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C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

***In re* T.W.**

No. 22-932 (Wood County CC-54-2022-JA-100)

MEMORANDUM DECISION

Petitioner Mother M.C.[1] appeals the Circuit Court of Wood County's November 23, 2022, order terminating her parental rights to T.W.[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 April 2022, the DHS filed the instant petition alleging that petitioner was unable to provide appropriate care, supervision, and protection of the child and used illegal substances in the child's presence. According to the petition, the child's father's parental rights were terminated in a prior proceeding. Although petitioner was adjudicated in that prior proceeding as an abusing parent due to substance abuse, untreated mental health issues, educational neglect, and domestic violence between the parents, the child was ultimately returned to her custody. However, in April 2022, DHS workers discovered the child's father in the home. The father would not allow the workers inside and insisted that petitioner and the child were not present. When DHS workers were able to speak to petitioner the following day, she denied intentionally allowing the father around the child and denied using illegal substances. Despite petitioner's assertions, the then-twelve-year-old child advised DHS workers that he saw his father on holidays, his father would come to the home to fix things, and petitioner used marijuana in his presence.

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[1]Petitioner appears by counsel Heather L. Starcher. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrisey and Assistant Attorney General Lee Niezgoda. 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").

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

During the course of two adjudicatory hearings held in June and July 2022, the court heard testimony of a police officer, a child forensic interviewer, two DHS workers, and the mother. The child's forensic interview was admitted into evidence over objection by petitioner. Importantly, the evidence revealed the child's statement that he was "around pot smokers" and that he could describe a bowl. Furthermore, the evidence showed that the child was involved in a separate truancy proceeding due to numerous school absences and that he was charged with obstruction after an officer attempted to take him to school. When asked about visiting her son once he was removed from her care, petitioner said she wasn't "emotionally ready to see [her] son." Petitioner admitted smoking marijuana and that she got it "off the streets" in years prior but testified that she was recently approved to receive medical marijuana for her post traumatic stress disorder ("PTSD"), anxiety, and depression. She did not, however, provide any evidence to corroborate this testimony. She denied using marijuana in the child's presence, stating that she, and occasionally others, would only smoke in her bedroom with an exhaust fan. She further denied intentionally allowing the father to be around the child. Based on the evidence presented, the court found that the child's contact with the father appeared to be incidental in nature; therefore, petitioner was not adjudicated on this ground. The court further found that because educational neglect was not alleged in the petition, petitioner would likewise not be adjudicated for that reason. However, the court found that petitioner had extensive substance abuse issues and that her testimony regarding use of marijuana for medical purposes was not credible.[3] The court found clear and convincing evidence that the child was abused and neglected and adjudicated petitioner an abusing and neglecting parent. The court further ordered that petitioner could be granted visitation with the child after producing two clean drug screens. Thereafter, petitioner filed a motion for a post-adjudicatory improvement period.

The court proceeded to disposition in September 2022, with a final dispositional hearing concluding in October 2022. The court heard testimony of the physicians who certified petitioner's receipt of medical marijuana based on her PTSD diagnosis. They explained that medical marijuana cannot be "prescribed" because it is illegal under federal law; however, a person can be "certified" to receive medical marijuana based on state rules. Once the diagnosis is reviewed and use of medical marijuana is certified, the patient must then register through the Office of Medical Cannabis, which organization makes the decision to issue a medical marijuana card. Petitioner admitted that she still had not received a medical marijuana card and, contrary to her prior testimony, she asserted that she had only been smoking cannabidiol ("CBD") and not marijuana. She further admitted to her failure to submit to any drug screens throughout the proceeding, claiming that there were miscommunications and vehicle issues. Although the physicians recommended petitioner enroll in therapy, she did not participate in services. When asked if she would comply with services if granted an improvement period, petitioner responded in the affirmative but listed various reasons why none of the services would be beneficial. The court found petitioner's testimony unbelievable and inconsistent. The court further found petitioner had ongoing mental health issues and had failed to treat them. Although she indicated she wanted help, the court found that petitioner repeatedly gave reasons why treatments failed in the past. Petitioner

[3]In the September 19, 2022, adjudication order, the court also found that petitioner lived with others who used marijuana, allowed others to come into her home, had illegal substances in front of the child that were not for medical use, and allowed the child to be in the home while marijuana was smoked.

further had not taken advantage of visiting her child because she refused to drug screen. Therefore, the court did not grant petitioner's requested improvement period and terminated her parental rights to the child, finding no reasonable likelihood that conditions of abuse and neglect could be substantially corrected in the near future and that termination was necessary for the welfare and best interests of the child. The court further denied post-termination visitation based on the child's need for permanency. It is from the final dispositional order that petitioner appeals.[4]

