

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

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

In re H.V.

No. 25-716 (Morgan County CC-33-2025-JA-5)

MEMORANDUM DECISION

Petitioner Father B.V.¹ appeals the Circuit Court of Morgan County’s September 2, 2025, order terminating his parental rights to H.V., arguing that the court adjudicated him based upon insufficient evidence and erred in terminating his parental rights.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 2025 alleging that the mother inflicted an “extremely concerning,” “non-accidental” arm fracture on H.V.’s three-month-old half-sibling.³ At that time, the DHS designated the petitioner as a nonoffending parent. However, in March 2025, the DHS filed an amended petition alleging that the petitioner abused alcohol and drugs, which affected his ability to parent the child. Further, the DHS alleged that the petitioner refused to submit to drug testing ordered by the court immediately following the preliminary hearing and made a false report against a Morgan County probation officer to evade drug testing. The petition also alleged that the petitioner had recently been arrested and was incarcerated at the time of the amended petition’s filing.⁴

The circuit court held two separate adjudicatory hearings. During the first adjudicatory hearing in March 2025, the petitioner testified that he did not participate in the ordered drug screening immediately following the preliminary hearing because the probation officer harassed him, which resulted in the petitioner calling 9-1-1. The petitioner also admitted that he previously abused drugs but denied any current drug use other than his prescribed Suboxone. At the conclusion of this hearing, the court again ordered the petitioner to participate in drug screening.

¹ The petitioner appears by counsel James P. Riley IV. The West Virginia Department of Human Services (“DHS”) appears by counsel Attorney General John B. McCuskey and Assistant Attorney General Lee Niezgoda. Counsel Victoria G. Camardi appears as the child’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).

³ The petition included two other children who are not at issue in this appeal.

⁴ The petitioner was released from incarceration before the adjudicatory hearing.

During the second adjudicatory hearing in April 2025, a worker at the Morgan County Day Report Center testified that the petitioner submitted to a blood and urine drug screen on April 2, 2025. The petitioner's blood test results were positive for methamphetamine and amphetamine. However, the petitioner's urine results were "abnormally dilute" and only positive for buprenorphine. The petitioner testified that he never submitted to a blood or urinalysis test. He stated that he attempted to complete a urinalysis test, but when he refused a blood test, the center denied all drug testing. The petitioner further denied any drug use and claimed that the positive test results were not his but rather could be his father's, who shares his name. Next, the mother testified that in January 2025, the petitioner and his girlfriend attended H.V.'s birthday party and a hypodermic needle fell out of the petitioner's girlfriend's pocket. Further, the mother testified that the petitioner's aggressive behavior made her concerned that he was using drugs. At the conclusion of the second adjudicatory hearing, the circuit court found that the petitioner abused and neglected H.V. through his drug use and failure to drug screen, which the court considered a presumptive positive screen, and that H.V. was an abused and neglected child.

The circuit court held a dispositional hearing in May 2025. The petitioner did not appear but was represented by counsel. A DHS worker testified that the petitioner had not been in contact with the DHS and did not participate in drug screens or services outside of a few video calls with H.V. The court found that the petitioner chose not to participate in the proceedings, services, or drug screens. Therefore, the court found that there was no reasonable likelihood that the petitioner could correct the conditions of abuse and neglect in the near future. The court also found that it was not in the best interest of H.V., due to the child's age, to delay permanency. Accordingly, the court terminated the petitioner's parental rights to H.V. It is from this 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 substantive rulings for abuse of discretion, factual findings are reviewed for clear error, and issues of law are reviewed de novo. *See* Syl. Pt. 1, *In re K.S.*, -- W. Va. --, 930 S.E.2d 400 (2026). Before this Court, the petitioner argues that the evidence presented was insufficient to support his adjudication. At adjudication, West Virginia Code § 49-4-601(i) requires the circuit court to determine "whether the child is abused or neglected and whether the respondent is [an] abusing [or] neglecting [parent] . . . based upon conditions existing at the time of the filing of the petition and proven by clear and convincing evidence." Further, "[t]he statute . . . does not specify any particular manner or mode of testimony or evidence by which the [DHS] is obligated to meet this burden." Syl. Pt. 3, in part, *In re F.S.*, 233 W. Va. 538, 759 S.E.2d 769 (2014) (quoting Syl. Pt. 3, *In re Christina L.*, 194 W. Va. 446, 460 S.E.2d 692 (1995)). In regard to this burden, we have explained that "[c]lear and convincing evidence means that more than a mere scintilla of evidence has been presented to establish the veracity of the allegations of abuse and/or neglect, but it does not impose as exacting an evidentiary burden as criminal proceedings which generally require proof beyond a reasonable doubt." *In re A.M.*, 243 W. Va. 593, 598, 849 S.E.2d 371, 376

⁵ The mother is currently participating in an improvement period. The permanency plan for the child is reunification with the mother with a concurrent permanency plan of adoption by the maternal grandparents.

(2020). The petitioner argues that his refusal to submit to drug screening did not expose H.V. to harm and that the circuit court's reliance on his failure to drug test was "speculative and unsupported."⁶ We disagree. West Virginia Code § 49-1-201 defines a "neglected child" as one "[w]hose physical or mental health is harmed or *threatened* by a present refusal, failure or inability of the child's parent . . . to supply the child with necessary food, clothing, shelter, supervision, medical care, or education." (emphasis added). The record reflects that the DHS presented sufficient evidence to adjudicate the petitioner, including evidence of his failure to submit to court-ordered drug screens, his positive drug screen for methamphetamine and amphetamine, and the mother's testimony regarding her concern that he was using drugs. The petitioner's positive drug screen (and his failure to screen, which the court considered as evidence of his continued drug abuse) was appropriate for the court to consider as a threat of harm to H.V. Based on the foregoing, we conclude that the circuit court did not err in adjudicating the petitioner.

The petitioner also argues that the circuit court erred in terminating his parental rights without applying the factors set forth in Syllabus Point 3 of *In re Cecil T.*, 228 W. Va. 89, 717 S.E.2d 873 (2011), which requires a court to consider several factors "[w]hen no factors and circumstances other than incarceration are raised at a disposition hearing . . . with regard to a parent's ability to remedy the condition of abuse and neglect in the near future." Critically, *Cecil T.* is not applicable here, as the petitioner *was not incarcerated* at the time of disposition. While the petitioner argues that the court relied upon his past incarceration when terminating his parental rights, the record reflects that the court instead relied upon evidence of the petitioner's drug use, failure to drug test, failure to participate in services, and failure to participate in court proceedings. Further, it does not appear that the court, in any way, based the decision to terminate parental rights on the petitioner's past incarceration, as that factor was not referenced in the dispositional order. Importantly, the court found that there was no reasonable likelihood that the conditions of abuse and neglect could be corrected in the near future and that termination was in the best interests of the child. Circuit courts are permitted to terminate parental rights upon these findings. *See* W. Va. Code § 49-4-604(c)(6) (permitting circuit courts to terminate parental rights upon finding "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, 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 2, 2025, dispositional order is hereby affirmed.

Affirmed.

ISSUED: September 22, 2026

⁶ The petitioner also argues that the amended petition relies "exclusively on adult criminal allegations unrelated to child harm." However, the petition directly alleges that the petitioner abused drugs to the degree that his parenting skills were impaired and imposed an imminent risk to H.V. Therefore, the petitioner is not entitled to relief in this regard.

CONCURRED IN BY:

Chief Justice C. Haley Bunn
Justice William R. Wooton
Justice H. L. Kirkpatrick
Justice James W. Flanigan

DISQUALIFIED:

Justice Charles S. Trump IV