

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re A.L. and S.L.-1

No. 23-539 (Mercer County CC-09-2022-JA-28 and CC-09-2022-JA-29)

MEMORANDUM DECISION

Petitioner Mother S.L.-2¹ appeals the Circuit Court of Mercer County’s October 27, 2023, order terminating her parental, custodial, and guardianship rights to A.L. and S.L.-1, arguing that the circuit court erred by failing to grant her a post-adjudicatory improvement period.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 2022, the DHS filed an abuse and neglect petition alleging truancy concerns regarding A.L. and the petitioner’s substance abuse. The petition also alleged an incident where the petitioner physically abused A.L. while S.L.-1 was also in the home. Additionally, the petition referenced a prior abuse and neglect case where the petitioner was arrested for felony child endangerment and operation of a methamphetamine lab. The circuit court held an adjudicatory hearing in March 2022. The court heard testimony from the petitioner’s aunt, a DHS worker, and a law enforcement officer. At the conclusion of testimony and evidence, the court adjudicated the petitioner of neglecting the children.

In April 2022, the petitioner was incarcerated based on felony charges regarding allegations contained in the abuse and neglect petition. In September 2022, the petitioner filed a motion to continue disposition based on her continued incarceration and pending the outcome of an

¹ The petitioner appears by counsel John E. Williams Jr. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Andrew T. Waight. Counsel Patricia Kinder Beavers 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). Additionally, because they share the same initials, we refer to one child as S.L.-1 and the petitioner as S.L.-2.

upcoming grand jury proceeding regarding her charges. The circuit court granted the petitioner's motion. The petitioner was indicted on one count of felony child neglect creating risk of injury and one count of felony child abuse resulting in injury. In October 2022, the petitioner pled guilty to felony child abuse resulting in injury.³ While awaiting sentencing, the petitioner was released on bond and entered an inpatient substance abuse treatment program in November 2022.

The petitioner filed a motion for a post-adjudicatory improvement period and, at a hearing in December 2022, the circuit court held the motion in abeyance. In its order following the hearing, the court found that the petitioner struggled with substance use and was currently participating in a drug treatment program. In the court's order following the hearing, the court stated that the petitioner's motion for an improvement period would be revisited if the petitioner participated successfully in the program. The court ordered the petitioner to continue her program and work on parenting skills.

In January 2023, the petitioner was sentenced and placed on probation, which allowed for her to continue participating in her inpatient treatment program. In May 2023, the petitioner filed another motion for a post-adjudicatory improvement period. In the motion, the petitioner stated she was doing well in her treatment program, submitting negative drug screens, participating in therapy, working full time, and attending Narcotics Anonymous meetings regularly.

The circuit court held a dispositional hearing in June 2023 and heard testimony from A.L.'s therapist. The therapist testified to completing forty sessions with A.L. and diagnosing him with post-traumatic stress disorder. She explained that A.L., then eight years old, maintained severe anger toward the petitioner throughout their sessions. When she read letters to A.L. from the petitioner, the child became angry and stated that he did not want to hear communication from her. She further testified that A.L. had a strong bond with S.L.-1 and worried that S.L.-1 would not be safe with the petitioner. Ultimately, she opined that reunification would not be possible.

The circuit court held a final dispositional hearing in July 2023. A DHS worker testified that the petitioner continued doing well in her treatment program and recently moved to an independent living facility. However, the worker also testified that A.L. continued to struggle with behavioral issues but was improving by the end of the school year. The DHS recommended termination of the petitioner's parental rights and opined that adoption in the current foster home would be in the best interests of the children. A worker from the petitioner's treatment program testified to the petitioner's success in the program. She testified that the petitioner recently moved from her initial inpatient facility to an independent living facility. She explained that the petitioner could have overnight visitations with the children at the independent living facility but that the children could not permanently reside there. She further explained that the petitioner could remain in the independent living facility for up to a year and that she currently did not have an estimate of when the petitioner would be able to leave the facility. The petitioner also testified to her success in the program, her employment, and participation in mental health treatment. She admitted to struggling with substance abuse and to the physical abuse giving rise to the petition and criminal

³ The petitioner's charge of felony child neglect creating risk of injury was dismissed as a term of the petitioner's plea agreement.

case, resulting in the petitioner being sentenced to six years of probation. The foster parent testified regarding A.L.'s behavioral issues and the close relationship between A.L. and S.L.-1.

The court found that although the petitioner demonstrated improvement, there was “no chance” that the petitioner could provide stability for the children currently or within the near future. Given the length of time the children spent in foster care, the court stated it could not provide her with additional time. The court recognized the progress the petitioner made but also recognized the pain caused to the children and A.L.'s struggle to overcome that. The court further found that it was in the best interests of the children to live in a stable environment. Accordingly, the court terminated the petitioner's parental, custodial, and guardianship rights to the children.⁴ 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 raises a single assignment of error, arguing that the circuit court should have granted her a post-adjudicatory improvement period.⁵ West Virginia Code § 49-4-610(2)(B) provides that a court may grant a post-adjudicatory improvement period where the parent “demonstrates, by clear and convincing evidence, that the respondent is likely to fully participate in the improvement period.” The petitioner argues that her progress in her substance abuse treatment program demonstrated her likelihood of participating in an improvement period. However, West Virginia Code 49-4-610(9) provides that “no combination of any improvement periods or extensions thereto may cause a child to be in foster care more than fifteen months of the most recent twenty-two months, unless the court finds compelling circumstances by clear and convincing evidence that it is in the [children's] best interests to extend the time limits.”

At the time of disposition, the circuit court noted that the children had spent eighteen of the prior twenty-two months in foster care. Therefore, the court could not grant an improvement period unless it found compelling circumstances that it was in the children's best interests to grant additional time for improvement, and the evidence did not support such a finding. Despite the petitioner's success in her drug treatment program, the petitioner's actions which led to the filing of this case damaged her relationship with the children. A.L.'s therapist testified to the anger and turmoil A.L. expressed towards the petitioner during their sessions and his fear for his and his sibling's safety in her care. She ultimately opined that reunification in the near future would not be possible. The record did not support a finding that additional time for improvement would be in the children's best interests. *See* Syl. Pt. 4, in part, *In re B.H.*, 233 W. Va. 57, 754 S.E.2d 743 (2014) (“The controlling standard that governs any dispositional decision remains the best interests of the child.”). Although the court acknowledged the petitioner's improvement, the petitioner was still unable to provide a stable home for the children after eighteen months, and the court's ruling focused on the children's need for stability and permanency. *See In re Cesar L.*, 221 W. Va. 249,

⁴ The children's respective fathers' rights were also terminated. The permanency plan is adoption in their current placement.

⁵ The petitioner raises no assignment of error concerning her adjudication or the termination of her parental rights.

258, 654 S.E.2d 373, 382 (2007) (“Ensuring finality for these children is vital to safeguarding their best interests so that they may have permanency”). As such, the petitioner is entitled to no relief.

For the foregoing reasons, we find no error in the decision of the circuit court, and its October 27, 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