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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

***In re* A.F.-1, J.F., and A.F.-2**

No. 21-0712 (Monongalia County 20-JA-227, 20-JA-228, and 20-JA-229)

MEMORANDUM DECISION

Petitioner Mother J.L., by counsel Kevin T. Tipton, appeals the Circuit Court of Monongalia County's August 6, 2021, order terminating her parental rights to A.F.-1, J.F., and A.F.-2.[1] The West Virginia Department of Health and Human Resources ("DHHR"), by counsel Patrick Morrisey and Lee Niezgoda, filed a response in support of the circuit court's order. The guardian ad litem for A.F.-1, Teresa Lyons, filed a response on behalf of that child in support of the circuit court's order. The guardian ad litem for J.F. and A.F.-2, Amanda Ray, filed a response on behalf of those children in support of the circuit court's order. On appeal, petitioner argues that the circuit court erred in (1) finding that it had jurisdiction to preside over these proceedings; (2) denying her a post-adjudicatory improvement period; and (3) not considering J.F.'s clear and firm wishes to return to petitioner's home.

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.

Prior to the proceedings giving rise to the current appeal, petitioner and the children's father had an extensive history of Child Protective Services ("CPS") involvement after their adoption of the children several years ago. According to the evidence presented in the current matter, the parents had two prior CPS cases: one in 2013 and another in 2018. A third CPS case was opened and eventually gave rise to the current proceedings. According to the record, these prior referrals—though not followed by petitions—involved similar allegations to the instant proceedings. Additionally, the record reflects that the court referred to the instant proceedings as being the third

[1]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). Additionally, because two of the children share the same initials, we refer to them as A.F.-1 and A.F.-2, respectively, throughout the memorandum decision.

CPS proceedings involving the parents. Relevant to the issues on appeal is the undisputed fact that petitioner received services over a period of several years prior to the filing of the instant petition.

In December of 2020, the DHHR filed an abuse and neglect petition against petitioner and the father alleging that they failed to provide the children a safe and secure home environment, refused to supply them with necessary food and shelter, and emotionally abused them by employing harsh and neglectful disciplinary tactics. The DHHR alleged that the parents punished the children by periodically making them sleep outside alone in a tent while the rest of the family remained inside with door locked, and withheld food as a form of discipline. The DHHR further alleged that when the children removed food items from the kitchen without specific permission to do so, the parents would consider it a form of "stealing" and punished the children. The parents did not deny occasionally putting the children in the tent or withholding food as forms of punishment and claimed the tactics stemmed from a disciplinary program based in Florida. According to the petition, then thirteen-year-old A.F.-1 received more punishment than the younger children. At the time of the petition, a CPS worker traveled to Georgia to take A.F.-1 into custody, where he was attending the Alice Blount Academy of Science and Agriculture, a residential school for boys with emotional and behavioral challenges.

Later that month, following further investigation, the DHHR filed an amended petition, adding more specificity to the allegations. The DHHR alleged the parents forced the children to sit on the rim of an open five-gallon bucket for hours at a time, removed A.F.-1's bedroom door as a form of punishment, employed security cameras throughout the home to document the children committing infractions, mandated the children perform strenuous labor as punishment, restricted A.F.-1's food intake if his weight exceeded 100 pounds, and barred the children from attending school when they were subject to punishment. According to the amended petition, A.F.-1 disclosed in a Child Advocacy Center interview that he was subjected to the tent punishment beginning when he was ten years old. The child noted that he was sometimes required to reside in the tent without any footwear, and always without any comfort items, including a flashlight. The child noted that he was punished during his birthday week—in November of 2020—after he was caught looking inside of a kitchen cabinet for food. The child claimed he did not remove any food from the cabinet but was nevertheless forced to spend a night inside the tent. The child disclosed that he was upset about his tent punishment and broke his soup bowl, which earned him another night in the tent. The child also threw a crayon marker and hit petitioner the following day, and ended up spending five consecutive nights in the tent, during which time the family ate his birthday cake without him. The DHHR alleged that many of A.F.-1's disclosures were corroborated by J.F. The DHHR did not interview then nine-year-old A.F.-2, who is legally blind and deaf.

The circuit court appointed a Court-Appointed Special Advocate ("CASA") in January of 2021. The CASA worker filed three reports throughout the proceedings, including recommending an improvement period for both parents in a report prepared for the dispositional hearing.

