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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

***In re* S.S., A.S.-1, and K.L.**

No. 22-0260 (Kanawha County 21-JA-359, 21-JA-360, and 21-JA-361)

MEMORANDUM DECISION

Petitioner Mother A.S.-2, by counsel Faun S. Cushman, appeals the Circuit Court of Kanawha County's March 3, 2022, order terminating her parental rights to S.S., A.S.-1, and K.L.[1] The West Virginia Department of Health and Human Resources ("DHHR"), by counsel Patrick Morrisey and Brittany Ryers-Hindbaugh, filed a response in support of the circuit court's order. The guardian ad litem, Sharon K. Childers, filed a response on behalf of the children in support of the circuit court's order.

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.

In June of 2021, the DHHR filed a petition alleging that petitioner abused and neglected the children by virtue of inappropriate supervision, medical neglect, educational neglect, and substance abuse. According to the petition, petitioner abused methamphetamine daily and drug paraphernalia was found in the residence within reach of the children. Additionally, petitioner was charged criminally with child neglect creating risk of bodily injury.

At the preliminary hearing, the court sustained the guardian's objection to certain services for petitioner on the grounds that, following removal, petitioner engaged in "horrendous and threatening behavior" towards the children, the children's caregivers, and a DHHR worker.

[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 one of the children and petitioner share the same initials, we will refer to them as A.S.-1 and A.S.-2, respectively, throughout this memorandum decision.

Petitioner then failed to appear for the adjudicatory hearing, although she was represented by counsel. At the conclusion of the DHHR's evidence, the court found that petitioner abused and neglected the children.

The court then held a series of dispositional hearings, culminating in a final hearing in February of 2021. Petitioner moved for an improvement period, but the circuit court denied the motion, in part, upon finding that petitioner failed to accept responsibility for her abuse and neglect of the children. Specifically, the court found that petitioner expressly denied that she failed to provide the children with appropriate supervision, among other issues. The court also found that there was no reasonable likelihood that petitioner could substantially correct the conditions of abuse and neglect in the near future and that termination of her parental rights was necessary for the children's welfare. As such, the court terminated petitioner's parental rights.[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 argues that the court erred in terminating her parental rights without affording her an improvement period. We disagree, given that the court found that petitioner failed to take responsibility for her abuse and neglect of the children. As we have explained,

> [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.

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

In re Timber M., 231 W. Va. 44, 55, 743 S.E.2d 352, 363 (2013) (citation omitted). Specifically, the circuit court found that petitioner expressly denied that her conduct constituted abuse and neglect. As such, it is clear that petitioner's refusal to acknowledge the conditions of abuse and neglect rendered her unable to correct them, and we therefore find no error in the denial of her motion for an improvement period. *See In re Tonjia M.*, 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002) (granting circuit courts discretion to deny an improvement period when no improvement is likely).

This same evidence also supports the court's termination of petitioner's parental rights. While petitioner argues on appeal that she made "tremendous progress" during the proceedings, the court's findings belie this assertion. According to the court, petitioner's participation in services was sporadic, and she failed to meaningfully participate, provide consistent negative drug screens, or complete substance abuse treatment. Because the court made the requisite findings, based upon ample evidence, to support termination of petitioner's parental rights, we find no error. *See* W. Va. Code § 49-4-604(c)(6) (permitting a circuit court to terminate parental rights upon finding that there is no reasonable likelihood that the conditions of abuse and 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 or abuse can be substantially corrected").

For the foregoing reasons, we find no error in the decision of the circuit court, and its March 3, 2022, order is hereby affirmed.

Affirmed.

ISSUED: September 20, 2022

CONCURRED IN BY:

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