

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re G.C.

No. 23-240 (Cabell County 22-JA-148)

MEMORANDUM DECISION

Petitioner Mother A.A.¹ appeals the Circuit Court of Cabell County’s March 31, 2023, order terminating her parental, custodial, and guardianship rights to G.C.,² arguing that the circuit court erred in finding that the DHS made reasonable efforts to reunify the family, denying her an improvement period, and terminating her rights. 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 September 2022, the DHS filed an abuse and neglect petition against the petitioner based upon physical abuse, exposure to domestic violence, failure to provide safe and adequate housing, failure to protect, and failure to seek medical care. According to the petition, the then-five-year-old child arrived at the emergency room with second-degree burns on her back and shoulder. Upon examination, it was discovered that the child had an “abnormal appearance of the brain,” indicating that she had been shaken or thrown. The child also had bruising on her face, neck, and ears; a busted lip; a shoeprint shaped bruise on her buttocks; a cigarette burn on her back; and older bruises on her body that appeared to be in various stages of healing. When questioned by hospital staff and DHS workers, the child and the petitioner offered identical, albeit impossible explanations of the child’s injuries. Hospital staff received a report from a bystander who overheard the petitioner tell the child, “They won’t take you away, but you have to say this.” The child reported that she was burned from an overheated shower and that a puppy jumping on her caused the other injuries.

¹ The petitioner appears by counsel Sara E. Chapman. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Deputy Attorney General Steven R. Compton. Counsel Allison K. Huson 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).*

She also reported that she “always has bruises” but could not explain why. Additionally, the child stated that she regularly received physical discipline in the bathroom.

A contested adjudicatory hearing was held in November 2022. The DHS entered into evidence photographs of the child’s injuries that were taken in the hospital. The petitioner admitted to coaching the child while at the hospital and lying to the hospital staff and DHS workers; confirmed that only she and her then-boyfriend, J.B., had access to the child; stated that she was not present when the child was burned; and explained that she was unaware of the child’s injuries aside from the burn. The petitioner further admitted to using methamphetamine “one time” in the home, that J.B. was “a recovering heroin addict,” and the home was infested with roaches and lacked flooring. The petitioner also explained that she had only been in a relationship with J.B. for “approximately a month” and that J.B. had previously been “violent” with her. J.B. then testified that the child burned herself in the shower and denied intentionally hurting the child. J.B. further testified that the petitioner regularly used drugs and that she left the child in his care “half the [] time.” J.B. admitted that he had previously seen the petitioner jerk, smack, and hit the child with a hairbrush. The circuit court found that, based on the evidence, the petitioner “knowingly inflict[ed] physical injury on [the child], as well as expos[ed] the respondent child to domestic violence, fail[ed] to provide safe and adequate housing, and fail[ed] to protect the respondent child from [J.B.]” As a result, the circuit court adjudicated the petitioner as an abusive and neglectful parent. The petitioner filed a motion for a post-adjudicatory improvement period.

The dispositional hearing was held in January 2023. The petitioner testified that she did not hurt the child and did not know for certain whether J.B. physically abused the child. The circuit court found that the evidence of the petitioner’s coaching of the child, the child’s severe injuries, and the petitioner’s failure to protect the child was sufficient evidence to justify denying the petitioner’s request for an improvement period. The circuit court further found that there was no reasonable likelihood that the conditions of abuse and neglect could be corrected in the near future, and the best interest of the child required termination of the petitioner’s rights. Accordingly, the circuit court terminated the petitioner’s parental, custodial, and guardianship rights.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). Before this Court, the petitioner first argues that she should have been granted an improvement period because she was likely to participate. West Virginia Code § 49-4-610(2)(B) places the burden on the petitioner to demonstrate by clear and convincing evidence that she was likely to fully participate in the improvement period. It is well-established that a parent’s failure to acknowledge the abuse or neglect is determinative as to whether an improvement period should be granted. We have explained that

[i]n order to remedy the abuse and/or neglect problem, the problem must first be acknowledged. Failure to acknowledge the existence of the problem, i.e., the truth

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

of the basic allegation pertaining to the alleged abuse and neglect or the perpetrator of said abuse and neglect, results in making the problem untreatable and in making an improvement period an exercise in futility at the child's expense.

In re Timber M., 231 W. Va. 44, 55, 743 S.E.2d 352, 363 (2013) (quoting *In re Charity H.*, 215 W. Va. 208, 217, 599 S.E.2d 631, 640 (2004)). The record shows that the petitioner denied abusing the child throughout the proceedings. Even on appeal, the petitioner *continues* to assert that she did not inflict injuries on the child or knowingly leave the child with someone who would injure her. Because the petitioner failed to acknowledge the existence of the problem, she failed to demonstrate that she was likely to fully participate in an improvement period. Therefore, the circuit court did not err in denying the petitioner an improvement period.

The petitioner next argues that the DHS failed to make reasonable efforts to reunify the family because she did not receive any services from the DHS. According to West Virginia Code § 49-4-604(c)(7)(A),

[f]or purposes of the court's consideration of the disposition custody of a child pursuant to this subsection, the department is not required to make reasonable efforts to preserve the family if the court determines: . . . The parent has subjected the child, another child of the parent or any other child residing in the same household or under the temporary or permanent custody of the parent to aggravated circumstances which include, but are not limited to, abandonment, torture, chronic abuse, and sexual abuse.

The record demonstrates that the child was chronically abused. The evidence showed that the child was severely injured by nonaccidental trauma, that the injuries were in various stages of healing, that the injuries could have only been inflicted by the petitioner or J.B., and that the child was coached into repeating a fabricated explanation of her injuries to medical staff and DHS workers. Furthermore, the petitioner was steadfast in her contention that she did not know the cause of the child's bruising and head trauma and failed to recognize or admit to her role in the child's injuries. In view of those circumstances, we see no reversible error and the petitioner is entitled to no relief in this regard.

Finally, the petitioner argues that the circuit court erred in terminating her parental rights. In support of this argument, the petitioner contends that the "circumstances could have been corrected" and that she "demonstrated that she was willing to work with the [DHS]." In addition, the petitioner maintains that she was not present when the child was burned, and there was no evidence that she inflicted injuries on the child. We find no merit in this argument. West Virginia Code § 49-4-604(c)(6), directs circuit courts to terminate an abusing parent's parental rights "[u]pon a finding that there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future and, when necessary for the welfare of the child." The statute defines "no reasonable likelihood that conditions of abuse and neglect can be substantially corrected" to mean that "[t]he abusing parent or parents have repeatedly or seriously injured the child physically or emotionally, . . . and the potential for further abuse and neglect are so great as to preclude the use of resources to mitigate or resolve family problems, or assist the abusing parent or parents in fulfilling their responsibilities to the child." W. Va. Code § 49-4-604(d)(5). Here, in

addition to the second-degree burn, the child had severe injuries in various stages of healing throughout her body suggesting a chronic pattern of abuse. The chronic abuse coupled with the petitioner's refusal to acknowledge and accept responsibility for the child's injuries is clear and convincing evidence that the conditions of abuse and neglect could not be substantially corrected in the near future. As such, the petitioner is entitled to no relief.

For the foregoing reasons, we find no error in the decision of the circuit court, and its March 31, 2023, order is hereby affirmed.

Affirmed.

ISSUED: June 10, 2024

CONCURRED IN BY:

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