In March of 2021, law enforcement officials executed a criminal search warrant against the parents. The items listed in the warrant were substantially similar to or identical to items requested by the DHHR in a motion to compel discovery, which the circuit court had earlier rejected. Following the execution of the criminal search warrant, the parents stated they were advised by

their counsel to refrain from communicating with parties to the case without counsel present in accordance with their Fifth Amendment right against self-incrimination.

Later that month, the circuit court held an adjudicatory hearing during which the parents stipulated that they "engaged in excessive corporal punishment and failed to provide necessary food and shelter, resulting in emotional abuse." The parents then filed motions for post-adjudicatory improvement periods. The DHHR opposed the parents' motions based upon the severity of the abuse and neglect. The next month, the DHHR filed a motion requesting that the circuit court find aggravated circumstances. One day later, the guardian filed a motion to continue, which the court granted. In May of 2021, the guardian filed a report recommending post-adjudicatory improvement periods for both parents.

The circuit court held a series of hearings from May of 2021 until August of 2021 during which it heard evidence regarding the parents' motions for improvement periods as well as the DHHR's motion to terminate the parents' parental rights. The first hearing in May of 2021 was continued due to the DHHR's failure to timely file family case plans. Later that month, the guardian filed a motion for an additional guardian noting that "a conflict may arise when permanency for the children is addressed." The court granted the motion and appointed a second guardian to represent J.F. and A.F.-2. In June of 2021, the first guardian filed a supplemental report, and the newly appointed guardian filed a preliminary report on the same day. Neither guardian was opposed to an improvement period for the parents.

At a hearing in June of 2021, the DHHR objected to granting the parents' motions for improvement periods and claimed that no services were available to them. The DHHR also renewed its motion that the circuit court find aggravated circumstances in the proceedings. During the hearings, Barbara Nelson, a psychologist who performed psychological evaluations with A.F.-1 and J.F., testified that although the children were traumatized in their birth home (which led to the termination of the biological parents' parental rights), they were more recently traumatized in the home of petitioner, their adoptive parent. Ms. Nelson testified that the abuse and neglect that the children disclosed they suffered in the adoptive parents' home amounted to torture. She further testified that the parents implemented harsher disciplinary tactics than the regimen that the parents claimed they followed at the advice of professionals. Ms. Nelson noted that the program the parents claimed to follow recommended taking away privileges and recreational items as a form of punishment. However, Ms. Nelson stated that the parents took away life necessities, such as food and shelter, which was particularly troubling given the history of abuse and neglect that the children suffered prior to coming to their adoptive parents' home. As such, Ms. Nelson testified that the parents exacerbated the emotional and behavioral issues that the children developed from the abuse and neglect they suffered in the care of their biological parents.

Ms. Nelson further testified that although then thirteen-year-old J.F. was not subjected to the parents' discipline tactics as often as A.F.-1, she was still traumatized by the environment created in the home. Ms. Nelson stated that J.F. formed an unhealthy alliance with her parents, placing J.F. in the status of the preferred child and causing her to take on the role of an informant against her brother, A.F.-1. This fact was evidenced by J.F.'s repeated use of the term "we," to convey that she and her parents had to administer discipline to A.F.-1 because he was a bad person. Ms. Nelson opined that J.F. displayed narcissistic qualities and other indicators of a developing

personality disorder, which could affect the child's future ability to form relationships as well as her ability to restore her relationship with her brother, A.F.-1. Moreover, Ms. Nelson found that J.F.'s prognosis for improvement was "very poor," and indicated that she would need intensive therapy to "re-program" the way of thinking she had developed due to the abusive and neglectful discipline tactics that her adoptive parents employed in the home. Further, a therapist for A.F.-1 and a therapist for J.F. opined that the children had suffered trauma in the adoptive parents' home and the children would require intensive therapy to recover. Each of the children's therapists also testified that the children would need individual therapy for an indiscernible period of time before they could proceed to any type of family therapy.

The parents retained a psychological expert, Dr. Ronald Federici, to conduct parental fitness evaluations and presented his testimony in support of their motions for improvement periods. Dr. Federici opined that the parents were intelligent and capable of changing their parenting methods. He further testified that both parents acknowledged in retrospect that the discipline program they had implemented with the children was harsh but further explained that they had relied on professionals who recommended the program.

