

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re S.B., I.B., and K.B.-1

No. 23-152 (Kanawha County 21-JA-403, 21-JA-404, and 21-JA-405)

MEMORANDUM DECISION

Petitioner Mother K.B.-2¹ appeals the Circuit Court of Kanawha County’s February 15, 2023, order terminating her parental rights to S.B., I.B., and K.B.-1,² arguing that the court should have instead granted a dispositional improvement period. 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 July 2021, the DHS filed a petition alleging that petitioner had abused and neglected her children by failing to provide them with appropriate housing. The petition alleged that the DHS received a referral stating that petitioner would soon be evicted from the current home. Further, during their investigation, a DHS worker observed “thousands of cockroaches” throughout the home and feces smeared in various places within the kitchen and bedroom.

Petitioner filed a motion for a pre-adjudicatory improvement period, and the circuit court held a hearing on the motion. During the hearing, the court was informed that petitioner had secured new housing approved by the DHS. The court granted petitioner a pre-adjudicatory

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 T. Waight. Counsel Jennifer R. Victor appears as the children’s guardian ad litem (“the guardian”).

Additionally, pursuant to West Virginia Code § 5F-2-1a, the agency formerly known as the West Virginia Department of Health and Human Resources was terminated. It is now three separate agencies—the Department of Health Facilities, the Department of Health, and the Department of Human Services. *See* W. Va. Code § 5F-1-2. 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). Additionally, because a child, K.B.-1, and petitioner, K.B.-2, share the same initials, we use numbers to differentiate them.

improvement period, allowing the children to return to the home during the improvement period. Additionally, the court ordered services, including parenting classes and adult life skills training.

However, in November 2021, the DHS filed a motion for emergency removal due to issues concerning school attendance, housing concerns, and cleanliness and hygiene of the children. During the hearing on the motion, a school counselor testified that the school has been washing the children's clothing because it often smelled of urine and feces. Further evidence confirmed issues with school attendance. At the conclusion of the hearing, the court ordered the children be removed from the home while the DHS filed an amended petition to include the recent concerns.

Following a preliminary hearing on the amended petition, the court found that there was no reasonable alternative to removal of the children from the home due to risk of further neglect and scheduled the matter for adjudication. However, due to delays with securing psychological evaluations for the children and petitioner, adjudication was continued several times. During this time, the court ordered supervised visitation and that the services previously ordered were to remain in place.

On September 6, 2022, the circuit court held a hearing, where the DHS worker recommended additional services to facilitate reunification. Petitioner moved for a second pre-adjudicatory improvement period, and the motion was granted without objection. Services for petitioner's improvement period included visitation, reunification services, and additional behavioral services for the children. In October 2022, the circuit court held a review hearing for petitioner's improvement period. Petitioner was brought to the hearing by a neighbor, D.D., who is a registered sex offender. Petitioner's counsel proffered that petitioner and D.D. were not in a relationship and that she understood he could not be around the children. Upon recommendation from the DHS and the guardian, the court set the matter for adjudication. Additionally, the court ordered the DHS to visit petitioner's home and monitor housing conditions.

The circuit court held an adjudicatory hearing on November 29, 2022, where petitioner stipulated to "uninhabitable conditions of the home constituting abuse and/or neglect of her children." The circuit court accepted petitioner's stipulation and adjudicated her to be an abusing parent. During the hearing, the guardian reported concerns about the inconsistency of petitioner's phone calls with the children, making the children promises she did not keep, and missed visits. Additionally, the DHS reported that, based on posts from petitioner and D.D. on social media, petitioner appeared to be engaged to D.D. Consequently, the court ordered that visitation be suspended and set the matter for disposition.

At the dispositional hearing, the DHS worker testified that petitioner informed the worker that she was not in a romantic relationship with D.D., but that they were living together in D.D.'s home. The worker provided copies of several social media posts made by petitioner and D.D. Petitioner's profile now listed her last name as D.D.'s last name and listed that she was engaged to D.D. Additionally, petitioner posted a photograph trying on a wedding dress and a photograph of petitioner and D.D. showing D.D. down on one knee. Petitioner also testified and denied any romantic relationship with D.D., stating that her social media account was hacked. However, she did admit that she currently lived in D.D.'s home. She stated that she was trying to secure a loan

for her own housing, but she did not have a job. Additionally, she testified that she believed D.D. was framed by his ex-wife and she was assisting him in trying to appeal his convictions.

Based upon the evidence presented at disposition, the court concluded that termination of petitioner's parental rights was in the best interest of the children and that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future given that petitioner still had not secured suitable and safe housing for the children. The court also found that petitioner had not followed through with the family case plan because securing suitable and safe housing was the main goal of that case plan. Accordingly, the court entered an order on February 15, 2023, terminating petitioner's parental rights to the children.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). Petitioner contends that the circuit court erred by terminating her parental rights, arguing that the court should have granted a dispositional improvement period instead, as this was a less restrictive alternative. However, petitioner's argument ignores our previous holding that termination of parental rights 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." Syl. Pt. 5, *In re Kristin Y.*, 227 W. Va. 558, 712 S.E.2d 55 (2011). West Virginia Code § 49-4-604(d)(3) provides that there is no reasonable likelihood that the conditions of neglect and abuse can be substantially corrected when the parent has not "responded to or followed through with a reasonable family case plan." This case began because petitioner was unable to secure appropriate housing for her children. At adjudication, petitioner stipulated to "uninhabitable conditions of the home" constituting neglect. Yet, after two pre-adjudicatory improvement periods spanning over a year, petitioner had still not secured safe housing for her children, choosing instead to begin living with a registered sex offender during the pendency of this case. Accordingly, we find no error in the circuit court's termination of petitioner's parental rights, as the court made the necessary findings upon ample evidence. *See* W. Va. Code § 49-4-604(c)(6) (permitting circuit courts to terminate parental rights upon finding no reasonable likelihood conditions of neglect can be substantially corrected in the near future and when necessary for a child's welfare).

For the foregoing reasons, we find no error in the decision of the circuit court, and its February 15, 2023, order is hereby affirmed.

Affirmed.

ISSUED: March 6, 2024

³The permanency plan for all three children is adoption in their current placements.

CONCURRED IN BY:

Chief Justice Tim Armstead
Justice Elizabeth D. Walker
Justice John A. Hutchison
Justice William R. Wooton
Justice C. Haley Bunn