

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re C.H., B.H., and J.C.

No. 23-329 (Wood County CC-54-2022-JA-144, CC-54-2022-JA-145, and CC-54-2022-JA-146)

MEMORANDUM DECISION

Petitioner Mother A.B.¹ appeals the Circuit Court of Wood County’s May 4, 2023, order terminating her parental rights to C.H., B.H., and J.C., arguing that the DHS failed to establish that there was no reasonable likelihood that she could substantially correct the conditions of abuse and neglect.² Upon our review, we determine that oral argument is unnecessary and that a memorandum decision affirming, in part, and vacating, in part, the circuit court’s May 4, 2023, dispositional order and remanding for further proceedings is appropriate, in accordance with the “limited circumstances” requirement of Rule 21(d) of the West Virginia Rules of Appellate Procedure.

In June 2022, the DHS filed an abuse and neglect petition after Child Protective Services (“CPS”) and law enforcement discovered drug paraphernalia, including hypodermic needles, in the petitioner’s possession and within reach of C.H. and B.H. and observed marks on the petitioner’s arm indicative of intravenous drug use. The petition further detailed the petitioner’s extensive history of abuse and neglect proceedings predicated on her substance abuse and other issues, including domestic violence and the manufacture of methamphetamine, beginning in 2008. The petitioner’s custodial rights to J.C. were terminated during one of these prior proceedings, although C.H. and B.H. were ultimately returned to her custody. Based on her ongoing substance abuse issues, the DHS alleged that the petitioner abused and neglected the children, although it is

¹ The petitioner appears by counsel Lauren A. Estep. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Jason R. Trautwein. Counsel Michael D. Farnsworth Jr. 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).

important to stress that the petition did not include any allegations specific to J.C., who the DHS admitted was in the father's custody at the time the petition was filed.

Following an adjudicatory hearing in September 2022, the court found that the evidence demonstrated that the petitioner's "housing is inappropriate and unsafe" given that drug paraphernalia, "including burnt foil and needles" were "found within reach of the children." Further, the court found that the petitioner "has a long history of substance abuse and has shown evidence that she had continued in her substance abuse problem." Accordingly, the court found that the petitioner abused and neglected the children, although its finding in this regard was general to all three children and contained no specificity as to how J.C., a child who was not in the petitioner's custody at any point relative to this petition, was either abused and/or neglected.

At a hearing in November 2022, the circuit court granted the petitioner a post-adjudicatory improvement period. The petitioner was to be evaluated for family drug treatment court ("FTC") and undergo an updated substance abuse evaluation. However, the petitioner delayed submitting to the evaluation and, as a result, had not yet been accepted into FTC by a hearing in January 2023. Further, she was issued a citation for possession of a controlled substance following the November 2022 hearing. As a result of the petitioner's noncompliance, the DHS requested that the matter be set for disposition.

The final dispositional hearing took place in March 2023. The petitioner admitted to having abused methamphetamine twice during the proceedings, including once just days prior to the hearing. Further, the petitioner denied having been in possession of drug paraphernalia at several points throughout the proceedings, despite evidence from law enforcement to the contrary. The court also heard testimony from the individual who administered the petitioner's drug screens. According to this witness, the petitioner was noncompliant because she missed several screens. Further, the individual who supervised the petitioner's visits with the children testified to the petitioner's consistent tardiness that resulted in several visits being cancelled. The supervisor also detailed an incident in which the petitioner appeared to be under the influence during a visit. Finally, the court heard testimony from an officer with the Parkersburg Police Department who recounted his interaction with the petitioner in November 2022. Law enforcement had responded to a call of an "unconscious person slumped over the wheel in their vehicle," which was in reference to the petitioner. When the testifying officer arrived on the scene, another officer had already awoken the petitioner, who seemed "incoherent." During their investigation, law enforcement located a needle and two bags of what they suspected to be methamphetamine. As a result, the officer cited the petitioner for possession of a controlled substance.

Ultimately, the court found that the petitioner had been receiving services from the DHS since 2008, but that she failed to fully remedy her substance abuse issues. Noting the petitioner's demeanor while testifying, the court expressed "concern[] . . . as to her health and what is going on with her, but there's clearly something wrong and she needs to work on herself." Given that the petitioner's substance abuse issues persisted, the court concluded that "the children certainly should not be . . . require[d] to wait and be in a fluctuating and unstable situation. They need permanency." The court also expressed concern over the children's safety, given that the petitioner "makes many excuses . . . and blames others for her failure to improve." Accordingly, the court found that there was no reasonable likelihood that the petitioner could correct the conditions of

abuse and neglect in the near future and that termination of her parental rights was necessary for the children's welfare. As such, the court terminated the petitioner's parental rights to the children.³ It is from the dispositional 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). Further, we have explained that substantial disregard for, or frustration of, "the process established by the Rules of Procedure for Child Abuse and Neglect Proceedings and related statutes for the disposition of" abuse and neglect cases will result in "remand[] for compliance with that process." Syl. Pt. 5, in part, *In re Edward B.*, 210 W. Va. 621, 558 S.E.2d 620 (2001).

