STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

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

***In re* F.W., J.W., E.C.-1, E.C.-2, and K.C.**

No. 20-0219 (Wood County 19-JA-109, 19-JA-110, 19-JA-111, 19-JA-112, and 19-JA-113)

MEMORANDUM DECISION

Petitioner Mother M.C., by counsel John Woods, appeals the Circuit Court of Wood County's January 22, 2020, order terminating her parental rights to F.W., J.W., E.C.-1, E.C.-2, and K.C.[1] The West Virginia Department of Health and Human Resources ("DHHR"), by counsel Mindy M. Parsley, filed a response in support of the circuit court's order. The guardian ad litem, Brandon Ledford, filed a response on behalf of the children also in support of the circuit court's order. On appeal, petitioner argues that the circuit court erred in denying her a post-dispositional improvement period, terminating her parental rights, and denying her post-termination visitation with the children.

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 initiation of the instant proceedings, the parents were the subject of child abuse and neglect proceedings based upon their substance abuse and domestic violence. Petitioner stipulated to the allegations contained in the prior abuse and neglect petition, and the circuit court adjudicated her as an abusing parent. The circuit court granted the parents an improvement period in October of 2017. In April of 2018, the parents successfully completed their improvement periods, and the children were returned to their custody.

[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 children share the same initials, we will refer to them as E.C.-1 and E.C.-2 respectively, throughout this memorandum decision.

In June of 2019, the DHHR filed the instant petition against the parents alleging that their chronic substance abuse impacted their ability to parent the children and provide them with necessities such as adequate and safe housing. Specifically, the DHHR alleged that upon receiving a referral in March of 2019, it investigated the home and found that it lacked running water, had inadequate heat, and had frequent drug-related traffic. Further, petitioner appeared to be under the influence of drugs as she could not easily remember her children's birth dates and could not remain focused. Later in June of 2019, a code enforcement officer visited the home due to its lack of water, and the police department sent officers to assist in vacating the property. The DHHR worker also came to check on the welfare of the children. Upon arrival, the code enforcement officer found then two-year-old F.W. unsupervised outside in a parking lot and the front door of the home wide open. A police officer reported that numerous people came in and out of the home while officers attempted to vacate the property. Several of the home's occupants appeared to be under the influence of drugs. In August of 2019, the DHHR filed an amended petition, which contained corroborating statements from petitioner's adult daughter concerning the abuse and neglect of the children.

The circuit court held contested adjudicatory hearings in September, October, and November of 2019. First, the code enforcement officer testified that the home lacked running water and that the water meter had been altered to access water without paying. He further testified that when he visited the home, he found then-two-year-old F.W. outside by herself in a parking lot. Next, the police officer testified that the children looked dirty and that the home had eight to ten individuals living there. He further testified that petitioner was nervous, uncooperative, and defensive. After the police officer's testimony, petitioner's adult daughter testified that she witnessed her mother and others smoke marijuana in the home while in the presence of F.W. and J.W. and that petitioner would spend hours away from them without explanation. During one incident, petitioner emerged from the bathroom and acted very strange by ordering the children to pick up large crumbs from the floor when the floor was clean. The daughter further reported that she was worried about her siblings' welfare due to petitioner's anger management issues. The DHHR then presented the testimony of the father of E.C.-1, E.C.-2, and K.C. who testified to his concerns over the high traffic of strangers in and out of the house and petitioner's inability to provide food for the children. Next, the investigating DHHR worker stated that petitioner was involved in two prior child abuse and neglect proceedings, and that the worker came to the home for the most recent referral due to the lack of running water. She further testified that petitioner could not focus when asked questions and that her behavior was "erratic." Additionally, she testified that when the provider tried to establish visitation with petitioner, petitioner became angry and uncooperative, and claimed that the provider kidnapped her children. Finally, petitioner testified. On direct examination, petitioner claimed that only three adults lived in the home at the time of the petition's filing and stated that she last used marijuana when she was twenty-four years old—twelve years prior. She also testified that she had no substance abuse issues and had never had an addiction of any kind. Ultimately, the circuit court found petitioner to be an abusing parent.

