

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re P.F., B.D., H.D., and K.D.

No. 23-525 (Nicholas County CC-34-2022-JA-69, CC-34-2022-JA-70, CC-34-2022-JA-71, and CC-34-2022-JA-72)

MEMORANDUM DECISION

Petitioner J.F.,¹ attempted intervenor below, appeals the Circuit Court of Nicholas County’s August 7, 2023, order denying her motion to intervene in the proceedings, arguing that the circuit court erred in applying West Virginia Code § 48-9-103(b) and in concluding that her intervention was not in the children’s best interests.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.*

Because the petitioner was not a party to the action below, the appendix record in this matter is extremely sparse. For approximately two years, the petitioner served as a foster parent for K.D., H.D., and B.D. until those children were removed from the petitioner’s home in December 2021. From the limited record, it appears that K.D., H.D., and B.D. were reunited with their mother. It is uncontroverted that P.F. never resided with the petitioner.

However, in October 2022, all four children were removed from the mother, and, at a preliminary hearing in November 2022, the children were placed in the DHS’s legal and physical custody. Immediately, the DHS placed all four children with a relative, where they remained throughout the proceedings giving rise to this appeal.

¹ The petitioner appears by counsel Matthew A. Bradford and Brandon L. Gray. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Deputy Attorney General Steven R. Compton. Counsel Denise N. Pettijohn appears as the children’s guardian ad litem (“guardian”).

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).*

In May 2023, the petitioner filed a motion to intervene. The petitioner relied on West Virginia Code § 48-9-103(b) to assert that the circuit court could grant permission for her to participate in the proceedings because her participation was likely to serve the children’s best interests. According to the petitioner, this was based on her prior foster care of three of the children and her purported role as their psychological parent. In July 2023, the court held a hearing on the motion to intervene, during which the DHS and the guardian objected to her intervention and argued that a change in placement of the children was not in their best interests, given that the petitioner never had custody of P.F. and had not cared for the other children since 2021. The petitioner testified to her ongoing contact with the children subsequent to their return to their mother in 2021, in addition to her efforts to obtain placement of the children once she learned of their most recent removal. Ultimately, the court denied the petitioner’s motion. Despite recognizing that the petitioner loves the children and had “the best intentions in trying to intervene,” the court found that changing the children’s placement would delay their permanency and be disruptive given that the permanency plan was for their adoption in their current placement.³ The petitioner appeals from the order denying her motion to intervene.

We have previously explained that

[a] circuit court’s decision on an individual’s motion for permissive intervention in a child abuse and neglect proceeding pursuant to West Virginia Code § 49-4-601(h) (2019) is reviewed under a two-part standard of review. We review *de novo* whether the individual seeking permissive intervention was afforded “a meaningful opportunity to be heard” as required by West Virginia Code § 49-4-601(h), and we review for an abuse of discretion a circuit court’s decision regarding the “level and type of participation” afforded to individuals seeking permissive intervention, i.e., foster parents, pre-adoptive parents, and relative caregivers, pursuant to Syllabus point 4, in part, *State ex rel. C.H. v. Faircloth*, 240 W. Va. 729, 815 S.E.2d 540 (2018).

Syl. Pt. 1, *In re H.W.*, 247 W. Va. 109, 875 S.E.2d 247 (2022). Before this Court, the petitioner first argues that the circuit court erred in its application of West Virginia Code § 48-9-103(b), the lone authority upon which the petitioner based her motion to intervene. However, this statute has no applicability to the issue of intervention in an abuse and neglect proceeding. Indeed, that statute is clear that, “[i]n exceptional cases,” the circuit court may “grant permission to intervene to other persons . . . whose participation *in the proceedings under this article* it determines is likely to serve the child’s best interests.” *Id.* (emphasis added). The proceedings in which the petitioner sought to intervene were not brought under the article at issue in this statute, or even the chapter. Instead, these proceedings were initiated under Chapter 49 of the West Virginia Code. Simply put, the petitioner is entitled to no relief for any arguments predicated on this statute. This includes the petitioner’s second assignment of error, in which she alleges that the circuit court erred in determining that her intervention was not in the children’s best interests. In advancing this assignment of error, the petitioner cites to *Clifford K. v. Paul S. ex rel. Z.B.S.*, 217 W. Va. 625, 619 S.E.2d 138 (2005), and its discussion of intervention under West Virginia Code § 48-9-103 when in a child’s best interests. See *Clifford K.*, 217 W. Va. at 630, 619 S.E.2d at 143, Syl. Pt. 4

³ The parents’ parental rights have been terminated.

(“In exceptional cases and subject to the court’s discretion, a psychological parent may intervene in a custody proceeding brought pursuant to W. Va. Code § 48-9-103 (2001) (Repl. Vol. 2004) when such intervention is likely to serve the best interests of the child(ren) whose custody is under adjudication.”). Because the petitioner continues to rely on inapplicable authority, she is entitled to no relief.

For the foregoing reasons, we find no error in the decision of the circuit court, and its August 7, 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