

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

***In re* K.K. and N.K.**

No. 23-750 (Raleigh County CC-41-2022-JA-124 and CC-41-2022-JA-125)

MEMORANDUM DECISION

Petitioner Father J.K.¹ appeals the Circuit Court of Raleigh County’s December 5, 2023, order terminating his parental rights to K.K. and N.K., although he fails to allege any specific error in the proceedings below.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.

Given that the petitioner’s appeal before this Court raises no specific challenge to any act by the circuit court, it is unnecessary to belabor the procedural history of the proceedings below. The DHS filed a petition in September 2022 alleging that the petitioner sexually abused a child in the home who is not at issue in this appeal and was charged with 300 counts of sex crimes as a result. Following a hearing in May 2023, the court entered an order adjudicating the petitioner of abusing K.K. and N.K. due to his sexual abuse of another child in the home. In November 2023, the court held a dispositional hearing, after which it terminated his parental rights to K.K. and N.K.³ Specifically, the court found that there was no reasonable likelihood that the petitioner could

¹ The petitioner appears by counsel Matthew A. Victor, who filed the brief in accordance with Rule 10(c)(10) 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 Heather L. Olcott. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel. Counsel Adam D. Taylor 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).

³ The court also terminated the petitioner’s rights as a psychological parent to two additional children, J.J. and E.J. The petitioner, however, is explicit in his brief before this Court

correct the conditions of abuse based upon his conviction of one count of first-degree sexual abuse and one count of sexual abuse by a parent, guardian, custodian, or person in a position of trust and his resulting term of incarceration of fifteen to forty-five years.⁴ The petitioner appeals from the dispositional order.

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). As noted above, the petitioner fails to challenge any act of the circuit court in his petition for appeal. Specifically, the petitioner's lone assignment of error before the Court asserts that "[t]here are no discernible meritorious assignments of error which are capable of being raised in this appeal." In the "Argument" section of the brief, the petitioner's counsel presents no actual argument regarding any alleged errors. Instead, he simply speculates about issues the petitioner could possibly raise in a self-represented brief. Despite this Court granting counsel's motion for the petitioner to file a self-represented brief pursuant to Rule 10(c)(10)(b) of the Rules of Appellate Procedure, the petitioner failed to do so. Accordingly, this Court is left with no assignment of error to address in affirming the circuit court's dispositional order. As we have explained, "[t]here is a presumption of regularity of court proceedings that remains until the contrary appears, and the burden is on the person who alleges such irregularity to show it affirmatively." Syl. Pt. 2, in part, *State v. J.S.*, 233 W. Va. 198, 757 S.E.2d 622 (2014) (quoting Syl., in part, *State ex rel. Smith v. Boles*, 150 W. Va. 1, 146 S.E.2d 585 (1965)). Because the petitioner has failed to establish any irregularity in the proceedings below, we must affirm the circuit court's order.

For the foregoing reasons, we find no error in the decision of the circuit court, and its December 5, 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

that he does not challenge the termination of his rights to these children. As such, they are not at issue in this appeal.

⁴ The permanency plan for the children is to remain with the mother.