

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

*In re G.B.*

No. 20-0383 (Logan County 19-JA-84)

**FILED  
November 4, 2020**

EDYTHE NASH GAISER, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

**MEMORANDUM DECISION**

Petitioner Father M.B., by counsel Dwayne J. Adkins, appeals the Circuit Court of Logan County’s March 12, 2020, order terminating his parental rights to G.B.<sup>1</sup> The West Virginia Department of Health and Human Resources (“DHHR”), by counsel Katherine A. Campbell, filed a response in support of the circuit court’s order. The guardian ad litem (“guardian”), Karen S. Hatfield, filed a response on behalf of the child in support of the circuit court’s order. On appeal, petitioner argues that the circuit court erred in finding that there was no change in petitioner’s level of participation between the adjudicatory hearing and dispositional hearing, in finding that the DHHR made reasonable efforts to reunify the family, in finding that petitioner failed to address the conditions of abuse and neglect in a meaningful way, in finding there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future, and in finding that termination of petitioner’s parental rights was in the child’s best interests.

This Court has considered the parties’ briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision affirming the circuit court’s order is appropriate under Rule 21 of the Rules of Appellate Procedure.

Petitioner asserts error regarding his biological child, G.B., who was one of four children living in petitioner’s home at the time of their removal. In June of 2019, the DHHR filed a child abuse and neglect petition alleging that petitioner’s use of controlled substances negatively affected his ability to parent the child as evidenced by his unsanitary home and the children’s

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<sup>1</sup>Consistent with our long-standing practice in cases with sensitive facts, we use initials where necessary to protect the identities of those involved in this case. *See In re K.H.*, 235 W. Va. 254, 773 S.E.2d 20 (2015); *Melinda H. v. William R. II*, 230 W. Va. 731, 742 S.E.2d 419 (2013); *State v. Brandon B.*, 218 W. Va. 324, 624 S.E.2d 761 (2005); *State v. Edward Charles L.*, 183 W. Va. 641, 398 S.E.2d 123 (1990).

chronic lice and hygiene issues. The DHHR alleged that petitioner submitted to a drug screen at the case worker's request and tested positive for amphetamine, methamphetamine, and marijuana. However, neither parent appeared to discuss the issues with the case worker as requested. Petitioner later waived his preliminary hearing. The circuit court ordered him to submit to random drug screens at least twice per week and further ordered that the DHHR provide supervised visitation with the child contingent upon negative drug screen results. In October of 2019, the DHHR amended the petition and alleged that petitioner failed to participate in random drug screening in July of 2019, tested positive for methamphetamine and marijuana once in August of 2019, and tested positive for methamphetamine three times in September of 2019.

In January of 2020, the circuit court held an adjudicatory hearing.<sup>2</sup> Petitioner did not appear but was represented by counsel. The DHHR presented evidence that the children were living in deplorable conditions in that their home was filled with trash, roaches, and other bugs. Additionally, the evidence showed that petitioner initially denied any substance abuse, but he tested positive for controlled substances multiple times since the filing of the petition. Based on petitioner's multiple positive drug screen results and multiple missed screening opportunities, the circuit court found that he was a habitual user of illegal substances. As a result of his continued substance use, petitioner was afforded only one visit with G.B. and failed to request any other visitation. The circuit court further found that petitioner failed to participate in the proceedings or services, such as in-home services or a psychological evaluation. The circuit court concluded that the child was abused and neglected and adjudicated petitioner as an abusing parent. Thereafter, the DHHR filed a motion to terminate petitioner's parental rights.

In February of 2020, the circuit court held the final dispositional hearing. Petitioner failed to appear but was represented by counsel. The DHHR presented testimony that petitioner had failed to contact his caseworker since the adjudicatory hearing. According to the testimony, petitioner submitted to four random drug screens since the adjudicatory hearing and was consistently positive for methamphetamine. The DHHR indicated that petitioner failed to participate in scheduled substance abuse and psychological evaluations, any substance abuse treatment programs, including the local "Fresh Start" program. The case worker testified that petitioner was "hit and miss" with services, but worked with a service provider a week prior to the dispositional hearing. Further, the case worker testified that petitioner was scheduled to visit with the child the week prior to the dispositional hearing, but she was not "[one-hundred] percent sure that actually happened." Other than that potential visit and one visit earlier in the proceedings, petitioner had not seen the child since the filing of the petition.

