

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re **K.T.**

No. 23-180 (Upshur County CC-49-2022-JA-10)

MEMORANDUM DECISION

Petitioner Mother E.N.¹ appeals the Circuit Court of Upshur County’s March 24, 2023, order terminating her parental rights to K.T.,² arguing that the circuit court erred in terminating her parental rights instead of extending her improvement period or ordering a less restrictive alternative disposition. 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.

On January 7, 2022, petitioner was found to have three bricks of heroin in her car during a traffic stop. Petitioner was arrested and charged with the felony offense of possession with intent to deliver. During their investigation, a Child Protective Services (“CPS”) worker spoke with the child’s aunt, who reported that she often took care of the child for days at a time. The aunt reported that petitioner left the child with her a couple of days before her arrest and the child had remained with her since. A CPS worker interviewed petitioner, who was incarcerated at the time. Petitioner admitted to using heroin for the past six to seven months and using as frequently as every couple of days, but denied using while the child was in her care. Based on the foregoing, the DHS filed an abuse and neglect petition on January 24, 2022.

¹Petitioner appears by counsel G. Phillip Davis. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Lee Niezgoda. Counsel Melissa T. Roman appears as the child’s guardian ad litem.

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).

The circuit court held an adjudicatory hearing in March 2022, where petitioner stipulated that “she struggles with issues surrounding illegal drug usage which has adversely impacted the minor child.” Accordingly, the court adjudicated petitioner as an abusing parent. Following the adjudicatory hearing, petitioner’s criminal bond was revoked due to positive drug screens. As part of her criminal case, petitioner then attended and completed a twenty-eight-day rehabilitative program. At the recommendation of the DHS and the guardian ad litem, petitioner was granted a six-month post-adjudicatory improvement period in June 2022. The terms of petitioner’s improvement period, among other requirements, included remaining drug free, completing parenting and life skills classes, and following recommendations of the multidisciplinary team.

In August 2022, the circuit court held a status hearing where the DHS reported that petitioner was testing positive for codeine and petitioner’s bond was revoked for the second time. Consequently, the DHS filed a motion to terminate petitioner’s parental rights based upon petitioner’s lack of compliance with the terms of her improvement period. Petitioner remained incarcerated from August 2022 to January 2023. Following petitioner’s release, the circuit court held a dispositional hearing in March 2023. Petitioner testified that, since her release, she had participated in outpatient therapy, complied with drug screening, and gained employment. However, a worker from community corrections testified that petitioner’s recent drug test on February 13, 2023, came back as a diluted sample. The worker further explained that diluted screens are considered positive drug screens. Additionally, a DHS worker testified that petitioner participated in some individualized parenting and adult life skills services but did not complete the courses. The DHS worker also testified that petitioner participated in phone calls with the child regularly, but according to the foster parent, the phone calls resulted in behavioral outbursts by the child at school and home.

Based on the evidence presented, the circuit court found that petitioner continued to have substance abuse issues even after completing a rehabilitative program and that petitioner’s positive drug screens caused her bond to be revoked in her criminal case twice during the abuse and neglect proceedings. The court further found that termination of petitioner’s parental rights was in the best interest of the child and found that there was no evidence that petitioner could remediate the circumstances of abuse and neglect in the reasonably foreseeable future. Accordingly, the court terminated petitioner’s parental rights 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 it was error to terminate her parental rights because there was a less restrictive alternative to termination: extending petitioner’s improvement period. However, we have previously explained 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). Throughout this case, petitioner was given

³The father voluntarily relinquished his parental rights, and the permanency plan for the child is adoption in the current placement.

the span of fourteen months to address her substance abuse and parenting concerns. In those fourteen months, petitioner failed several drug tests, resulting in her bond being revoked on two separate occasions. Some of these failed drug tests came after petitioner completed a rehabilitative program. Accordingly, the court had ample evidence upon which to base this finding. *See* W. Va. Code § 49-4-604(d) (defining “no reasonable likelihood that conditions of neglect or abuse can be substantially corrected” to mean that the abusing parent has “demonstrated an inadequate capacity to solve the problems of abuse or neglect on their own or with help”).

Further, petitioner argues that she presented evidence that she was likely to fully participate in an improvement period or an extension thereof. However, the record is clear that petitioner was granted an improvement period but did not substantially comply with its terms. Petitioner did not complete parenting classes, did not complete life skills classes, and did not maintain sobriety, in addition to submitting a diluted drug screen just weeks before the disposition hearing. Petitioner’s argument also ignores the court’s finding that termination of parental rights was in the best interest of the child and fails to explain how reunification would be in the best interest of the child. Thus, petitioner is entitled to no relief. *See* Syl. Pt. 4, in part, *In re B.H.*, 233 W. Va. 57, 754 S.E.2d 743 (2014) (“The controlling standard that governs any dispositional decision remains the best interests of the child.”); *see also* W. Va. Code § 49-4-604(c)(6) (permitting circuit court to terminate parental rights upon finding no reasonable likelihood conditions of abuse and neglect can be substantially corrected in the near future and when necessary for child’s welfare).

For the foregoing reasons, we find no error in the decision of the circuit court, and its March 24, 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