

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re E.S. and I.S.

No. 23-264 (Cabell County 20-JA-174 and 20-JA-175)

MEMORANDUM DECISION

Petitioner Mother A.E.¹ appeals the Circuit Court of Cabell County’s April 18, 2023, order terminating her parental rights to E.S. and I.S., arguing that termination was in error because she complied with her case plan and should have been entitled to an additional improvement period.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.

In October 2020, the DHS filed a petition alleging that the children’s father shot E.S. in the head while the petitioner and I.S. were also in the home. At the time of this incident, the father was on bond for charges of wanton endangerment and possession of a firearm by a prohibited person, and I.S. indicated that he had pointed the gun at the children many times before. Despite these issues, the petitioner asserted that the father’s gun was “legal,” and she claimed that she would frequently hide it from him because he “likes to clean the gun and play with it.” The petitioner further admitted to abusing drugs with the father.

At an adjudicatory hearing in January 2021, the petitioner admitted to abusing drugs, including heroin and cocaine. Ultimately, the court adjudicated the petitioner of having neglected the children. Thereafter, the court granted the petitioner a post-adjudicatory improvement period. During this improvement period, the petitioner tested positive for cocaine, marijuana, fentanyl, and morphine and failed to participate in multiple services, including parenting education and

¹ The petitioner appears by counsel Kerry A. Nessel. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Andrew Waight. Counsel Allison K. Huson 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”).

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

therapy. Further, the petitioner initially delayed participation in substance abuse treatment and, after having completed a short program, later admitted to continued drug abuse. Despite her apparent noncompliance, the circuit court permitted the petitioner's post-adjudicatory improvement period to continue and granted her a post-dispositional improvement period following a hearing in December 2021. At that time, the court cautioned the petitioner that she was "at the point where [she had] zero room for failure going forward." As the proceedings progressed, the petitioner demonstrated improved compliance and was eventually permitted to have unsupervised visits with the children. However, at a hearing in April 2022, the evidence established that the petitioner failed to comply with mental health services over a two-month period. The court also heard evidence that I.S. had concerns about returning to the petitioner's care.

In June 2022, the court held a final review hearing for the petitioner's post-dispositional improvement period. Although the DHS indicated that the petitioner had been substantially compliant with her case plan, it raised concerns with an incident that occurred during the petitioner's first overnight visit with the children. After the children reported that the petitioner's boyfriend stayed overnight and drove them in a vehicle, the petitioner was untruthful when the DHS questioned her about this man. She initially indicated that she did not know his name, but social media posts by both the man and the petitioner indicated that the two had been in a romantic relationship for an extended period. Further, the DHS discovered that the man had a prior conviction of driving under the influence and lacked a valid license. The petitioner accused the children of being "confused" about the man staying in the home overnight. The DHS was "very discourage[ed]" that the petitioner continued to demonstrate poor decision making. The DHS also explained I.S.'s concerns about returning home and his worry "that things would . . . be the way that they were before" with "a lot of strangers and men coming and going." When questioned about a recommendation for the petitioner's case, a DHS worker stated that it was "a very difficult situation as she has been substantially compliant[,] and we are at the very end of all the improvement period times that could be given because of kind of the delay in her seriously getting into treatment and taking things seriously when this case first started." Ultimately, the DHS worker indicated that the DHS was "not comfortable with the boys returning home at this time." The petitioner testified and admitted that she had been in a relationship with the man in question, but claimed it ended in January 2022. Ultimately, the court granted the petitioner an extension of her post-dispositional improvement period.

After conducting in camera interviews with E.S., then eleven years old, and I.S., then twelve years old, in August 2022, the court held a final dispositional hearing in January 2023. The petitioner continued to accuse the children of being confused about the man who stayed the night with them during the unsupervised visit, claiming that did not occur. Further, when questioned about I.S.'s refusal to communicate or visit with her since October 2022, the petitioner expressed disbelief and asserted that the child must have been coerced. When questioned about the shooting incident that led to the filing of the petition, the petitioner denied knowing that the father had the gun out of the safe and explained that she was "not to blame for any of that." The petitioner further clarified that her overnight visits with the children were restricted following the incident with the man who stayed in the home, but that her unsupervised visits with the children were further restricted after she upset E.S. by repeatedly questioning him about I.S. and the children's foster care arrangement. The petitioner denied responsibility for this incident and again accused E.S. of being "confused."

The court also heard from I.S.'s therapist, who detailed the severe anxiety and suicidal ideations that the child suffered as a result of "a history of mental abuse and . . . physical abuse" that he endured in the petitioner's care. According to I.S., the incident in which E.S. was shot was part of a pattern of behavior in which the father would punish the children by holding a gun to their heads and pulling the trigger. The therapist also discussed the stress that visiting with the petitioner put on I.S. and how the child described extreme relief when he was permitted to stop attending. In fact, after I.S.'s hair began falling out, he was diagnosed with alopecia as a result of his anxiety. I.S. also explained to the therapist that when he had an overnight visit with the petitioner, he was afraid of the man who stayed in the home and felt like the petitioner was not being honest with him. According to the therapist, I.S. expressed a strong preference to remain in his foster placement because of his fear of returning to the petitioner's care.

