

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re A.L.

No. 23-280 (Kanawha County 22-JA-321)

MEMORANDUM DECISION

Petitioner Mother B.R.¹ appeals the Circuit Court of Kanawha County’s April 17, 2023, order terminating her parental rights to A.L.,² arguing that the circuit court erred in terminating her parental rights instead of 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.

In July 2022, the DHS filed a petition alleging that the petitioner screened positive for fentanyl, methamphetamine, opiates, and THC when she gave birth to A.L. Additionally, the child demonstrated withdrawal symptoms and screened positive for fentanyl, methamphetamine, and amphetamine. The day after the child’s birth, the petitioner left the hospital against medical advice leaving no one to make decisions regarding the child’s care. When a Child Protective Services (“CPS”) worker interviewed the petitioner, she admitted to using drugs while she was at the hospital. Following a preliminary hearing held in August 2022, the circuit court ordered the petitioner to immediately enroll in an inpatient drug rehabilitation program lasting a minimum of six months. A court summary provided by the DHS in September 2022 stated that the petitioner had failed to keep in contact with the DHS and, to their knowledge, had not enrolled in any substance abuse treatment.

The circuit court held an adjudicatory hearing in September 2022. Testimony established that the petitioner tested positive for illicit substances when she gave birth to the child, that the

¹ The petitioner appears by counsel Sandra K. Bullman. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General James “Jake” Wegman. Counsel J. Rudy Martin 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”).

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

child demonstrated withdrawal symptoms, and that the petitioner left the child at the hospital with no one to consent to the child's medical care. A CPS worker testified that the petitioner admitted that she used drugs while in the hospital, shortly after the child's birth. The petitioner testified, denying that she admitted to using drugs in the hospital. She further testified that she had been admitted to a drug rehabilitation program but had not started the program yet. During the petitioner's testimony, the court inquired as to whether the petitioner was currently under the influence of any drugs. The petitioner denied using any drugs within the past twenty-four hours but admitted she would test positive for heroin if screened. The court adjudicated the petitioner as an abusing and neglecting parent.

A dispositional hearing was scheduled in December 2022. The petitioner's counsel moved to continue disposition to allow the petitioner time to attend an inpatient drug rehabilitation program. The petitioner's counsel proffered that the petitioner was scheduled to be admitted to an inpatient program later that day. The circuit court granted the motion, explaining that this continuance was a one-time opportunity. The court held a dispositional hearing in April 2023. The petitioner did not appear at the hearing but was represented by counsel. Documentary evidence established that the petitioner did not attend the drug rehabilitation program as directed and failed to keep in contact with the DHS since the last hearing. A DHS worker testified, recommending that the petitioner's parental rights be terminated due to her continued drug use and unwillingness to seek treatment.

Based on the evidence presented, the circuit court found that the petitioner had not corrected the problems that led to the filing of the petition, given that she had not followed through with a reasonable family case plan or other rehabilitative services. The court further found that termination of the petitioner's parental rights was in the best interest of the child and that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future. Accordingly, the court terminated the petitioner's parental rights to the child and denied any post-termination visitation.³ It is from this 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). The petitioner argues that it was error to terminate her parental rights instead of granting a less restrictive dispositional alternative. 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 part, *In re Kristin Y.*, 227 W. Va. 558, 712 S.E.2d 55 (2011). At the outset of this case, the petitioner was ordered to attend an inpatient drug rehabilitation program, and the record is clear that the petitioner never attended such program or completed any other substance abuse treatment. The petitioner was given a final opportunity to attend an inpatient program following her first dispositional hearing and still failed to attend the program. Accordingly, the

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

court had ample evidence upon which to base its finding that there was no reasonable likelihood the petitioner could correct the conditions of neglect in the near future. *See* W. Va. Code § 49-4-604(d)(3) (defining “no reasonable likelihood that conditions of neglect or abuse can be substantially corrected” to mean that the abusing parent did not “follow[] through with a reasonable family case plan or other rehabilitative efforts”). The 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 child’s best interest. *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.”).

The petitioner further argues that the circuit court should have allowed post-termination visitation. However, the circuit court found that post-termination visitation was not in the child’s best interest, and the petitioner makes no argument as to why this finding was erroneous. As such, the petitioner is entitled to no relief. *See* Sy. Pt. 5, *In re Christina L.*, 194 W. Va. 446, 460 S.E.2d 692 (1995) (holding that the evidence must indicate that post-termination visitation “would not be determinantal to the child’s well being and would be in the child’s best interest” to grant such visitation).

For the foregoing reasons, we find no error in the decision of the circuit court, and its April 17, 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