At the outset, we must address the circuit court's adjudication of the petitioner in regard to J.C.⁴ As we recently explained, the exercise of subject matter jurisdiction over a child in an abuse and neglect proceeding requires "the court [to] make specific factual findings explaining how each child's health and welfare are being harmed or threatened by the allegedly abusive or neglectful conduct of the parties named in the petition." Syl. Pt. 3, in part, *In re B.V.*, 248 W. Va. 29, 886 S.E.2d 364 (2023). Further, we explained that, "[d]ue to the jurisdictional nature of this question, generalized findings applicable to all children named in the petition will not suffice; the circuit court must make specific findings with regard to each child so named." *Id.* at 31, 886 S.E.2d at 366. In its November 9, 2022, adjudicatory order, the court made no specific findings as to how J.C. was abused and/or neglected with respect to the allegations in the June 2022 petition. Instead, it adjudicated all three children as abused and neglected based upon the conditions in the home, where J.C. did not reside, and as a result of ongoing substance abuse, to which the evidence did not indicate that J.C. was exposed. Indeed, as the DHS admits on appeal, J.C. was in the custody of the nonabusing father prior to the filing of the petition. Because there are no findings in the record specific to J.C. and how the petitioner is alleged to have abused and/or neglected this child, and in accordance with *In re B.V.*, the circuit court's November 9, 2022, order adjudicating the petitioner must be vacated as it pertains to J.C. only. Further, the court's May 4, 2023, order terminating the petitioner's parental rights must be vacated as it pertains to J.C. only. *See In re K.L.*, 247 W. Va. 657, 666, 885 S.E.2d 595, 604 (2022) ("[P]roper adjudication is a jurisdictional prerequisite to continuation of the proceedings." (citation omitted)). Accordingly, the matter must be remanded for the court to enter a new adjudicatory order satisfying these requirements regarding

³ The parental rights of the father of C.H. and B.H. were also terminated. The permanency plan for those children is adoption in the current placement. The permanency plan for J.C. is to remain in the custody of the nonabusing father.

⁴ While the petitioner does not challenge her adjudication in regard to J.C. on appeal, this Court, as more fully explained above, concludes that the petitioner's adjudication regarding J.C. requires vacation because the court did not make the findings necessary to exercise subject matter jurisdiction in regard to this child. "'This Court, on its own motion, will take notice of lack of jurisdiction at any time or at any stage of the litigation pending therein.' Syl. Pt. 2, *In re Boggs' Estate*, 135 W.Va. 288, 63 S.E.2d 497 (1951)." Syl. Pt. 2, *State ex rel. Universal Underwriters Ins. Co. v. Wilson*, 239 W. Va. 338, 801 S.E.2d 216 (2017).

J.C. and for further proceedings consistent with the applicable statutes and rules governing abuse and neglect proceedings.

However, as to the termination of the petitioner’s parental rights to C.H. and B.H., we find no error. Before this Court, the petitioner raises a single assignment of error in which she alleges that evidence of her prior abuse and neglect proceedings could not be the basis for the circuit court’s finding that there was no reasonable likelihood that she could substantially correct the conditions of abuse and neglect. This argument is entirely without merit, as this evidence was clearly relevant to the issue of whether the petitioner could correct her substance abuse—the same issue upon which all four proceedings were predicated—in the near future. While it may be true that the petitioner previously successfully completed an improvement period and regained custody of C.H. and B.H., the overarching evidence demonstrates an extended history of repeated substance abuse issues. Further, the petitioner ignores the overwhelming evidence regarding her conduct during *these* proceedings, including her admitted drug use just days prior to the dispositional hearing and criminal citation for possession of a controlled substance. Critically, the court found that the petitioner refused to accept responsibility for her actions and, instead, blamed others, which strongly supports the court’s finding that there was no reasonable likelihood that the petitioner could substantially correct the conditions of abuse and neglect. *See In re Timber M.*, 231 W. Va. 44, 55, 743 S.E.2d 352, 363 (2013) (“Failure to acknowledge the existence of the problem . . . results in making the problem untreatable” (quoting *In re Charity H.*, 215 W. Va. 208, 217, 599 S.E.2d 631, 640 (2004))). Given that the evidence overwhelmingly supported the circuit court’s findings regarding the petitioner’s inability to correct the conditions of abuse and neglect and that the children’s welfare required termination, we conclude that the court did not err in terminating the petitioner’s parental rights to C.H. and B.H. *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 vacate, in part, the circuit court’s November 9, 2022, adjudicatory order and May 4, 2023, dispositional order inasmuch as they pertain to J.C. only; and we remand this matter to the circuit court for further proceedings, including but not limited to the entry of an order setting out the requisite findings as to whether J.C. met the statutory definitions of an abused or neglected child. *See* W. Va. Code § 49-1-201. The court is further directed to undertake any additional proceedings consistent with the applicable rules and statutes. With respect to C.H. and B.H., the circuit court’s May 4, 2023, order is affirmed. The Clerk is directed to issue the mandate contemporaneously herewith.

Affirmed, in part, Vacated, in part, and Remanded, with directions.

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