

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re R.G., T.G., and A.G.

No. 24-106 (Pocahontas County CC-38-2023-JA-01, CC-38-2023-JA-02, and CC-38-2023-JA-03)

MEMORANDUM DECISION

Petitioner Father D.G.¹ appeals the Circuit Court of Pocahontas County’s January 30, 2024, order terminating his parental rights to R.G., T.G., and A.G., arguing that termination was erroneous because he successfully fulfilled most of the requirements of his 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 January 2023, the DHS filed a petition alleging that the petitioner exposed the children to an unstable living environment due to his substance abuse. The DHS alleged that then-three-year-old A.G. was “couch surfing” with her mother but was often left with other individuals and that then-seven-year-old R.G. and then-five-year-old T.G. primarily lived with the petitioner. The petitioner previously admitted to methamphetamine use during a prior Child Protective Services (“CPS”) investigation, and when CPS went to the home to remove the children pursuant to the instant petition, the petitioner admitted to recent methamphetamine use.

At the February 2023 adjudicatory hearing, the petitioner stipulated to neglecting the children by exposing them to an unstable living environment due to his substance abuse. The court adjudicated the petitioner of neglecting the children and granted his motion for a post-adjudicatory

¹ The petitioner appears by counsel Carrie F. DeHaven. The West Virginia Department of Human Services appears by Attorney General John B. McCuskey and Assistant Attorney General Andrew Waight. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel. Counsel Michael R. Whitt 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).*

improvement period, the terms of which included, among other things, refraining from contact with drug users or paraphernalia, attaining employment, obtaining appropriate housing, submitting to a psychological and substance abuse evaluation, participating in a parental fitness evaluation, abstaining from drugs and alcohol, submitting to drug and alcohol screens, and completing parenting and adult life skills classes. At a May 2023 review hearing, the court granted the petitioner an extension of his post-adjudicatory improvement period.

In July 2023, the petitioner underwent a psychological evaluation during which he reported a history of domestic violence with the mother and multiple years of drug use. The evaluator concluded that his prognosis for the reliable attainment of minimally adequate parenting was poor, due to his failure to “maintain consistent contact and consistently care for the subject children,” and his history of polysubstance abuse, extensive criminal history, history of “interpersonal dysfunction” and domestic violence, lack of housing, unemployment, and defensive responses. In October 2023, the court held a dispositional hearing at which the petitioner was granted a post-dispositional improvement period. In November 2023, the court held a review hearing and the parties reported that the matter should be set for a contested dispositional hearing.

In January 2024, the court held a final dispositional hearing, during which the petitioner testified. When questioned about two recent positive drug screens, the petitioner claimed that, shortly after completing a drug rehabilitation program, he visited his friends, who he knew to be drug users, and intentionally touched methamphetamine to “test himself” to see if he could say no to drugs, but he was unable to explain the second positive drug screen. Describing other instances that violated the terms of his improvement period, the petitioner testified that he was again exposed to methamphetamine when he visited an individual who he knew was a drug user and that individual smoked methamphetamine in the petitioner’s presence; he spent time at the home of his brother, a known drug user;³ and he allowed the children’s mother, also a known drug user, to stay in the home “for a week or so.” On the issue of housing, the petitioner explained that he lived with his mother and her boyfriend, who has a criminal record of domestic violence. The petitioner stated that his mother’s boyfriend would drink and be “mean” to his mother and admitted that his current living environment was not a good situation for his children. Despite admitting the home in which he lived was not a suitable place for his children, the petitioner testified that he would move the children into the home if there was not an abuse and neglect proceeding preventing him from doing so. In the dispositional order that followed, the court found that the petitioner denied using drugs despite two positive drug screens from July 2023; allowed the mother, a known drug user, to move in with him; failed to obtain suitable housing; and failed to comply with the terms of his improvement period. Based upon the evidence, the court found that there was no reasonable likelihood that the conditions of neglect could be substantially corrected in the near future and that termination of the petitioner’s parental rights was in the children’s best interests. As such, the court terminated the petitioner’s parental rights. It is from this order that the petitioner appeals.⁴

³ Although the petitioner stated that his brother did not use drugs in the petitioner’s presence, contact with drug users violated the terms of the petitioner’s improvement period.

⁴ The mother’s parental rights were terminated earlier in the proceeding. The permanency plan for the children is adoption in the current placement.

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 by terminating his parental rights rather than employing a less restrictive alternative. He contends that he complied with the “bulk” of the terms included in his improvement period and corrected his substance abuse issue by January 2024.⁵ However, the court may terminate parental rights “[u]pon a finding that there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future, and when necessary for the welfare of the child.” W. Va. Code § 49-4-604(c)(6). There is no reasonable likelihood that 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 . . . 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). In his brief, the petitioner readily admits to directly violating the terms of his improvement period by failing two drug screens, holding methamphetamine in his hands, and allowing the children’s mother, a known drug user, to live with him. The petitioner failed to adhere to the terms of his improvement periods in other respects, as evidenced by his testimony that he had contact with multiple known drug users and failed to obtain suitable housing. Additionally, the petitioner’s psychological prognosis for minimally adequate parenting was found to be poor. Based upon this evidence, the court found that termination of his parental rights was in the children’s best interests and there was no reasonable likelihood that the petitioner could correct his substance abuse and lack of appropriate housing for which he was adjudicated, even after nearly twelve months of services. As such, we decline to disturb the circuit court’s decision.

For the foregoing reasons, we find no error in the decision of the circuit court, and its January 30, 2024, order is hereby affirmed.

Affirmed.

ISSUED: March 4, 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

⁵ While the petitioner contends that he complied with the “bulk” of his improvement period terms, he fails to support this assertion with relevant facts or citations to the record. *See* W. Va. R. App. P. 10(c)(7) (requiring that briefs contain “appropriate and specific citations to the record on appeal”).