

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re A.M., L.B., and H.P.

No. 23-515 (Mineral County CC-29-2023-JA-9, CC-29-2023-JA-10, and CC-29-2023-JA-11)

MEMORANDUM DECISION

Petitioner Mother D.M.¹ appeals the Circuit Court of Mineral County’s August 1, 2023, order terminating her parental rights to the children, A.M., L.B., and H.P., arguing that the circuit court erred by adjudicating her as an abusing and neglecting parent based on the evidence.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 February 2023, the DHS filed an abuse and neglect petition against the petitioner alleging that A.M. sexually abused L.B. Then-twelve-year-old L.B. reported the sexual abuse to a schoolteacher, stating that when she told the petitioner, the petitioner said, “oh he is playing.” Forensic interviews with L.B. revealed that A.M. had also sexually abused her in the past, and although she previously reported the abuse, she recanted her statement at that time. L.B. further stated that the petitioner was in her bedroom “gaming” with a headset on while the abuse occurred. The petition also alleged that the petitioner “cannot control” her children and that L.B. exhibited defiant behaviors, including running away.

Prior to adjudication, Court Appointed Special Advocates (“CASA”) filed a report for the circuit court’s consideration, detailing a recent disclosure by H.P., then eight years old, that both of her siblings had inappropriately touched her on prior occasions. CASA further reported A.M.’s history of behavioral issues including a stabbing, an arson attempt, and other sexual abuse allegations. During the adjudicatory hearing held in April 2023, the court heard testimony from a

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 Kristen E. Ross. Counsel Madison Martin appears as the guardian ad litem for A.M. and H.P., and counsel Lauren M. Wilson appears as the guardian ad litem for L.B.

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).

forensic interviewer, a Child Protective Services (“CPS”) worker, and the petitioner. The forensic interviewer recounted L.B.’s disclosure and testified that she believed the child was being truthful because “she was very emotional” at critical times. The CPS worker observed the forensic interview and also believed the child was truthful, further stating that the child’s story had not changed throughout the case. After speaking with the petitioner, the CPS worker determined that the petitioner did not believe the child. During a home visit, the CPS worker observed the children’s sleeping arrangements, which she found concerning. Although A.M. and H.P. had their own bedrooms, L.B.’s “room” was in the living room with sheets hung as walls. Additionally, the CPS worker testified that, although L.B. had some significant behavioral issues, assistance was provided to the petitioner through the Children with Serious Emotional Disorders Waiver program.

The petitioner denied that L.B. told her about the abuse and testified that she did not believe L.B.’s statements because “she lied about it in the past,” and the petitioner “didn’t see anything physically happen.” She further denied playing video games. The petitioner filed an incorrigibility petition against L.B. on a prior occasion because “she kept running away . . . not listening, just being defiant.” The petitioner also called law enforcement when H.P. told the petitioner that L.B. had touched her inappropriately, although the petitioner conceded that she did not witness that touching. Additionally, the petitioner admitted that A.M. had a history of being physically violent with L.B., but insisted, “it wasn’t something way out of control.” Moreover, although the petitioner alluded to “minor issues” with A.M., on cross-examination she admitted that those issues were arson and stabbing.

At the conclusion of the testimony, the circuit court found clear and convincing evidence that L.B. was sexually abused, determining that the child’s statements were consistent and credible. The court further found it “abundantly clear” that the petitioner did not provide “necessary supervision” and that the children’s “needs were not being met. They were not being protected.” Furthermore, “there was a knowledge that [A.M.] was abusive in some way physically and also past allegations that he had done other things, and with that knowledge, there should have been some other safeguards put into place.” Therefore, the court adjudicated the petitioner as an abusive and neglectful parent. Thereafter, the court terminated the petitioner’s parental rights at a hearing held in June 2023,³ finding that there was no reasonable likelihood that the conditions of abuse or neglect could be substantially corrected in the near future, as the petitioner had still refused to acknowledge the underlying abuse at that time, and termination was necessary for the children’s welfare.⁴ The petitioner appealed this matter following entry of the court’s dispositional order.

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). Further, as we have held, “[West Virginia Code

³ The petitioner’s arguments on appeal relate to the court’s adjudicatory ruling; therefore, any further discussion of the June 2023 dispositional hearing is unnecessary.

⁴ The court terminated the parental rights of each of the children’s respective fathers. The permanency plan for A.M., now seventeen years old, is to enter into a transitional living program. The permanency plan for L.B. and H.P. is adoption by foster placement.

§ 49-4-601(i)], requires the [DHS], in a child abuse or neglect case, to prove ‘conditions existing at the time of the filing of the petition . . . by clear and convincing [evidence].’” Syl. Pt. 1, *In re Joseph A.*, 199 W. Va. 438, 485 S.E.2d 176 (1997) (quoting Syl. Pt. 1, in part, *In Interest of S.C.*, 168 W. Va. 366, 284 S.E.2d 867 (1981)). The petitioner argues that the record lacks evidence that sexual abuse occurred; therefore, the circuit court erred by adjudicating the petitioner as an abusive and neglectful parent. We disagree.

Here, the circuit court found clear and convincing evidence to adjudicate the petitioner as an abusing and neglecting parent and upon our review, we find no error as the record is replete with evidence that supports this finding. The court found that L.B.’s disclosures of sexual abuse were consistent and credible upon hearing testimony of the CPS worker and forensic interviewer who believed her statements to be truthful. Although the petitioner continues to insist on appeal that L.B.’s recanting of her prior disclosure means that she was lying about the current disclosure, the circuit court heard this evidence and weighed it accordingly. We will not disturb the court’s credibility determination 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.”). The petitioner knowingly allowed abuse to occur in the home between the siblings. The petitioner’s own testimony revealed her knowledge of A.M.’s violent and inappropriate actions toward L.B., despite minimizing this conduct. *See Syl. Pt. 4, In re A.M.*, 243 W. Va. 593, 849 S.E.2d 371 (2020) (“[West Virginia Code § 49-1-201], in part, defines an abused child to include one whose parent *knowingly* allows another person to commit the abuse.’ Syllabus point 3, in part, *In re Betty J.W.*, 179 W.Va. 605, 371 S.E.2d 326 (1988).” (emphasis added)). The court correctly noted the petitioner’s failure to properly supervise the children, which resulted in their harm to each other. As evidenced by the record, abusive behavior between all of the siblings was taking place in the home while the petitioner played video games in her bedroom and refused to believe certain disclosures. *See W. Va. Code § 49-1-201* (“‘Neglected child’ means a child: (A) Whose physical or mental health is harmed or threatened by a present refusal, failure or inability of the child’s parent . . . to supply the child with necessary . . . supervision[.]”). Therefore, we can discern no error in the court’s finding of clear and convincing evidence that the petitioner was an abusive and neglectful parent.⁵

Accordingly, we find no error in the decision of the circuit court, and its August 1, 2023, order is hereby affirmed.

Affirmed.

ISSUED: July 31, 2024

⁵ The petitioner mentions in passing that it was also error for the circuit court to terminate her parental rights but does not make any specific argument in this regard. Therefore, we decline to address termination on appeal. *See W. Va. R. App. P. 10(c)*; *see also State v. Larry A.H.*, 230 W. Va. 709, 716, 742 S.E.2d 125, 132 (2013) (“The decisions of this Court are quite clear. ‘Although we liberally construe briefs in determining issues presented for review, issues . . . mentioned only in passing but are not supported with pertinent authority, are not considered on appeal.’ *State v. LaRock*, 196 W.Va. 294, 302, 470 S.E.2d 613, 621 (1996).”).

CONCURRED IN BY:

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