

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

***In re* B.L., B.J., B.B., Q.B., S.B., T.B., and K.B.**

No. 23-688 (Doddridge County CC-09-2022-JA-16, CC-09-2022-JA-17, CC-09-2022-JA-18, CC-09-2022-JA-19, CC-09-2022-JA-20, CC-09-2022-JA-21, and CC-09-2022-JA-22)

MEMORANDUM DECISION

Petitioner Mother T.J.¹ appeals the Circuit Court of Doddridge County’s October 31, 2023, order terminating her parental rights to B.J. and K.B. and her custodial rights to B.L., B.B., Q.B., S.B., and T.B., arguing that the circuit court abused its discretion in denying her motion for a post-adjudicatory improvement period, failing to consider the wishes of the children, and denying post-termination contact.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 July 2022, the DHS filed an abuse and neglect petition alleging that the petitioner and the father of B.B., Q.B., S.B., T.B., and K.B. (hereinafter “the father”) engaged in domestic violence in the presence of the children and subjected the children to deplorable living conditions. Additionally, a Child Protective Services (“CPS”) worker observed that the children were infested with lice, dirty, and smelled of urine and body odor. An amended petition was filed in October 2022 following forensic interviews with the children. The children made additional disclosures that the petitioner and their uncle (who occasionally resided in the home) physically abused them, left them unsupervised and responsible for feeding themselves, and slept many hours during the day. According to the petitioner’s appellate brief, the circuit court adjudicated the petitioner as an

¹ The petitioner appears by counsel Judith A. McCullough. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Katica Ribel. Counsel Keith White, Sara B. Hall, and Dreama Sinkkanen appear as the children’s guardians ad litem (“guardians”).

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).

abusing and neglecting parent in August 2023.³ Although the petitioner indicates that she requested a post-adjudicatory improvement period, there is no written motion in the record on appeal.

The circuit court proceeded to disposition in September 2023, at which time the DHS and the guardians supported termination of the petitioner's parental and custodial rights. The court heard testimony from the petitioner, a CPS worker, and two service providers. The evidence revealed that the petitioner was uncooperative with CPS throughout the case and was unable to complete individualized parenting and adult life skills classes with her first service provider because she "essentially fired" him after a disagreement regarding his recommendations. Although she later participated in services with a second provider, the petitioner's attendance was inconsistent, she was dishonest about her conduct toward the children, and she failed to acknowledge certain deficiencies. The CPS worker discussed the wishes of the then-fifteen-year-old child, B.J., reporting that "she wanted to give her mom the benefit of the doubt, that she never wanted to parent before, but since they were removed, it appeared that she does want to parent, but she also doesn't know if her mom is just faking it to get them back."

The petitioner testified and claimed that she was willing to participate in services and had made certain improvements, including separating from the father, moving in with a new boyfriend, and participating in services. However, the petitioner admitted that she was unable to take care of all the children and requested that only her two biological children be returned to her care. The petitioner further testified that B.J. resented her because this child had to perform caretaking functions for the other children in the home before removal. Based on the evidence presented, the court found that the petitioner failed to demonstrate that improvement was likely, that there was no reasonable likelihood that the conditions of abuse or neglect could be substantially corrected in the near future, and that it was in the children's best interests to terminate her parental and custodial rights. The court further determined that post-termination contact would be contrary to the children's best interests. It is from the dispositional order that the petitioner appeals.⁴

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 first argues that the circuit court erred in refusing to grant her a post-adjudicatory improvement period. However, we must first note that there is no evidence that the petitioner filed a written motion for an improvement period at any point during the proceedings nor does such a motion appear in the record. *See* Syl. Pt. 4, in part, *State ex rel. P.G.- I v. Wilson*, 247 W. Va. 235, 878 S.E.2d 730 (2021) ("A circuit court may not grant a post-adjudicatory improvement period under W. Va. Code § 49-4-610(2) . . . unless the respondent to the abuse and neglect petition files a written motion requesting the improvement period."). Even if the petitioner had filed a written motion, the evidence presented during the dispositional hearing supported the court's finding that improvement was not likely. The petitioner

³ Neither the adjudicatory order nor transcript from the adjudicatory hearing were made part of the record on appeal.

⁴ The respective fathers of B.L., B.B., Q.B., S.B., T.B., and K.B. had their parental rights terminated, and the father of B.J. is deceased. The permanency plan for the children is adoption or legal guardianship in foster placement.

was uncooperative with CPS, failed to fully participate in services, and was dishonest with providers about the extent of her parenting issues. Therefore, we cannot find the court abused its discretion in refusing to grant an improvement period. *See In re Tonjia M.*, 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002) (“[T]he circuit court has discretion to refuse to grant an improvement period when no improvement is likely.”).

The petitioner next argues that the circuit court erred by failing to consider the wishes of B.J., who was fifteen years old at the time of disposition. *See* W. Va. Code § 49-4-604(c)(6)(C) (requiring that courts “give consideration to the wishes of a child fourteen years of age or older . . . regarding the permanent termination of parental rights”). However, the record shows that the circuit court heard the CPS worker’s testimony regarding the child’s wishes and reluctance to trust that her mother genuinely wanted to care for her because of the possibility that she could be “faking it.” Because the petitioner’s argument has no basis in fact, we therefore find no error in this regard.

The petitioner further argues that the circuit court erred by denying post-termination contact with her two biological children, B.J. and K.B. As we have held,

“[w]hen parental rights are terminated due to neglect or abuse, the circuit court may nevertheless in appropriate cases consider whether continued visitation or other contact with the abusing parent is in the best interest of the child. Among other things, the circuit court should consider whether a close emotional bond has been established between parent and child and the child’s wishes, if he or she is of appropriate maturity to make such request. The evidence must indicate that such visitation or continued contact would not be detrimental to the child’s well being and would be in the child’s best interest.” Syl. Pt. 5, *In re Christina L.*, 194 W.Va. 446, 460 S.E.2d 692 (1995).

Syl. Pt. 11, *In re Daniel D.*, 211 W. Va. 79, 562 S.E.2d 147 (2002). Although the petitioner asserts that she has a close bond with her biological children and that they expressed wishes to see her, the petitioner ignores the court’s finding that continued contact would not be in the children’s best interests. Because the record supports this conclusion, we find no error in the court’s decision to deny post-termination contact.

Accordingly, we find no error in the decision of the circuit court, and its October 31, 2023, order is hereby affirmed.

Affirmed.

ISSUED: July 31, 2024

CONCURRED IN BY:

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