

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re E.O. and M.O.

No. 22-909 (Wood County CC-54-2020-JA-221 and CC-54-2020-JA-222)

MEMORANDUM DECISION

Petitioner Father D.O.¹ appeals the Circuit Court of Wood County’s November 15, 2022, order terminating his parental rights to E.O. and M.O.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 November 2020, the DHS filed an abuse and neglect petition alleging that petitioner suffered from a mental illness or impairment that impacted proper parenting skills resulting in the neglect of the children. Specifically, petitioner and the children’s mother, M.C., believed that aliens had sexually assaulted them and the children. Petitioner claimed that the aliens were coming out of the television and that the children had been awake and crying for four days because of the aliens. The mother reported being abducted by the aliens multiple times since she was an infant and that she had recently seen the alien mothership. The children’s doctor expressed concerns for the children’s well-being citing a conversation with the mother where the mother explained that her home is filthy, has bed bugs, and that she forgets to feed the children.

¹Petitioner appears by counsel Wells H. Dillon. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Katica Ribel. Counsel Keith White appears as the child’s guardian ad litem.

Additionally, pursuant to West Virginia Code § 5F-1-2, the agency formerly known as the West Virginia Department of Health and Human Resources was terminated, effective January 1, 2024, and is now three separate agencies—the Department of Health Facilities, the Department of Health, and the Department of Human Services. For purposes of abuse and neglect appeals, the agency is now the Department of Human Services (“DHS”).

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

At the adjudicatory hearing in March 2021, petitioner entered a stipulated adjudication admitting that he suffers from a mental illness or impairment to the extent that it impacted proper parenting skills, resulting in the neglect of the children, and the circuit court adjudicated him as a neglecting parent. Petitioner was granted a six-month post-adjudicatory improvement period. In May 2021, the mother filed a petition for a domestic violence protective order in family court against petitioner for domestic abuse after a verbal altercation. The next day, the mother, accompanied by petitioner, sought to withdraw the petition for a protective order. After the matter was transferred from family court to the circuit court, an evidentiary hearing on the protective order was held and evidence was presented that petitioner made physical threats of violence against the mother. The circuit court issued the protective order and ordered petitioner to participate in the Batterer Intervention and Prevention Program (“BIPP”) as a condition of his improvement period.

At a review hearing in September 2021, the circuit court extended petitioner’s post-adjudicatory improvement period for ninety days and terminated the protective order because petitioner was compliant with BIPP at the time. In December 2021, petitioner was granted a six-month post-dispositional improvement period. At a review hearing in April 2022, the DHS expressed concerns over petitioner’s noncompliance with BIPP and reports from service providers that petitioner was belittling the mother during services. Despite these concerns, all parties agreed to continue with the post-dispositional improvement period. At the next review hearing in June 2022, the mother testified about petitioner’s continued anger and violent outbursts. The court heard evidence about an incident in which petitioner strangled their cat after he became angry with the mother for not cleaning the dishes. Although the mother reported to her therapist that petitioner strangled the cat, at the hearing she recanted because petitioner told her that is not what happened. The mother also explained a separate incident where petitioner became angry and punched a hole in the wall close to her head. Nonetheless, all parties agreed to continue the improvement period and set the matter for disposition.

The dispositional hearing began in June 2022 and concluded in November 2022. The DHS presented evidence of petitioner’s inability to change his behavior despite participating with services for nearly two years. A service provider testified about an incident she had with petitioner while he was visiting with his children. The service provider explained that petitioner became angry and began yelling at her when she asked him to sign an updated care plan. The incident occurred in front of the children and prompted a supervisor who was across the building and on another floor to intervene because he heard the yelling. Petitioner testified that the only thing he learned from his services was that he never neglected the children. Petitioner blamed the mother for any neglect of the children because she failed to change diapers and keep the home clean. At the conclusion of the evidence, petitioner requested that the circuit court grant his motion for a ninety-day extension of his post-dispositional improvement period.

The circuit court found that petitioner failed to successfully complete his improvement periods because, although he participated in the services, he failed to internalize what those services were intended to achieve. The circuit court further found that petitioner’s inability to succeed in the improvement periods was likely due to his mental health deficiencies. Moreover, the circuit court found that an additional extension of the improvement period would result in the children being in foster care for longer than permitted by West Virginia Code § 49-4-610(9), and

there was no evidence of compelling circumstances to justify exceeding the time limit. Accordingly, the circuit court denied petitioner's request for an extension to the post-dispositional improvement period. The court further terminated petitioner's parental rights because there was no reasonable likelihood that the conditions of neglect could be substantially corrected in the near future and, considering the need for continuity of care and caretakers, termination was necessary for the children. It is from the dispositional order that petitioner appeals.³

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). Upon our review, we must first address petitioner's utter failure to comply with the requirements of Rule 10(c)(7) of our Rules of Appellate Procedure, which requires that

[t]he brief must contain an argument exhibiting clearly the *points of fact and law presented, the standard of review applicable, and citing the authorities relied on* . . . [and] *must contain appropriate and specific citations to the record on appeal* The Court may disregard errors that are not adequately supported by specific references to the record on appeal.

