

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re A.J.

No. 23-241 (Braxton County CC-04-2023-JA-1)

MEMORANDUM DECISION

Petitioner Mother A.K.¹ appeals the Circuit Court of Braxton County’s April 5, 2023, order terminating her parental and custodial rights to A.J., arguing that termination was erroneous because less restrictive alternatives were available.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 January 2023, the DHS filed a petition alleging that the child, A.J., was born exhibiting symptoms of drug withdrawal. At the hospital where she gave birth, the petitioner tested positive for fentanyl and amphetamine. The petition alleged that the petitioner’s drug addiction affected her ability to properly parent. The petition also detailed the petitioner’s history with Child Protective Services, noting that the petitioner’s parental and custodial rights to two other children were involuntarily terminated due to the petitioner’s drug addiction and her failure to provide the children with suitable housing. Shortly after the initial petition, the DHS filed an amended petition that included the results of the child’s umbilical cord blood tests, which were positive for amphetamine, methamphetamine, fentanyl, norfentanyl, and cannabinoids.

Following the filing of the petition, the petitioner submitted a written motion for an improvement period. In February 2023, the guardian filed an objection to the petitioner’s motion, asserting that the petitioner continually tested positive for marijuana and buprenorphine. At that time, the petitioner had not provided evidence of a medical marijuana card or a prescription for

¹ The petitioner appears by counsel David Karickhoff. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Katica Ribel. Counsel Julia R. Callaghan appears as the child’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).

buprenorphine. The guardian stated that there was no reason to believe that the petitioner would benefit from services, as she had previously been given services for the same issues in her prior abuse and neglect proceedings. In February 2023, the petitioner stipulated that her drug use affected her ability to properly parent the child. Thus, the court adjudicated her of abusing and neglecting the child. The court denied the petitioner's motion for an improvement period because of her unsuccessful improvement periods in prior abuse and neglect proceedings.

The dispositional hearing was held in April 2023, wherein the DHS presented multiple witnesses in support of its request to terminate the petitioner's rights. At the conclusion of the evidence, the circuit court entered an order in which it found that the petitioner previously participated in improvement periods and had her parental rights terminated for the same issues as the case at hand. Then, the court found that the petitioner had a severe drug addiction that affected her ability to parent the child and that her relationship with the child's father was dysfunctional and unhealthy for the child. Finally, the court found that there was no reasonable likelihood that the petitioner could substantially correct the conditions that led to the filing of the initial petition, there was no less restrictive alternative available in this case, and termination was in the child's best interests. Ultimately, the court terminated the petitioner's parental and custodial rights. It is from the dispositional order that the petitioner appeals.³

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 argues solely that that a post-dispositional improvement period was the appropriate disposition.⁴ The court may grant a post-dispositional improvement period when the parent demonstrates they are likely to fully participate. W. Va. Code § 49-4-610(3)(B). However, the petitioner is not entitled to the relief she seeks on appeal. First, the petitioner has not argued or demonstrated that she has satisfied the statutory criteria for the award of a post-dispositional improvement period. Second, the petitioner's reliance of our prior opinion in *In re Jonathan G.* is misplaced. Our review of the record demonstrates that the petitioner's continued substance abuse and inability to benefit from improvement periods in past proceedings clearly established that an improvement period was not warranted.

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

⁴ In support of this argument, the petitioner cites to West Virginia Code § 49-6-5, a statute that has not been in effect since 2015.

To support her argument, the petitioner cites to Syllabus Point 10 in *In re Jonathan G.*⁵ and contends that the circuit court recognized a strong emotional bond between herself and the child.⁶ See Syl. Pt. 10, 198 W. Va. 716, 482 S.E.2d 893 (1996). However, the petitioner’s reliance on *In re Jonathan G.* is misplaced, as the syllabus point that the petitioner references discusses consideration of the parent-child bond in the limited context of post-termination visitation and does not apply this analysis to the question at issue in this case regarding the termination of parental and custodial rights. Furthermore, although the petitioner claims that the circuit court found that a strong emotional bond existed between her and the child, she does not cite to any portion of the record where the court found there was a strong emotional bond, nor can we find any such references in the record. The child at issue was removed from the petitioner’s custody at the hospital shortly after the child’s birth; therefore, the development of a strong emotional bond in such a brief span of time is unlikely given that “[o]ur cases indicate that a close emotional bond generally takes several years to develop.” See *In re Alyssa W.*, 217 W. Va. 707, 711, 619 S.E.2d 220, 224 (2005). Furthermore, upon substantial evidence, the circuit court concluded that there was no reasonable likelihood that the petitioner could substantially correct the conditions of abuse and neglect in the near future, and that the child’s best interest necessitated termination. As we have explained, termination of parental and custodial rights is appropriate upon these findings. See Syl. Pt. 5, *In re Kristin Y.*, 227 W. Va. 558, 712 S.E.2d 55 (2011).

For the foregoing reasons, we find no error in the decision of the circuit court, and its April 5, 2023, order is hereby affirmed.

Affirmed.

ISSUED: June 10, 2024

⁵ “When parental rights are terminated due to neglect or abuse, the circuit court may nevertheless in appropriate cases consider whether continued visitation or other contact with the abusing parent is in the best interest of the child. Among other things, the circuit court should consider whether a close emotional bond has been established between parent and child and the child’s wishes, if he or she is of appropriate maturity to make such request. The evidence must indicate that such visitation or continued contact would not be detrimental to the child’s well being and would be in the child’s best interest.” Syl. Pt. 5, *In re Christina L.*, 194 W.Va. 446, 460 S.E.2d 692 (1995).

Syl. Pt. 10, *In re Jonathan G.*, 198 W. Va. 716, 482 S.E.2d 893 (1996).

⁶ It is important to stress that the petitioner’s brief fails to comply with our Rules of Appellate Procedure in several ways, most critically in its failure to cite controlling authority or include citations to the appendix record. See W. Va. R. App. P. 10(c). While we could refuse to address the petitioner’s assignment of error due to such noncompliance, we nonetheless resolve this matter on its merits.

CONCURRED IN BY:

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