

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re J.S.-1

No. 25-494 (Kanawha County CC-20-2023-JA-379)

MEMORANDUM DECISION

Petitioner Father J.S.-2¹ appeals the Circuit Court of Kanawha County’s July 9, 2025, order terminating his parental rights to J.S.-1, arguing that the circuit court erred by denying 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.

In October 2023, the DHS filed an abuse and neglect petition shortly after J.S.-1 tested positive at birth for amphetamines, methamphetamine, buprenorphine, and THC. The DHS alleged that the petitioner knew about the mother’s substance abuse and failed to protect J.S.-1. At a hearing on November 7, 2023, the circuit court ordered that the petitioner, who retained custody of J.S.-1, be subject to unannounced visits by the DHS and receive services from Liam’s Place, which included parenting education and drug screening. The DHS subsequently filed an amended petition in December 2023, alleging that Liam’s Place had difficulty contacting the petitioner and that the petitioner tested positive for methamphetamine twice following the prior hearing. The DHS further alleged that the petitioner’s home was in deplorable condition—including broken steps, a hatchet lodged in the front entrance, exposed wiring, weak flooring, and a tarp nailed to the wall in place of a back door. At a preliminary hearing shortly thereafter, the court removed J.S.-1 from the petitioner’s custody, but allowed the petitioner to have supervised visitation conditioned upon three consecutive negative drug screens. The court further ordered the petitioner to undergo a drug and alcohol assessment and, depending on the results, engage in substance abuse treatment.

The circuit court held an adjudicatory hearing in January 2024, where the petitioner stipulated to suffering from a substance abuse issue that negatively affected his ability to parent. Accordingly, the court adjudicated the petitioner of neglecting J.S.-1. The court then granted the petitioner a post-adjudicatory improvement period due to his active participation in services. The

¹ The petitioner appears by counsel Jason S. Lord. The West Virginia Department of Human Services (“DHS”) appears by counsel Attorney General John B. McCuskey and Assistant Attorney General Wyclif S. Farquharson. Counsel Sophia D. Mills appears as the child’s guardian ad litem (“guardian”).

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 child and the petitioner share the same initials, we refer to them as J.S.-1 and J.S.-2, respectively.

improvement period's terms required that the petitioner continue to participate in these services—and any others recommended by the multidisciplinary team (“MDT”)—as well as supervised visitation. In February 2024, the petitioner began exercising unsupervised visitation. However, at a May 2024 hearing, the court granted the DHS and guardian's motion to terminate the petitioner's improvement period after the petitioner began testing positive for THC, methamphetamine, and amphetamines. On December 9, 2024, the petitioner filed a motion for a second post-adjudicatory improvement period.

On December 16, 2024, the DHS filed a second amended petition, alleging that, despite prior improvement, the petitioner's home was again in deplorable and unsafe condition, presenting fire hazards, dangerous objects, and electrical concerns both the inside and outside of the home. The DHS further alleged that J.S.-1 had a variety of health issues resulting from being born drug affected and, after an unsupervised visit with the petitioner, the child contracted a gastrointestinal illness that could only be contracted through exposure to rodent excrement. In addition, the DHS alleged that the petitioner reported having no income or vehicle, but that he is self-employed as a handyman. At a March 2025 adjudicatory hearing, the circuit court received evidence in support of the allegations in the second amended petition, including photographs of the petitioner's home and testimony from a Child Protective Services (“CPS”) worker and the petitioner. Based upon this evidence, the court adjudicated the petitioner of neglecting J.S.-1 via his continued substance abuse and deplorable living conditions.

At a dispositional hearing in April 2025, the circuit court took judicial notice of all prior evidence presented. Service providers from Liam's Place testified that, although supervised visits went well, the petitioner failed to show improvement in his parenting. One service provider testified that, due to J.S.-1's medical conditions, it was necessary for the petitioner to obtain a vehicle and driver's license to properly care for the child. However, despite providing the petitioner with resources, the provider stated that the petitioner still did not have a license. The provider further reported that, despite claiming he was employed, the petitioner never provided verification, that the conditions of the petitioner's home had not improved, and that the petitioner's supervised visits were interrupted by his sporadic positive drug screens. A CPS worker testified in support of termination, asserting that the petitioner's progress had “completely stalled,” and that, when she visited the petitioner's home the day before the hearing, the exterior of the home was strewn with scrap metal, rusty metal objects, industrial buckets, lumber, power tools, and other materials that posed a risk of injury to a child. Finally, the court heard from the petitioner who, despite acknowledging that some screens were positive for marijuana, denied any substance abuse. The petitioner testified that he did not have a driver's license, that his home was not safe for J.S.-1, and that he was unfamiliar with the medications J.S.-1 was taking. Although the petitioner asserted that he was employed, he admitted that he did not provide proof of employment.

Ultimately, the circuit court found that, while the petitioner attended services, the evidence demonstrated that he was not making progress and that his home was not habitable for a toddler. The court also found that the petitioner refused to accept assistance in getting a driver's license, despite its necessity to take J.S.-1 to medical appointments, and failed to provide evidence of steady employment. Based upon these findings, the court concluded that it was not likely that the petitioner would successfully complete the terms of an improvement period and that there was no reasonable likelihood that the conditions of abuse and neglect could be corrected in the near future,

as the petitioner failed to follow through with reasonable services. The court further concluded that J.S.-1's best interests required termination of the petitioner's rights. Accordingly, the court denied the petitioner's motion for an improvement period and terminated his parental rights to J.S.-1.³ It is from this dispositional order that the petitioner appeals.

"We review a circuit court's decision to grant or deny a post-adjudicatory improvement period under an abuse of discretion standard." Syl. Pt. 1, *In re K.A.*, 251 W. Va. 626, 915 S.E.2d 520 (2025). Before this Court, the petitioner raises a sole assignment of error, arguing only that the circuit court erred in denying his motion for a second post-adjudicatory improvement period. We disagree. West Virginia Code § 49-4-610(2)(B) permits a circuit court to grant a post-adjudicatory improvement period when a parent "demonstrates, by clear and convincing evidence, that [he] is likely to fully participate." However, when, as here, a parent has previously been granted an improvement period, a court may only grant an improvement period where the parent "demonstrates that since the initial improvement period, [he] has experienced a substantial change in circumstances" and, due to that change, "[he] is likely to fully participate in a further improvement period." *Id.* § 610(2)(D). Critically, the petitioner fails to reference this standard. Nor did he argue, below or on appeal, that he experienced a substantial change in circumstances. Instead, the record supports the circuit court's findings that, while the petitioner attended parenting classes, he made no progress in improving the conditions of his home and failed to take steps that would allow him to properly care for J.S.-1. In fact, the record demonstrates that the petitioner's situation *worsened*. More than a year *after* the initiation of the proceedings, the circuit court adjudicated the petitioner of additional neglect upon the DHS's filing of several amended petitions. In sum, the record does not demonstrate that the petitioner experienced a substantial change in circumstances or that he was likely to fully participate in a new improvement period. Therefore, the circuit court did not abuse its discretion in denying the petitioner's motion for a second post-adjudicatory improvement period. *See In re Tonjia M.*, 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002) (explaining that circuit courts have "discretion to refuse to grant an improvement period when no improvement is likely").

For the foregoing reasons, we find no error in the decision of the circuit court, and its July 9, 2025, order is hereby affirmed.

Affirmed.

ISSUED: August 25, 2026

CONCURRED IN BY:

Chief Justice C. Haley Bunn
Justice William R. Wooton
Justice Charles S. Trump IV
Justice H. L. Kirkpatrick
Justice James W. Flanigan

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