

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re M.M.

No. 23-402 (Kanawha County 23-JA-72)

MEMORANDUM DECISION

Petitioner Mother C.B.¹ appeals the Circuit Court of Kanawha County’s May 31, 2023, order terminating her parental rights to M.M., arguing that the circuit court erred by terminating her parental rights without granting additional time for her to participate in services.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 March 2023, the DHS filed an abuse and neglect petition alleging that the petitioner used methamphetamine and Suboxone, without a prescription, while she was pregnant with M.M. The petition also alleged that she obtained little prenatal care and that her parental rights to two older children were previously terminated in a prior abuse and neglect case. An amended petition was also filed in March 2023, alleging domestic violence between the petitioner and the child’s father that resulted in the father being charged with domestic battery. Following a preliminary hearing, the circuit court ordered the petitioner to participate in drug screening.

The circuit court held an adjudicatory hearing in April 2023. A DHS worker testified that, during his interview with the petitioner after M.M.’s birth, the petitioner admitted to using methamphetamine and Suboxone during her pregnancy and receiving little prenatal care. The DHS worker confirmed that the petitioner’s parental rights to two other children were terminated in a prior abuse and neglect case involving the petitioner’s drug use. The petitioner testified and admitted to using illicit substances while pregnant and not participating in any drug rehabilitation programs since her prior case. She acknowledged that she was supposed to pick up her drug testing

¹ The petitioner appears by counsel Jason S. Lord. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Deputy Attorney General Steven R. Compton. Counsel Jennifer N. Taylor appears as the child’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).

packet from the DHS in March 2023 but stated she had not picked up the packet or participated in any drug testing. The petitioner also testified that she did not wish to proceed with the criminal domestic battery case against the father, claiming that the incident was a “misunderstanding.” The circuit court adjudicated the petitioner as an abusing and neglecting parent as a result of her substance abuse and, again, ordered the petitioner to participate in drug screening.

The circuit court held a dispositional hearing in May 2023. The evidence presented established that in the petitioner’s prior abuse and neglect case, she was offered services including inpatient rehabilitation programs and drug screening and that she did not participate. A DHS worker testified that she recommended the petitioner enter inpatient treatment due to her prior terminations involving drug use and continued drug use during her pregnancy. However, the worker stated that the petitioner felt that inpatient treatment was not in her “best interest,” that she did not have a substance use disorder, and that she was only willing to enter outpatient treatment. Additionally, the worker was concerned that the petitioner did not follow through with the domestic violence charge against the child’s father. The worker further testified that the petitioner did not participate in drug screening and explained that was largely due to the petitioner not having an identification card. The worker explained that another DHS worker informed the petitioner she could assist her in getting an identification card but that the worker took maternity leave at the end of April. During the petitioner’s testimony, she denied having substance abuse issues and admitted she never went to the DHS to get assistance in obtaining her identification card, despite being informed she could do so.

Based on the evidence presented, the circuit court found there was no change in circumstances since the termination of the petitioner’s parental rights in the previous case, there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future, and that termination of her parental rights was in the best interests of the child. Accordingly, the court terminated the petitioner’s parental rights to the child.³ 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 instead of granting additional time, such as an improvement period, for her to participate in services and demonstrate her ability to rectify the presenting problems. Upon our review, we disagree.

To be granted an improvement period, West Virginia Code § 49-4-610 provides that a parent must file a written motion requesting the improvement period and demonstrate by clear and convincing evidence that he or she is likely to fully participate. First, we must note that the petitioner does not make any citation to the record indicating that she made any motion for an improvement period, written or oral, during the proceedings below. Second, the petitioner failed to demonstrate that she would be likely to participate in an improvement period given her refusal to participate in the recommended drug rehabilitation, her noncompliance with drug screening, and

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

her noncompliance in her prior abuse and neglect case. Further, although the record reflects that the DHS attempted to provide services to the petitioner, the DHS was not required to do so because the petitioner's parental rights to other children were previously terminated involuntarily. *See* W. Va. Code § 49-4-604(c)(7)(C). As such, we find no error in the court proceeding to disposition without granting the petitioner an improvement period.

As to the termination of the petitioner's parental rights, we similarly find no error. We have held that termination of parental rights "may be employed 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 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 "no reasonable likelihood that conditions of neglect or abuse can be substantially corrected" where the parent has habitually abused controlled substances "to the extent that proper parenting skills have been seriously impaired and [the parent has] not responded to or followed through [with] the recommended and appropriate treatment." W. Va. Code § 49-4-604(d)(1). Despite this being the petitioner's second abuse and neglect case precipitated by her substance use, she continued to deny her substance abuse issues and refused drug rehabilitation. Thus, we find no error in the circuit court's termination of the petitioner's parental rights.

For the foregoing reasons, we find no error in the decision of the circuit court, and its May 31, 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