

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re S.H.

No. 24-555 (Greenbrier County CC-13-2024-JA-14)

MEMORANDUM DECISION

Petitioner Father J.W.¹ appeals the Circuit Court of Greenbrier County’s September 3, 2024, order terminating his parental rights to S.H., arguing that the circuit court erred by terminating his parental rights without providing adequate time to remedy his substance abuse issues.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 February 2024 alleging that S.H.’s mother tested positive for controlled substances upon giving birth to her and reported to hospital staff that she used heroin two days prior. Further, S.H. showed severe signs of neonatal abstinence syndrome and withdrawal symptoms. The DHS alleged that the petitioner, who is S.H.’s father and the mother’s boyfriend, was a “heavy drug user” and knew of the mother’s drug use during her pregnancy. In June 2024, the circuit court held an adjudicatory hearing during which the petitioner stipulated to all allegations in the petition. As a result, the court adjudicated the petitioner as an abusing and neglecting parent.

On July 10, 2024, the petitioner moved for a post-adjudicatory improvement period. At the July 11, 2024, hearing on the motion, the petitioner testified that he would be in substance abuse treatment within twenty-four hours and that he had already spoken to a representative at a

¹ The petitioner appears by counsel Carrie F. DeHaven. 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 Denise N. Pettijohn 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).

rehabilitation facility. The petitioner further testified that if he were to be drug tested that day, he would likely test positive for fentanyl. The circuit court granted the petitioner's motion and the terms of his improvement period required him, among other things, to enroll in an inpatient drug treatment program within one week. One week later, the DHS filed a motion to revoke the improvement period because the petitioner failed to enter the treatment program as ordered. At the July 23, 2024 hearing on the DHS's motion, the petitioner failed to appear in person. The court terminated the petitioner's improvement period for noncompliance and set the matter for disposition.

On August 28, 2024, the circuit court held a dispositional hearing. The petitioner again failed to appear but was represented by counsel. At the hearing, the court heard evidence that the petitioner participated in very few of his scheduled drug screens, had not been in contact with the DHS, failed to appear for his psychological evaluation, and failed to address his substance abuse issues. Specifically, the petitioner had been accepted into an inpatient treatment facility, but he failed to appear for the DHS transport to the facility on two separate occasions. Based upon this evidence, the court found that the petitioner failed to address and remedy his substance abuse issues despite the DHS offering multiple rehabilitative services, including transportation to a drug treatment facility. Due to his failure and unwillingness to comply with services, address his substance abuse issues, and cooperate with the DHS, the court found that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected and that it was necessary for the child's welfare to terminate the petitioner's parental rights.³ Accordingly, the court terminated the petitioner's parental rights. It is from the dispositional 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 the circuit court erroneously terminated his parental rights by not allowing him more time to seek substance abuse treatment.⁴ Specifically, the petitioner argues that "a drug problem cannot be resolved in six weeks." However, after the petitioner failed to undertake the basic step of submitting to substance abuse treatment as directed, the court found that there was no reasonable

³ The mother's parental rights were also terminated. The permanency plan for the child is adoption in the current placement.

⁴ The petitioner also alleges that his improvement period was terminated prematurely, yet he fails to provide any relevant documents in the appendix record on appeal. Specifically, the petitioner did not include the DHS's motion to terminate his improvement period, the transcript from the hearing on the DHS's motion, or the circuit court's order terminating the improvement period. This is in violation of Rule 10(c)(7) of the Rules of Appellate Procedure, which requires that a brief contain appropriate and specific citations to the record, including "citations that pinpoint when and how the issues in the assignments of error were presented to the lower tribunal." Further, this Rule permits this Court to "disregard errors that are not adequately supported by specific references to the record on appeal." Therefore, we decline to address this assignment of error.

likelihood that the petitioner could correct the conditions of abuse and neglect. Indeed, West Virginia Code § 49-4-604(d)(1) provides that “no reasonable likelihood that conditions of abuse and neglect can be substantially corrected” include situations where

[t]he abusing parent or parents have habitually used or are addicted to alcohol, controlled substances or drugs, to the extent that proper parenting skills have been seriously impaired and the person or persons have not responded to or followed through the recommended and appropriate treatment which could have improved the capacity for adequate parental functioning.

Here, the petitioner failed to enter substance abuse treatment and, critically, continued to use drugs throughout the proceedings as evidenced by his admission to using fentanyl. Contrary to his argument, the petitioner was not asked to “remedy his drug addiction in six weeks.” Instead, the court ordered that he enter into treatment, yet the petitioner failed to do so multiple times, despite the DHS scheduling transportation to a treatment facility twice. Further undermining the petitioner’s argument is the fact that this proceeding began in February 2024, allowing the petitioner over six months to begin to address his substance abuse issues, yet he failed to take the basic step of submitting to treatment. Additionally, the court found that the petitioner was unwilling to comply with services provided to him, stay in contact with the DHS, or cooperate with the family case plan. Based upon these findings, the circuit court concluded there was no reasonable likelihood that the petitioner could correct the conditions of abuse and neglect and that the child’s welfare necessitated termination of the petitioner’s parental rights. Circuit courts are permitted to terminate parental rights upon these findings. *See* W. Va. Code § 49-4-604(c)(6) (allowing a court to terminate parental rights “[u]pon a finding that there is no reasonable likelihood that the conditions of neglect or abuse and be substantially corrected in the near future and[] when necessary for the welfare of the child”); *see also* Syl. Pt. 5, *In re Kristin Y.*, 227 W. Va. 558, 712 S.E.2d 55 (2011) (“Termination 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.” (quoting Syl. Pt. 2, *In re R.J.M.*, 164 W. Va. 496, 266 S.E.2d 114 (1980))). As such, we decline to disturb the circuit court’s decision.

For the foregoing reasons, we find no error in the decision of the circuit court, and its September 3, 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