

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

*In re* L.F.

No. 24-205 (Lewis County CC-21-2023-JA-26)

**MEMORANDUM DECISION**

Petitioner Father I.F.<sup>1</sup> appeals the Circuit Court of Lewis County’s January 23, 2024, order terminating his parental rights to L.F.,<sup>2</sup> arguing that the termination was erroneous because the DHS failed to meet its burden of proof. 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 May 2023, the DHS filed a petition alleging that L.F. was an abused and neglected child because the petitioner and the mother used methamphetamine while the mother was pregnant with L.F. The DHS further alleged that the petitioner had an ongoing abuse and neglect case involving his older children that commenced in April 2022.<sup>3</sup> According to the record, in June 2022, the petitioner stipulated to abusing and neglecting his older children due to the parents’ drug use and the deplorable condition of their home. The petitioner was granted a post-adjudicatory improvement period, during which he and the mother conceived L.F. and tested positive for methamphetamine.

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<sup>1</sup> The petitioner appears by counsel Phil Isner. The West Virginia Department of Human Services appears by counsel Attorney General John B. McCuskey and Assistant Attorney General Lee Niezgodá. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel. Counsel Melissa T. Roman 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 older children are not at issue in this appeal.

In June 2023, a dispositional hearing was held regarding the older children. The court heard testimony that the petitioner frequently failed to submit to urine drug screens, particularly from September 2022 to November 2022; submitted numerous insufficient or diluted urine samples, which are considered administrative failures; and had hair follicle tests in August 2022 and November 2022 that were positive for methamphetamine. The court also heard testimony that the mother had several positive drug screens for various illegal substances, including hair follicle tests in November 2022 and January 2023 that were positive for methamphetamine, a urine screen in January 2023 that was positive for morphine and codeine, and a urine screen in April 2023 that was positive for methamphetamine. The mother testified that her urine screen in January 2023 was positive because she had consumed poppy seeds and that her positive urine screen in April 2023 was a laboratory error. The petitioner admitted that he used methamphetamine on one occasion in September 2022, shaved the hair off his body in November 2022 in an attempt to defeat the hair follicle screen, and missed drug screens because he knew he would fail. In addition, the petitioner claimed that the mother's positive drug screens were false positives because "he trusts [the mother] and is confident she is not using." Ultimately, the circuit court terminated the petitioner's parental rights to his older children, finding that he did not successfully complete his improvement period, admitted to using methamphetamine in September 2022, delayed his participation in services to remediate his parenting deficiencies and drug addiction, remained in a relationship and lived with the mother, and denied the mother's drug use throughout her pregnancy.<sup>4</sup>

In July 2023, the DHS filed an amended petition to add allegations based on the involuntary termination of the petitioner's parental rights to his older children. At a hearing on August 1, 2023, the mother entered into a stipulated adjudication, wherein she admitted to using methamphetamine in April 2023 while pregnant with L.F. and that her parental rights to her older children were involuntarily terminated, which the record indicates was due to her substance abuse. At a hearing on August 31, 2023, the mother advised the court that she was entering a twenty-eight-day inpatient drug rehabilitation program following the hearing and indicated that she and the petitioner remained in a relationship and were still living together. That same day, the petitioner submitted for a hair follicle drug screen, which was positive for methamphetamine.

In October 2023, the court held an adjudicatory hearing for the petitioner. The petitioner admitted that he "tested positive for methamphetamine by at least two different hair follicle tests in 2023," that he "struggled with addiction since the conception of the infant child," and that his parental rights to his older children were involuntarily terminated, which the record indicates was due to his substance abuse. Based on the petitioner's admissions, the circuit court concluded that L.F. was abused and neglected and adjudicated the petitioner as an abusing parent.

In December 2023, the court held a dispositional hearing, during which the case worker testified that the DHS recommended terminating the petitioner's parental rights to his older children because the conditions of abuse and neglect had not changed since his parental rights were terminated in June 2023. The case worker explained that the petitioner continued to deny drug use despite multiple positive hair follicle tests, including one in August 2023. The petitioner testified

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<sup>4</sup> We affirmed the circuit court's decision to terminate the petitioner's parental rights. *See In re I.F.-1*, No. 23-463, 2024 WL 3985064 (W. Va. Aug. 27, 2024) (memorandum decision).

that he remedied his substance abuse problem and maintained that he last used methamphetamine in the fall of 2022. When questioned about his hair follicle tests that were positive for methamphetamine in January 2023 and August 2023, the petitioner claimed they were inaccurate because the test administrator used “nonregenerative hair.” However, the petitioner then admitted to shaving his body in 2022 after receiving a positive hair follicle test. The petitioner further disputed the accuracy of the mother’s positive drug test results despite acknowledging that the mother previously lied to him about her drug use. Additionally, across the last two hearings, the parents gave conflicting testimony concerning their ongoing relationship. Finally, a provider who administered drug screens testified as an expert about the differences between hair follicle and urine drug screens. The provider indicated that hair follicle screens detect repeated drug use within the previous ninety days, while urine screens detect drug use within the previous three to five days. Because the detection windows of the drug screens are different, the provider acknowledged that it is possible for someone to have a negative urine screen and a positive follicle screen. The provider testified that although the petitioner had been consistently providing clean urine screens, he still had four hair follicle screens that were positive for methamphetamine across an extended period, the most recent of which was August 2023 and was provided alongside clean urine screens.

