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

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

***In re* A.H.**

No. 24-34 (Monongalia County 23-JA-78)

MEMORANDUM DECISION

Petitioner Father S.H.[1] appeals the Circuit Court of Monongalia County's December 21, 2023, order terminating his parental rights to A.H., arguing that the circuit court erred in denying his motion for a post-adjudicatory improvement period and terminating his parental rights.[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 September 2021, prior to the initiation of the matter on appeal, the DHS filed a petition in Greenbrier County alleging that the petitioner abused and neglected the child as a result of his substance abuse, among other allegations. During the prior proceedings, the petitioner was granted two improvement periods over eighteen months and underwent a psychological evaluation that resulted in a "poor" prognosis for improved parenting. Despite this prognosis, the prior matter was ultimately dismissed on March 20, 2023. The child was returned to the mother's custody, and the petitioner received visitation in accordance with an agreed parenting plan.

Approximately thirty days later, A.H. found both parents unresponsive in a bedroom as a result of a drug overdose. The mother passed away, and the petitioner was revived by medical personnel. As a result of this conduct, the DHS filed the petition giving rise to the instant proceedings in Monongalia County alleging that the petitioner abused and neglected the child by

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[1] The petitioner appears by counsel Stephanie Nethken. The West Virginia Department of Human Services appears by counsel Attorney General John B. McCuskey and Assistant Attorney General Lee Niezgoda. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel. Counsel Larry J. Conrad 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).

virtue of his substance abuse. In June 2023, the petitioner stipulated that his substance abuse impaired his ability to properly parent, and the circuit court adjudicated him of abusing and neglecting the child. Thereafter, the petitioner filed a motion for a post-adjudicatory improvement period in which he asserted, among other things, that he was participating in outpatient substance abuse treatment.

The court then proceeded to hold a series of dispositional hearings, culminating in a final hearing in November 2023. During these hearings, the DHS presented testimony from a DHS worker and a Court Appointed Special Advocate ("CASA"), both of whom were involved in the petitioner's prior Greenbrier County case. According to this DHS worker, the petitioner did not comply with all services in the prior case, as he did not successfully complete domestic violence or anger management classes, did not comply with visitation, and did not complete substance abuse treatment. According to the CASA, "it was difficult to get [the petitioner] to schedule services" in the prior matter. The DHS also introduced evidence that the petitioner failed to drug screen from February through April 2022. The petitioner testified that he completed parenting classes and drug and psychological evaluations and complied with drug screening requirements. He further testified that he was currently participating in an outpatient medication-assisted treatment program.

Ultimately, the court denied the petitioner's motion for a post-adjudicatory improvement period and terminated his parental rights to the child. In issuing these rulings, the court relied heavily on the fact that, across the two cases, the child had been in the DHS's custody for more than fifteen out of the most recent twenty-two months. The court further found that there was no reasonable likelihood that the petitioner could correct the conditions of abuse and neglect in the near future and that the child's welfare required termination of the petitioner's parental rights. Specifically, the court noted the child's need for stability given the recent loss of both his mother and great-grandfather, "both of whom he had a very close relationship with." The court stressed that the child "ha[d] been in limbo, not having any real sense of a permanent home" since September 2021, "with the exception of a six (6) month period when he was in the . . . custody of his mother." The court memorialized these findings in its dispositional order, which also granted the petitioner post-termination visitation with the child. The petitioner appeals from the dispositional order.[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, the petitioner first argues that the circuit court erred in denying his motion for a post-adjudicatory improvement period. In support, the petitioner cites to *State v. Scritchfield*, 167 W. Va. 683, 692, 280 S.E.2d 315, 321 (1980), to argue that a circuit court "shall allow . . . an improvement period unless it finds compelling circumstances to justify a denial." We note, however, that the petitioner's reliance on the "compelling circumstances" standard for denying an improvement period is misplaced as it was "based upon language in a former version of [West Virginia Code § 49-4-610]." *In re Charity H.*, 215 W. Va. 208, 216 n.11, 599 S.E.2d 631, 639 n.11 (2004) (explaining that "the compelling circumstance concept is no longer relevant to this Court's investigation"). The current statute requires that the parent "demonstrate[], by clear and convincing evidence, that [he or she is] likely

[3] The permanency plan for the child is adoption in the current placement.

to fully participate in the improvement period." W. Va. Code § 49-4-610(2)(B). Further, it is well established that "West Virginia law allows the circuit court discretion in deciding whether to grant a parent an improvement period." *In re M.M.*, 236 W. Va. 108, 115, 778 S.E.2d 338, 345 (2015); *see also In re Tonjia M.*, 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002) (granting circuit courts discretion to deny a motion for an improvement period when no improvement is likely). While the petitioner also argues that he established that he was likely to fully comply, the circuit court considered his history of substance abuse necessitating multiple abuse and neglect proceedings to conclude that an improvement period was inappropriate. We conclude that this does not constitute an abuse of discretion.

