FILED
September 10, 2025
C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

***In re* J.S.-1 and J.S.-2**

No. 24-552 (Randolph County CC-42-2023-JA-86 and CC-42-2023-JA-87)

MEMORANDUM DECISION

Petitioner Father K.S.[1] appeals the Circuit Court of Randolph County's August 27, 2024, order terminating his parental rights to J.S.-1 and J.S.-2, arguing that the circuit court erred in denying his motion to continue the dispositional hearing and in failing to grant him an improvement period prior to 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.

The DHS filed a petition in September 2023 shortly after the twin children's premature birth, alleging that the mother admitted to using methamphetamine during the pregnancy and had tested positive while pregnant and at delivery. The DHS alleged that the petitioner, who was required to drug screen regularly as a condition of his criminal bond, also abused drugs, having recently tested positive for methamphetamine and amphetamine. The petitioner reported to an investigating Child Protective Services ("CPS") worker that he had been in a relationship with the mother for two years, but that they recently broke up "due to her drug use and lies."

The court held an initial hearing in September 2023. The petitioner represented that he could rebut the DHS's allegations, as he had been testing regularly and was "clean." The court

[1] The petitioner appears by counsel Timothy H. Prentice. 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 Heather M. Weese 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). Because the children share the same initials, we use numbers to differentiate them.

ordered the petitioner to participate in call-to-test drug screening. After several continuances, the court held an adjudicatory hearing in May 2024. The petitioner failed to appear but was represented by counsel. The director of the facility where the petitioner (and the mother) had drug screened testified that the petitioner tested positive for methamphetamine and amphetamine both before and after the children's birth (and most recently, for methamphetamine, in October 2023). A CPS worker testified that when she investigated the initial referral, the petitioner said he was no longer in a relationship with the mother because of her drug use, as "he did not agree with her habits." When the worker asked the petitioner about his positive screens, he claimed to be unaware that there was methamphetamine in his electronic cigarette. The petitioner reported that he "wanted to do what he needed to do to be a part of his children's life," but refused services to help with his sobriety, stating that it was "no problem" for him to "stay clean" because his drug use "wasn't an all-the-time thing." Based on the witnesses' testimony, the court found that the petitioner abused drugs up to and following the children's birth, impacting his ability to parent. Additionally, the court found that J.S.-1 and J.S.-2 were born drug exposed to methamphetamine and that the petitioner was aware of the mother's drug use during pregnancy but took no action to protect the children. For those reasons, the court adjudicated the petitioner as an abusing and neglecting parent.

In June 2024, the DHS filed a motion to terminate the petitioner's parental rights. At a hearing in July 2024, the petitioner moved for an improvement period as well as a continuance, so that his motion and disposition could be taken up together. The court granted the petitioner's request, and ordered that he submit to a drug screen immediately following the hearing.

The court held a dispositional hearing in August 2024. The petitioner failed to appear but was represented by counsel, who told the court that the petitioner had been present at the courthouse earlier that afternoon, but "apparently left the building" sometime before his case was called. The petitioner's counsel moved for a continuance, since the hearing began several hours later than scheduled and the petitioner might have had "some urgent circumstance he had to take care of." The court allowed the petitioner's counsel the opportunity to determine whether the petitioner had attempted to contact him to explain his departure. The petitioner's counsel determined that the petitioner had not, and the court denied his motion to continue. The DHS again called the director of the facility where the petitioner drug screened, who testified that the petitioner had screened seventeen times, testing positive for methamphetamine on five occasions. The petitioner had not complied with the call-to-test program, as he missed a total of eighty-three required screens and had not checked in at all since December 2023. The guardian proffered that the petitioner had been "sporadic" in visiting the children, had denied having a drug problem at the most recent multidisciplinary team meeting, and had tested positive for methamphetamine and amphetamine immediately following the July 2024 hearing.

