

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

In re L.P.

No. 24-74 (Wood County CC-54-2023-JA-45)

MEMORANDUM DECISION

Petitioner Father P.P.¹ appeals the Circuit Court of Wood County’s November 30, 2023, order terminating his parental rights to L.P., arguing that the circuit court erred in proceeding to disposition in the absence of a case plan.² Upon our review, we determine that oral argument is unnecessary and that a memorandum decision vacating the circuit court’s November 30, 2023, dispositional order and remanding for further proceedings is appropriate, in accordance with the “limited circumstances” requirement of Rule 21(d) of the West Virginia Rules of Appellate Procedure.

In February 2023, the DHS filed a petition alleging that the petitioner abused and neglected L.P.³ Specifically, the DHS indicated that law enforcement responded to a domestic dispute wherein the child’s mother claimed that the petitioner threatened her with a firearm and was physically violent. According to the petition, the child “witnessed the incident and [was] distressed.” Additionally, the DHS alleged that the petitioner’s parental rights to other children were previously involuntarily terminated as a result of domestic violence.

¹ The petitioner appears by counsel Michael D. Farnsworth Jr. 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 Courtney L. Ahlborn appears as the child’s guardian ad litem. Respondent Mother appears by counsel Jeffrey B. Reed.

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 proceedings below concerned additional children that are not at issue in this appeal.

The petitioner appeared for the preliminary hearing on February 27, 2023, but then failed to appear for any additional hearings throughout the proceedings although he was represented by counsel at these subsequent hearings. After continuing the initial adjudicatory hearing three times, the court held a final adjudicatory hearing in September 2023. According to the circuit court's adjudicatory order, the mother "testified regarding extreme domestic violence by the [petitioner] against her." The court also found that the petitioner's parental rights to other children were previously terminated. Based on this evidence, the court adjudicated the petitioner of abusing L.P.

The court held a dispositional hearing in November 2023. It is undisputed that although the DHS filed a case plan in regard to L.P.'s mother, it never filed one in regard to the petitioner. Instead, the DHS filed a dispositional report four days prior to the final dispositional hearing in which it simply expressed its support for termination of the petitioner's parental rights because of his noncompliance and prior history. Ultimately, the circuit court issued a dispositional order in which it found that because the petitioner was "completely non-compliant in this case and ha[d] not appeared for Court," there was no reasonable likelihood that he could substantially correct the conditions of abuse and neglect in the near future. Further, citing his "history of extreme domestic violence" and the prior terminations of his parental rights, the court also found that the child's welfare required termination of the petitioner's parental rights. Accordingly, the court terminated the petitioner's parental rights to L.P.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). Before this Court, the petitioner's lone assignment of error concerns the DHS's failure to file a case plan in accordance with applicable statutes. *See* W. Va. Code § 49-4-604(a) (requiring the DHS to file a copy of the case plan following a finding as to whether a child has been abused or neglected); *see also id.* at §§ -408(a) and (b) (setting forth timelines for filing case plans and requirements for their formulation). While the DHS argues that it filed a case plan, it admits that the filed case plan focused entirely on the mother and made no reference to the petitioner. The petitioner argues that this constitutes error, and we agree, given that "[o]ur caselaw . . . makes clear . . . that the failure to prepare a family case plan containing clear requirements designed to rectify conditions of abuse or neglect is reversible error." *In re K.L.*, 247 W. Va. 657, 668, 885 S.E.2d 595, 606 (2022) (citing *In re Desarae M.*, 214 W. Va. 657, 665, 591 S.E.2d 215, 223 (2003)). We are cognizant of the fact that the petitioner demonstrated almost total noncompliance below. As we have explained, however, it can be "tempting to circumvent the statutory requirement [that a case plan be filed] by focusing upon . . . the absence of clear indication that the [parent] is capable of improvement even given a concise family case plan, or the recalcitrance of the [parent]' but . . . the statutory requirements must be followed regardless." *In re K.L.*, 247 W. Va. at 669, 885 S.E.2d at 607 (quoting *In re Desarae M.*, 214 W. Va. at 664, 591 S.E.2d at 222). As such, we reject the DHS's position that the petitioner's failure to comply rendered a case plan unnecessary. On the contrary, "[w]ithout a family case plan, the individuals seeking to assist a parent are limited in their ability to formulate distinct goals, methods of achieving such goals, or means by which success will be judged." *In re K.L.*, 247 W. Va. at 669,

⁴ The permanency plan for the child is to remain with the mother, who successfully completed an improvement period.

