

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

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

In re T.G., J.R., and R.G.

No. 24-581 (Webster County CC-51-2024-JA-8, CC-51-2024-JA-9, and CC-51-2024-JA-10)

MEMORANDUM DECISION

Petitioner Father A.G.¹ appeals the Circuit Court of Webster County’s September 10, 2024, order terminating his parental rights to T.G., J.R., and R.G., arguing that the circuit court erroneously terminated his parental rights without granting him an improvement period.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.

On February 7, 2024, the DHS filed a petition alleging that the petitioner and his wife (the mother of R.G. and stepmother of T.G. and J.R.) abused and neglected the children. The petition alleged that ten-year-old J.R. was placed in Highland Hospital, wherein she alleged sexual abuse by a noncustodial family member. During a subsequent Child Advocacy Center (“CAC”) interview, J.R. disclosed physical, verbal, and emotional abuse by the petitioner, that the petitioner and his wife did “inappropriate things in front of her,” that the petitioner drank excessively and drove while intoxicated, and that she was underfed and denied food. CAC interviews were then conducted with twelve-year-old T.G., who admitted that he did not like being in the interview and alleged that J.R. makes wild claims, and eight-year-old R.G., who stated that he liked living at home but that it had a lot of bugs and sometimes cockroaches. The petition also alleged that the petitioner underwent a drug screen and tested positive for MDMA (also known as molly or ecstasy) and ETG (a byproduct of recent alcohol consumption), but stated to the DHS he did not know why he had these positive results. The petition further asserted that the DHS observed that the home where the petitioner lived with his wife and the children had a terrible smell and was cluttered and unkempt; there was visible roach feces, but no visible roaches; and the kitchen and bathroom were dirty, with mold in the shower. The petition also noted that the petitioner and the biological mother of T.G. and J.R. were parties to an earlier child abuse and neglect petition alleging that the home was without electric and somewhat unkempt, but that the matter was dismissed without either

¹ The petitioner appears by counsel Andrew Chattin. The West Virginia Department of Human Services appears by counsel Attorney General John B. McCuskey and Assistant Attorney General James Wegman. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel. Counsel Mackenzie A. Holdren appears as the children’s guardian ad litem.

² We use initials where necessary to protect the identities of those involved in this case. *See* W. Va. R. App. P. 40(e).

parent being adjudicated as abusive or neglectful. Based upon these assertions, the DHS alleged that the petitioner and his wife abused controlled substances, failed to provide a fit and suitable home for the children, and physically abused the children.

Following the petition's filing, the petitioner filed a written motion for an improvement period. At a preliminary hearing on February 14, 2024, the court heard the testimony of two DHS workers regarding the state of the house, indicating that the shower was so filthy that it appeared the children were bathing in the sink and there was trash throughout the home. Following this testimony, the court ratified the emergency removal of the children from the home based on the imminent danger to the children's physical and/or emotional wellbeing stemming from the failure of the petitioner and his wife to provide them with a fit, apt, and suitable home. The DHS filed an amended petition in March 2024 after additional CAC interviews were conducted following the children's removal from the home. In these interviews, J.R. additionally disclosed sexual abuse by the petitioner, and T.G. made additional disclosures that he and J.R. were denied food, that the petitioner had issues with alcohol (including drinking and driving) and called him offensive and derogatory names, and that the petitioner and his wife had sex in front of him. Additionally, R.G. disclosed that the petitioner gave him alcohol and that T.G. had previously told him about not receiving food. Based on these disclosures, the DHS alleged that the petitioner's parenting was adversely affected by his alcohol and/or drug use, that he was physically abusive to the children, that he failed to provide suitable housing, and that he exposed the children to the physical abuse to which he was subjecting the others.

The court held a series of adjudicatory hearings in April 2024, during which the DHS presented the testimony of the CAC forensic interviewer, who stated that the children's second interviews were scheduled after J.R. made disclosures of sexual abuse and T.G. and R.G. made disclosures of additional abuse to their foster placement. During this testimony, recordings of the CAC interviews were played for the court and admitted as evidence without objection.³ Further, the court treated the petitioner's refusal to testify at the hearing as affirmative evidence of his culpability and ultimately found that the petitioner and his wife physically abused the children, allowed abuse to occur in the home, failed to maintain a suitable home, failed to provide appropriate food and clothing, and that the petitioner attempted to influence the children to be fearful of Child Protective Services ("CPS"). Based on these findings, the court adjudicated the petitioner of abusing and neglecting the children.

