

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

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

In re A.F. and H.J.

No. 24-574 (Hardy County CC-16-2023-JA-31 and CC-16-2023-JA-32)

MEMORANDUM DECISION

Petitioner Father X.F.¹ appeals the Circuit Court of Hardy County’s September 3, 2024, order terminating his parental rights to A.F. and H.J., arguing that the circuit court erred by terminating his parental rights instead of employing a less restrictive alternative.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 June 2023, the DHS filed a petition alleging that the petitioner abused and neglected the children³ by exposing them to domestic violence, drugs, and drug paraphernalia and by failing to provide suitable housing and appropriate hygiene. Specifically, the DHS alleged that the petitioner and the mother had an altercation in front of the children and the petitioner threatened to burn down the home or shoot everyone, resulting in law enforcement intervention. A temporary protection plan was implemented with the assistance of Child Protective Services (“CPS”), but the petitioner failed to comply, leading to the filing of the instant petition.

In July 2023, the circuit court held an adjudicatory hearing at which the petitioner stipulated to abusing substances to the detriment of his parenting abilities, engaging in domestic violence in the children’s presence, and failing to provide suitable housing and proper hygiene. Based upon

¹ The petitioner appears by counsel Jeremy B. Cooper. The West Virginia Department of Human Services appears by Attorney General John B. McCuskey and Assistant Attorney General Katica Ribel. Counsel C. Carter Williams 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 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 petitioner is not H.J.’s biological father but was the child’s custodian, as they all lived in the home together.

his stipulation, the court adjudicated the petitioner of abusing and neglecting the children. Thereafter, the DHS filed a family case plan including, among other things, parenting and adult life skills classes, supervised visits, and anger management services. In addition, the petitioner was ordered to obtain suitable housing, maintain employment, refrain from engaging in illegal activity, abstain from using illicit or unprescribed drugs, and report any contact with law enforcement to the DHS and the multidisciplinary treatment team within forty-eight hours. In September 2023, the court granted the petitioner's written motion for a post-adjudicatory improvement period and approved the terms contained in the family case plan.

At a status hearing held in November 2023, the DHS informed the court that the petitioner tested positive for drugs and was briefly incarcerated but had been released. A CPS worker testified that the petitioner was currently complying with services and testing negative for drugs since being released from jail. At a review hearing held in February 2024, the court noted that the petitioner violated his probation in a related criminal matter by testing positive for methamphetamine and alcohol and, as a result, was incarcerated at a facility that offered rehabilitative services.

In April 2024, the court granted the petitioner's request for an extension of his post-adjudicatory improvement period, finding that the petitioner had partially complied with the terms of his family case plan and was participating in programs at the correctional center where he was incarcerated. In May 2024, the petitioner filed a motion for a post-dispositional improvement period. In support of his motion, the petitioner claimed that he had experienced a substantial change in circumstances, as he was participating in numerous services while incarcerated.

In August 2024, the circuit court held a final dispositional hearing at which the superintendent of the correctional center where the petitioner was incarcerated testified that while the petitioner participated in certain classes, he had "numerous rule infractions" and was discharged, in part due to a fight with another inmate. A day report employee testified that the petitioner was dismissed from the day report program as a result of his incarceration in February 2024 but that before being dismissed, he was testing positive for illicit drugs. The day report employee testified that the petitioner did not complete anger management or adult life skills classes. At the conclusion of the hearing, the court found that the petitioner was granted his first improvement period nearly a year prior but failed to demonstrate "any reason to continue this improvement period or [grant a] dispositional improvement period either." In the resulting dispositional order, the circuit court found that the petitioner was unwilling or unable to provide for the children. The court explained that the petitioner failed to complete services, was discharged from the Anthony Center for noncompliance, failed multiple drug screens throughout the proceedings, and was presently incarcerated. The court found that continuation in the petitioner's care was contrary to the children's welfare, as the petitioner demonstrated he could not sustain a suitable, safe home. The court concluded that there was no reasonable likelihood that the conditions of neglect could be substantially corrected in the near future, that a significant amount of time was required for the children to be integrated into a stable and permanent home environment, and that the petitioner demonstrated an inadequate capacity to solve the problems of abuse and neglect. Accordingly, the court denied the petitioner's motion for a post-dispositional

improvement period and terminated his parental rights to the children.⁴ It is from the dispositional order that the petitioner appeals.⁵

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 record does not support termination of his parental rights and instead supports disposition pursuant to West Virginia Code § 49-4-604(c)(5). However, we have explained that “[t]ermination 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.” Syl. Pt. 5, in part, *In re Kristin Y.*, 227 W. Va. 558, 712 S.E.2d 55 (2011) (quoting Syl. Pt. 2, *In re R.J.M.*, 164 W. Va. 496, 266 S.E.2d 114 (1980)). There is no such likelihood when the parent “ha[s] not responded to or followed through with a reasonable family case plan or other rehabilitative efforts . . . designed to reduce or prevent the abuse or neglect of the child[ren]” W. Va. Code § 49-4-604(d)(3). The petitioner did not follow through with his case plan, as he sporadically abused drugs throughout the proceedings and during his improvement period. Further, the petitioner failed to participate in services, was discharged from day report and a correctional center for noncompliance and remained incarcerated at the time of disposition with no concrete release date. Clear and convincing evidence supports the court's findings that there was no reasonable likelihood that the conditions of abuse or neglect could be corrected in the near future and the children's best interests necessitated termination. *See id.* § 604(c)(6) (permitting circuit courts to terminate parental rights upon these findings). Thus, the petitioner is entitled to no relief.

Inasmuch as the petitioner argues that a further improvement period was warranted because he demonstrated a substantial change in circumstances, we disagree. *See id.* § 610(3)(D) (requiring that, in order to obtain a post-dispositional improvement period after already having been granted an improvement period, a parent must demonstrate a “substantial change in circumstances” and that, due to the change, they are likely to substantially comply). We have held that “courts are not required to exhaust every speculative possibility of parental improvement before terminating parental rights where it appears that the welfare of the child will be seriously threatened.” *In re Kristin Y.*, 227 W. Va. at 560, 712 S.E.2d at 57, Syl. Pt. 4, in part (quoting *In re R.J.M.*, 164 W. Va. at 496, 266 S.E.2d at 114, Syl. Pt. 1). The petitioner participated in a post-adjudicatory improvement period and an extension thereof yet continued to use illicit drugs and engage in violent behavior, resulting in his dismissal from not one, but two rehabilitative programs. The petitioner demonstrated that he was unlikely and unable to fulfill the requirements of his case plan and, thus, was not entitled to a further improvement period.

⁴ The court terminated the petitioner's parental rights to A.F. and his rights “such as he has to [H.J.]” We take this to mean his custodial rights to H.J. were terminated pursuant to West Virginia Code § 49-4-604(c)(6) and analyze his arguments accordingly.

⁵ The mother's and H.J.'s unknown father's parental rights were terminated below. The permanency plan for the children is adoption in the current placement.

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 30, 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