FILED
June 26, 2025
C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

***In re* D.F.**

No. 24-116 (Barbour County CC-01-2022-JA-22)

MEMORANDUM DECISION

Petitioner Father R.F.[1] appeals the Circuit Court of Barbour County's January 30, 2024, order terminating his parental rights to D.F., arguing that the circuit court erred in terminating his rights instead of granting him an improvement period or imposing a less severe disposition.[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.

The DHS filed a petition[3] in April 2022, alleging that the petitioner exposed the child to domestic violence. Specifically, law enforcement reported two incidents of domestic violence in which the petitioner and the mother fought over a knife and then a gun in the child's presence. During these altercations, the parents slashed each other's tires. Additionally, the petitioner put the gun in his mouth and threatened to commit suicide while in the front seat of a vehicle with the child in the back seat. The DHS noted that, in 2016, the child was removed from the parents' custody during the pendency of a prior abuse and neglect case that was also due to the parents' domestic violence.

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[1] The petitioner appears by counsel Kevin T. Tipton. The West Virginia Department of Human Services appears by counsel Attorney General John B. McCuskey and Assistant Attorney Katica Ribel. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel. Counsel Ashley Joseph Smith 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).

[3] The proceedings below concerned an additional child and adult respondent who are not at issue on appeal.

At an adjudicatory hearing in October 2022, an investigating law enforcement officer testified that the gun was loaded when recovered, and that surveillance footage showed that the gun was pointed in the child's direction during the fight. The child's forensic interview was also entered into evidence, in which the child described witnessing the altercations. Finally, the petitioner testified, denying that his conduct was abusive or neglectful to the child. Based on the evidence, the court adjudicated the petitioner as an abusive and neglectful parent and D.F. as an abused and neglected child, noting that it was "apparent the issues of chronic domestic violence in the previous case weren't remediated."

Thereafter, the court considered the petitioner's written motion for an improvement period at a hearing in March 2023. The petitioner testified that he participated in multiple services and, in response to direct inquiry from counsel, accepted responsibility for his actions, agreeing that they were abusive and/or neglectful. However, he subsequently blamed the mother's substance abuse for the ongoing domestic violence and claimed that he did not realize he had not accepted responsibility at the prior hearing. The court found the petitioner's purported lack of understanding over accepting responsibility at adjudication "somewhat incredulous" and, over concern for the petitioner's history and the late acceptance of responsibility, held his motion in abeyance pending a psychological evaluation.

The matter came on for a dispositional hearing in January 2024. The petitioner testified to his ongoing voluntary participation in services, and again accepted responsibility for his abusive and neglectful conduct. Next, a DHS worker recommended termination because there was nothing the DHS could offer to alleviate concern for the child's safety since the domestic violence underlying the instant matter was worse than in the 2016 case, despite the petitioner's receipt of services in that case. The psychologist who administered the petitioner's psychological evaluation also testified that there were no services or interventions that could improve the petitioner's parenting within a reasonable time, if at all, given, among other things, his failure to benefit from prior DHS involvement and his "utter lack of insight." During his evaluation, the petitioner maintained he was a good parent, accepted no responsibility, and extensively blamed the mother. The petitioner "showed no empathy" for the child or how his suicide threat affected the child, asserting that the child did not see the incident and that the gun was not loaded. In her report, the psychologist stated that "[w]ithout acceptance of responsibility and insight, there is no reason to believe [the petitioner] is motivated to change his behaviors" and that his "prognosis for improved parenting . . . is extremely poor."

Accordingly, the court found that the petitioner demonstrated a reversion to his position at the adjudicatory hearing and was "resistant to treatment of any kind." The court was especially concerned that the petitioner expressed the same beliefs in the evaluation as he had at adjudication, including the petitioner's repeated denial that the child saw anything or that the gun was loaded, and noted that "the facts of this case are actually worse than the last." The court found the petitioner had not internalized the lessons of previous interventions. The court also addressed the child's welfare and need for stability, finding it was not in the child's best interest to delay permanency.

Accordingly, the court terminated the petitioner's parental rights to D.F.[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 asserts that the circuit court erred in denying him a post-adjudicatory improvement period.[5] However, we have explained that "[f]ailure to acknowledge the existence of the problem, i.e., the truth of the basic allegation pertaining to the alleged abuse and neglect . . . results in making the problem untreatable and in making an improvement period an exercise in futility at the child's expense." *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)). While the petitioner claimed to accept responsibility at some hearings, he also shifted blame to the child's mother and expressed belief that he did nothing to harm the child. The circuit court heard the petitioner's supposed acceptance and found it lacking, especially considering extensive contradictory testimony from the DHS worker and the psychological evaluator. We decline to disturb the court's credibility determinations on appeal. *See Michael D.C. v. Wanda L.C.*, 201 W. Va. 381, 388, 497 S.E.2d 531, 538 (1997) ("A reviewing court cannot assess witness credibility through a record. The trier of fact is uniquely situated to make such determinations and this Court is not in a position to, and will not, second guess such determinations."). This denial of responsibility also indicates that the petitioner failed to gain or maintain any meaningful benefit from the DHS services he received in the past or those he pursued on his own. As such, we find no abuse of discretion in the denial of his motion for an improvement period. *See In re Tonjia M.*, 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002) (recognizing that circuit courts have discretion to deny an improvement period when no improvement is likely).

Finally, the petitioner argues that it was error to terminate his parental rights, instead of imposing a less restrictive alternative. However, the petitioner's refusal to acknowledge the abuse and neglect constitutes sufficient evidence to support the circuit court's finding that there was no reasonable likelihood the petitioner could substantially correct the conditions of abuse and neglect. *See* W. Va. Code § 49-4-604(d); *see also In re Charity H.*, 215 W. Va. at 217, 599 S.E.2d at 640 ("[I]n order to remedy the abuse and/or neglect problem, the problem must first be

[4] The mother's rights were also terminated. The permanency plan for D.F. is adoption in the current placement.

[5] The petitioner also alleges that the court incorrectly relied on the fact that the child had been out of the petitioner's home for twenty-one months in terminating the petitioner's rights, as the petitioner alleges that the court improperly extended the proceeding with continuances. However, the petitioner does not cite to any objection to these delays or continuances in the record on appeal. *See* W. Va. R. App. P. 10(c)(7) (requiring the petitioner's brief to include "citations that pinpoint when and how the issues in the assignments of error were presented to the lower tribunal"). Moreover, "'[o]ur general rule is that nonjurisdictional questions . . . raised for the first time on appeal, will not be considered.' *Shaffer v. Acme Limestone Co., Inc.*, 206 W.Va. 333, 349 n.20, 524 S.E.2d 688, 704 n.20 (1999)." *Noble v. W. Va. Dep't of Motor Vehicles*, 223 W. Va. 818, 821, 679 S.E.2d 650, 653 (2009). As such, the petitioner has waived this argument.

acknowledged."). Further, we have explained that "[t]ermination of parental rights . . . may be employed without the use of intervening less restrictive alternatives when it is found that there is no reasonable likelihood . . . that conditions of neglect or abuse can be substantially corrected." Syl. Pt. 5, *In re Kristin Y.*, 227 W. Va. 558, 712 S.E.2d 55 (2011) (quoting Syl. Pt. 2, *In re R.J.M.*, 164 W. Va. 496, 266 S.E.2d 114 (1980)). The court additionally found that termination was necessary for the child's welfare, a finding the petitioner does not challenge on appeal. Circuit courts are permitted to terminate a parent's rights upon these findings. *See* W. Va. Code § 49-4-604(c)(6). As such, the petitioner is not entitled to relief.

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: June 26, 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