Following the presentation of evidence, the circuit court found that there had been "no change regarding [petitioner's] level of participation" and made the following findings of fact in support: petitioner "failed to submit to any drug screens;" he "failed to follow up with his Fresh Start referral and/or develop another program to address his habitual substance abuse;" he "failed to reschedule his psychological and substance abuse evaluation;" he "failed to have any contact with the [West Virginia] DHHR;" he "failed to present any evidence that he is in any treatment of

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<sup>2</sup>According to the record, the adjudicatory hearing was delayed multiple times at the request of the respondent parents, partly in order to excuse and re-appoint the parents' respective counsel.

any kind to address the issues which led to the filing of the emergency petition;” he “inconsistently complied with services as provided by the [West Virginia] DHHR;” he “failed to visit with the [i]nfant and/or request the same;” he “failed to provide any support to the [i]nfant;” he “failed to even check on the [i]nfant’s well-being;” and he “failed to appear at multiple hearings.” In sum, the circuit court found that there was no evidence that petitioner meaningfully addressed the issues that led to the filing of the petition. The court found that the DHHR used all reasonable efforts to reunify the family, but petitioner failed to take advantage of those services. The circuit court concluded that there was no reasonable likelihood that the conditions of abuse and neglect could be corrected in the near future and that termination of petitioner’s parental rights was necessary for the welfare of the child. Accordingly, the circuit court terminated petitioner’s parental rights to the child by its March 12, 2020, order. Petitioner now appeals that order.<sup>3</sup>

The Court has previously held:

“Although conclusions of law reached by a circuit court are subject to *de novo* review, when an action, such as an abuse and neglect case, is tried upon the facts without a jury, the circuit court shall make a determination based upon the evidence and shall make findings of fact and conclusions of law as to whether such child is abused or neglected. These findings shall not be set aside by a reviewing court unless clearly erroneous. A finding is clearly erroneous when, although there is evidence to support the finding, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. However, a reviewing court may not overturn a finding simply because it would have decided the case differently, and it must affirm a finding if the circuit court’s account of the evidence is plausible in light of the record viewed in its entirety.” Syl. Pt. 1, *In Interest of Tiffany Marie S.*, 196 W.Va. 223, 470 S.E.2d 177 (1996).

Syl. Pt. 1, *In re Cecil T.*, 228 W. Va. 89, 717 S.E.2d 873 (2011). Upon review, this Court finds no error in the proceedings below.

On appeal, petitioner first argues that the circuit court erred in concluding that his level of participation had not changed between the adjudicatory hearing and dispositional hearing. Petitioner asserts that the circuit court’s findings that he “failed to submit to any drug screens,” “failed to visit with the [i]nfant,” and “failed to even check on the [i]nfant’s well-being” are contradicted by the record and are clearly erroneous. According to petitioner, because these findings are inaccurate, “some others are thrown into question.” Petitioner argues that, because these findings are clearly erroneous, the circuit court’s dispositional order should be vacated and remanded. We disagree.

To petitioner’s credit, we note that the circuit court’s finding that he “failed to submit to any drug screens” is clearly contradicted by the record. As noted in the recitation of facts above, petitioner submitted to four drug screens in the six weeks between the adjudicatory and dispositional hearing and was positive for methamphetamine four times. Notably, petitioner was

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<sup>3</sup>The mother’s parental rights were terminated below. According to the parties, the permanency plan for the child is adoption in his current foster placement.

ordered to submit to two drug screens per week, which would total twelve tests for this period of time, but only managed to complete four of the required screens. Although a discrepancy exists in this finding and the record, it is clear that the evidence supports a finding that petitioner made no change between the adjudicatory and dispositional hearings. The DHHR presented evidence at the adjudicatory hearing that petitioner inconsistently submitted to drug screening and consistently tested positive for methamphetamine when he did submit to testing. Between the adjudicatory and dispositional hearing, petitioner continued to test inconsistently and, when testing, tested positive for controlled substances. Therefore, petitioner actualized no change in his behavior.

Further, petitioner's contention that the other two findings are erroneous is mere conjecture. Petitioner cites to testimony that there was a "possibility" that he visited with the child one week prior to the dispositional hearing, but the evidence is not determinative that such a visit occurred. Additionally, there is no evidence to support petitioner's assertion that he inquired into the child's well-being, except petitioner's assumption that he must have inquired about the child to be granted a potential visit. Upon our review of the record, this Court is not left with a definite and firm conviction that the circuit court was mistaken in making these findings and we therefore find petitioner is entitled to no relief in this regard.

