

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re V.O. and S.O.

No. 23-176 (Marion County CC-24-2021-JA-33 and CC-24-2021-JA-34)

MEMORANDUM DECISION

Petitioner Mother V.Q.¹ appeals the Circuit Court of Marion County’s March 1, 2023, order terminating her parental rights to V.O. and S.O.,² arguing that the DHS failed to offer her specific services and that it was error to deny her visitation with the children. 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 April 2021, the DHS filed a petition alleging that petitioner abused and neglected the children based upon, among other things, her pervasive drug use, including using methamphetamine and Subutex without a valid prescription; exposure of the children to domestic violence between the parents, including petitioner attempting to stab the father in the children’s presence and hitting S.O. during an altercation; and failure to provide the children with appropriate housing. At a hearing in May 2021, petitioner stipulated that she engaged in pervasive drug use while the children were in her care, that she exposed them to domestic violence, and that she suffers

¹Petitioner appears by counsel Heidi M. Georgi Sturm. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Lee Niezgod. Counsel Clarissa M. Banks 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”).

Finally, we note that petitioner’s counsel filed this brief in accordance with Rule 10(c)(10)(b) of the West Virginia Rules of Appellate Procedure.

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

from mental health issues that led to her exposing the children to dangerous conditions in the home. Accordingly, the court adjudicated petitioner of abusing and neglecting the children.

Thereafter, the court granted petitioner a post-adjudicatory improvement period, although the record shows that the same was subsequently revoked “due to her complete non-participation.” Despite her unsuccessful post-adjudicatory improvement period, the court later granted petitioner a post-dispositional improvement period. However, the record shows that she was again unsuccessful, given her “non-participation and non-compliance.” From the limited record on appeal, it appears that these improvement periods required petitioner to, among other things, submit to random drug screens and undergo appropriate treatment for her mental health and substance abuse issues. The record also shows that petitioner failed to remain in contact with her attorney, the DHS, and the guardian for extended periods of time. Further, the record shows that petitioner did not have any visits with the children after April 2021 as a result of her failure to participate in the proceedings.

The matter ultimately came on for a final dispositional hearing in February 2023. Prior to the hearing, the guardian filed a report in which she outlined petitioner’s various failures to successfully complete her improvement period. Critically, the guardian also explained that petitioner “has made it very clear multiple times . . . that she feels there was no justification for the removal of her children . . . and that she accepts no responsibility whatsoever for her own actions.” In reaching disposition, the court outlined petitioner’s various failures throughout the proceedings. Specifically, petitioner participated in only four drug screens during the pendency of the proceedings, one of which was positive for codeine and morphine. The court further recounted that petitioner was arrested seven times during the proceedings. In regard to her mental health and substance abuse issues, petitioner “was treated in multiple mental health facilities and/or drug treatment programs” throughout the proceedings but “failed to successfully complete any of the programs.” Additionally, the DHS provided petitioner with homelessness resources multiple times. Further, some of petitioner’s services could not be set up because of her inconsistent participation. Based on the evidence, the court found that petitioner was unable to address either her substance abuse or mental health issues in a timely manner, and that there was no reasonable likelihood that she would correct the issues in the near future. Noting the length of time the children had been out of the home, among other issues, the court also found that termination of petitioner’s parental rights was in the children’s best interests. Accordingly, the court terminated petitioner’s parental rights.³ 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). Before this Court, petitioner first argues that the DHS failed to provide her assistance with various issues, including housing and her mental health.⁴ This argument, however, is belied by the record, which indicates that the DHS provided petitioner with multiple services throughout the proceedings designed to address these issues. However,

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

⁴Petitioner raises no assignment of error regarding the termination of her parental rights.

petitioner either failed to follow through with these services or failed to participate in them at all, as there were extended periods that petitioner did not remain in contact with the parties. Even more importantly, the record shows that petitioner failed to acknowledge the various issues of abuse and neglect below, thereby rendering services futile. See *In re Timber M.*, 231 W. Va. 44, 55, 743 S.E.2d 352, 363 (2013) (“Failure to acknowledge the . . . truth of the basic allegation pertaining to the alleged abuse and neglect . . . results in making the problem untreatable” (quoting *In re Charity H.*, 215 W. Va. 208, 217, 599 S.E.2d 631, 640 (2004))). Accordingly, we find that petitioner is entitled to no relief.

Finally, petitioner argues that it was error to deny her visits with the children during the proceedings. Despite recognizing that it was her failure to participate in services that resulted in her lack of visits, petitioner nonetheless argues that having been able to see the children “likely” would have inspired her to begin or continue to actively participate in the case. Petitioner argues that visits could have been stopped if she appeared under the influence. However, this argument is not compelling because the reasonable restrictions imposed on visits in the absence of petitioner’s participation in services clearly protected the children and their best interests. As we have routinely explained, “[i]n a contest involving the custody of an infant the welfare of the child is the polar star by which the discretion of the court will be guided.” Syl. Pt. 2, *State ex rel. Lipscomb v. Joplin*, 131 W.Va. 302, 47 S.E.2d 221 (1948).” Syl. Pt. 3, *In re S.W.*, 233 W. Va. 91, 755 S.E.2d 8 (2014). As such, petitioner is entitled to no relief.

For the foregoing reasons, we find no error in the decision of the circuit court, and its March 1, 2023, order is hereby affirmed.

Affirmed.

ISSUED: April 15, 2024

CONCURRED IN BY:

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