

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re G.J., D.J., and K.J.

No. 23-417 (Kanawha County 21-JA-627, 21-JA-628, and 21-JA-630)

MEMORANDUM DECISION

Petitioner Mother L.J.¹ appeals the Circuit Court of Kanawha County’s June 15, 2023, order terminating her parental rights to the children, arguing that the circuit court erroneously terminated her improvement period and, ultimately, her parental rights.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 October 2021, the DHS filed a petition alleging that the petitioner abused and neglected the children by using excessive corporal punishment, emotionally abusing the children, and failing to provide the children necessary food, clothing, shelter, supervision, medical care, or education. The petition alleged that the petitioner physically and emotionally abused the children and took an inappropriate photo of one of the children. The petition further alleged that the father made inappropriate sexual contact with two other children who lived in the home, who are not at issue in this appeal. The petition detailed K.J.’s Child Advocacy Center (“CAC”) interview, at which she disclosed that the petitioner took inappropriate pictures of her chest, used her fists to hit her, spanked her and the other children with a wooden paddle, and would make her stand in a corner. The petition also detailed the CAC interviews of the two children who are not at issue here, T.M. and J.M. J.M. disclosed being hit on the feet and the bottom with a switch and being made to do pushups or jumping jacks as a punishment. T.M. disclosed that the petitioner hit the children on their feet and bottoms with a paddle and that the father made inappropriate sexual contact with her and J.M. In the following order ratifying emergency custody, the court found that reasonable

¹ The petitioner appears by counsel Benjamin Freeman. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Heather Olcott. Counsel Joseph Curia III 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).

efforts to preserve the family were not required due to the aggravated circumstances of physical and sexual abuse.

In March 2022, the court held an adjudicatory hearing at which the petitioner stipulated to abusing and neglecting the children by using excessive discipline and emotionally abusing them. At the conclusion of the hearing, the court granted the petitioner a six-month post-adjudicatory improvement period. The terms of the improvement period included parenting classes, supervised visits, a psychological and parenting evaluation, a sex offender evaluation, and family therapy. In June 2022, the DHS filed a motion to terminate the petitioner's improvement period after the children disclosed additional details of abuse during therapy sessions. In August 2022, the court held a hearing at which it considered the motion. The court did not rule on the motion until February 2023, when it terminated the improvement period. Notably, the petitioner received services for a total of eleven months until the court terminated her improvement period in February 2023.

In May 2023, the court held a dispositional hearing at which a Child Protective Services employee testified that the two older children, then seventeen and fourteen years old, did not want to be returned to the petitioner's and the father's care due to their constant fighting and the chaotic atmosphere. The petitioner testified that she hit the children's feet with a wooden stick and punished them by making them do wall sits or jumping jacks. In its dispositional order, the court found that the children detailed chronic physical abuse and that the petitioner's adult son disclosed being asked to participate in the abuse of the other children. The court noted that the petitioner had unauthorized contact with one of the children, evidencing her inability to abide by the court's orders. The court found that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future, another improvement period would be inappropriate considering the chronic nature of the abuse and the children's wishes, and the abuse and neglect could not be corrected through services. The court further found that the petitioner demonstrated an inadequate capacity to resolve the conditions of abuse and neglect; the children's best interests required termination of the petitioner's rights; and that there were no reasonable, less drastic alternatives available. Ultimately, the court terminated the petitioner's parental rights. It is from the dispositional order that the petitioner appeals.³

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 circuit court erred by revoking her improvement period. However, we need not address the petitioner's specific arguments because the circuit court granted her a post-adjudicatory improvement period in March 2022 and revoked it in February 2023. The petitioner had a total of eleven months of services—five months more than is permitted. *See* W. Va. Code § 49-4-610(2) (“After finding that a child is an abused or neglected child . . . a court may grant a respondent an improvement period of a period not to exceed six months.”). The court's revocation of the

³ The father's parental rights were also terminated. The permanency plan for the minor children is adoption in the current placement. K.J. has since reached the age of majority.

petitioner's already-expired improvement period was not erroneous; thus, she is entitled to no relief.

The petitioner also argues that termination of her parental rights was not the least restrictive alternative disposition. However, the court can terminate parental 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 no reasonable likelihood that the conditions of about and neglect could be substantially corrected in the near future when “[t]he abusing parent or parents have repeatedly or seriously injured the child physically or emotionally . . . and the degree of family stress and the potential for further abuse and neglect are so great as to preclude the use of resources to mitigate or resolve family problems” W. Va Code § 49-4-604(d)(5). The court specifically found that the petitioner “repeatedly and seriously emotionally injured” the children, and the record supports this finding. Thus, we decline to disturb the court’s findings.

For the foregoing reasons, we find no error in the decision of the circuit court, and its June 15, 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