The matter came on for disposition in August 2024. Multiple witnesses testified to the petitioner's participation with services provided and his refusal to accept responsibility for the abuse and neglect of the children, instead blaming J.R. for all the problems in the home. A psychologist who conducted an evaluation of the petitioner testified that the petitioner portrayed J.R. "as a very problematic child" and denied ever abusing or neglecting the children, only acknowledging the poor condition of the home. The psychologist further testified that the petitioner's prognosis for improved parenting was "extremely poor," that returning the children placed them at risk of retaliation from the petitioner and his wife, and that she did not believe the petitioner was willing or able to correct the issues of abuse or neglect. A service provider testified

³ The petitioner did not include recordings of the CAC interviews in the appendix record.

that progress had been made in cleaning the house, but that the petitioner and his wife would redirect conversations on parenting topics to blame J.R. The service provider also stated that the petitioner and his wife would not allow her to observe their bedroom, with a CPS worker later testifying that she had a similar experience and that the petitioner placed a padlock on the door to prevent entry. The CPS worker also testified that the petitioner had been compliant with services in the case but stated that an improvement period would likely be futile, as the petitioner had stated on several occasions that he did not want J.R. to return to his care. Following this, the petitioner testified that he participated in services but refused to allow CPS workers to see the bedroom, claiming it was his “personal space.” When asked what he had done wrong regarding his children, the petitioner replied that he had not “done any of the stuff” he was adjudicated of and denied that he abused or neglected the children.

Based on this evidence, the circuit court found that the petitioner had “gone through the motions” but had not benefited from services offered. The court also found that the petitioner refused to accept responsibility at any point in the case. Based on these findings, the circuit court concluded that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future and that no less restrictive alternative to termination was available to protect the health, safety, and welfare of the children. Accordingly, the court entered an order terminating the petitioner’s parental rights to the children. It is from this dispositional order that the petitioner 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 circuit court erroneously terminated his parental rights without granting him an improvement period to demonstrate his ability to correct the conditions of abuse and neglect. Although the petitioner’s “Motion for Improvement Period,” filed a week after the petition, generally requests a “preadjudicatory, post-adjudicatory or post-dispositional improvement period upon grounds to be presented at the hearing on this motion[,]” the governing statute is clear that all three require the moving parent to “demonstrate[, by clear and convincing evidence, that [he] is likely to fully participate in the improvement period.” W. Va. Code § 49-4-610(1)(B), (2)(B), and (3)(B). The petitioner asserts that the evidence adduced at the dispositional hearing regarding his cooperation with services established that “he was on track to correcting the conditions . . . and that he would have continued to correct the conditions” if granted an improvement period. However, the record supports the court’s findings to the contrary: that the petitioner was merely going through the motions and that he participated in, but failed to benefit from, the services he received during this case. We have explained that “it is possible for an individual to show ‘compliance with specific aspects of the case plan’ while failing ‘to improve . . . the overall attitude and approach to parenting.’” *In re Jonathan Michael D.*, 194 W. Va. 20, 27, 459 S.E.2d 131, 138 (1995) (quoting *W. Va. Dep’t of Hum. Servs. v. Peggy F.*, 184 W. Va. 60, 64, 399 S.E.2d 460, 464 (1990)). Notably, the petitioner does not challenge the circuit court’s finding that he failed to accept responsibility for the abuse of the children, which we have explained “results in making the problem untreatable

⁴ The parental and custodial rights of the children’s mothers were also terminated. The permanency plan for the children is adoption in their current placements.

and in making an improvement period an exercise in futility at the child[ren]’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)). These findings also support the court’s conclusion that there was no reasonable likelihood that the conditions of neglect or abuse could be substantially corrected in the near future. See W. Va. Code § 49-4-604(d) (“‘No reasonable likelihood that the conditions of neglect or abuse can be substantially corrected’ means that . . . the abusing adult . . . [has] demonstrated an inadequate capacity to solve the problems of abuse or neglect on their own or with help.”). Moreover, the court concluded that termination was necessary for the children’s welfare, which the petitioner does not challenge on appeal. Circuit courts are permitted to terminate parental rights upon such determinations. See W. Va. Code § 49-4-604(c)(6); 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 the 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, the circuit court did not err in terminating the petitioner’s parental rights without first granting him an improvement period.

For the foregoing reasons, we find no error in the decision of the circuit court, and its September 10, 2024, dispositional order is hereby affirmed.

Affirmed.

ISSUED: November 4, 2025

CONCURRED IN BY:

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

NOT PARTICIPATING:

Chief Justice William R. Wooton