In December of 2019, the circuit court held two dispositional hearings. At the first hearing, the DHHR presented a report that F.W. and J.W.'s foster family took them for medical care and learned that the children were developmentally delayed, underweight, and had sustained permanent eye damage due to medical neglect. The report further showed that petitioner had not complied with the Birth to Three program for F.W. and J.W. to address their delayed development.

Nonetheless, petitioner moved for a post-dispositional improvement period. Petitioner testified and confirmed that the most recent child abuse and neglect proceeding involving her concerned allegations of substance abuse and domestic violence, that she had not had visits with the children, and she had not submitted to drug screens throughout the case. Regarding the conditions of abuse, petitioner testified, "I believe I have done nothing wrong. I believe I was a fantastic mom" and that "[t]here was no abuse and neglect." Petitioner further testified that she received services such as drug and alcohol screenings, parenting and adult life skills classes, and counseling during the previous child abuse and neglect proceeding. However, at the final dispositional hearing, petitioner testified that she "made poor decisions" and failed to provide for the children's needs. Finally, petitioner moved for post-termination visitation in the event that the circuit court terminated her parental rights. The circuit court held the rulings on all pending motions in abeyance.

Within the dispositional order, the circuit court found that petitioner had refused to acknowledge or take responsibility for the conditions of abuse and neglect and denied her motion for a post-dispositional improvement period. Further, the circuit court found that despite receiving services in a previous child abuse and neglect case, petitioner continued to abuse drugs and was a habitual user such that her parenting skills were seriously impaired. Finally, the circuit court found that petitioner had not responded to or followed through with the appropriate and recommended treatment, services, or other rehabilitative efforts to correct the conditions of abuse and neglect. Accordingly, the circuit court terminated petitioner's parental rights upon finding that there was no reasonable likelihood that she could correct the conditions of abuse or neglect in the near future and that termination was necessary for the children's welfare. The circuit court further denied petitioner's motion for post-termination visitation. Petitioner appeals the January 22, 2020, dispositional order terminating her parental rights.[2]

The Court has previously established the following standard of review in cases such as this:

> "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).

[2]F.W. and J.W.'s father's parental rights were terminated below. According to respondents, the permanency plan for F.W. and J.W. is adoption in their current foster home. E.C.-1, E.C.-2, and K.C. remain in the care of their nonabusing father.

On appeal, petitioner alleges that the circuit court erred in denying her a post-dispositional improvement period. According to petitioner, the facts below showed her "capability and desire to change the circumstances" that led to the filing of the petition. Petitioner also argues that the circuit court should have granted her a post-dispositional improvement period because she successfully completed an improvement period in a previous case. We disagree.

West Virginia Code § 49-4-610(3)(B) provides that the circuit court may grant a parent a post-dispositional improvement period when the parent "demonstrates, by clear and convincing evidence, that the [parent] is likely to fully participate in the improvement period." We have noted that "West Virginia law allows the circuit court discretion in deciding whether to grant a parent an improvement period." *In re M.M.*, 236 W. Va. 108, 115, 778 S.E.2d 338, 345 (2015). Here, petitioner testified at the dispositional hearing that she did not have a substance abuse problem, she was a perfect mother, and she did not abuse or neglect the children. We have previously held that failure to acknowledge the issues of abuse and neglect renders an improvement period an "exercise in futility." *In re Timber M.*, 231 W. Va. 44, 55, 743 S.E.2d 352, 363 (2013) (citation omitted). Below, the circuit court correctly found that petitioner failed to acknowledge responsibility for the conditions of abuse and neglect and, therefore, an improvement period would have been futile given her complete denial of her substance abuse addiction and resulting conditions of abuse and neglect. Although petitioner admitted to poor decision-making and failing to provide for the children at the final dispositional hearing, the circuit court did not believe that petitioner truly acknowledged her problems. "A reviewing court cannot assess witness credibility through a record. The trier of fact is uniquely situated to make such determinations and this Court is not in a position to, and will not, second guess such determinations." *Michael D.C. v. Wanda L.C.*, 201 W. Va. 381, 388, 497 S.E.2d 531, 538 (1997). Accordingly, we find that the circuit court did not err in denying petitioner's motion for an improvement period.

