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C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

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

No. 24-554 (Ohio County CC-35-2023-JA-147 and CC-35-2024-JA-22)

MEMORANDUM DECISION

Petitioner Father J.C.-3[1] appeals the Circuit Court of Ohio County's August 26, 2024, order terminating his parental and custodial rights to J.C.-1 and J.C.-2, arguing that termination was erroneous.[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 2019, the petitioner was a respondent in an abuse and neglect proceeding which resulted in the court granting him disposition pursuant to West Virginia Code § 49-4-604(c)(5) as to J.C.-1. In December 2023, the DHS filed a petition against the children's mother and, in January 2024, the mother was adjudicated of abusing and neglecting J.C.-1 due, in part, to domestic violence in the home between the mother and the petitioner.[3] The adjudication against the mother prompted the petitioner to file a motion requesting that the circuit court modify his prior disposition and reunify him with J.C.-1. In support of his motion, he stated that he was recently released from incarceration and subsequently released from parole. Shortly thereafter, the DHS filed a competing motion for modification of the petitioner's disposition, requesting that his parental rights be

[1] The petitioner appears by counsel John M. Jurco. The West Virginia Department of Human Services appears by 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 Joseph J. Moses 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). The children and the petitioner share the same initials, so we refer to them as J.C.-1, J.C.-2, and J.C.-3, respectively.

[3] The petition and resultant proceedings also involved two other children who are not at issue in this appeal.

terminated. The DHS explained that, upon the petitioner's release from incarceration, he reunited with J.C.-1's mother and engaged in acts of domestic violence in front of J.C.-1 and the other two children in the home, which led to the DHS filing the abovementioned petition against the mother. Shortly after that petition was filed, the children underwent forensic interviews in which they all disclosed witnessing domestic violence between the petitioner and the mother.

In March 2024, J.C.-2 was born. Thus, the DHS filed an amended petition adding J.C.-2 and the petitioner to the proceedings and alleging that the petitioner engaged in domestic violence against the mother in front of J.C.-1 and the other two children in the home. In July 2024, the court held an adjudicatory hearing during which the petitioner admitted to arguing with and hitting the mother but claimed that none of the children were present. When presented with information from his criminal record, the petitioner also testified that he could not recall numerous allegations that he had committed domestic violence and much of his criminal history. Then, the mother testified that the petitioner had hit her at least once, threatened to harm her numerous times, punched holes in the walls of her home, broke her television, broke her car window by punching it when she refused to speak with him, and left her with a black eye after punching her in the face on one occasion. As a result of the incident where the petitioner broke her car window, the mother was granted a domestic violence protective order ("DVPO") in June 2024—approximately one month prior to the hearing. Accordingly, the court found by clear and convincing evidence that the petitioner was an abusive and neglectful parent based upon the unabated domestic violence in the home against the mother. Shortly thereafter, the petitioner filed a written motion for a post-adjudicatory improvement period.

In August 2024, the court held a dispositional hearing at which it addressed the petitioner's and the DHS's motions for modification of the petitioner's disposition as to J.C.-1. In the resulting order, the court found that the petitioner had a significant criminal history, including convictions for burglary, attempted murder, and various gun-related crimes, among other convictions. As a result, the petitioner had spent "a significant portion of his adult life incarcerated for mostly violent offenses." The court noted the petitioner's continuous cycle of moving in and out of the mother's home, due to domestic violence incidents, as well as the mother's very recent DVPO against the petitioner. The court explained that, due to the petitioner's repeated domestic violence and minimization thereof, there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future and an improvement period would be futile. The court found that the children's welfare necessitated termination of the petitioner's rights. Ultimately, the court denied the petitioner's motions for modification and a post-adjudicatory improvement period and terminated his parental and custodial rights to J.C.-1 and J.C.-2. It is from this order that the petitioner now appeals.[4]

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 the court erroneously denied his motion for an improvement period. In support of these arguments,

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

the petitioner points out that he was not incarcerated when he filed his motion, that he consistently attended hearings, that he admitted to engaging in domestic violence, and that he had positive visits with J.C.-2. However, to receive an improvement period a parent must "demonstrate[] by clear and convincing evidence, that [he or she] is likely to fully participate in the improvement period." W. Va. Code § 49-4-610. Critically, "[i]n order to remedy the abuse and/or neglect problem, the problem must first be acknowledged" and without acknowledgement, an improvement period is 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 admitted to a few instances of domestic violence, the record reflects that he continually minimized his conduct and, critically, continued engaging in domestic violence with the mother during the pendency of the proceedings—conduct to which he admitted and for which the mother obtained a DVPO. The circuit court's finding that the petitioner was unlikely to improve is well-supported by the record, and we decline to disturb the circuit court's decision to deny his motion for an improvement period. *See In re Tonjia M.*, 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002) ("The circuit court has the discretion to refuse to grant an improvement period when no improvement is likely.").

For the same reasons discussed above, we disagree with the petitioner's assertion that termination of his parental rights to J.C.-1 and J.C.-2 was erroneous, as his refusal to acknowledge the abuse and neglect supports the court's finding that there was no reasonable likelihood that the conditions of abuse or neglect could be substantially corrected in the near future. Further, we have explained that children deserve permanency, which includes reliable caretakers. *See State ex rel. Amy M. v. Kaufman*, 196 W. Va. 251, 260, 470 S.E.2d 205, 214 (1996) (in the context of time limits on an improvement period, stressing that "a child deserves resolution and permanency in his or her life, and . . . part of that permanency must include at minimum a right to rely on his or her caretakers"). After recounting the petitioner's history of incarceration and noting his unstable living situation, the court found that the children's welfare necessitated termination. *See* W. Va. Code § 49-4-604(c)(6) (permitting circuit courts to terminate parental rights upon 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). Thus, the petitioner is entitled to no relief.

For the foregoing reasons, we find no error in the decision of the circuit court, and its August 26, 2024, order is hereby 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