Next, the parents testified and displayed some acceptance of responsibility. However, they also minimized the severity of the disciplinary tactics that they employed and blamed the program they utilized and the professionals who recommended it. The parents explained that the program was the Parent Help Center, a behavioral modification program for children and their parents, located in Jacksonville, Florida. They stated that the program was founded on the principles of the Parent Project, a parent-training program for children with behavioral challenges. The parents claimed they participated in extensive and continuing training and were in regular contact with the Parent Help Center throughout the time they participated in the program. The parents testified that after the DHHR filed the instant petition, they began searching for therapies and services to aid in the reunification process. For instance, the parents stated they contacted Dr. Federici in February of 2021, and later participated in training seminars and began meeting with a local therapist for trauma therapy related to the instant case. Moreover, the parents continued to blame A.F.-1 for many of the issues inside the home and minimized his disclosures of the abuse and neglect he suffered.

At the conclusion of the dispositional hearings, the DHHR and guardians asked the court to terminate the parents' parental rights. After considering the evidence, the court found that there were no aggravated circumstances of abuse and neglect. However, the court found that there was no reasonable likelihood that the parents could substantially correct the conditions of abuse and neglect in the near future given their failure to fully acknowledge the abuse and neglect they perpetrated upon the children. The court found that "the amount of time required for the children to be integrated into a stable and permanent home environment [with petitioner] . . . is lengthy at best which is not in line with the best interests of the children." Further, the court considered the expressed wishes of the older children, A.F.-1 and J.F. (A.F.-1 did not wish to return to the parents' home while J.F. expressed a desire to do so) and found that their best interests were served by

termination of the parents' parental rights. As such, the court terminated petitioner's parental rights by its August 6, 2021, order.[2] It is from the dispositional order that petitioner appeals.

The Court has previously established the following standard of review:

> "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).

On appeal, petitioner first argues that the Monongalia County Circuit Court did not have jurisdiction to preside over these proceedings pursuant to W. Va. Code § 49-4-606(b) and claims that the case belonged in the Upshur County Circuit Court, where the children were initially adopted. Petitioner contends that as soon as the DHHR removed the children from her home in November of 2020, it was under a statutory obligation to notify the Upshur County Circuit Court of the removal and any subsequent proceedings should have been held there as the court retained exclusive jurisdiction in such cases.

W. Va. Code § 49-4-606(b) states:

> If the child is removed or relinquished from an adoptive home or other permanent placement after the case has been dismissed, any party with notice thereof and the receiving agency shall promptly report the matter to the circuit court of origin, the department and the child's counsel, and the court shall schedule a permanency hearing within sixty days of the report to the circuit court, with notice given to any appropriate parties and persons entitled to notice and the right to be heard. The department shall convene a multidisciplinary treatment team meeting within thirty days of the receipt of notice of permanent placement disruption.

Further, Rule 6 of the Rules of Procedure for Child Abuse and Neglect Proceedings directs that:

[2]The father's parental rights were also terminated below. The permanency plan for the children is adoption in their current foster homes.

> Each child abuse and neglect proceeding shall be maintained on the circuit court's docket until permanent placement of the child has been achieved. The court retains exclusive jurisdiction over placement of the child while the case is pending, as well as over any subsequent requests for modification, including, but not limited to, changes in permanent placement or visitation[.]

Here, jurisdiction and venue of the proceedings was properly before the circuit court in Monongalia County. Contrary to petitioner's argument that West Virginia Code § 49-4-606(b) required that this abuse and neglect proceeding be heard by the circuit court that terminated the biological parents' parental rights, "[s]tatutes in *pari materia* must be construed together and the legislative intention, as gathered from the whole of enactments, must be given effect." Syl. Pt. 3, *State ex rel. Graney v. Sims*, 144 W. Va. 72, 105 S.E.2d 886 (1958); Syl. Pt. 2, *Murrell B. v. Clarence R.*, 242 W. Va. 358, 836 S.E.2d 9 (2019). West Virginia Code § 49-4-606(b) does not limit jurisdiction of an abuse and neglect case against adoptive parents to the circuit court that presided over the abuse and neglect involving the biological parents. Pursuant to West Virginia Code § 49-4-601(a), a petition alleging abuse and neglect may be filed "in the county in which the child resides, or if the petition is being brought by the [DHHR], in the county in which the custodial respondent or other named party abuser resides, or in which the abuse or neglect occurred." This subsection continues with "[u]nder no circumstance may a party file a petition in more than one county based on the same facts." In the case at issue, the abuse and neglect alleged in the petition occurred in Monongalia County. The children and adoptive parents resided in Monongalia County. Given these facts, jurisdiction and venue were properly before the Monongalia County Circuit Court.

