

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re S.B.-1 and S.B.-2

No. 23-503 (Cabell County 21-JA-199 and 21-JA-200)

MEMORANDUM DECISION

Petitioner Mother H.B.¹ appeals the Circuit Court of Cabell County’s August 7, 2023, order terminating her parental, custodial, and guardianship rights to the children, arguing that the circuit court erred by denying her request for a post-dispositional improvement period and terminating her rights.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 December 2021, the DHS filed a petition alleging that the petitioner abused and neglected the children by using drugs while pregnant and failing to provide safe and adequate living conditions. At the hospital at the time of the twin children’s birth, the petitioner tested positive for amphetamines, gabapentin, and cannabinoids. She also admitted to relapsing on alcohol on one occasion while pregnant and smoking a pack of cigarettes daily. The petition detailed that a Child Protective Services (“CPS”) worker visited the petitioner’s home and observed clutter, uncleanliness, and various safety hazards.

In February 2022, the court held an adjudicatory hearing at which the petitioner stipulated to using drugs while pregnant. Thus, the court adjudicated the petitioner of neglecting the children based upon substance abuse affecting her ability to parent. The court granted the petitioner’s written motion for a post-adjudicatory improvement period and ordered her to submit to a parental

¹ The petitioner appears by counsel Krista Karickhoff Conway. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Heather Olcott. Counsel Allison K. Huson 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 the children share the same initials, we refer to them as S.B.-1 and S.B.-2.

fitness evaluation. The terms of the improvement period are not evident from the record. However, the petitioner's case plan required her to, among other things, attend parenting, adult life skills, and substance abuse classes; submit to drug tests; obtain safe and adequate housing; become employed; obtain mental health services; and attend intensive outpatient drug treatment. In April 2022, she participated in a parental fitness evaluation, resulting in a prognosis of "guarded" due to her history of "polysubstance abuse and dependence, use of drugs and alcohol during pregnancy, apparent neglect of her children's basic needs, history of domestic violence, and defensive respon[ses]."

At a July 2022 review hearing, the court found that the petitioner had been partially compliant with her post-adjudicatory improvement period noting that her home was still in deplorable condition and unsuitable for the children. At an August 2022 review hearing, the court found that the petitioner's improvement period had expired. The court further found that she failed to successfully complete the improvement period because she failed to attend intensive outpatient drug treatment and her home was still in deplorable condition.

The court held a series of dispositional hearings between March and May 2023, during which the petitioner testified, denying substance abuse. The petitioner explained that she was denied entry to multiple intensive outpatient drug treatment programs because she claimed that she was not abusing substances. She admitted that she went to the emergency room multiple times during her improvement period seeking pain medication but claimed that she did so at the direction of her doctor. She also admitted that a pain management doctor refused to treat her because a West Virginia Board of Pharmacy Report indicated that at least three doctors wrote her prescriptions for hydrocodone in a three-month period. However, the petitioner disputed the accuracy of medical records from various hospital visits, which included physician notes reporting that she left the hospital against medical advice upon being denied intravenous narcotics and informed that "it was inappropriate for [her] to go to the hospital to receive opioid medications." A CPS worker testified that the DHS recommended termination of the petitioner's rights due to her noncompliance with her case plan and her failure to benefit from services or acknowledge the conditions that led to the filing of the petition. The worker further testified that the petitioner refused to increase visits with the children from two hours to three hours and would often end visits early. The worker stated that the home was still in deplorable condition at the end of the petitioner's improvement period, and she never enrolled in outpatient drug treatment.

After considering the evidence, the court found that the petitioner did not comply with the terms of her improvement period, failed to remediate the conditions in the home, failed to progress beyond two hours of supervised visitation, refused to enroll in intensive outpatient treatment, failed to consistently attend parenting sessions, and engaged in "doctor shopping" to obtain controlled substances. In the dispositional order, the court specifically highlighted the CPS worker's testimony that the petitioner did not benefit from services and failed to acknowledge the effect of her actions on the children. The court further found that there was no reasonable likelihood that the conditions of abuse and neglect could be rectified in the near future and that it was in the children's best interests to terminate the petitioner's rights. Thus, the court terminated the

petitioner's parental, custodial, and guardianship rights to the children. It is from the dispositional order that the petitioner appeals.³

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). Before this Court, the petitioner argues that the circuit court erred by denying her request for a post-dispositional improvement period. The court may grant a post-dispositional improvement period to a parent who has previously been granted an improvement period when the parent "demonstrates that since the initial improvement period, the respondent has experienced a substantial change in circumstances" and due to that change "is likely to fully participate in the improvement period." W. Va. Code § 49-4-610(3). Moreover, "[i]n order to remedy the abuse and/or neglect problem, the problem must first be acknowledged. Failure 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, 363 (2013) (quoting *In re Charity H.*, 215 W. Va. 208, 217, 599 S.E.2d 631, 640 (2004)). Here, the petitioner was granted and failed to successfully complete a post-adjudicatory improvement period. The petitioner argues that her testimony at disposition shows that her drug screens were reflective of her prescribed medications and the home was in significantly better condition. However, the record shows that the home was still in deplorable condition by the end of the petitioner's improvement period and that she continually denied her substance abuse issues throughout the proceeding, rendering the problem untreatable. Based upon the evidence, we find no error in the circuit court's exercise of discretion in denying the petitioner's request for a post-dispositional improvement period. See *In re M.M.*, 236 W. Va. 108, 115, 778 S.E.2d 338, 345 (2015) ("West Virginia law allows the circuit court discretion in deciding whether to grant a parent an improvement period.").

The petitioner further argues that the circuit court erroneously terminated her parental, custodial, and guardianship rights. However, the court may terminate those rights "[u]pon a finding that there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future and, when necessary for the welfare of the child." W. Va. Code § 49-4-604(c)(6). Moreover, there is no reasonable likelihood that the conditions of neglect or abuse can be substantially correct when "[t]he abusing parent or parents have not responded or followed through with a reasonable family case plan or other rehabilitative efforts[.]" W. Va. Code § 49-4-604(d)(3). The court made such a finding based upon the petitioner's failure to comply with her case plan and her ongoing issues with controlled substances. The court further found that the child's best interests required termination of the petitioner's rights. Moreover, the petitioner's failure to acknowledge the abuse and neglect, as discussed above, rendered the problems untreatable. As such, we decline to disturb the findings of the circuit court.

For the foregoing reasons, we find no error in the decision of the circuit court, and its August 7, 2023, order is hereby affirmed.

³ The father's parental, custodial, and guardianship rights were also terminated. The permanency plan is adoption in the current placement.

Affirmed.

ISSUED: September 24, 2024

CONCURRED IN BY:

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