

FILED
March 6, 2024

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

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

***In re* H.B. and R.B.**

No. 23-191 (Preston County 22-JA-22 and 22-JA-23)

MEMORANDUM DECISION

Petitioner Mother M.B.¹ appeals the Circuit Court of Preston County’s March 7, 2023, order terminating her parental rights to the children, H.B. and R.B.,² arguing that the court should have implemented a less restrictive dispositional alternative. 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 an abuse and neglect petition after the oldest child, R.B., alleged that petitioner’s boyfriend, who lived with them, sexually abused her. When R.B. was taken to the hospital due to the sexual abuse concerns and potential pregnancy, petitioner locked herself in the emergency room bathroom and “began to act hysterical,” lying on the floor and vomiting. Furthermore, the maternal grandmother reported that the children’s bedrooms were too cold for the children to sleep and that the house was full of cats and smelled like urine and feces. The younger child, H.B., reported lots of yelling and cussing in the home and that she hides when this happens. The petition further alleged that the children had missed more than thirty days of school, transferred schools thirteen times, and had hygiene issues. Based on the foregoing, the DHS alleged that petitioner abused and/or neglected the children.

¹Petitioner appears by counsel Jeremy B. Cooper. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Lee Niezgoda. Counsel Kristen D. Antolini appears as the children’s guardian ad litem (“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).

After petitioner waived her right to a preliminary hearing, the court directed her to participate in drug screening, specifically advising her not to use substances such as delta-8 THC that would cause her to test positive. At an adjudicatory hearing held in July 2022, petitioner stipulated to certain allegations in the petition. She admitted that she permitted inappropriate caregivers to provide care for the children, she failed to provide stable housing for the children which led to excessive absences from school, and she suffered from mental health issues. Based upon petitioner's stipulation, the court adjudicated her an abusing and neglecting parent and the children abused and neglected children. Petitioner then moved the court for a post-adjudicatory improvement period, which was granted. Terms of the improvement period included drug screening twice a week, individual and family counseling, participating in a psychological evaluation, participating in supervised visitation upon completion of clean drug screens and at the discretion of children's therapists and the multidisciplinary team ("MDT"), completing parenting and adult life skills classes, maintaining appropriate housing, maintaining employment, and participating in hearings and MDT meetings.

The court proceeded to disposition in February 2023, at which time the DHS and guardian supported termination of petitioner's parental rights. Petitioner was not present for the dispositional hearing but was represented by counsel who had no recent contact with her.³ The court heard testimony from a community corrections program director and a Child Protective Services ("CPS") worker regarding petitioner's improvement period participation. The community corrections program director testified that petitioner drug screened sporadically despite the requirement that she screen twice weekly, and she tested positive for THC on multiple occasions. The last time petitioner appeared for a drug screen was in October 2022, but the CPS worker testified that the DHS had not relieved her from the drug screening requirement of her improvement period. The CPS worker further testified that petitioner still did not have stable housing and that she had been living with the sexually abusive boyfriend until January 2023 when she moved in with her aunt and uncle. When asked if she believed termination was in the children's best interests, the CPS worker responded in the affirmative, explaining that petitioner had not "for the life of this case, put her children's needs first," petitioner did not believe that R.B. was sexually abused by the boyfriend, and she only moved out of the home because of an unrelated domestic violence incident between the two. Additionally, petitioner did not participate in visits with the children due to her failure to consistently drug screen. The counselor for the children recommended family counseling; however, petitioner did not participate for the same reason. Furthermore, DHS services such as adult life skills and parenting classes were closed due to petitioner's noncompliance. Based on the evidence presented, the court found that petitioner was noncompliant with the terms of her improvement period and that there was no less drastic alternative to termination of her parental rights. Considering the best interests of the children and finding no reasonable likelihood that petitioner could correct the conditions of abuse and neglect in the near

³Petitioner was also not present for two prior hearings with no explanation from counsel. She was represented at both hearings.

future, the court terminated petitioner's parental rights.⁴ It is from the dispositional 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 argues that the circuit court erred by terminating her parental rights rather than implementing a less restrictive dispositional alternative. However, petitioner's argument ignores our prior holding that circuit courts may terminate a parent's parental rights "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. 2, *In re R.J.M.*, 164 W. Va. 496, 266 S.E.2d 114 (1980). Here, the circuit court correctly found that the conditions of neglect or abuse could not be substantially corrected considering petitioner's inconsistent to complete lack of participation in this case. While petitioner did initially show potential for improvement, she was noncompliant with DHS services, stopped appearing for hearings, drug screened sporadically, tested positive for THC on multiple occasions, and stopped appearing for screenings altogether several months before disposition. This resulted in petitioner's failure to visit the children or participate in family counseling. To that end, "[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). Therefore, we find no error.

To the extent petitioner argues that the court incorrectly relied on her irregular drug screening to terminate her parental rights because drug abuse was not alleged in the abuse and neglect petition, we further find no error. Although petitioner is correct that drug use was not a specific allegation, regular drug screening was a term of her improvement period to which petitioner agreed. As we have explained, "[i]n making the final disposition in a child abuse and neglect proceeding, the level of a parent's compliance with the terms and conditions of an improvement period is just one factor to be considered. The controlling standard that governs any dispositional decision remains the best interests of the child." Syl. Pt. 4, *In re B.H.*, 233 W. Va. 57, 754 S.E.2d 743 (2014). Upon our review, it is evident that the best interests of the children required termination of petitioner's parental rights not only because of her failure to put forth any effort during her improvement period but also because of her failure to demonstrate any loyalty to the protection of her children. *See In re Brianna Elizabeth M.*, 192 W. Va. 363, 367, 452 S.E.2d 454, 458 (1994) ("[T]he rights of children to be free from abuse require that a parent's first loyalty be to the protection of his or her children."). As the circuit court observed, the case was pending for nearly a year before petitioner chose to leave the home in which she was residing with the person who sexually abused her child. While petitioner may have eventually relocated, the fact that this occurred almost immediately preceding the dispositional hearing further highlights her failure to act in the best interests of her children. We, therefore, find that the court did not err in terminating petitioner's parental rights.

⁴The children's father's parental rights were also terminated. The permanency plan is adoption by kinship placement.

Accordingly, for the foregoing reasons, we find no error in the decision of the circuit court, and its March 7, 2023, order is hereby affirmed.

Affirmed.

ISSUED: March 6, 2024

CONCURRED IN BY:

Chief Justice Tim Armstead

Justice Elizabeth D. Walker

Justice John A. Hutchison

Justice William R. Wooton

Justice C. Haley Bunn