

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re S.H.-1, S.H.-2, and R.H.

No. 23-302 (Hampshire County CC-14-2022-JA-6, CC-14-2022-JA-7, and CC-14-2022-JA-8)

MEMORANDUM DECISION

Petitioner Mother C.C.¹ appeals the Circuit Court of Hampshire County’s May 12, 2023, order terminating her parental rights to S.H.-1, S.H.-2, and R.H.,² arguing that the circuit court erred by terminating her parental rights without granting her a post-adjudicatory improvement period. 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 February 2022, Child Protective Services (“CPS”) received a referral regarding unsafe conditions in the home and inappropriate touching. A CPS worker interviewed S.H.-1, then twelve years old, who disclosed that J.H.³ touched her inappropriately on her chest and buttocks several times. At the time, the children were splitting time between J.H.’s home and the petitioner’s home, primarily residing with J.H. S.H.-1 further disclosed that she did not primarily live with the petitioner because the petitioner overdosed on “heroin or something.” S.H.-1 also reported not having clean water and clean clothes at home. The children later participated in forensic interviews, where S.H.-1 made similar disclosures. During his forensic interview, R.H., then five years old, disclosed that the last time they stayed with the petitioner, he saw the petitioner’s boyfriend

¹ The petitioner appears by counsel Jonie E. Nelson. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Lee Niezgoda. Counsel Joyce E. Stewart 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).

³ Prior to the petition’s filing and throughout almost the entirety of the proceedings below, J.H. was believed to be the father of all three children, as he was listed as the father on the children’s birth certificates. At the end of the proceedings below, the petitioner called into question J.H.’s paternity, at which point the circuit court ordered the parties to establish paternity for the children. However, the later investigation of paternity has no effect on the petitioner’s appeal here.

“humping on her and it was disgusting.” A CPS worker interviewed the petitioner, who admitted to overdosing on carfentanil. She reported that J.H. would never put the children in danger and that she did not see any issues with the home in which he and the children lived. Based on the foregoing, the DHS filed an abuse and neglect petition in February 2022.

In April 2022, the court ordered the petitioner to report for drug testing. On April 4, 2022, the petitioner provided a urine sample that was the wrong temperature, so a blood test was conducted. The petitioner tested positive for methamphetamine. On April 20, 2022, the petitioner again provided a urine sample that was the wrong temperature; however, the sample was positive for THC. The DHS filed an amended petition in May 2022 reflecting the petitioner’s failed drug tests. A second forensic interview was conducted with S.H.-2, then eleven years old, where S.H.-2 disclosed sexual abuse by J.H. She also disclosed that she was aware the petitioner overdosed. The DHS filed a second amended petition in July 2022 reflecting the additional allegations.

The circuit court held an adjudicatory hearing in August 2022. Testimony presented showed that the children gave credible disclosures in their forensic interviews, that J.H. inappropriately touched both S.H.-1 and S.H.-2 on multiple occasions, and that the conditions of J.H.’s home, where the children resided, were deplorable and unsafe. A CPS worker testified that the children disclosed witnessing the petitioner’s sexual encounters. Another CPS worker testified that the petitioner continued testing positive for illicit substances and had attempted to falsify drug screens. The worker further testified that the petitioner failed to attend multidisciplinary team (“MDT”) meetings and that she continued to deny having a drug problem, stating that she did not need services. The petitioner testified, denying any drug use and positing that her positive results may be due to chemical exposures at her work. She further testified that she did not believe the children observed any of her sexual encounters or that J.H. touched the children inappropriately. Regarding the conditions of J.H.’s home, she testified that she did not believe the home was unsafe and believed the children were rebelling by not keeping the house clean. Based on the evidence presented, the circuit court adjudicated the petitioner as an abusing and neglecting parent. Although the petitioner previously filed a written motion for a post-adjudicatory improvement period, the court did not address this motion at this time.

The circuit court held several dispositional hearings, culminating in a final hearing in April 2023. A provider testified that the petitioner missed several drug screens and continued to test positive for illicit substances, although the petitioner denied using any illicit substances. A CPS worker testified that the DHS received no contact from the petitioner in the past five months. The petitioner testified that she did not believe she needed to attend any drug rehabilitation and did not have a drug problem. She reiterated her disbelief of the children’s disclosures regarding sexual abuse. Based on the evidence, the circuit court found that the petitioner failed to acknowledge her substance abuse problem, the adverse impact it had on her children, and how the deplorable conditions of J.H.’s home were detrimental to the children and endangered their health and welfare. The court further found that, because of this failure to accept responsibility or wrongdoing, an improvement period would be an exercise in futility at the expense of the children and that the petitioner failed to demonstrate that she would be likely to comply with an improvement period. Finally, the court found there was no reasonable likelihood the petitioner could correct the conditions of abuse and neglect in the near future and that termination was in the best interests of

the children. Accordingly, the court terminated the petitioner's parental rights to the children.⁴ 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 the circuit court erred by terminating her parental rights without granting her a post-adjudicatory improvement period. West Virginia Code § 49-4-610(2) provides that a post-adjudicatory improvement period may be granted where a parent "demonstrates, by clear and convincing evidence, that the [parent] is likely to fully participate in the improvement period." Further, we have previously 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 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 is replete with the petitioner's failure to acknowledge her substance abuse issues, the sexual abuse suffered by the children, and the deplorable conditions of the home where the children resided. Further, the petitioner missed MDT meetings, failed to remain in contact with the DHS, and consistently tested positive for illicit substances throughout the case. Thus, we find that the circuit court did not err by denying the petitioner an improvement period. *See In re Tonjia M.*, 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002) ("The circuit court has the discretion to refuse to grant an improvement period when no improvement is likely."). The circuit court terminated the petitioner's parental rights upon findings that termination was in the best interests of the children and there was no reasonable likelihood that the conditions of neglect could be corrected in the near future, and these findings were well-supported by the record. Accordingly, we find no error. *See* W. Va. Code § 49-4-604(c)(6) (permitting circuit court to terminate parental rights upon finding no reasonable likelihood conditions of neglect can be substantially corrected in the near future and when necessary for child's welfare).

For the foregoing reasons, we find no error in the decision of the circuit court, and its May 12, 2023, order is hereby affirmed.

Affirmed.

ISSUED: June 10, 2024

⁴ J.H.'s parental and custodial rights were terminated. The children are placed in a kinship placement while the circuit court continues proceedings regarding the suspected biological fathers.

CONCURRED IN BY:

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