

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re C.F., D.C., J.J., and S.J.

No. 23-250 (Roane County CC-44-2022-JA-51, CC-44-2022-JA-52, CC-44-2022-JA-53, and CC-44-2022-JA-54)

MEMORANDUM DECISION

Petitioner Mother N.J.¹ appeals the Circuit Court of Roane County’s March 29, 2023, order terminating her parental rights to C.F., D.C., J.J., and S.J., arguing that an improvement period or a less restrictive alternative was the appropriate disposition.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 May 2022, the DHS filed a petition alleging that the children’s welfare was harmed and threatened by the petitioner’s present refusal or inability to provide them with necessary food, clothing, shelter, supervision, medical care, or education. The petition noted that the petitioner was already receiving services from the DHS pursuant to an in-home safety plan. The petition further alleged that the petitioner committed medical neglect by waiting three days to take C.F. to the hospital after noticing shaking of his limbs indicative of seizures. The child’s treating physician recommended that the child not be returned to the petitioner’s care as a result of her home being in “deplorable” condition due to trash, excessive junk, a live fowl living in the home, and structural safety concerns. The petition also alleged that the children’s fathers failed to protect their children from the mother’s neglect.

In August 2022, the petitioner participated in a psychological evaluation. The evaluator noted that the petitioner “perceive[d] little need to make changes to her current behaviors,” that

¹ The petitioner appears by counsel Jeremy B. Cooper. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General James W. Wegman. Counsel Erica Brannon Gunn 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).*

her cognitive abilities were in the lower-extreme range of ability, and that her adaptive skills were markedly impaired to the extent that her parenting abilities were affected. During the evaluation, the petitioner admitted that, rather than correcting the unsanitary conditions in the home, she removed S.J. from a school readiness program that raised concerns about the child's unsanitary state and a bedbug found on his clothes. Overall, the evaluator assessed the petitioner's prognosis for improved parenting as "extremely poor" and "strongly believe[d] that children in the sole care of [the petitioner] are at risk of neglect and abuse." The evaluator further opined that given the petitioner's failure to benefit from previous services and her cognitive limitations, she likely would not benefit from interventions to improve her parenting.

In August 2022, the circuit court held an adjudicatory hearing and entered an accompanying order. The petitioner stipulated to failing to provide C.F. with necessary medical care and failing to provide all the children suitable shelter. Thus, the court adjudicated her of neglecting the children.³ Shortly thereafter, the petitioner submitted a written motion for a post-adjudicatory improvement period.

In January 2023, the circuit court held a dispositional hearing where the petitioner was observed shaking her head and expressing displeasure when a witness revealed that she was living with a new boyfriend. The petitioner testified that the witness was not supposed to reveal that information. The petitioner's mother and aunt testified that the petitioner's home was appropriate and denied medical neglect, directly contradicting the petitioner's own stipulation. The court, however, found this testimony was not credible or reliable. The petitioner further testified that the service provider who administered her parenting and life skills course "hasn't done anything." She also testified that she lived in at least three different residences throughout the pendency of the case. The service providers who testified expressed concerns that the petitioner could not fully comprehend the contents of her parenting and life skills classes. One service provider testified that she observed no progress throughout the nine months the petitioner received services. Another service provider testified that the petitioner often failed to bring diapers to visitations and would blame others for not reminding her to do so. Based upon the evidence presented, the court found that termination was in the children's best interest and there were no additional services that could assist the petitioner in gaining adequate parenting skills, especially after she participated in nine months of services. Moreover, the court found that the petitioner's intellectual deficiencies constituted an insurmountable barrier to her achieving adequate parenting capabilities and there was no reasonable likelihood that she could substantially correct the conditions of neglect in a reasonable time. Ultimately the court terminated the petitioner's parental and custodial rights and denied her motion for an improvement period. It is from the dispositional order that the petitioner appeals.⁴

³ The circuit court's order adjudicated the petitioner of abusing and neglecting the children; however, the petitioner stipulated to neglect due to a failure to provide medical care and shelter, which falls under the definition of neglect. *See* W. Va. Code § 49-4-601. Thus, we discuss only neglect.

⁴ The fathers' parental rights were also terminated except D.C.'s father. The permanency plan for S.J., J.J., and C.F is adoption in the current placement. D.C.'s permanency plan is reunification with his father.

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 that the DHS did not make reasonable efforts to reunify the family because the petitioner was not afforded an improvement period. However, the petitioner conflates the DHS's obligation to make reasonable efforts with the court's ability to grant an improvement period if it saw fit. *See* W. Va. Code § 49-4-604(c)(7) (absolving the DHS of its responsibility to "make reasonable efforts to preserve the family" in certain circumstances not present in the current matter); *See also In re Emily*, 208 W. Va. 325, 336, 540 S.E.2d 542, 553 (2000) ("[A] parent charged with abuse and/or neglect is not unconditionally entitled to an improvement period."). Further, the petitioner overlooks nine months of services that the DHS provided her, ignores her lack of progress in those services, and disregards testimony from service providers who observed her minimal participation and lack of comprehension of the services provided. To support her argument, the petitioner references flattering testimony by her family members and states that the circuit court discounted that testimony. The court specifically found that testimony was not credible or reliable, which is a determination entirely within the court's purview. We have consistently asserted that "[a] reviewing court cannot assess witness credibility through a record. The trier of fact is uniquely situated to make such determinations and this Court is not in a position to, and will not, second guess such determinations." *Michael D.C. v. Wanda L.C.*, 201 W. Va. 381, 388, 497 S.E.2d 531, 538 (1997). We decline to disturb the circuit court's credibility determinations on appeal.

The petitioner also argues that termination was erroneous because it was predicated upon her intellectual deficiencies. However, we have explained as followed:

"Where allegations of neglect are made against parents based on intellectual incapacity of such parent(s) and their consequent inability to adequately care for their children, termination of rights should occur only after the social services system makes a thorough effort to determine whether the parent(s) can adequately care for the children with intensive long-term assistance. In such case, however, the determination of whether the parents can function with such assistance should be made as soon as possible in order to maximize the child(ren)'s chances for a permanent placement." Syllabus point 4, *In re Billy Joe M.*, 206 W. Va. 1, 521 S.E.2d 173 (1999).

Syl. Pt. 4, *In re Maranda T.*, 223 W. Va. 512, 678 S.E.2d 18 (2009). After the petitioner participated in an in-home safety plan with no success, the DHS provided her with nine months of services during the proceedings, yet she made virtually no progress and failed to obtain appropriate housing. Based on the evidence, the court specifically held that there were no services that could help her attain adequate parenting skills, and we conclude that this finding was in keeping with the authority referenced above and the direction to assess a parent's ability to function with assistance as quickly as possible.

Furthermore, the circuit court found that termination was in the children's best interests and that there was no reasonable likelihood that the petitioner could substantially correct the conditions of abuse and neglect in the near future. As we have explained, termination of parental

rights is appropriate upon these findings. Syl. Pt. 5, in part, *In re Kristin Y.*, 227 W. Va. 558, 712 S.E.2d 55 (2011) (quoting Syl. Pt. 2, *In re R.J.M.*, 164 W. Va. 496, 266 S.E.2d 114 (1980)). We decline to disturb the circuit court's findings.

For the foregoing reasons, we find no error in the decision of the circuit court, and its March 29, 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