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).[5] Petitioner first argues that the circuit court erred in adjudicating her as a neglecting parent because it is not neglectful for a parent to use marijuana in light of the Medical Cannabis Act. Rather, petitioner argues the DHS must show that the use affected her ability to parent the child. We find that this argument is misplaced considering that at no time during the pendency of the proceeding did petitioner have a medical marijuana card in order to lawfully use marijuana. *See* W. Va. Code § 16A-3-2(a)(1)(A) ("Medical cannabis may only be dispensed to . . . a patient who receives a certification from a practitioner *and is in possession of a valid identification card* issued by the bureau[.]") (emphasis added). Therefore, she was not using marijuana legally at any point throughout this case. Moreover, the circuit court found that petitioner used marijuana in front of the child, lived with others who used marijuana, and allowed others to do so in her home while the child was there. In view of those findings, we cannot say the adjudication of petitioner as neglectful was erroneous.[6] *See In re S.C.*, 248 W. Va. 628, ---, 889 S.E.2d 710, 716 (2023); *see also* W. Va. Code § 49-1-201 (defining "neglected child," in part, as one whose health or welfare is *threatened* by certain conduct). Although petitioner later testified that she was using legal CBD and not marijuana, the circuit court specifically found her testimony was not credible and we refuse to disturb that determination on appeal. *See Michael D.C. v. Wanda L.C.*, 201 W. Va. 381, 388, 497 S.E.2d 531, 538 (1997) ("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."). Accordingly, for the foregoing reasons, we find no error in petitioner's adjudication.

Next, petitioner argues that the circuit court erred by failing to grant her motion for a post-adjudicatory improvement period because her successful completion of an improvement period in the prior abuse and neglect case demonstrated her likelihood of success here. However, upon

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[4]As both parents have had their parental rights terminated, the permanency plan is a legal guardianship with the child's paternal grandmother.

[5]Before this Court, petitioner raises no argument concerning the termination of her parental rights.

[6]We recognize that the circuit court also adjudicated petitioner of abusing the child. However, it is unnecessary to address this finding, as petitioner's adjudication for neglect was sufficient to grant the circuit court jurisdiction to proceed to disposition. *See* Syl. Pt. 1, *State v. T.C.*, 172 W. Va. 47, 303 S.E.2d 685 (1983) (holding that adjudication of a child "is a prerequisite to further continuation of the case.").

review of the record, we find no merit in this argument. Although petitioner claimed she would be willing to participate in an improvement period, her own testimony revealed that she would be unlikely to utilize services because she repeatedly provided reasons why they would not be helpful. The court found petitioner failed to treat her mental health issues, and it is evident from the record that petitioner disregarded recommended therapy. Furthermore, petitioner did not once submit to a drug screen throughout the proceeding, resulting in a lack of visitation with the child, further proving that compliance with improvement period terms would be unlikely. Indeed, "[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). Further, although petitioner successfully completed an improvement period in the prior abuse and neglect case, we have held that, "courts are not required to exhaust every speculative possibility of parental improvement . . . where it appears that the welfare of the child will be seriously threatened." *Cecil T.*, 228 W. Va. at 91, 717 S.E.2d at 875, Syl. Pt. 4. We, therefore, find that the circuit court did not abuse its discretion in refusing to grant petitioner's motion for an improvement period. *See In re Tonjia M.*, 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002) (holding "the circuit court has discretion to deny an improvement period when no improvement is likely").

Finally, petitioner argues that the court erred in denying her post-termination visitation because of the emotional bond between her and the child. We have held that,

> "[w]hen parental rights are terminated due to neglect or abuse, the circuit court may nevertheless in appropriate cases consider whether continued visitation or other contact with the abusing parent is in the best interest of the child. Among other things, the circuit court should consider whether a close emotional bond has been established between parent and child and the child's wishes, if he or she is of appropriate maturity to make such request. The evidence must indicate that such visitation or continued contact would not be detrimental to the child's well being and would be in the child's best interest." Syl. Pt. 5, *In re Christina L.*, 194 W.Va. 446, 460 S.E.2d 692 (1995).

Syl. Pt. 11, *In re Daniel D.*, 211 W. Va. 79, 562 S.E.2d 147 (2002). Here, the court pointed out petitioner's failure to drug screen in order to visit the child throughout the proceedings and found it would be in the child's best interests to deny visitation in order to provide him with a permanent, stable, and safe environment. To overturn the court's finding would defeat the goal of securing permanency for the child. *See* Syl. Pt. 3, *State v. Michael M.*, 202 W. Va. 350, 504 S.E.2d 177 (1998); *see also State ex rel. Amy M. v. Kaufman*, 196 W. Va. 251, 260, 470 S.E.2d 205, 214 (1996) (finding that post-termination visitation may be considered if it "would not unreasonably interfere with their permanent placement"). The evidence in the record supports the circuit court's finding and we, therefore, find no error in this regard.

Accordingly, for the foregoing reasons, we find no error in the decision of the circuit court, and its November 23, 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