Based on this evidence, the court found that in the month since the petitioner requested an improvement period and a continuance to prepare for the hearing on his motion, "he [had] made no effort to take advantage of [the court's] grace." Specifically, the court found that the petitioner had "tested positive [on] drug screens" and had "not maintained contact with the Department or counsel." The court also noted that, "given the circumstances," it did not "see any other alternative [to termination] for these two children." In its subsequent order, the court concluded that the petitioner had not demonstrated that he was likely to fully participate in an improvement period,

as he had not participated in the call-to-test program as directed and because "it was too burdensome for him to . . . stick around . . . until his hearing was called to participate in [the] disposition . . . where decisions regarding his parental rights are being made." Finding that the petitioner could not remedy the problems that led to his adjudication on his own or with help and that he was presently unwilling or unable to adequately provide for the children's needs, the court concluded that there was no reasonable likelihood that the conditions of neglect and abuse could be substantially corrected in the near future. Citing the children's need for continuity in care and caretakers and the time required for them to be integrated into a stable and permanent home environment, the court also concluded that the children required permanency through adoption and that termination of the petitioner's parental rights was in their best interest. Accordingly, the court terminated the petitioner's parental rights to J.S.-1 and J.S.-2.[3] 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 first asserts that the circuit court erred in denying his motion to continue the dispositional hearing. Rule 7(b) of the West Virginia Rules of Procedure for Abuse and Neglect Proceedings provides that a continuance "shall be granted only for good cause." Moreover, it is in the circuit court's discretion to determine whether a continuance is warranted. *See In re Tiffany Marie S.*, 196 W. Va. 223, 235, 470 S.E.2d 177, 189 (1996) ("Whether a party should be granted a continuance for fairness reasons is a matter left to the discretion of the circuit court, and a reviewing court plays a limited and restricted role in overseeing the circuit court's exercise of that discretion."). Nothing in the record indicates that there was good cause for a continuance, given the fact that the petitioner had been present at the courthouse but chose to leave before his case was called without explanation or excuse, despite knowing that the DHS sought termination of his parental rights. On appeal, the petitioner argues that the court was running behind and the petitioner waited "nearly three hours after his hearing[']s scheduled start time" before leaving, which was "reasonable under the circumstances." However, the record does not indicate how long the petitioner actually waited nor what time he left, and—regardless—this argument offers no explanation for the petitioner's departure or set forth circumstances that would constitute good cause for a continuance. The petitioner also asserts that if the court had continued the matter until a time when he "could appear and testify," the case's outcome might have differed. Again, this argument does not explain why the petitioner failed to appear, nor does it present circumstances constituting good cause for the requested continuance. As such, the court did not abuse its discretion, and the petitioner is not entitled to relief.

Next, the petitioner argues that the circuit court erred in failing to "afford[] him the opportunity to work an improvement period." West Virginia Code § 49-4-610(2)(B) permits a circuit court to grant an improvement period when a parent "demonstrates, by clear and convincing evidence, that [he] is likely to fully participate." Circuit courts have discretion to deny an improvement period when improvement is unlikely. *See In re Tonjia M.*, 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002). Here, the record supports the court's finding that the petitioner did

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

not show that he was likely to fully participate in an improvement period, given the petitioner's continued drug use throughout the proceedings and his failure to comply with the call-to-test drug screening previously ordered by the court. Moreover, "[a] circuit court may not grant an . . . improvement period . . . unless the respondent to the abuse and neglect petition files a written motion requesting the improvement period." Syl. Pt. 4, in part, *State ex rel. P.G.-1 v. Wilson*, 247 W. Va. 235, 878 S.E.2d 730 (2021). The petitioner does not indicate that he filed a written motion for a post-adjudicatory improvement period, nor did he include such a document or a docket sheet indicating that such a motion had been filed 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"); W. Va. R. App. P. 7(d)(7) (requiring the inclusion of "a complete docket sheet in the case" in the appendix on appeal). While it appears the petitioner made an oral motion at the July 2024 hearing, the appendix record does not indicate that the requisite written motion was ever filed. Accordingly, the court did not err and petitioner is entitled to no relief.

Finally, the petitioner argues that it was error to terminate his parental rights, although he presents no authority in support of this argument and fails to challenge the findings upon which termination was based. Ample evidence supports the circuit court's finding that there was no reasonable likelihood that the petitioner could substantially correct the conditions of abuse and neglect. The record also indicates that the petitioner did not acknowledge his substance abuse problem. As we have stated, "[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." *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)). As such, it is clear 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, as noted above, the petitioner does not challenge the circuit court's finding that termination was necessary for the children's best interests. Circuit courts are permitted to terminate parental rights upon these findings. *See id.* § 604(c)(6). As such, we conclude that the circuit court did not err in terminating the petitioner's parental rights.

For the foregoing reasons, we find no error in the decision of the circuit court, and its August 27, 2024, order is affirmed.

Affirmed.

ISSUED: September 10, 2025

CONCURRED IN BY:

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