Second, petitioner argues that the circuit court erred in finding that the DHHR made reasonable efforts to reunify the family.<sup>4</sup> Petitioner avers that the circuit court's finding is undermined by the case worker's imprecise testimony. Petitioner highlights that the caseworker described petitioner's participation in services as "hit or miss," stated that he participated in services "probably last week," and that she was not "[one-hundred] percent sure" as to whether petitioner participated in a visitation with the child the week before the dispositional hearing. However, petitioner ignores clear testimony from the case worker that the DHHR offered petitioner an array of services—supervised visitation, substance abuse treatments, random drug screening, parenting and adult life skills classes, and a substance abuse and psychological evaluation—to reunify the family. This evidence is sufficient to establish that the DHHR made reasonable efforts toward reunification. The caseworker's testimony, which describes petitioner's failure to participate in such services, is irrelevant to the circuit court's determination as to whether the DHHR made reasonable efforts to reunify the family. Accordingly, we find no error in the circuit court's determination that the DHHR made reasonable efforts.

In petitioner's third assignment of error, he argues that the circuit court erred in finding that "[t]here [was] no evidence to demonstrate [that petitioner had] meaningfully addressed the issues which led to the filing of the petition." In petitioner's view, this finding fails to consider the efforts he made to rectify the conditions of abuse and neglect. This finding directly relates to the circuit court's other finding that there was no reasonable likelihood that the conditions of neglect or abuse could be substantially corrected in the near future, which is the focus of petitioner's next assignment of error. In that fourth assignment of error, he argues that, although it was true that "a substantial portion of the case illustrate[s] a picture of non-participation and no substantial change," a demonstrable change in his behavior occurred just before the dispositional hearing.

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<sup>4</sup>West Virginia Code § 49-4-604(c)(6)(C) provides, in part, that "[i]n determining whether or not parental rights should be terminated, the court shall consider the efforts made by the department to provide remedial and reunification services to the parent."

Finally, in petitioner's fifth assignment of error, he challenges the circuit court's finding that termination of his parental rights was in the child's best interests. Petitioner asserts that he was taking steps towards recovery from addiction, "although he did not follow fully and perfectly all the recommendations relating to the recovery process, it would not be accurate to say that there had been no changes" between the adjudicatory and dispositional hearings. We reject petitioner's third, fourth, and fifth assignments of error.

Pursuant to West Virginia Code § 49-4-604(c)(6), a circuit court may terminate an abusing parent's parental rights upon findings that "there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future" and that termination is necessary for the child's welfare. The circuit court may find that "there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future" when

[t]he abusing parent or parents have not responded to or followed through with a reasonable family case plan or other rehabilitative efforts of social, medical, mental health, or other rehabilitative agencies designed to reduce or prevent the abuse or neglect of the child, as evidenced by the continuation or insubstantial diminution of conditions which threatened the health, welfare, or life of the child.

W. Va. Code § 49-4-604(d)(3). Here, the record is devoid of any evidence that petitioner meaningfully addressed the conditions of neglect or abuse. The only evidence produced at the dispositional hearing shows that petitioner failed to respond to any of the remedial services offered by the DHHR. Although some evidence showed that petitioner partially participated in parenting and adult life skills classes, the evidence clearly showed that the conditions that threatened the health and welfare of the child continued unabated. Petitioner continued to abuse controlled substances as evidenced by his positive drug screen results. Further, contrary to petitioner's argument that he was taking steps to treat his addiction, there was no evidence that, during the proceedings he participated in any substance abuse treatment that might assist him in maintaining sobriety. Clearly, because petitioner could not cease his substance abuse on his own and he failed to utilize the assistance of the DHHR, termination of petitioner's parental rights was in the child's best interest. The child could not be safely returned to petitioner's care because there was absolutely no change in petitioner's behavior since the filing of the petition. We have held that

"[t]ermination of parental rights, the most drastic remedy under the statutory provision covering the disposition of neglected children, [West Virginia Code § 49-4-604] . . . may be employed without the use of intervening less restrictive alternatives when it is found that there is no reasonable likelihood under [West Virginia Code § 49-4-604(d)] . . . that conditions of neglect or abuse can be substantially corrected." Syllabus point 2, *In re R.J.M.*, 164 W.Va. 496, 266 S.E.2d 114 (1980).

Syl. Pt. 5, *In re Kristin Y.*, 227 W. Va. 558, 712 S.E.2d 55 (2011). Because the circuit court's findings are fully supported by the record, we find no error in the termination of petitioner's parental rights.

For the foregoing reasons, we find no error in the decision of the circuit court, and its March 12, 2020, order is hereby affirmed.

Affirmed.

**ISSUED:** November 4, 2020

**CONCURRED IN BY:**

Chief Justice Tim Armstead  
Justice Margaret L. Workman  
Justice Elizabeth D. Walker  
Justice Evan H. Jenkins  
Justice John A. Hutchison