Further, the language of West Virginia Code § 49-4-606(b) implicitly references a situation where the child's permanency is the only issue—not where new issues of abuse and neglect are raised. Specifically, the statute provides that once a case is transferred to the circuit court of origin, a "permanency hearing" shall be scheduled. Clearly had the Legislature intended for the circuit court of origin to have jurisdiction and venue over new abuse and neglect petitions arising out of other counties simply because the parental rights of the children's biological parents were terminated by that court, then the statute would have specified that under those conditions a preliminary or adjudicatory hearing should first be held, rather than proceeding directly to a permanency hearing. Accordingly, petitioner's interpretation does not comport generally with a respondent's right to due process pursuant to West Virginia Code § 49-4-601 and more specifically, does not comport with the venue requirements set forth in West Virginia Code § 49-4-601(a).

Likewise, the language in Rule 6 of the West Virginia Rules of Procedure for Child Abuse and Neglect Proceedings clearly addresses changes in a child's permanent placement, exclusive of a subsequent abuse and neglect proceeding. A subsequent abuse and neglect proceeding cannot be considered a request for modification of placement. Moreover, a subsequent abuse and neglect petition, without due process, including adjudicatory and dispositional phases of the proceeding, could not result in a change to an adopted child's permanent placement. Thus, accepting petitioner's interpretation, the court of origin would either have to disregard the jurisdiction and venue requirements of West Virginia Code § 49-4-601(a) and conduct hearings on the subsequent abuse and neglect petition, or make permanent placement modifications prior to disposition of the

subsequent abuse and neglect proceeding; neither result comports with the body of law governing abuse and neglect proceedings. Consequently, the Monongalia County Circuit Court properly assumed jurisdiction in these proceedings.

Next, petitioner argues that the circuit court erred in denying her a post-adjudicatory improvement period. Petitioner notes that she timely filed a motion for an improvement period which was denied after several days of testimony. Petitioner called an expert witness who testified, unequivocally, that petitioner was remorseful, had accepted responsibility for her actions, and was more than capable of participating in and successfully completing that improvement period. Moreover, the expert, Dr. Federici, also testified that, in his expert opinion, the parents and the children would benefit from therapy and counseling that could be implemented in three to six months.

Further, petitioner argues that the record is clear that she never physically abused the children or "tortured" them as evidenced by the circuit court's decision to not find aggravated circumstances. In fact, the court made a finding that none of the children ever suffered any physical harm or injuries. Yet, the court found that "there was no reasonable likelihood or reasonable expectations that the *conditions* of neglect and abuse could be substantially corrected in the near future." To that end, petitioner avers that the court misapplied the law. The law does not state that the court should deny an improvement period if there is no reasonable likelihood that the "*results* of neglect or abuse could be corrected, but, rather, the *conditions*." However, we find no merit to petitioner's arguments.

This Court has held that "a parent charged with abuse and/or neglect is not unconditionally entitled to an improvement period." *In re Emily*, 208 W. Va. 325, 336, 540 S.E.2d 542, 553 (2000). West Virginia Code § 49-4-610(2)(B) provides that the circuit court may grant a parent an improvement period when the parent "demonstrates, by clear and convincing evidence, that the [parent] is likely to fully participate in the improvement period." "This Court has explained that 'an improvement period in the context of abuse and neglect proceedings is viewed as an opportunity for the . . . parent to modify his/her behavior so as to correct the conditions of abuse and/or neglect with which he/she has been charged.'" *In re Kaitlyn P.*, 225 W. Va. 123, 126, 690 S.E.2d 131, 134 (2010) (citation omitted). However, the circuit court has discretion to deny an improvement period when no improvement is likely. *See In re Tonjia M.*, 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002). We have previously held that

> [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).