885 S.E.2d at 607 (quoting *In re Desarae M.*, 214 W. Va. at 663, 591 S.E.2d at 221). Accordingly, we conclude that the DHS’s failure to file a case plan in regard to the petitioner necessitates vacation of the dispositional order so that the DHS can comply with the applicable statutes. *See* Syl. Pt. 3, *In re Emily G.*, 224 W. Va. 390, 686 S.E.2d 41 (2009) (requiring vacation and remand where “the process established by the [applicable rules and] statutes . . . has been substantially disregarded or frustrated” (quoting Syl. Pt. 5, in part, *In re Edward B.*, 210 W. Va. 621, 558 S.E.2d 620 (2001))).

For the foregoing reasons, we vacate the circuit court’s November 30, 2023, dispositional order terminating the petitioner’s parental rights,⁵ and we remand this matter to the circuit court for further proceedings consistent with the applicable rules and statutes. The Clerk is directed to issue the mandate contemporaneously herewith.

Vacated and remanded, with directions.

ISSUED: March 25, 2025

CONCURRED IN BY:

Chief Justice William R. Wooton
Justice Elizabeth D. Walker
Justice C. Haley Bunn
Justice Charles S. Trump IV

DISSENTING:

Justice Tim Armstead

Armstead, Justice, dissenting:

I disagree with the majority’s decision to vacate and remand the circuit court’s order terminating Petitioner Father P.P.’s parental rights to the child L.P. upon its finding that that the circuit court erred by proceeding to disposition in the absence of a case plan. In general, I agree with the conclusion that the lack of a case plan constitutes reversible error. *See In re K.L.*, 247 W. Va. 657, 668, 885 S.E.2d 595, 606 (2022). However, in the instant case, Petitioner failed to participate in almost every aspect of this case, including failing to appear at the adjudicatory or dispositional hearings. Further, Petitioner had a “history of extreme domestic violence” and had previously lost his parental rights to other children. Moreover, Petitioner, who was represented by counsel, did not raise any objection during the proceedings below to the lack of a case plan. Thus, under the specific facts of this case, it is clear that Petitioner waived any objection to the lack of a case plan. *See In re A.N.-I*, No. 16-0477, 2016 WL 6679007, at *4 n.3 (W. Va. Nov. 16, 2016) (memorandum decision) (“We have often explained that the requirement for a party to raise or

⁵ To the extent that the circuit court’s November 30, 2023, order contains rulings regarding other adult respondents or children, those rulings remain in full force and effect.

waive an objection is designed ‘to prevent a party from obtaining an unfair advantage by failing to give the trial court an opportunity to rule on the objection and thereby correct potential error.’”). Indeed, this Court has previously affirmed the termination of a parental rights where a parent was not prejudiced by the DHS’s failure to file a timely case plan. *See In re Z.A.*, No. 21-0851, 2022 WL 1506059 (W. Va. May 12, 2022) (memorandum decision); *In re M.S.*, No. 17-0223, 2017 WL 2608446 (W. Va. June 16, 2017) (memorandum decision); *In re I.D.*, No. 20-0962, 2021 WL 5326512 (W. Va. Nov. 16, 2021) (memorandum decision).

To be clear, the DHS should always comply with its duty to file a case plan in abuse and neglect matters. However, Petitioner was not prejudiced by the lack of a case plan in the instant matter as he (1) did not object to the lack of a case plan, and (2) almost entirely failed to participate in this case. Under these facts, Petitioner waived any objection to this issue and failed to demonstrate that he suffered any prejudice resulting from the lack of a case plan. Additionally, it is worth emphasizing that the overwhelming evidence, including Petitioner’s history of “extreme domestic violence” and the fact that he had previously lost his parental rights to other children, provided a sufficient basis for the termination of his parental rights.

Based on the foregoing, I believe this Court should have affirmed the circuit court’s order terminating Petitioner’s parental rights.