Petitioner next argues that the circuit court erred in terminating her parental rights rather than impose a less-restrictive dispositional alternative. We find that petitioner is entitled to no relief.

West Virginia Code § 49-4-604(c)(6) provides that circuit courts are to terminate parental rights upon finding 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 children's welfare. West Virginia Code § 49-4-604(d)(3) provides that a situation in which there is "[n]o reasonable likelihood that [the] conditions of neglect or abuse can be substantially corrected" includes when the abusing parent has

> 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.

The record demonstrates that here, there was no reasonable likelihood that petitioner could correct the conditions of abuse and neglect in the near future. As shown above, the evidence established that petitioner failed to follow through with services such as establishing supervised visitations or addressing her alleged medical issue so that she could submit urine samples for drug

screens. During one instance where the DHHR provider attempted to coordinate supervised visitations, petitioner claimed that the provider kidnapped her children. Petitioner blamed the DHHR for her shortcomings and inability to establish supervised visitations and drugs screens. Further, despite findings of similar conditions of abuse and neglect in previous proceedings, petitioner continued to claim that she never had any addiction issues and averred that her adult daughter lied regarding petitioner's drug use. The evidence demonstrates that petitioner failed to respond to or follow through with rehabilitative services designed to reduce or prevent the abuse and neglect of the children. Moreover, petitioner never exercised supervised visitations with her children and "[w]e have previously pointed out that the level of interest demonstrated by a parent in visiting his or her children while they are out of the parent's custody is a significant factor in determining the parent's potential to improve sufficiently and achieve minimum standards to parent the child." *In re Katie S.*, 198 W. Va. 79, 90 n.14, 479 S.E.2d 589, 600 n.14 (1996) (citations omitted). Based on the foregoing, it is clear that there was no reasonable likelihood that petitioner could correct the conditions of abuse and neglect and that termination was necessary for the children's welfare.

While petitioner claims she should have been granted a less-restrictive dispositional alternative other that the termination of her parental rights, we have previously 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). Accordingly, the circuit court's findings are fully supported by the record below, and we find no error in the termination of petitioner's parental rights.

Finally, petitioner argues that the circuit court erred in denying her motion for post-termination visitation because she had a bond with the children. However, petitioner fails to cite to a single case or the appendix record in support of this assertion. These failures are in direct contradiction of Rule 10(c)(7) of the West Virginia Rules of Appellate Procedure requiring 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, under headings that correspond with the assignments of error. The argument must contain appropriate and specific citations to the record on appeal, including citations that pinpoint when and how the issues in the assignments of error were presented to the lower tribunal. The Court may disregard errors that are not adequately supported by specific references to the record on appeal.

Additionally, in an Administrative Order entered on December 10, 2012, Re: Filings That Do Not Comply With the Rules of Appellate Procedure, this Court specifically noted that "[b]riefs that

lack citation of authority [or] fail to structure an argument applying applicable law" are not in compliance with this Court's rules. Further, "[b]riefs with arguments that do not contain a citation to legal authority to support the argument presented and do not 'contain appropriate and specific citations to the record on appeal . . .' as required by rule 10(c)(7)" are not in compliance with this Court's rules. *Id.* "A skeletal 'argument,' really nothing more than an assertion, does not preserve a claim. . . . Judges are not like pigs, hunting for truffles buried in briefs." *State v. Kaufman*, 227 W. Va. 537, 555 n.39, 711 S.E.2d 607, 625 n.39 (2011) (citation omitted). Because petitioner's brief with regard to this assertion is inadequate and entirely fails to comply with Rule 10(c)(7) of the Rules of Appellate Procedure, we decline to address this issue on appeal.

For the foregoing reasons, we find no error in the decision of the circuit court, and its January 22, 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