After considering the evidence, the circuit court entered a dispositional order which concluded the DHS proved<sup>5</sup> that there had been no change in the petitioner’s circumstances since the prior termination of his parental rights to his older children. Specifically, the circuit court found that the petitioner “did not take responsibility for [his] drug addiction” in his prior abuse and neglect case and “continue[s] to not take responsibility for [his] drug addiction in [this case].” The court explained that the petitioner had been dishonest with the court because he “testified, under oath, to multiple versions of [his] self-proclaimed sobriety, and continue[d] to make excuses for failed drug screens.” The court recalled that the petitioner “attempted to defeat his hair follicle screening by shaving his body before the test in November 2022 but still had failed hair follicle screens for methamphetamine in August 2022, November 2022, January 2023[,] and August 2023.” The circuit court further found that the petitioner’s testimony concerning his separation from the mother was not credible because he and the mother testified “to multiple versions of their self-proclaimed separation.” Based on these findings, the circuit court determined that there was no reasonable likelihood the petitioner could substantially correct the conditions of abuse and neglect in the near future and that termination of the petitioner’s parental rights was in L.F.’s best

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<sup>5</sup> The record indicates that there was confusion amongst the parties and the circuit court concerning who bears the burden of proof in abuse and neglect cases when the abusing parent’s parental rights to another child have previously been involuntarily terminated. Although it should be axiomatic, we remind the circuit court and the parties that West Virginia Code § 49-4-601(i) places the burden on the DHS to prove, by clear and convincing evidence, that a respondent parent abused or neglected his or her child. *Accord* Syl. Pt. 1, *In re S.C.*, 168 W. Va. 366, 284 S.E.2d 867 (1981). Furthermore, “the burden of proof in a child neglect or abuse case *does not shift from the [DHS] to the parent, guardian or custodian of the child.* It remains upon the [DHS] throughout the proceedings.” *See* Syl. Pt. 4, *In re K.L.*, 233 W. Va. 547, 759 S.E.2d 778 (2014) (emphasis added) (quoting Syl. Pt. 2, in part, *In re S.C.*, 168 W. Va. 366, 284 S.E.2d 867 (1981)). Indeed, this necessarily includes abuse and neglect cases wherein the abusing parent’s parental rights to another child have previously been involuntarily terminated.

interest. Accordingly, the circuit court terminated the petitioner's parental rights to L.F.<sup>6</sup> 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 evidence did not support the circuit court's finding that there was no reasonable likelihood he could substantially correct the conditions of abuse and neglect in the near future. The petitioner contends that the conflicting results of his concurrent urine and hair follicle drug screens do not "support a finding of ongoing drug use by 'clear and convincing evidence.'" However, the petitioner fails to recognize that his "conflicting" drug screens were not considered in a vacuum and comprised just a small portion of the evidence presented to the court. Notably, in addition to the petitioner's drug screen results, the circuit court heard expert testimony explaining the differences between the drug screens and the validity of the test results, as well as testimony that the petitioner missed several urine screens. It is clear that the circuit court exercised its authority to assign weight and credibility to the evidence presented, and we decline to disturb its determinations on appeal. *See State v. Guthrie*, 194 W. Va. 657, 669 n.9, 461 S.E.2d 163, 175 n.9 (1995) ("An appellate court may not decide the credibility of witnesses or weigh evidence as that is the exclusive function and task of the trier of fact.").

Moreover, the record is replete with evidence supporting the circuit court's finding that there was no reasonable likelihood the petitioner could substantially correct the conditions of abuse and neglect in the near future. West Virginia Code § 49-4-604(d) defines "no reasonable likelihood that conditions of neglect or abuse can be substantially corrected" to mean that "the abusing adult or adults have demonstrated an inadequate capacity to solve the problems of abuse or neglect on their own or with help." It is well-established that "to 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." *In re Timber M.*, 231 W. Va. 44, 55, 743 S.E.2d 352, 363 (2013) (quoting *In re Charity H.*, 215 W. Va. 208, 217, 599 S.E.2d 631, 640 (2004)). Throughout the proceedings, the petitioner denied using drugs after 2022, made excuses for his failed drug screens, and misled the court about the status of his relationship with the mother. Further underscoring the court's findings, the petitioner continued defending the mother by claiming to have no knowledge of her drug use, disputing the validity of her drug screens, and remaining in a relationship with her despite knowing that she previously lied to him about using methamphetamine while pregnant. Therefore, the petitioner's refusal to acknowledge his and the mother's drug use is clear and convincing proof that the conditions of abuse or neglect could not be substantially corrected in the near future. The evidence further supports the circuit court's determination that termination was necessary for L.F.'s welfare. As such, the circuit court had a sufficient basis upon which to make the findings necessary to terminate the petitioner's parental rights to L.F. *See* W. Va. Code § 49-4-604(c)(6) (permitting termination of parental rights upon finding "there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future" and that termination is necessary for the welfare of the

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<sup>6</sup> The mother's parental rights were also terminated. The permanency plan for the child is adoption in her current placement.

child). Accordingly, we find no error in the circuit court's decision to terminate the petitioner's parental rights to L.F.

For the foregoing reasons, the circuit court's January 23, 2024, order is hereby affirmed.

Affirmed.

**ISSUED:** March 19, 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