedure. 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 Juliana C. Dotsenko 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).*

In June 2023, the court held an adjudicatory hearing at which the petitioner stipulated to the allegations in the petition. As such, the court adjudicated him of abusing and neglecting the children and granted him a post-adjudicatory improvement period. The terms of the improvement period included, among other things, visits with the children at the DHS's discretion, drug and alcohol screens, and drug abuse rehabilitation or counseling.

At a September 2023 review hearing, the DHS moved to revoke the petitioner's improvement period due to his noncompliance and failed drug screens. The court then ordered a recess so that the petitioner could submit to a drug screen, which was positive for methamphetamine. Thereafter, the court heard testimony from a Child Protective Services ("CPS") worker indicating that the petitioner was initially compliant with his improvement period, but in June 2023, he stopped responding to CPS and refused to drug screen. The witness testified that the petitioner screened positive for drugs at least three times during his improvement period. Then, the psychologist who conducted the petitioner's parental fitness and psychological evaluation testified that the petitioner was "delusional" and his mental state was a potential danger to the children. In the resulting order, the court found that the petitioner was noncompliant with the terms of his improvement period with the exception of parenting and adult life skills classes. Based upon the evidence, the court revoked the petitioner's improvement period.

In November 2023, the court held a dispositional hearing at which it took judicial notice of the testimony and evidence adduced at the September 2023 review hearing. The CPS worker who testified at the prior hearing confirmed that the situation had not changed, and that the DHS was recommending termination of the petitioner's parental rights. In the resulting dispositional order, the court found that the petitioner continually abused and was addicted to substances to the detriment of his parenting abilities and refused to follow through with a reasonable family case plan. As such, the court ultimately determined that there was no reasonable likelihood that the conditions of abuse and neglect that led to the filing of the petition could be substantially corrected in the near future and that termination was in the children's best interests, given their need for continuity of caretakers. Finally, the court imposed upon the petitioner a \$250 per month child support obligation. It is from this 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 Cecil T.*, 228 W. Va. 89, 717 S.E.2d 873 (2011). Before this Court and by his counsel, the petitioner contends that the circuit court erred by terminating his parental rights rather than employing a less restrictive disposition because there was evidence that the petitioner would have participated in a post-dispositional improvement period or, in the alternative, that disposition pursuant to West Virginia Code § 49-4-604(c)(5) was warranted because he faithfully attended his parenting and adult life skills classes. However, we have held as follows:

³ The permanency plan for the children is placement with their respective nonabusing mothers.

“Termination of parental rights, the most drastic remedy under the statutory provision covering the disposition of neglected children, [West Virginia Code § 49-4-604] may be employed without the use of intervening less restrictive alternatives when it is found that there is no reasonable likelihood under [West Virginia Code § 49-4-604(c)(6)] that conditions of neglect or abuse can be substantially corrected.” Syllabus point 2, *In re R.J.M.*, 164 W.Va. 496, 266 S.E.2d 114 (1980).

Syl. Pt. 5, *In re Kristin Y.*, 227 W. Va. 558, 712 S.E.2d 55 (2011). There is no reasonable likelihood that conditions of neglect or abuse can be substantially corrected when “[t]he abusing parent or parents have habitually abused or are addicted to alcohol, controlled substances or drugs, to the extent that proper parenting skills have been seriously impaired” or when “[t]he abusing parent or parents have not responded to or followed through with a reasonable family case plan or other rehabilitative efforts.” W. Va. Code § 49-4-604(d)(1) & (3). As the petitioner aptly points out in his brief, “courts are not required to exhaust every speculative possibility of parental improvement before terminating parental rights.” *In re Kristin Y.*, 227 W. Va. at 560, 712 S.E.2d at 57, Syl. Pt. 4, in part (quoting *In re R.J.M.*, 164 W. Va. at 496, 266 S.E.2d at 114, Syl. Pt. 1). Here, the evidence upon which the court relied shows that the petitioner failed to comply with his case plan, made no effort to correct the conditions of abuse and neglect that led to the filing of the initial petition, and either continually tested positive for methamphetamine throughout his improvement period or simply refused to drug screen. Based upon this evidence, the court found that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future and termination was necessary in light of the children’s need for continuity of care and caretakers. As such, we decline to disturb the circuit court’s decision.⁴

For the foregoing reasons, we find no error in the decision of the circuit court, and its November 14, 2023, order is hereby affirmed.

Affirmed.

ISSUED: January 29, 2025

⁴ In the petitioner’s self-represented supplemental brief, he asserts numerous violations of his constitutional rights. However, the petitioner’s brief fails entirely to comply with Rule 10 of the West Virginia Rules of Appellate Procedure, both in form and substance. For example, the petitioner asserts, based only on his personal opinion, that a DHS witness was “under the influence of substance[s]” while giving testimony. The petitioner fails to cite to any relevant facts or applicable law to support this claim. Further, he asserts that the court’s imposition of a child support obligation was impermissible under *Hooten v. Hooten*, 168 Ga. 86, 147 S.E.2d 373 (1929), a divorce case decided by the Georgia Supreme Court with no applicability to the instant matter. However, controlling authority provides that “[a] circuit court terminating a parent’s parental rights pursuant to [West Virginia Code § 49-4-604], must ordinarily require that the terminated parent continue paying child support for the child.” Syl. Pt. 2, in part, *In re Ryan B.*, 224 W. Va. 461, 686 S.E.2d 601 (2009). The petitioner fails to reference applicable law; thus, we decline to address the petitioner’s improperly presented arguments as contained in his self-represented brief.

CONCURRED IN BY:

Chief Justice William R. Wooton

Justice Elizabeth D. Walker

Justice Tim Armstead

Justice C. Haley Bunn

Justice Charles S. Trump IV