

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

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

In re B.W., B.C.-1, and B.C.-2

No. 23-38 (Kanawha County 21-JA-53, 21-JA-54, and 21-JA-55)

MEMORANDUM DECISION

Petitioner Mother B.L.¹ appeals the Circuit Court of Kanawha County’s November 17, 2022, order terminating her parental rights to B.W., B.C.-1, and B.C.-2.² 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 February 2021, the DHS filed a petition alleging that petitioner failed to protect the children from domestic violence perpetrated by petitioner’s boyfriend³ by allowing him to return to their residence following domestic battery charges. All three children disclosed to a Child Protective Services (“CPS”) worker that petitioner’s boyfriend struck petitioner on multiple occasions and that they fear him. Petitioner confirmed that domestic violence was occurring.

In April 2021, the circuit court held an adjudicatory hearing, but decided that adjudication of petitioner was not appropriate at the time and instead ordered the DHS to provide her with services, including domestic violence counseling, parenting classes, adult life skills classes, and random drug screens. However, in May 2021, the DHS filed an amended petition based upon

¹Petitioner appears by counsel Sandra K. Bullman. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Andrew Waight. Counsel James Rudy Martin appears as the children’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”).

²We use initials where necessary to protect the identities of those involved in this case. *See* W. Va. R. App. P. 40(e). Because two children have the same initials, we refer to them as B.C.-1 and B.C.-2.

³Petitioner’s boyfriend is B.W.’s father.

petitioner's April 8, 2021, positive drug screen result for methamphetamine and amphetamine and her failure to drug screen since. In June 2021, petitioner stipulated to the allegations in the amended petition. Accordingly, the court found that the children were abused and neglected and that petitioner was an abusing parent. The court granted petitioner's request for a post-adjudicatory improvement period, the terms of which included compliance with previously ordered services.

In December 2021, petitioner participated in a psychological evaluation that resulted in a prognosis of "guarded," indicating that there were significant problems that could prevent minimally adequate parenting, especially if petitioner did not comply with drug treatment. The report stated that petitioner's "treatment motivation was below average, indicating that she is not reporting marked distress and may see little need for behavioral change or treatment." During the evaluation, petitioner stated that she had not used methamphetamine for seven months, however, her drug screens refuted her claim. The psychologist recommended, among other things, that petitioner begin intensive outpatient substance abuse treatment and continue random screenings.

In February 2022, the court granted the guardian discretion to begin reunification services to return B.W. to petitioner's care. Petitioner's other two children were placed with their nonabusing father. Then, in April 2022, the court extended petitioner's improvement period by forty-five days to allow B.W. to be transitioned into petitioner's care. However, during a June 1, 2022, review hearing, the DHS presented evidence that petitioner tested positive for THC and reunification was halted. The court continued the matter to allow petitioner to show that she could abstain from THC. At the reconvened review hearing on June 27, 2022, the DHS's witness testified that petitioner's visitation with B.W. was suspended due to the child's behavioral issues. The witness also explained that petitioner had begun a relationship with a man whose parental rights had previously been terminated.

In November 2022, the court held a dispositional hearing where it found that, based upon the evidence presented, there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future because petitioner had not made sufficient efforts to rectify the circumstances leading to the filing of the initial and amended petitions. The DHS presented evidence that petitioner did not comply with services, was not responsive to the CPS worker's attempts at contact, and had not been seen since June 13, 2022. The court specifically excluded guardianship as a potential disposition, as it found that termination was in the children's best interest and guardianship would not provide the permanency the children deserve. Ultimately, the court permanently terminated petitioner's parental rights.⁴ It is from this order that petitioner appeals.

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). Before this Court, petitioner argues that the circuit court erred in terminating her parental rights, but does not challenge the court's findings of fact in support of disposition. Petitioner contends only that she may have been able to correct the situation

⁴B.W.'s father's parental rights were terminated. The permanency plan for B.W. is adoption in the current placement. The other two children were placed with their nonabusing father.

had proper help been provided, but she ignores the fact that she admittedly stopped participating in services in June 2022. As we have explained:

“Termination 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(c)(6)] 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 evidence shows that petitioner was given numerous opportunities to participate in services and failed to do so, her argument that she needed more time for improvement rings hollow. Further, the record contains ample evidence to support the court’s finding that “there is no reasonable likelihood that the conditions of neglect can be substantially corrected in the near future.” Consequently, the court was not obligated to consider less restrictive alternatives. Even so, the court determined that termination was the least restrictive alternative in order for the children to achieve permanency. *See* W. Va. Code § 49-4-604(c)(6) (permitting circuit court to terminate parental rights upon finding no reasonable likelihood conditions of neglect can be substantially corrected in the near future and when necessary for the child’s welfare). Accordingly, we conclude the court did not err in making the findings necessary for termination.

Petitioner further argues that terminating her parental rights to B.C.-1 and B.C.-2 was not necessary because the court could have achieved permanency by placing the children with their father while leaving petitioner’s rights intact. Petitioner contends that the two children should have been placed in the full custody of their father and petitioner should have retained the right to modify the arrangement if circumstances change in the future. Petitioner’s argument ignores our prior direction that West Virginia Code § 49-4-604 “permits the termination of one parent’s parental rights while leaving the rights of the nonabusing parent completely intact, if the circumstances so warrant.” *In re Emily*, 208 W. Va. 325, 344, 540 S.E.2d 542, 561 (2000). Further, “simply because one parent has been found to be a fit and proper caretaker for [the] child does not automatically entitle the child’s other parent to retain his/her parental rights if his/her conduct has endangered the child and such conditions of abuse and/or neglect are not expected to improve.” *Id.* Accordingly, we find no error in the court’s termination of petitioner’s parental rights.

For the foregoing reasons, we find no error in the decision of the circuit court, and its November 17, 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