

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

***In re* N.H., K.H.-1, A.H.-1, and A.H.-2**

No. 23-255 (Barbour County 20-JA-60, 20-JA-61, 20-JA-62, and 20-JA-63)

MEMORANDUM DECISION

Petitioner Mother K.H.-2¹ appeals the Circuit Court of Barbour County’s April 21, 2023, order denying her request to alter a prior order prohibiting her contact with N.H., K.H.-1, A.H.-1, and A.H.-2, arguing that the circuit court erred in denying her motion without holding a hearing.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.

The proceedings below were initiated in October 2020, when the DHS filed a petition alleging that the petitioner, among other things, abused controlled substances, failed to protect the children from domestic violence, and failed to provide suitable housing. In March 2021, the petitioner was adjudicated, and then she voluntarily relinquished her parental rights to the children at a dispositional hearing in August 2021. By order entered in August 2021, the circuit court accepted the petitioner’s voluntary relinquishment and terminated her parental rights to the children. The court further ordered that the petitioner was to have no contact with the children, in keeping with an earlier order prohibiting all contact. At that time, the court dismissed the petitioner from the proceedings.

Approximately one year later, the petitioner began sending self-represented correspondence to the court through which she sought to lift the prohibition on her contact with

¹ The petitioner appears by counsel Michael Safcsak, who filed this appeal pursuant to Rule 10(c)(10)(b) of the West Virginia Rules of Appellate Procedure. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Katica Ribel. Counsel Allison C. Iapalucci appears as the children’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”).

² We use initials where necessary to protect the identities of those involved in this case. *See* W. Va. R. App. P. 40(e). Further, because some of the children share the same initials and the petitioner shares initials with one child, we use numbers to differentiate them.

the children. By order entered in April 2023, the court denied the request. According to the court, “given [the petitioner’s] pervasive and continuing dishonesty . . . during the pendency of the proceedings,” visitation was not in the children’s best interests. The court reiterated that its “permanent no contact order” remained in place.³ It is from the order denying her request to alter the prior no contact order that the 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, the petitioner cannot be entitled to relief regarding her argument that the circuit court was required to hold a hearing on the issue of visitation because of her failure to comply with the applicable rules. Rule 10(c)(7) of the West Virginia Rules of Appellate Procedure requires that “[t]he brief must contain an argument exhibiting clearly the points of . . . law presented . . . and citing the authorities relied on.” Additionally, in an Administrative Order entered December 10, 2012, the Court specifically noted that “[b]riefs that . . . fail to structure an argument applying applicable law” are not in compliance with this Court’s rules. In ordering that all litigants before this Court must comply with the Rules of Appellate Procedure, the Court’s order cautioned that, “[p]ursuant to Rule 10(j), failure to file a compliant brief ‘may result in the Supreme Court refusing to consider the case, denying argument to the derelict party, dismissing the case from the docket, or imposing such other sanctions as the Court may deem appropriate.’” Here, the petitioner’s argument contains only one citation. This citation broadly directs that a child’s best interests must guide decisions affecting custody decisions. *See* Syl. Pt. 1, *State ex rel. Cash v. Lively*, 155 W. Va. 801, 187 S.E.2d 601 (1972). However, the petitioner fails to apply this holding to her assertion that a hearing on her requests for visitation was necessary, and she similarly fails to cite to any authority governing post-termination visitation or hearings on such requests. Because of these deficiencies, we decline to address the petitioner’s argument.

For the foregoing reasons, the circuit court’s April 21, 2023, order is hereby affirmed.

Affirmed.

ISSUED: May 13, 2024

CONCURRED IN BY:

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

³ The father’s parental rights were also terminated below.