Next, the petitioner argues that the circuit court erred in "using terms, irrelevant facts and timelines from the Greenbrier case as a basis for termination." Essentially, the petitioner argues that the time the child spent in DHS custody in the prior proceeding should not have been used to calculate whether certain timeframes were exhausted in the current matter. The petitioner cites West Virginia Code § 49-4-605(a)(1), which requires the DHS to "file or join in a petition or otherwise seek a ruling in any pending proceeding to terminate parental rights . . . [i]f a child has been in foster care for 15 of the most recent 22 months." What the petitioner fails to recognize, however, is that this statute simply imposes a duty on the DHS to file a petition or seek a ruling where one is pending. It does not require the circuit court to take any action, and the petitioner fails to present any argument as to how the allegedly erroneous computation of the child's time in DHS custody was a "procedural delay [that] work[ed] to the detriment of the persons seeking custody of the child" as he asserts. While the court based its dispositional ruling, in part, on the child's extended time in DHS custody, this does not constitute a violation of the statute to which the petitioner cites. Further, the petitioner's blanket assertion that evidence from the prior proceeding was irrelevant is entirely without merit. On the contrary, the evidence of his prior adjudication for substance abuse issues, partial compliance with services, and the incredibly brief period between dismissal of the prior proceeding and his relapse giving rise to the current matter were extremely relevant to the circuit court's resolution of this matter. Critically, "[t]he decision whether to admit evidence rests within the sound discretion of the circuit court." *In re Tiffany Marie S.*, 196 W. Va. 223, 234, 470 S.E.2d 177, 188 (1996) (citation omitted). Further, "we will interfere with a circuit court's ruling on evidentiary matters only if an appellant demonstrates an abuse of the circuit court's substantial discretion." *Id.* (citation omitted). Here, the petitioner fails to cite to any portion of the record where he challenged the admission of this evidence, as required by Rule 10(c)(7) of the West Virginia Rules of Appellate Procedure, and further fails to allege how the circuit court abused its discretion. Accordingly, he is entitled to no relief.

Finally, the petitioner argues that the circuit court erred in terminating his parental rights. The petitioner asserts that his clean drug screens and participation in a medication-assisted treatment program and therapy supported leaving his parental rights intact. However, he ignores the fact that "it is possible for an individual to show 'compliance with specific aspects of the case plan' while failing 'to improve . . . [the] overall attitude and approach to parenting.'" *In re Jonathan Michael D.*, 194 W. Va. 20, 27, 459 S.E.2d 131, 138 (1995) (citation omitted). Just as in the prior proceeding, the petitioner demonstrated some compliance with the requirements of the case plan. Yet the circuit court considered the fact that approximately one month after the dismissal of the prior petition, the petitioner overdosed on drugs along with the mother, who died. Simply put, the circuit court was presented with evidence that the petitioner "demonstrated an inadequate

capacity to solve the problems of abuse or neglect on [his] own or with help." W. Va. Code § 49-4-604(d) (defining "[n]o reasonable likelihood that conditions of neglect or abuse can be substantially corrected"). Further, the court made extensive findings about the child's welfare requiring termination of the petitioner's parental rights, specifically noting the child's lack of stability over a period of many months preceding disposition. While the petitioner argues that the court's order was contradictory because it found that reunification with him was not in the child's best interests while continued contact was, these findings are not inherently contradictory. This Court has, in fact, directed that "[w]hen parental rights are terminated due to neglect or abuse, the circuit court may nevertheless in appropriate cases consider whether continued visitation or other contact with the abusing parent is in the best interest of the child." Syl. Pt. 11, in part, *In re Daniel D.*, 211 W. Va. 79, 562 S.E.2d 147 (2002) (quoting Syl. Pt. 5, *In re Christina L.*, 194 W. Va. 446, 460 S.E.2d 692 (1995)). That the court believed continued contact with the petitioner was in the child's best interests does nothing to undercut the findings upon which termination of the petitioner's parental rights was based. *See* W. Va. Code § 49-4-604(c)(6) (permitting termination of parental rights upon findings that there is no reasonable likelihood conditions of abuse and neglect can be substantially corrected and when necessary for the child's welfare). As such, we conclude that the circuit court did not err.

For the foregoing reasons, we find no error in the decision of the circuit court, and its December 21, 2023, 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