

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re W.S., B.S.-1, and B.S.-2

No. 24-383 (Marshall County CC-25-2023-JA-24, CC-25-2022-JA-48, and CC-25-2022-JA-49)

MEMORANDUM DECISION

Petitioner Father S.R.¹ appeals the Circuit Court of Marshall County’s June 4, 2024, order terminating his parental rights to W.S., B.S.-1, and B.S.-2, arguing that the circuit court erred in accepting his voluntary relinquishment 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 2022, the DHS filed a petition alleging that the petitioner exposed the children to domestic violence, physically and sexually abused B.S.-1, and smoked methamphetamine while feeding then-one-year-old B.S.-2.³ The petitioner submitted a written stipulation to the allegations of domestic violence, which was accepted by the circuit court at an adjudicatory hearing in April 2023. Based on this stipulation, the court adjudicated the petitioner of neglecting the children. Then, in May 2023, the court granted the petitioner an improvement period, the terms of which required the petitioner to participate in drug screening and complete a drug treatment program. The court held status hearings throughout the duration of the improvement period, which was extended at a hearing in November 2023. During this time, the petitioner tested

¹ The petitioner appears by counsel John M. Jurco. The West Virginia Department of Human Services appears by counsel Attorney General John B. McCuskey and Assistant Attorney General Kristen E. Ross. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel. Counsel Kevin L. Neiswonger appears as the children’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 the 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). Because two children share the same initials, we refer to them as B.S.-1 and B.S.-2.

³ In May 2023, the DHS filed an amended petition to include the infant, W.S.

positive for methamphetamine, missed scheduled visits with the children, and missed several drug treatment appointments.

At a March 2024 hearing, the DHS moved to terminate the improvement period based on the petitioner's continued drug use, as evidenced by his recent positive drug screens, failure to consistently drug screen, and lack of participation in required treatment programs. At this hearing, the petitioner informed the court that he did not plan to comply with the terms of the improvement period. The court then continued the hearing until April 2024, at which point the improvement period had expired.

The dispositional hearing was held in May 2024. The petitioner's counsel advised the court that, following numerous discussions with counsel over the course of the proceedings, the petitioner wished to voluntarily relinquish his parental rights and submitted a written and signed relinquishment. The circuit court then placed the petitioner under oath and questioned him regarding the written relinquishment. At the outset of the court's questioning, the petitioner stated that the allegations set forth in the petition "were all false," despite his prior stipulation to domestic violence and repeated positive drug screens. During the extensive colloquy with the court, the petitioner confirmed that he understood that he had a right to a contested hearing, with representation; that he understood the consequences of relinquishing his parental rights; and that he had not been coerced, forced, or induced to relinquish his parental rights. Additionally, the court questioned the petitioner's counsel, who stated that he was "confident that [the petitioner has] taken all the information learned over the course of the case" and was "confident [the petitioner] knows what he's doing." The petitioner's counsel also represented that voluntary relinquishment was the petitioner's "best decision or his least worst decision in light of the circumstances." Following this, the court accepted the petitioner's written voluntary relinquishment and terminated his parental rights by order entered on June 4, 2024.⁴ It is from this 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 it was erroneous for the circuit court to terminate his parental rights because neither the relinquishment form nor the colloquy established the elements for an effective relinquishment under Rule 35(a) of the Rules of Procedure for Child Abuse and Neglect Proceedings. In relevant part, this rule requires the circuit court to conduct an inquiry to "determine whether the parent fully understands the consequences of a termination of parental rights, is aware of possible less drastic alternatives than termination, and was informed of the right to a hearing and to representation by counsel" before accepting a signed voluntary relinquishment. W. Va. R. P. Child Abuse & Neglect Proc. 35(a)(3). Our review of the record shows that, upon receiving the petitioner's written relinquishment, the court engaged in an extensive colloquy with both the petitioner and his counsel. This resulted in testimony sufficient for the court to determine that the petitioner understood the consequences of relinquishing his parental rights, possible less drastic alternatives, and his right to a contested hearing with counsel. Although the petitioner claims that the testimony

⁴ The mother's parental rights were also terminated. The permanency plan for the children is adoption in their current placement.

does not contain “actual statement[s]” that he fully understood the consequences of the termination of his parental rights or that he was aware of possible less drastic alternatives, nothing in Rule 35(a) requires such explicit statements. Furthermore, the petitioner does not argue that he agreed to relinquish his parental rights as a result of fraud or duress, nor was there any evidence indicative of fraud or duress apparent from the record. *See In re Tesla N.M.*, 211 W. Va. 334, 339, 566 S.E.2d 221, 226 (2002) (noting that “all agreements to terminate parental rights must be made free from duress and fraud”); W. Va. Code § 49-4-607 (“An agreement of a natural parent in termination of parental rights is valid if made by a duly acknowledged writing, and entered into under circumstances free from duress and fraud.”) Accordingly, the petitioner is entitled to no relief on this basis.

For the foregoing reasons, we find no error in the decision of the circuit court, and its June 4, 2024, order is hereby affirmed.

Affirmed.

ISSUED: September 10, 2025

CONCURRED IN BY:

Justice C. Haley Bunn
Justice Charles S. Trump IV
Justice Thomas H. Ewing
Senior Status Justice John A. Hutchison

DISSENTING:

Chief Justice William R. Wooton

Wooton, Chief Justice, dissenting:

I dissent to the majority’s resolution of this case. I would have set this case for oral argument to thoroughly address the error alleged in this appeal. Having reviewed the parties’ briefs and the issues raised therein, I believe a formal opinion of this Court was warranted, not a memorandum decision. Accordingly, I respectfully dissent.