

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re B.B., A.B., K.B., and E.P.

No. 24-298 (Roane County CC-44-2022-JA-73, CC-44-2022-JA-74, CC-44-2022-JA-75, and CC-44-2022-JA-76)

MEMORANDUM DECISION

Petitioner Father D.B.¹ appeals the Circuit Court of Roane County’s April 23, 2024, order terminating his parental rights to B.B., A.B., K.B., and E.P., arguing that the circuit court based termination on the erroneous conclusion that he did not successfully complete his improvement period and on conduct for which he was not adjudicated.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 its initial petition³ in September 2022, alleging deplorable housing conditions and that the petitioner failed to supply the children with necessary food, clothing, shelter, supervision, medical care, and education. Controlled substances and drug paraphernalia were also found in the home. In October 2022, the DHS filed an amended petition to include the petitioner’s history of domestic violence with the mother of B.B., A.B., and K.B. (“the mother”), which caused the children “substantial emotional trauma.” The DHS specifically noted a recent altercation, “mutual in nature,” resulting in a domestic violence protective order against the mother

¹ The petitioner appears by counsel Michael N. Eachus. The West Virginia Department of Human Services appears by counsel Attorney General John B. McCuskey and Assistant Attorney General Wyclif S. Farquharson. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel. Counsel Erica M. Brannon appears as the children’s guardian ad litem (“guardian”).

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 and respondents not at issue on appeal.

and the petitioner's arrest for possession of a firearm by a prohibited person, brandishing a deadly weapon, and wanton endangerment.

At an adjudicatory hearing in October 2022, the petitioner admitted to deplorable housing conditions, his substance abuse, drug paraphernalia in the home, and subjecting the children to domestic violence resulting in substantial emotional trauma. On this basis, the circuit court adjudicated him as an abusing parent and the children as abused and neglected children. In November 2022, the petitioner filed a written motion requesting a post-adjudicatory improvement period, again acknowledging that his substance abuse negatively affected his ability to parent, that he had exposed the children to domestic violence, and that the children had resided in unsuitable living conditions. The court granted the petitioner's motion. The terms and conditions of the improvement period included, among other things, that the petitioner drug screen and maintain sobriety, attend counseling, complete parenting and adult life skills classes, participate in a parental fitness evaluation and follow the provider's recommendations, and participate in domestic violence intervention services.

The petitioner underwent a parental fitness evaluation, and the report was filed with the court in March 2023. During the evaluation, the petitioner stated that the case started because of "[the mother], basically," and admitted that the children witnessed the domestic violence she perpetrated against him. He expressed confusion about being required to attend domestic violence intervention services—"I should have to go to the victim's class"—and rated himself "at least an eight" as a parent, because he went "beyond what most parents would [do]" for their children. When asked what he anticipated changing, he stated that he needed to "keep [the mother] away" and denied having issues with sobriety. The examiner concluded that the petitioner's prognosis for improved parenting was "very poor," given, among other things, "the five-year period in which he failed to take appropriate protective actions and facilitated the children's exposure to domestic violence." The examiner stated that the petitioner's "habitual abuse of cannabis" may have "impaired his ability to recognize the severity and potential consequences of [the mother's] escalating violence" but noted this was not an "absolving excuse for his horrendous judgement errors and repeated failures to protect the children."

In April 2023, the court granted the petitioner's counsel's motion to withdraw, after the petitioner "fired" her for allegedly colluding with the DHS to "railroad" him. The court then held a review hearing in May 2023, which the petitioner attended without counsel. At that hearing, the DHS requested that "[the mother's] and [the petitioner's] [improvement periods] . . . be extended [ninety] days." The court granted the motion on the record.⁴ The court also granted the guardian's motion for in camera testimony from E.P., taking the testimony that same day. Subsequently, the petitioner was appointed new counsel, and in October 2023, he filed a motion for the judge's recusal based on her taking E.P.'s testimony while he was unrepresented. The court granted the motion, and the case was promptly reassigned. In October 2023, the DHS and the guardian filed a joint motion to terminate the petitioner's parental rights.

⁴ The Circuit Court of Roane County's subsequent written order, dated May 31, 2023, lists only the extension of the mother's improvement period.

In November 2023, the court announced it would not review the prior in camera testimony and set the matter for a new hearing on the guardian's motion. The court ultimately granted the motion for in camera testimony and heard E.P.'s testimony in December 2023, in the presence of counsel. E.P.'s testimony confirmed the allegations on which the petitioner was adjudicated. E.P. also testified to additional misconduct, that, while alleged in the petition, was not addressed at adjudication, including the petitioner's failure to provide the children with appropriate food, shoes, supervision, or medical care. E.P. also testified that the petitioner sold marijuana, bringing her on occasion so she could count the money. She believed the petitioner was "addicted to sex," as he had engaged in intercourse while she was present in the room.

The matter came on for a dispositional hearing in February 2024, during which the petitioner admitted that he did not participate in all recommended services, including counseling and domestic violence intervention services, and that he had been using marijuana regularly since November 2023. He minimized the domestic violence issues and indicated he did not have much to learn from the parenting classes he completed, as "the only thing" he needed to improve "was buying too much stuff for my kids" and "spoiling" them. He stated that he "wasn't abusive to [his] kids by any means," and that his children were "well taken care of." He also stated there were false allegations in the case, and that he was "basically blackmailed" into the improvement period, since he was told that if he did not agree to one, he would lose his rights to his children. The court also heard from other witnesses, including a DHS worker who testified that the petitioner did not complete all terms and conditions of his improvement period, and that the DHS believed termination was in the children's best interest. She also testified that the petitioner's attitude and behavior throughout the case were consistent with his testimony.

