

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

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

In re A.L.-1 and A.L.-2

No. 23-580 (Wood County CC-54-2021-JA-231 and CC-54-2022-JA-294)

MEMORANDUM DECISION

Petitioner Mother G.C.¹ appeals the Circuit Court of Wood County’s September 14, 2023, orders terminating her parental rights to A.L.-1 and A.L.-2, arguing that the circuit court erred by adjudicating the petitioner, terminating her parental rights, and failing to grant additional improvement periods.² Upon our review, we determine that oral argument is unnecessary and that a memorandum decision affirming the circuit court’s orders is appropriate. *See* W. Va. R. App. P. 21.

In October 2021, the DHS filed a petition alleging that the petitioner abused and neglected her newborn child, A.L.-1, by abusing controlled substances while pregnant. The petition also alleged that the petitioner and the father repeatedly exposed the baby to unsafe practices while in the hospital after birth despite warnings from hospital staff. Further, the petition alleged that the petitioner’s parental rights to two older children were previously terminated due to substance abuse. In December 2021, the petitioner stipulated to the allegations in the petition, and the circuit court adjudicated her as a neglectful parent. The petitioner was accepted into the Wood County Family Treatment Court program, and the court ordered the petitioner to participate in the program as a condition of a post-adjudicatory improvement period. The father was also accepted into the family treatment court program.

¹ The petitioner appears by counsel Wells H. Dillon. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Lee Niezgoda. Counsel Michael D. Farnsworth Jr. 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 the children as A.L.-1 and A.L.-2.

In October 2022, their second child, A.L.-2, was born. The DHS filed an amended petition to obtain legal custody of A.L.-2 while the parents continued participating in the family treatment court program. Due to their compliance with the program and an ongoing trial reunification with A.L.-1, the parents retained physical custody of A.L.-2. However, shortly after A.L.-2's birth, the petitioner stopped complying with therapy and courses and missed several drug screens. The petitioner was later discharged from the family treatment court program due to her noncompliance. Not long after her discharge, the DHS filed a second amended petition based on new allegations of domestic violence between the parents and their ongoing substance abuse.

The circuit court held several adjudicatory hearings on the second amended petition, culminating in a final hearing held in July 2023. The court heard testimony from the petitioner and the father regarding their relationship, the reported domestic violence, and substance abuse. The parents explained that they petitioned for multiple domestic violence protective orders against the other, with the father successfully obtaining a protective order against the petitioner. The petitioner acknowledged that, in petitioning for protective orders, she previously reported physical abuse by the father, including one incident in which she was holding one of the children, and showed a DHS worker a bruise on her arm from another incident. During the hearing, however, the parents recanted past allegations against one another and generally minimized their conduct. Ultimately, the circuit court adjudicated the petitioner as an abusing and neglecting parent based on the petitioner engaging in domestic violence in the home. The court found that there was extensive testimony "regarding what can only be described as a volatile relationship" resulting in frequent verbal altercations and disclosures of physical abuse that have been recanted. The petitioner later filed a motion for a post-adjudicatory improvement period.

The circuit court held dispositional hearings in September 2023. Three individuals working with the Peer Solutions program testified to the petitioner's recent progress in therapy and Alcoholic Anonymous meetings. The petitioner testified and acknowledged domestic violence between herself and the father. However, she also testified that she believed they did "really well together" and only had a few issues regarding boundaries that they were now working on. A DHS worker testified that she sent referrals for both parents for parenting and adult life skills courses in March 2023 and that those referrals expired due to a lack of participation. She sent referrals again for courses in July 2023, and the petitioner participated in some classes and visitations. The visitation provider testified that the petitioner interacted well with the children but missed several visits. A drug screen worker testified that the petitioner typically tested negative but missed approximately six drug screens.

The court found that the evidence reflected a substantial amount of domestic violence and issues between the petitioner and the father and that both parents neglected the children based on that domestic violence. The court further found that the petitioner testified that she wanted to continue to work on the relationship with the father and did not see a danger to her children; that she had shown a failure to take responsibility for her actions; and that she continued to abuse substances. The court also found that the DHS was not required to make reasonable efforts to preserve the family because the petitioner's parental rights were previously terminated; however, the DHS did make those efforts to allow the petitioner to participate in the family treatment court program, which she could not complete. Finally, the court found there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near

future, especially given that the extensive services already provided had not corrected the issues, and that termination was in the best interests of the children. Accordingly, the court terminated the petitioner's parental rights to the children by the entry of two separate dispositional orders, which were entered on the same day.³ It is from these final dispositional orders 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). First, the petitioner argues that the circuit court erred by adjudicating her, with regard to the second amended petition, as an abusing and neglecting parent in the absence of clear and convincing evidence. We have explained that in abuse and neglect cases, West Virginia Code § 49-4-601(i) "requires the [DHS] . . . to prove 'conditions existing at the time of the filing of the petition . . . by clear and convincing [evidence],'" though the statute "does not specify any particular manner or mode of testimony or evidence by which the [DHS] is obligated to meet this burden." Syl. Pt. 1, in part, *In re Joseph A.*, 199 W. Va. 438, 485 S.E.2d 176 (1997) (quoting Syl. Pt. 1, in part, *In re S.C.*, 168 W. Va. 366, 284 S.E.2d 867 (1981)). Further, "'clear and convincing' is the measure or degree of proof that will produce in the mind of the factfinder a firm belief or conviction as to the allegations sought to be established." *Brown v. Gobble*, 196 W. Va. 559, 564, 474 S.E.2d 489, 494 (1996).

