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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* E.G. and O.G.**

No. 23-73 (Clay County CC-08-2022-JA-25 and CC-08-2022-JA-26)

MEMORANDUM DECISION

Petitioner Mother B.H.[1] appeals the Circuit Court of Clay County's December 28, 2022, order terminating her parental rights to E.G. and O.G.[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 May 2022, the DHS filed a petition alleging that petitioner abused and neglected the children by abusing alcohol and drugs and engaging in acts of domestic violence in the presence of the children. The DHS filed the petition upon information that petitioner and the children's father were arguing and became physically violent towards each other. Specifically, it was alleged that the father chased petitioner with an axe and made verbal threats that he would kill her in front of the children. Additionally, the petition alleged that the child's father grabbed E.G., causing bruising of the child's arms. Finally, petitioner tested positive for marijuana.

At an adjudicatory hearing in August 2022, the circuit court considered testimony from a Child Protective Services ("CPS") employee, photographs of E.G., and a domestic violence protective order petitioner obtained against the children's father. The court found by clear and convincing evidence that petitioner abused and neglected the children by failing to "provide a fit, apt and suitable home, drug and alcohol free, as well as domestic violence free, for the children,

[1]Petitioner appears by counsel Herbert Hively II. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrisey and Assistant Attorney General Lee A. Niezgoda. Counsel Mackenzie Anne Holdren 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").

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

which threatens the health, safety and welfare of the infant children." The court also found that petitioner's testimony was not credible. Shortly after the adjudicatory hearing, petitioner moved for a post-adjudicatory improvement period.

At the dispositional hearing in November 2022, a CPS employee initially testified that the DHS recommended an improvement period for petitioner. However, the CPS employee changed her position after reviewing petitioner's psychological evaluation. According to this evaluation, petitioner's prognosis for improved parenting was "very poor," and the evaluator stated that "there are significant concerns regarding [petitioner's] overall veracity, given the number of contradictory statements and implausible explanations she provided" and "there is significant concern regarding [petitioner] having pressured [E.B.] to recant her allegations." Most importantly, the evaluator indicated that petitioner did not accept responsibility for any abuse or neglect and that she only stipulated to allegations of abuse and neglect in order to obtain an improvement period. The report mentioned her repeated reconciliations with the children's father, who has a history of domestic violence. Furthermore, petitioner's testimony was troubling. When questioned if she would end her relationship if domestic violence issues arose again, petitioner simply responded, "No." Upon being questioned if she would continue to live with the children's father if he became violent, petitioner testified that she had "no worries of that anymore. We've become great."

The dispositional hearing was continued to allow the DHS to submit an amended case plan considering the CPS employee's changed position. At the continued dispositional hearing, the court heard testimony from the same CPS employee, who maintained her recommendation that petitioner's parental rights be terminated. The court ultimately found that petitioner did not correct the conditions that led to the filing of the petition, was not likely to correct those conditions in the foreseeable future, and failed to establish a suitable residence for the children. The court also concluded that petitioner's failure to take responsibility impaired her parenting ability and there was no less restrictive alternative available. Based upon the evidence, the court terminated petitioner's parental rights.[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's sole assignment of error is that the court below incorrectly denied her motion for a post-adjudicatory improvement period. Petitioner cites West Virginia Code § 49-4-610(2), claiming that she had a change in circumstances such that an improvement period was warranted.[4] We have consistently held that:

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

[4]Petitioner's reliance on West Virginia Code § 49-4-610(2)(D) and its requirement that, in order to receive a *second* improvement period, a parent must "demonstrate[] that . . . the [parent] has experienced a substantial change in circumstances," is misplaced. The record demonstrates that petitioner was not granted any improvement periods. Thus, this standard is irrelevant to the issue before this Court.

> [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.

In re Timber M., 231 W. Va. 44, 55, 743 S.E.2d 352, 363 (2013) (citation omitted). Petitioner's own testimony clearly indicated that she did not believe she did anything wrong. The record reflects that petitioner continually denied domestic violence allegations and refused to accept responsibility for any abuse or neglect of the children. Petitioner even testified that she has no worries that the children's father would become violent again and stated that she would not end the relationship if he did become violent. Thus, petitioner did not demonstrate that she was likely to fully participate in the improvement period and the court's decision to deny her motion for a post-adjudicatory improvement period is supported by the evidence. *See* W. Va. Code § 49-4-610(2)(B) (providing that, in order to obtain a post-adjudicatory improvement period, a parent must "demonstrate[] . . . that the [parent] is likely to fully participate in the improvement period").

Further, petitioner attacks the testimony of the CPS employee, who changed her recommendation upon examining petitioner's parental fitness evaluation. This argument is unavailing, as this witness was free to change positions on whether petitioner should be entitled to an improvement period after being made aware of relevant information, such as the results of petitioner's psychological evaluation. Additionally, petitioner claims that her participation in services entitled her to a post-adjudicatory improvement period. However, we have held that "it is possible for an individual to show 'compliance with specific aspects of the case plan' while failing 'to improve . . . [the] overall attitude and approach to parenting.'" *In re Jonathan Michael D.*, 194 W. Va. 20, 27, 459 S.E.2d 131, 138 (1995) (citation omitted). While petitioner participated in certain services, the fact remains that she was unwilling to acknowledge the problems, making an improvement period an exercise in futility. The circuit court found that the evidence supported termination and we decline to disturb the court's decision.

For the foregoing reasons, we find no error in the decision of the circuit court, and its December 28, 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