

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re G.A. and M.B.

No. 23-382 (Mercer County CC-28-2019-JA-91 and CC-28-2019-JA-92)

MEMORANDUM DECISION

Petitioner Mother C.A.¹ appeals the Circuit Court of Mercer County’s April 27, 2023, order terminating her custodial rights to G.A. and M.B., arguing that the circuit court erred by failing to impose a less restrictive alternative 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.*

This matter was previously before this Court wherein the petitioner appealed the circuit court’s termination of her custodial rights to G.A. and M.B. By memorandum decision, this Court vacated the circuit court’s order terminating her custodial rights due to the order’s lack of required findings and remanded the matter with instructions to enter a new dispositional order containing the required findings of fact and conclusions of law. *See In re G.A. and M.B.*, No. 22-0332, 2023 WL 1992170 (W. Va. Feb. 14, 2023) (memorandum decision). The circuit court entered a new dispositional order on remand, which the petitioner now appeals.

The proceedings below began in August 2019, when the DHS filed an abuse and neglect petition alleging that the petitioner abused drugs and failed to seek treatment for her mental health issues.³ Following a preliminary hearing, the court allowed G.A. and M.B. to be returned to the

¹ The petitioner appears by counsel P. Michael Magann. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Katica Ribel. Counsel E. Raeann Osborne appears as the children’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).*

³ In addition to G.A. and M.B., the petition also named the petitioner’s two older children, S.P. and K.P., and an amended petition was later filed making additional allegations regarding

petitioner's physical custody at the recommendation of the DHS. The circuit court granted the petitioner a preadjudicatory improvement period and ordered her to drug screen. The terms of the improvement period required the petitioner to maintain stable housing and employment, cooperate with services, and address mental health concerns by completing a psychological evaluation and following any resulting recommendations.

In September 2020, the circuit court held an adjudicatory hearing. After hearing testimony from case workers and service providers, the court adjudicated the petitioner based on her neglect of G.A. and M.B. and noted her failure to adequately address her mental health issues during the preadjudicatory improvement period. However, the court allowed the children to continue residing with the petitioner and granted her a post-adjudicatory improvement period with the same terms and conditions.

In August 2021, the circuit court held a hearing where testimony of DHS workers revealed that the petitioner had stable housing and employment, was seeking mental health treatment for anxiety, and doing well in parenting classes. However, testimony also revealed the petitioner was not receiving mental health treatment for her bipolar and personality disorders, as recommended by her psychological evaluation, and was not participating in drug screening. Based upon the recommendation of the DHS and guardian, the circuit court granted the petitioner a post-dispositional improvement period and ordered her to resume weekly drug screening and participate in mental health treatment addressing the recommendations of the psychological evaluation. The court also ordered a second psychological evaluation. In November 2021, the court authorized the removal of the children from the petitioner's home after she tested positive for methamphetamine.

The circuit court held dispositional hearings in February and March 2022. Testimony established that the petitioner was employed, maintained stable housing, participated in visitation, and completed parenting classes. However, testimony also revealed the petitioner tested positive for illicit drugs ten times. A forensic toxicologist testified that the petitioner disputed her positive drug screen results for methamphetamine, claiming a "Vick's vapor rub inhaler" caused false positives. The toxicologist completed further testing to confirm the petitioner's test results were consistent with prescription or illicit methamphetamine use rather than any compounds contained in "Vick's vapor rub."

Although the petitioner was participating in some therapy, her therapist testified that she frequently missed appointments and the gaps in sessions made treatment difficult. The therapist also testified that the petitioner failed to take responsibility for her positive drug screens. The evaluator who completed both of the petitioner's forensic psychological evaluations testified that he diagnosed the petitioner with bipolar disorder, post-traumatic stress disorder, and a mild substance abuse disorder. He recommended both behavioral therapy and psychiatric treatment. Between the petitioner's first and second evaluation, the evaluator opined that the petitioner made only "slight improvement" and that it was unlikely she would achieve stability in the near future

those children. This Court previously affirmed the termination of the petitioner's custodial rights to S.P. and K.P., and those children are not at issue in this appeal. *See In re S.P. and K.P.*, No. 21-0746, 2022 WL 710483, at *6 (W. Va. Mar. 9, 2022) (memorandum decision).

given her failure to participate in treatment and failure to take psychiatric medication to stabilize her mood. The petitioner testified and denied having a drug problem and testing positive for methamphetamine. She further stated that she stopped taking her psychiatric medication because “it was messing with [her] ability to parent.”

The circuit court entered an order on March 29, 2022, terminating the petitioner’s custodial rights to G.A. and M.B. The petitioner appealed this order, and this Court vacated the order and remanded the matter for entry of a sufficient dispositional order. *See In re G.A. and M.B.*, No. 22-0332, 2023 WL 1992170, at *4 (W. Va. Feb. 14, 2023) (memorandum decision). On remand, the circuit court entered a new dispositional order on April 27, 2023, terminating the petitioner’s custodial rights to the children. In this order, the court found that the petitioner failed to comply with the recommendations of the psychological evaluations, as required by the case plan, and stopped taking her psychiatric medication; failed to consistently attend therapy; failed to comply with drug screens and tested positive for illicit substances ten times; failed to take responsibility for the circumstances giving rise to this case; and continued to deny her drug use. Therefore, the court found that the conditions of abuse or neglect could not be substantially corrected in the near future and that termination of her custodial rights was in the best interest of the children. Accordingly, the court terminated the petitioner’s custodial 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 custodial rights as opposed to ordering a less restrictive dispositional alternative, such as returning the children to her custody with any additional services deemed necessary. However, the petitioner’s argument ignores our prior holding that circuit courts may terminate custodial rights “without the use of intervening less restrictive alternatives when it is found that there is no reasonable likelihood under [West Virginia Code § 49-4-604(c)(6)] . . . that conditions of neglect or abuse can be substantially corrected.” 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)). There is “[n]o reasonable likelihood that conditions of neglect or abuse can be substantially corrected” where the parent has “not responded to or followed through with a reasonable family case plan or other rehabilitative efforts of social, medical, mental health, or other rehabilitative agencies.” W. Va. Code § 49-4-604(d)(3).

Here, the record is clear that the petitioner failed to participate in mental health treatment as required by the case plan despite having been granted three improvement periods. We have explained that

[a]s a general rule the least restrictive alternative regarding . . . rights to custody of a child under [W. Va. Code § 49-4-604] will be employed; however, courts are not required to exhaust every speculative possibility of parental improvement before terminating [custodial] rights where it appears that the welfare of the child will be seriously threatened.

⁴ The permanency plan for the children is guardianship in their current placement.

In re R.J.M., 164 W. Va. at 496, 266 S.E.2d at 114, Syl. Pt. 1, in part. Thus, the circuit court's findings that the conditions of abuse or neglect could not be substantially corrected in the near future and that termination of the petitioner's custodial rights was in the best interest of the children are supported by the record, and we find no error.

For the foregoing reasons, we find no error in the decision of the circuit court, and its April 27, 2023, order is hereby affirmed.

Affirmed.

ISSUED: July 31, 2024

CONCURRED IN BY:

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