West Virginia Code § 49-1-201, in relevant part, defines an "abused child" as one "whose health or welfare is being harmed or threatened by: . . . [d]omestic violence as defined in § 48-27-202 of this code." Further, West Virginia Code § 48-27-202 defines domestic violence as several types of conduct between family or household members,⁴ including the following:

- (1) Attempting to cause or intentionally, knowingly or recklessly causing physical harm to another with or without dangerous or deadly weapons;
- (2) Placing another in reasonable apprehension of physical harm;
- (3) Creating fear of physical harm by harassment, stalking, psychological abuse or threatening acts

The petitioner testified to several incidents of argument and physical violence between the parents, including one in which the petitioner was holding one of the children. Further, the father testified to obtaining a domestic violence protective order because the petitioner harassed and threatened him. In support of this argument, the petitioner confusingly argues that her own testimony was unreliable and could not support the court's finding regarding domestic violence. This argument cannot entitle her to relief, as we refuse to disturb the circuit court's credibility determinations on appeal. *See Michael D.C. v. Wanda L.C.*, 201 W. Va. 381, 388, 497 S.E.2d 531, 538 (1997). The circuit court's finding of domestic violence between the petitioner and the father is supported by the record. As such, we find no error in the petitioner's adjudication.

³ The father's parental rights were also terminated. The permanency plan for the children is adoption in their current placement.

⁴ It is undisputed that the petitioner and the father satisfy the definition of family or household members, as set forth in West Virginia Code § 48-27-204.

Second, the petitioner argues that the circuit court erred by finding there was no reasonable likelihood the conditions of abuse or neglect could be substantially corrected in the near future.⁵ West Virginia Code § 49-4-604(d) defines “no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected” to mean that the parent has “demonstrated an inadequate capacity to solve the problems of abuse or neglect on their own or with help.” The record contains numerous examples of the petitioner’s noncompliance with services attempting to remedy the problems of abuse and neglect, including being discharged from the family treatment court program, missed drug screens, and missed visitations.⁶ Thus, the circuit court’s finding that there was no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected is supported by the record.

Third, the petitioner argues that the circuit court erred by terminating her rights rather than granting additional time for improvement.⁷ West Virginia Code § 49-4-610(3)(D) requires a parent who has been granted any improvement period since the initiation of the proceedings to demonstrate that the parent “has experienced a substantial change in circumstances” in order to obtain a second improvement period. The petitioner points to no evidence that she satisfied this burden below. Additionally, at disposition, A.L.-1 had been in foster care for approximately sixteen of the previous twenty-two months. West Virginia Code § 49-4-610(9) provides that, when a child has been in foster care for more than fifteen of the most recent twenty-two months, the court must find “compelling circumstances by clear and convincing evidence” to grant further time for improvement. The record reflects evidence of the petitioner’s noncompliance with the family treatment court program, drug screening, and visitation. Further, the court found at disposition that the petitioner continued to fail to take responsibility for domestic violence issues in the home and minimized that domestic violence. We have explained that “[f]ailure to acknowledge the existence of the problem . . . results in making the problem untreatable and in making an improvement period an exercise in futility at the child’s expense.” *In re Timber M.*, 231 W. Va. 44, 55, 743 S.E.2d 352,

⁵ In support of this argument, the petitioner argues that the DHS did not comply with the requirements of West Virginia Code §§ 49-4-604(a)(2) and -408(b) in that it failed to establish what “reasonable efforts” it made to prevent removal or return the children to the home. However, the circuit court correctly found at disposition that the DHS was not required to make reasonable efforts to preserve the family because the petitioner’s parental rights were previously terminated to other children. *See* W. Va. Code § 49-4-604(c)(7)(C) (providing that the DHS is not required to make reasonable efforts to preserve the family if the court determines that the “parental rights of the parent to another child have been terminated involuntarily”).

⁶ The petitioner also specifically argues that the DHS failed to provide domestic violence services. Again, we note that the DHS was under no obligation to provide any reasonable efforts to preserve the family because of the petitioner’s prior involuntary termination of parental rights to older children. *See* W. Va. Code § 49-4-604(c)(7)(C).

⁷ The petitioner makes a separate argument regarding improvements periods for each child, arguing that she should have been granted an additional post-adjudicatory improvement period in reference to A.L.-2 and a post-dispositional improvement period in reference to A.L.-1. However, we will simply analyze whether the circuit court erred by failing to grant the petitioner further improvement periods beyond her initial post-adjudicatory improvement period.

363 (2013) (quoting *In re Charity H.*, 215 W. Va. 208, 217, 599 S.E.2d 631, 640 (2004)). The circuit court found there were no compelling circumstances to justify granting the petitioner an additional improvement period, and this finding is supported by the record.

For the foregoing reasons, we find no error in the decision of the circuit court, and its September 14, 2023, orders are 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