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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

***In re* M.C.-1 and M.C.-2**

No. 23-401 (Randolph County CC-42-2020-JA-107 and CC-42-2020-JA-108)

MEMORANDUM DECISION

Petitioner Grandmother J.C.[1] appeals the Circuit Court of Randolph County's June 16, 2023, order denying her motion to enforce visitation with M.C.-1 and M.C.-2, arguing that the court erred in refusing to enforce its prior award of visitation with the children.[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 August 2020, the DHS filed a petition alleging abuse and neglect of several children, including some not at issue in this appeal, by the petitioner and the children's biological parents. At the time, the petitioner had temporary legal guardianship of the two children at issue. The allegations against the petitioner stemmed from the children's poor hygiene and the conditions in the home. The petitioner later stipulated to the allegations, and the circuit court adjudicated her. Following a dispositional hearing in November 2021, the circuit court terminated the petitioner's guardianship rights and granted her supervised post-termination visitation "as established by" the multidisciplinary team ("MDT"). It is important to note that the petitioner did not appeal from the court's December 3, 2021, dispositional order that memorialized these rulings and dismissed her from the proceedings.

It appears from the record that after the petitioner's dismissal, the proceedings concerning the children continued in the circuit court as it sought to achieve their permanent placement.

[1] The petitioner appears by counsel Morris C. Davis. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrisey and Assistant Attorney General Kristen E. Ross. Counsel Heather M. Weese 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). Because the children share the same initials, we use numerals to differentiate them.

However, by August 2022, the DHS ceased the petitioner's supervised visits with the children after it determined that the visits were contrary to the children's desires and/or against their best interests. The petitioner filed a motion to intervene in February 2023, in which she sought to enforce the previously awarded post-termination visitation with the children. Shortly after the motion's filing, the court held a permanency hearing and noted that it previously directed the MDT to meet and discuss the issue of the petitioner's visitation. However, "an agreement could not be reached in regard to the reinstatement of visitations," given M.C.-1's express desire not to visit with the petitioner and reports from M.C.-2's foster mother, who indicated that the child was "no longer fixated with returning to [the petitioner's] care on a daily basis" after visits with the petitioner ceased.

The court held a series of hearings on the petitioner's motion in March and April 2023, during which the court heard evidence that M.C.-1, then fourteen years old, did not wish to have visits with the petitioner and that they were "a source of conflict" for the child. The court went on to address M.C.-2, who has intellectual deficits that resulted in her inability to "understand why she cannot return to [the petitioner's] home and cannot appreciate that she will never return to her care." The petitioner exacerbated this issue by telling M.C.-2 during at least one visit that the petitioner "would adopt her if they'd let me," despite having already been deemed an inappropriate caregiver for the child. Because of these issues, continued visits with the petitioner "fostered the potential in [M.C.-2's] mind that she will return to the care of [the petitioner] and the visits reinforced her desire to return." This, in turn, affected M.C.-2's ability "to successfully acclimate into an adoptive home." As a result, the court concluded that continued contact between M.C.-2 and the petitioner was no longer in the child's best interests. The court, therefore, denied the petitioner's motion to intervene to enforce visitation. The court went on to rule that it was simply suspending the petitioner's visits with M.C.-2 and left "the potential open for contact with [the petitioner] in the future should the same no longer be adverse to the child's best interests." The court further ruled that M.C.-1 was permitted to visit with the petitioner, "so long as she desires such contact and the same is not adverse to her best interests." The court further encouraged the petitioner "to respect the desires and boundaries set by the child in regard to any future contact."[3] The petitioner appeals from the order denying her motion to enforce visitation.

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 raises a single assignment of error in which she argues that it was error to deny her request to enforce the previously awarded post-termination visitation.[4] However, we find no error in the circuit court's ruling on the petitioner's motion. In fact, in regard to M.C.-1, the petitioner, essentially, obtained

[3] The parents' parental rights were terminated below. The permanency plan for the children is adoption in the current placement.

[4] We note that, although the petitioner styled her motion as one in which she sought intervention in order to enforce her previously awarded visitation, she raises no arguments on appeal in which she challenges the denial of her request to intervene. Because the petitioner's arguments on appeal are concerned entirely with the request to enforce visitation, it is unnecessary to address the court's denial of the petitioner's request to intervene.

the relief she seeks on appeal. Indeed, the court ruled that M.C.-1 may attend visits with the petitioner if the child so chooses. As we have made extremely clear, "[s]uch post-termination visitation or other continued contact where determined to be in the best interest of the child could be ordered not as a right of the parent, *but rather as a right of the child*." *In re Christina L.*, 194 W. Va. 446, 455 n.9, 460 S.E.2d 692, 701 n.9 (1995) (emphasis added) (citations omitted). The petitioner's refusal to accept that the child has chosen not to exercise visits with her does not constitute error by the circuit court. Though the petitioner challenges the testimony concerning M.C.-1's wishes, we note that this is a credibility determination we decline to disturb on appeal. *See Michael D.C. v. Wanda L.C.*, 201 W. Va. 381, 388, 497 S.E.2d 531, 538 (1997) ("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.").

As to M.C.-2, the court clearly ruled in a manner consistent with the child's best interests and in keeping with our prior direction. Specifically, we have stressed that, in order to permit post-termination visitation, "[t]he 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. 11, in part, *In re Daniel D.*, 211 W. Va. 79, 562 S.E.2d 147 (2002) (quoting Syl. Pt. 5, *In re Christina L.*, 194 W. Va. 446, 460 S.E.2d 692 (1995)). The circuit court specifically ruled that any post-termination visitation would be established by the MDT, which monitored the visits as the proceedings continued following the petitioner's dismissal. Ultimately, the MDT could not come to an agreement on reinstating the petitioner's visits based, in substantial part, on the negative impact the visits had on M.C.-2 and the child's ability to achieve permanency in an adoptive home. Given the child's intellectual issues, the visits confused M.C.-2, who questioned when she would return to the petitioner's care. Even more importantly, the petitioner created additional confusion for the child during visits by stating that she would adopt the child while knowing this was not possible. Despite recognizing the connection between M.C.-2 and the petitioner, the court nonetheless concluded that continued visits jeopardized the child's permanency. Accordingly, the court appropriately limited the petitioner's contact with M.C.-2 in order to protect the child's best interests, and we find no error.

For the foregoing reasons, we find no error in the decision of the circuit court, and its June 16, 2023, order is hereby affirmed.

Affirmed.

ISSUED: August 27, 2024

CONCURRED IN BY:

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