Contrary to petitioner's argument, we see no error in the circuit court's determination that petitioner was not likely to fully participate in an improvement period. Here, the court found that petitioner failed to make significant progress during the eight-month course of the proceedings,

including the fact that she minimized responsibility for abusing and neglecting the children. Although earlier reports of the guardians ad litem were supportive of an improvement period for petitioner, at the time of the final dispositional hearing, neither guardian argued that petitioner should be granted an improvement period. Both guardians cited the lack of full acknowledgement of abuse and neglect and their belief that the conditions of abuse and neglect could not be substantially corrected in the near future as reasons for denying petitioner's motion for an improvement period. Petitioner's dispositional testimony can best be summarized as an explanation and mitigation of her use of abusive disciplinary tactics. Perhaps the strongest admission that petitioner made during her testimony was: "In some way we probably harmed [A.F.-1.]" Such language supports the circuit court's finding that she failed to acknowledge the abuse and neglect. In addition, it illustrated that not only does petitioner minimize the effects of that abuse upon A.F.-1, but she also completely disregards the effect of that abuse upon the other two children.

Further, petitioner continues to try to mitigate and justify her actions on appeal, in defiance of her stipulation to "excessive corporal punishment . . . which resulted in physical abuse." Petitioner's suggested resolution to excessive corporal punishment resulting in physical abuse is a simple decision to stop doing these things. Consequently, it appears as though she does not believe she needs any services. Moreover, the circuit court found that for eight years, petitioner had the opportunity to help the children overcome their past abuse and not only failed to do so but added to the children's trauma by subjecting them to additional abuse and neglect, and that given petitioner's intellectual capacity, she should have known that the discipline she was administering was abusive. Based upon those findings, the circuit court correctly denied petitioner an improvement period and soundly concluded that there was no reasonable likelihood that she could correct the conditions of abuse and neglect.

Finally, petitioner argues that the circuit court erred by not considering J.F.'s clear and firm wishes to return to petitioner's home. Petitioner contends that the record is replete with evidence that J.F. wanted to return to petitioner's home. Testimony from a DHHR worker, J.F.'s therapist, and the child's guardian during the course of the proceedings all made it clear that she was adamant in her desire to return to petitioner's home. Petitioner averts that, in its final order, the circuit court noted it would consider fourteen-year-old A.F.-1's wishes but ignored the wishes of thirteen-year-old J.F. Petitioner argues that the two youngest children's wishes should not be ignored just because A.F.-1 is the oldest. Instead, their wishes, especially those of J.F., should have been equally weighed in the court's decision. We find no merit in petitioner's argument.

West Virginia Code § 49-4-604(6)(C) states, in relevant part, that "[n]otwithstanding any other provision of this article, the court shall give consideration to the wishes of a child 14 years of age or older or otherwise of an age of discretion as determined by the court regarding the permanent termination of parental rights." Here, the circuit court properly considered the expressed wishes of each of the older children prior to terminating petitioner's parental rights. While it is uncontested that J.F. wanted to return to petitioner's home, the circuit court soundly found that the best interests of J.F. necessitated termination of petitioner's parental rights. Contrary to petitioner's contention, the record demonstrates that the court considered both the wishes of A.F.-1 and J.F. The fact that J.F. expressed her desire to return to the parents' care and custody

was acknowledged throughout the lower court proceeding by the original guardian, her second appointed guardian, and the child's therapist.

However, the psychologist testified that J.F. was developing narcissistic personality disorder, which she attributed to petitioner and the father's abusive discipline and alienation of A.F.-1. Similarly, J.F.'s therapist found that she was strongly enmeshed with her parents against A.F.-1 and, like the evaluating psychologist, found it concerning that J.F. referenced punishment of A.F.-1 by not only her parents, but herself as well. Significantly, both the evaluating psychologist and the child's therapist testified that J.F. was unable to recognize how these behaviors were inappropriate and harmful and that she will require intensive therapy if she is to overcome the risk of developing personality disorder and repair her sibling relationship with A.F.-1. Finally, West Virginia Code § 49-4-604(c)(6)(C) does not require the circuit court to grant the wishes of a child regarding placement; the statute requires only that the circuit court give consideration to the wishes of a child with regard to "the permanent termination of parental rights."

For the foregoing reasons, we find no error in the decision of the circuit court, and its August 6, 2021, order is hereby affirmed.

Affirmed.

ISSUED: August 31, 2022

CONCURRED IN BY:

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