In its dispositional order, the court noted the petitioner's poor judgement, which he "demonstrate[d] through his continued denial that, despite the years-long exposure of the [children] to domestic violence, he ever abused the [children] and his continued belief that the only area of concern regarding his parenting is his tendency to spoil his children." The court concluded that the petitioner failed to substantially comply with the terms of his improvement period "due to his abject denial of any issues and his failure to participate in domestic violence classes, individual counseling[,] . . . and his illegal use of marijuana." Even if the petitioner had completed the requirements of his improvement period, the court "could not find that returning the [children] to his care would be in their best interests." Given the petitioner's denial of abusive conduct, in both his parental fitness evaluation and his testimony, the court found that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future. Consequently, the court terminated the petitioner's parental rights to B.B., A.B., K.B., and E.P.⁵ The petitioner appeals from this 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 he was denied equal protection and procedural due process when the court denied him the opportunity

⁵ The court also terminated the mother's parental rights to B.B., A.B., and K.B. E.P.'s mother is deceased. The permanency plan for the children is adoption by their current placements.

to extend his post-adjudicatory improvement period in May 2023, while he was unrepresented. This assertion is not supported by the record, as the court granted the DHS's oral motion to extend the petitioner's improvement period for ninety days. While the petitioner is correct that the court's subsequent written order does not mention his improvement period, it is undisputed that he continued to receive services. Per the testimony presented at disposition, the petitioner completed parenting classes in September 2023 and participated in drug screens and supervised visits through at least December 2023. As such, the petitioner is not entitled to relief on this ground.

Next, the petitioner argues that the circuit court erred in terminating his parental rights based on its conclusion that he did not successfully complete his post-adjudicatory improvement period. This Court has held that circuit courts must "review [a parent's] performance" at an improvement period's conclusion, and, in its "discretion, determine whether the conditions . . . have been satisfied and whether sufficient improvement has been made in the context of all the circumstances of the case to justify the return of the child." Syl. Pt. 6, in part, *In re Carlita B.*, 185 W. Va. 613, 408 S.E.2d 365 (1991). Here, in addition to admitting his ongoing marijuana use, the petitioner testified that he did not participate in domestic violence intervention services or counseling. While the petitioner blames these failures on the DHS, West Virginia Code § 49-4-610(4)(A) is clear that when granted an improvement period, "the [petitioner] shall be responsible for the initiation and completion of all [its] terms." The court therefore did not abuse its discretion in finding that the petitioner did not satisfy the conditions of his improvement period.

Even if the petitioner had complied with these conditions, he would not be entitled to relief. As we have explained, an improvement period provides "an opportunity for the . . . parent to modify [his] behavior so as to correct the conditions of abuse and/or neglect with which [he] has been charged." *In re Timber M.*, 231 W. Va. 44, 55, 743 S.Ed.2d 352, 363 (2013) (quoting *In re Emily*, 208 W. Va. 325, 334, 540 S.E.2d 542, 551 (2000)). Critically, "in order to remedy [an] abuse and/or neglect problem, the parent must recognize and acknowledge that his . . . conduct constituted abuse." *Id.* Despite the petitioner's admissions at adjudication, during his parental fitness evaluation he shifted blame to the mother and denied having issues maintaining sobriety. At disposition, the petitioner stated he "wasn't abusive," had done nothing wrong, and was falsely accused. "Failure 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." *In re Timber M.*, 231 W. Va. at 55, 743 S.Ed.2d at 363 (quoting *In re Charity H.*, 215 W. Va. 208, 217, 599 S.E.2d 631, 640 (2004)). Given the petitioner's complete denial of culpability, the conditions of abuse and neglect are not correctable and the circuit court's finding to this effect was appropriate. The court also found that termination was in the children's best interests—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) ("The court shall . . . [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, terminate the parental . . . rights . . . of the abusing parent."). As such, the circuit court committed no error.

Lastly, the petitioner asserts that the circuit court improperly based its termination of his parental rights on conduct for which he was not adjudicated. Specifically, the petitioner argues that the court relied on "additional, and more severe" allegations made during E.P.'s in camera testimony, and requests that this Court remand the case and order that the DHS amend its petition

to include these allegations to properly afford the petitioner due process.⁶ However, the petitioner fails to specify what these allegations are, nor does he point to where the circuit court mentions (let alone relies on) any allegations by E.P. in its dispositional order. Instead, the circuit court extensively cited and relied upon the petitioner’s own testimony, as well as the petitioner’s statements contained in the parental fitness report, which—as discussed above—provide sufficient evidence to support termination.⁷

For the foregoing reasons, we find no error in the decision of the circuit court, and its April 23, 2024, order is affirmed.

Affirmed.

ISSUED: July 30, 2025

CONCURRED IN BY:

Chief Justice William R. Wooton
Justice Tim Armstead
Justice C. Haley Bunn
Justice Charles S. Trump IV

⁶ To the extent that the petitioner argues that E.P.’s in camera testimony was improperly taken while he was unrepresented, any potential error was corrected below when the court granted the petitioner’s motion for the judge’s recusal. After the case was reassigned, the court did not review or consider the initial in camera testimony taken by the recused judge.

⁷ The petitioner raises another assignment of error in which he alleges his due process rights were violated when the circuit court applied Section (D)(8) of Appendix A of the Rules of Procedure for Child Abuse and Neglect Proceedings and denied his motion to call the guardian as a witness at disposition. The petitioner argues that he had a right to confront and cross-examine the guardian regarding the contents of her written report. However, Section (D)(8) of Appendix A of the Rules of Procedure for Child Abuse and Neglect Proceedings, in effect when the circuit court made its ruling, clearly states that a guardian is “precluded from testifying as to any aspect of the [written] report.” Accordingly, we find no error.