(emphasis added). Here, petitioner's brief in regard to two of his assignments⁴ is wholly inadequate as it fails to include citation to or application of any controlling authority, in violation of Rule 10(c)(7). Accordingly, the Court will not address these assignments of error on appeal. Furthermore, we note that petitioner's brief is completely devoid of any citations to the record. For this reason alone, we could dismiss petitioner's entire appeal, as we explained in an Administrative Order entered December 10, 2012, Re: Filings That Do Not Comply With the Rules of Appellate Procedure, that "[p]ursuant to Rule 10(j), failure to file a compliant brief 'may result in the Supreme Court refusing to consider the case, denying argument to the derelict party, dismissing the case from the docket, or imposing such other sanctions as the Court may deem appropriate.'" However, we will forgo dismissal in this instance and address the merits of petitioner's remaining assignment of error.

Turning to his remaining assignment of error, petitioner argues that the circuit court erred in denying his motion for an extension of his post-dispositional improvement period beyond statutory limits. West Virginia Code § 49-4-610(9) prohibits a circuit court from granting or extending an improvement period if it would cause a child to be in foster care for more than fifteen of the prior twenty-two months, unless compelling circumstances are proven by clear and convincing evidence that it is in the child's best interests to exceed the time limits. In support of

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

⁴The assignments of error alleged were (1) whether the circuit court erred in denying post-termination visitation, and (2) whether the circuit court erred in finding that petitioner had not changed his behavior.

his argument, petitioner contends that compelling circumstances were shown by clear and convincing evidence because the DHS did not comply with this Court's holding in syllabus point 4, *In re Billy Joe M.*, 206 W. Va. 1, 521 S.E.2d 173 (1999), that termination of parental rights where allegations of neglect are made against the parent based on their intellectual incapacity should only occur after a thorough effort to determine whether the parent can adequately care for the child with intensive long-term assistance. This Court finds that the services contemplated under *Billy Joe M.* were provided to petitioner. Petitioner was granted post-adjudicatory and post-dispositional improvement periods with multiple extensions. Petitioner received services for a period of twenty months. Unfortunately, petitioner was not able to realize the benefit of these services as he continued to have violent outbursts, including in front of the children. Requiring more services and permitting an extension to the post-dispositional improvement period would only serve to further delay permanency for the children.

Moreover, petitioner refused to acknowledge any wrongdoing on his part. As we have held,

[i]n order to remedy the abuse and/or neglect problem, the problem must first be acknowledged. Failure to acknowledge the existence of the problem, i.e., the truth of the basic allegation pertaining to the alleged abuse and neglect or the perpetrator of said abuse and neglect, results in making the problem untreatable and in making an improvement period an exercise in futility at the child's expense.

In re Timber M., 231 W. Va. 44, 55, 743 S.E.2d 352, 363 (2013) (citation omitted). During his testimony, petitioner explained that his takeaway from his parenting provider was that he never neglected the children. Accordingly, denial of petitioner's motion for an extension of his post-dispositional improvement period was not in error.

We conclude that the circuit court correctly found no reasonable likelihood that petitioner could substantially correct the conditions of abuse and neglect in the near future and that termination of petitioner's parental rights was necessary for the children's welfare. *See* W. Va. Code § 49-4-604(c)(6) (permitting circuit court to terminate parental rights upon finding no reasonable likelihood that the conditions of neglect can be substantially corrected in the near future and when necessary for the child's welfare); *see also* Syl. Pt. 5, *In re Kristin Y.*, 227 W. Va. 558, 712 S.E.2d 55 (2011) (permitting termination of parental rights "without the use of intervening less restrictive alternatives when it is found that there is no reasonable likelihood . . . that conditions of neglect . . . can be substantially corrected"). Accordingly, termination of petitioner's parental rights was appropriate.

For the foregoing reasons, we find no error in the decision of the circuit court, and its November 15, 2022, order is hereby affirmed.

Affirmed.

ISSUED: February 7, 2024

CONCURRED IN BY:

Chief Justice Tim Armstead
Justice Elizabeth D. Walker
Justice John A. Hutchison
Justice William R. Wooton
Justice C. Haley Bunn