

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

In re C.K., I.F.-1, and I.F.-2

No. 23-454 (Lewis County CC-21-2022-JA-30, CC-21-2022-JA-31, and CC-21-2022-JA-32)

MEMORANDUM DECISION

Petitioner Mother H.B.¹ appeals the Circuit Court of Lewis County’s June 30, 2023, order terminating her parental rights to C.K., I.F.-1, and I.F.-2,² arguing that the termination was erroneous because the DHS failed to meet its burden of proof. 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 April 2022, the DHS filed an abuse and neglect petition against the petitioner and I.F.-3, who is the father of I.F.-1 and I.F.-2.³ The petition alleged that a postal worker found then-two-year-old I.F.-1 in the road with no clothes, an incident for which the petitioner was charged criminally. The petition further alleged that the residence was in a deplorable condition and that the petitioner admitted to using methamphetamine to the Child Protective Services (“CPS”) worker.

At an adjudicatory hearing in June 2022, the petitioner stipulated to having an addiction to controlled substances that adversely affected her parenting abilities and that her home was in an unsanitary and unsafe condition not suitable for children. The circuit court accepted the petitioner’s stipulation and adjudicated her as an abusing parent. The petitioner received a post-adjudicatory

¹ The petitioner appears by counsel Jeremy B. Cooper. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Katica Ribel. Counsel Melissa T. Roman 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). Further, because some of the children and the father share the same initials, we use numbers to differentiate them.

³ The proceedings below also concerned an additional child who is not at issue in this appeal.

improvement period that required her to submit to substance abuse counseling and drug screening. The DHS initially sought to return the children to the petitioner's custody because of her successful participation. However, the DHS filed a motion to terminate the petitioner's parental rights on November 21, 2022, after the petitioner and the father relapsed, and the DHS was informed that the petitioner was pregnant.⁴

Following several continuances, the dispositional hearing was held in June 2023. At the hearing, a CPS worker testified that the petitioner submitted to a hair follicle test, which was positive for methamphetamine. The CPS worker explained that the petitioner agreed to immediately attend an inpatient rehabilitation program on November 23, 2022, but never submitted to treatment. The worker further explained that the petitioner was not forthcoming or honest about her drug use until the hair follicle test was confirmed to be positive. A provider who administered drug screens explained that the petitioner frequently failed to screen, particularly from September 2022 to November 2022; tested positive for controlled substances on multiple occasions; and had numerous insufficient or diluted urine samples, which are considered administrative failures. According to the provider, the petitioner had urine screens positive for morphine and codeine in January 2023 and methamphetamine in April 2023, in addition to hair follicle tests positive for methamphetamine in November 2022 and January 2023. Nonetheless, the provider confirmed that the petitioner also produced several valid, negative drug screens, including just before the hearing. Finally, the provider explained that the drug screening facility offered to assist the petitioner with rehabilitation services but that she never requested assistance.

The petitioner testified and admitted that she had not successfully completed her improvement period. She also admitted to using methamphetamine once at the beginning of September 2022 before she knew she was pregnant. However, the petitioner disputed her January 2023 positive drug screen for codeine and morphine, blaming it on her consumption of poppy seeds, and her April 2023 positive drug screen for methamphetamine, claiming it was a false positive. The petitioner also claimed that she was denied admittance to an inpatient drug rehabilitation facility. Instead, she enrolled in an online intensive outpatient program, but not until February 2023. In addition, the petitioner stated that she began participating in an online drug counseling program in March 2023 and an in-person recovery program in May 2023. The petitioner maintained that she still planned to pursue an inpatient rehabilitation program.

Based on the evidence, the circuit court found that the parents did not successfully complete their improvement periods. The parents admitted to relapsing and "delayed in getting the services necessary to ensure remediation of their parenting deficiencies and drug addiction." The circuit court also stated that it did not find credible the petitioner's testimony that she only used methamphetamine on one occasion in September 2022, given the extensive evidence regarding the timeframes of her drug screens and admissions. Furthermore, the circuit court noted the petitioner's drug use throughout her pregnancy. Thus, the circuit court determined that there had been "no substantial change of circumstances since [the parents] were granted an improvement period," and the parents were "unwilling or unable to provide adequately for the children's needs."

⁴ The petitioner gave birth in May 2023. Separate abuse and neglect proceedings were initiated for the child, and the parents' parental rights were terminated. A separate appeal is currently pending before this Court.

As such, the circuit court concluded that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future and that termination of the petitioner's parental rights was necessary for the children's welfare. Accordingly, the circuit court terminated the petitioner's parental rights to the children.⁵ It is from the dispositional 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). Before this Court, the petitioner argues that the evidence did not support the circuit court's finding that there was no reasonable likelihood that the petitioner could substantially correct the conditions of abuse and neglect in the near future. The petitioner contends that the circuit court "gave insufficient weight to the evidence in the record that supported [the petitioner's] capacity to correct the conditions of abuse and neglect." Specifically, the petitioner relies on testimony that she was honest about her drug use after the hair follicle test, attempted inpatient rehabilitation, completed an intensive outpatient program, and participated in drug counseling. We find no merit in the petitioner's argument.

The phrase "no reasonable likelihood that conditions of abuse and neglect can be substantially corrected" includes circumstances where a parent has "not responded to or followed through with a reasonable family case plan or other rehabilitative efforts . . . designed to reduce or prevent the abuse or neglect of the child, as evidenced by the continuation or insubstantial diminution of [those] conditions." W. Va. Code § 49-4-604(d)(3). Here, the petitioner's admissions provided clear and convincing evidence supporting the circuit court's findings. The petitioner admitted to not complying with the terms and conditions of her improvement period, which included rehabilitative services for drug addiction. The petitioner does not dispute that she used methamphetamine, missed drug screens, and was untruthful with the multidisciplinary team. Moreover, while the petitioner's recent efforts to seek treatment and maintain sobriety are commendable, multiple positive drug screens in 2023 prove that the petitioner continued to abuse drugs throughout her pregnancy. This alone is clear and convincing proof that the conditions of abuse or neglect would not be substantially corrected in the near future. Further, the court found that termination of the petitioner's parental rights was necessary for the children's welfare. As we have explained, circuit courts are permitted to terminate an abusing parent's parental rights upon these findings. *See* W. Va. Code § 49-4-604(c)(6); *see also* Syl. Pt. 5, *In re Kristin Y.*, 227 W. Va. 558, 712 S.E.2d 55 (2011) ("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 . . . that conditions of neglect or abuse can be substantially corrected." (quoting Syl. Pt. 2, *In re R.J.M.*, 164 W. Va. 496, 266 S.E.2d 114 (1980))). Accordingly, the circuit court did not err in terminating the petitioner's parental rights.

For the foregoing reasons, the circuit court's June 30, 2023, order is hereby affirmed.

⁵ The parental rights of I.F.-1's and I.F.-2's father were also terminated. The permanency plan for I.F.-1 and I.F.-2 is adoption in their current placement. The father of C.K. voluntarily relinquished his custodial rights. The permanency plan for C.K. is a legal guardianship in her current placement.

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