

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

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

In re C.B.-1

No. 23-751 (Wood County CC-54-2023-JA-49)

MEMORANDUM DECISION

Petitioner Father C.B.-2¹ appeals the Circuit Court of Wood County’s November 30, 2023, order terminating his parental rights to C.B.-1, arguing that the court erred in denying his motion for a post-dispositional improvement period.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 February 2023, the DHS filed a petition after the mother tested positive for amphetamine and cannabis upon giving birth to the child and tested positive for fentanyl during her pregnancy. As to the petitioner, the DHS alleged that he admitted to abusing drugs with the mother while she was pregnant. At an adjudicatory hearing in March 2023, the petitioner admitted to the substance abuse allegations against him as set forth in the petition and stipulated to his adjudication. Accordingly, the court found that the petitioner abused and neglected the child. The court also granted the petitioner a post-adjudicatory improvement period, the terms of which required him to participate in parenting and adult life skills education, random drug screens, a substance abuse evaluation, and substance abuse counseling, among other requirements.

¹ The petitioner appears by counsel Wells H. Dillon. 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 Keith White 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”).

² We use initials where necessary to protect the identities of those involved in this case. *See W. Va. R. App. P. 40(e).* Because the child and the petitioner share the same initials, we use numbers to differentiate them.

According to a DHS report from May 2023, the petitioner had submitted to only one drug screen and was “on track to get discharged” from one service provider due to his noncompliance. During the petitioner’s substance abuse evaluation, he indicated that he did not have a substance use disorder despite admitting to having used methamphetamine and he was adamant with providers that “he d[id] not have a problem.” The evaluator who completed the petitioner’s parental fitness evaluation opined that the petitioner lacked the “suitability to care for his child due to his own illicit substance use.” After a period of minimal compliance, the petitioner failed to continue his participation in services and his submission to drug screens became sporadic. Specifically, the petitioner was required to undergo more strict screening, but he failed to begin screening at the new location as directed. As a result of the petitioner’s refusal to cooperate, he failed to submit to a drug screen for approximately two months. Additionally, the petitioner was discharged by a substance abuse counseling provider due to his noncompliance. The court terminated the petitioner’s improvement period at a hearing in September 2023.

In November 2023, the circuit court held a final dispositional hearing. The petitioner made an oral motion for a post-dispositional improvement period, but the court denied the motion. The court then proceeded to disposition, noting that the petitioner “participated very little in services” during the proceedings and that his parental fitness evaluation was “very concerning and showed a lot of underlying problems.” Further, the court found that the petitioner had not participated in any services since August 2023, that his visits with the child were stopped because of his refusal to consistently drug screen, and that when he did submit to screens many were positive for methamphetamine. In fact, the petitioner admitted to abusing cannabis one week prior to the dispositional hearing. Given the petitioner’s failure to meaningfully participate in services and his continued substance abuse, the court found that there was no reasonable likelihood that he could substantially correct the conditions of abuse and neglect in the near future. Finding that the child’s welfare necessitated it, the court terminated the petitioner’s parental rights.³ 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). Before this Court, the petitioner argues that the circuit court erred in denying his motion for a post-dispositional improvement period.⁴ However, the record is clear that the petitioner failed to file a written motion in violation of West Virginia Code § 49-4-610(3)(A). *See also* Syl. Pt. 4, *State ex rel. P.G.-1 v. Wilson*, 247 W. Va. 235, 878

³ The mother’s parental rights were also terminated. The permanency plan for the child is adoption in the current placement.

⁴ The petitioner raises a second assignment of error in which he asserts that termination of his parental rights was in error. However, the petitioner provides no actual argument on this issue and fails to cite to any authority in support, in violation of Rule 10(c)(7) of the West Virginia Rules of Appellate Procedure. Further, we have explained that “[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.” *State v. Kaufman*, 227 W. Va. 537, 555 n.39, 711 S.E.2d 607, 625 n.39 (2011) (quoting *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir.1991)). Accordingly, the petitioner has not preserved his claim regarding termination, and we decline to address this issue.

S.E.2d 730 (2021) (“A circuit court may not grant a[n] . . . improvement period under W. Va. Code § 49-4-610 . . . unless the respondent to the abuse and neglect petition files a written motion requesting the improvement period.”). Additionally, the petitioner failed to demonstrate that he had experienced a substantial change in circumstances since his initial improvement period. *See* W. Va. Code § 49-4-610(3)(D) (prohibiting circuit courts from granting parents a second improvement period unless the parent demonstrates that “since the initial improvement period, [he] has experienced a substantial change in circumstances” and that “due to that change in circumstances [he] is likely to fully participate in a further improvement period”). While the petitioner argues that having obtained housing and employment constituted such a change in circumstances, the circuit court’s findings about his minimal compliance in the initial improvement period, failure to participate in any services in the two months prior to disposition, and continued drug use overwhelmingly supported denial of the petitioner’s motion. Accordingly, we conclude that the circuit court did not abuse its discretion in denying the petitioner a post-dispositional improvement period. *See In re Tonjia M.*, 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002) (granting circuit courts discretion to deny an improvement period when no improvement is likely).

For the foregoing reasons, we find no error in the decision of the circuit court, and its November 30, 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