

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re A.W. and L.O.

No. 23-63 (Harrison County 22-JA-24-1 and 22-JA-25-1)

MEMORANDUM DECISION

Petitioner Mother T.F.¹ appeals the Circuit Court of Harrison County’s January 12, 2023, order terminating her parental and custodial rights to A.W. and L.O.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 2022, the DHS filed a petition alleging that petitioner and newborn child, L.O., tested positive for multiple drugs (including fentanyl) upon that child’s birth. Petitioner advised a Child Protective Services (“CPS”) employee that she used fentanyl and heroin daily and was unaware she was pregnant up until she gave birth. Upon questioning by a CPS employee, petitioner’s mother reported that A.W. had been in her care for the last five months and that petitioner had only visited her child, A.W., once in those five months. The petition further alleged that petitioner’s substance abuse resulted in her abuse and neglect of both children and that her conduct demonstrated the settled purpose to forego her duties and parental responsibilities to A.W.

At an adjudicatory hearing in April 2022, the circuit court found by clear and convincing evidence that petitioner neglected the children. The court found that petitioner failed to provide the children with proper care, abused drugs while pregnant with L.O., and abandoned A.W. by leaving the child with a family member for the last five months. Thus, the court adjudged petitioner

¹Petitioner appears by counsel Jenna L. Robey. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Katica Ribel. Counsel Julie N. Langford Garvin 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).

as an abusing parent and the children as neglected. Shortly after adjudication, petitioner moved for a post-adjudicatory improvement period.

During a July 2022 dispositional hearing, the DHS presented evidence that petitioner failed to participate in services ordered by the court, visitations with the children, and drug rehabilitation. Additionally, petitioner was unresponsive to CPS's and the service provider's attempts to contact her. Petitioner missed numerous drug screens and tested positive for drugs at each screen she did attend. Based upon the evidence, the court concluded that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future and that termination of her rights was necessary for the welfare of the children. Accordingly, the court terminated petitioner's parental and custodial rights and duties to the child.³ 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 and custodial rights because the court did not apply the least restrictive alternative, specifically the disposition found in West Virginia Code § 49-4-604(c)(5).⁴ Petitioner claims that because one father had custody of A.W. and L.O.'s father was in an improvement period at the time, termination should not have occurred. However, 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(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). Moreover,

“[c]ourts are not required to exhaust every speculative possibility of parental improvement . . . where it appears that the welfare of the child will be seriously threatened, and this is particularly applicable to children under the age of three

³L.O.'s father voluntarily relinquished his parental rights. The permanency plan for L.O. is adoption in the current placement. A.W. is placed with the nonabusing biological father.

⁴That statute permits, in relevant part, the following:

Upon a finding that the abusing parent or battered parent or parents are presently unwilling or unable to provide adequately for the child's needs, commit the child temporarily to the care, custody, and control of the department, a licensed private child welfare agency, or a suitable person who may be appointed guardian by the court.

years who are more susceptible to illness, need consistent close interaction with fully committed adults, and are likely to have their emotional and physical development retarded by numerous placements.” Syl. Pt. 1, in part, *In re R.J.M.*, 164 W.Va. 496, 266 S.E.2d 114 (1980).

Syl. Pt. 4, *In re Cecil T.*, 228 W. Va. at 91, 717 S.E.2d at 875 (2011). The circuit court made specific findings that petitioner continually used drugs throughout the proceedings, failed to seek substance abuse treatment, and refused to comply with drug screens and services. The record contains ample evidence to support the circuit court’s specific findings that there was no reasonable likelihood that the conditions of neglect could be substantially corrected in the near future, and it was necessary for the children’s welfare to terminate petitioner’s parental and custodial rights. *See* W. Va. Code § 49-4-604(c)(6) (permitting circuit court to terminate parental and custodial 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). Thus, petitioner’s argument that the court erred is without merit.

Petitioner also argues that she should have been granted post-termination contact with both children but fails to offer any support for this position. As we have explained, “[t]he decisions of this Court are quite clear. ‘Although we liberally construe briefs in determining issues presented for review, issues . . . mentioned only in passing but are not supported with pertinent authority, are not considered on appeal.’ *State v. LaRock*, 196 W.Va. 294, 302, 470 S.E.2d 613, 621 (1996).” *State v. Larry A.H.*, 230 W. Va. 709, 716, 742 S.E.2d 125, 132 (2013). Further, we have previously held that post-termination contact must be both non-detrimental and in the best interest of the children. Syl. Pt. 11, *In re Daniel D.*, 211 W. Va. 79, 562 S.E.2d 147 (2002). The evidence discussed above demonstrated that petitioner had severe substance abuse issues and even when services were offered, petitioner declined to participate. Thus, petitioner’s bare assertion that she should have been granted post-termination visitation is rejected.

For the foregoing reasons, we find no error in the decision of the circuit court, and its January 12, 2023, 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