Finally, the court heard testimony from a Child Protective Services worker who recommended the termination of the petitioner's rights based on several factors. One was the extended nature of the proceedings and the fact that the petitioner "spent about a year of the case and of her improvement period until she actually started taking getting substance abuse treatment seriously." According to the witness, this was "time that [she] could have been working on reunification and focusing on the process with the boys." Another factor was the petitioner's dishonesty after exposing the children to an inappropriate individual during an overnight visit. Further, the DHS based this recommendation on I.S.'s anxiety as a result of contact with the petitioner and E.S.'s express preference for remaining in the foster placement with I.S. According to the witness, the DHS did not "have the confidence that [the petitioner] would not continue to make more bad decisions that affect the children's well-being if they were returned to her care." This was highlighted by the fact that the petitioner had only one overnight visit with the children because the DHS and guardian were not comfortable with her progress despite the proceedings being ongoing for two years.

In reaching disposition, the court noted that the case went beyond the applicable timeframes in an effort for the petitioner "to form a bond and for the children to come around during visitations." Noting that the petitioner "complied with many provisions of her family case plan," the court stressed that one critical provision she failed to comply with was "the continuing relationship" with her children. According to the court, the children were "traumatized by the possibility of being back in the [petitioner's] care and . . . home." The court concluded that there was no reasonable likelihood that the petitioner could substantially correct the conditions of abuse and neglect, given her failure to fully comply with the case plan, and that that the children's welfare required that termination of the petitioner's parental rights. Accordingly, the court terminated the petitioner's parental rights.³ The petitioner appeals from the dispositional order.

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 raises a single assignment of error in which she alleges that it was error to terminate her parental rights. First, the

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

petitioner argues that because she completed many of the terms of her case plan, the children should have been immediately returned to her care. However, her compliance notwithstanding, the evidence overwhelmingly demonstrated that the petitioner had not improved to the point that returning the children to her care was appropriate. As we have explained, when an improvement period concludes, “the court shall review the performance of the parents in attempting to attain the goals of the improvement period and shall, in the court’s discretion, determine whether . . . sufficient improvement has been made . . . to justify the return of the child.” Syl. Pt. 3, in part, *In re B.H.*, 233 W. Va. 57, 754 S.E.2d 743 (2014) (quoting Syl. Pt. 6, *In re Carlita B.*, 185 W. Va. 613, 408 S.E.2d 365 (1991)). Before this Court, the petitioner admits that she did not complete all the goals of her improvement period, and the record demonstrates that visits with the children did not progress to the point that the bond between the petitioner and the children was repaired. Indeed, the record shows that the petitioner’s relationship with both children deteriorated to the point that they no longer wished to return to her care, with I.S. especially demonstrating fear and anxiety over reunification. In short, the petitioner has not established that the circuit court abused its discretion.

Next, the petitioner argues that an additional improvement period was warranted, but this argument is without merit. As the circuit court noted, the petitioner’s participation in improvement periods was extended well beyond the statutory timeframes. *See* W. Va. Code § 49-4-610(9) (prohibiting, absent certain findings, any “combination of any improvement periods or extensions thereto [that] cause a child to be in foster care more than fifteen months of the most recent twenty-two months”). While the court permitted the petitioner to continue in her improvement period beyond this timeframe earlier in the proceedings, the record demonstrates that further extension was contrary to the children’s best interests after they remained in foster care for almost two years. Specifically, as the children continued in their foster placements, they became increasingly secure in their care. This Court has recognized that termination in such circumstances can be “a difficult task,” but we have instructed that “the trial court must accept the fact that the statutory limits on improvement periods . . . dictate that there comes a time for decision.” *State ex rel. Amy M. v. Kaufman*, 196 W. Va. 251, 260, 470 S.E.2d 205, 214 (1996). This is especially true considering that “a child deserves resolution and permanency in his or her life, and . . . part of that permanency must include at minimum a right to rely on his or her caretakers to be there to provide the basic nurturance of life.” *Id.* As the court correctly found, the children’s need for permanency outweighed the need for an additional improvement period.

Ultimately, we find no error in the termination of the petitioner’s parental rights. While it is true that the petitioner participated in many services, we have explained that “[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). Here, the children’s best interests overwhelmingly supported termination. Further, the court made the findings necessary for termination based upon substantial evidence. *See* W. Va. Code § 49-4-604(c)(6) (permitting termination of parental rights upon finding “there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future” and that termination is necessary for the welfare of the child).

For the foregoing reasons, we find no error in the decision of the circuit court, and its April 18, 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