

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re B.D.

No. 23-528 (Roane County CC-44-2022-JA-87)

MEMORANDUM DECISION

Petitioner Mother A.S.¹ appeals the Circuit Court of Roane County’s August 4, 2023, order terminating her parental rights to B.D.,² arguing that the circuit court erred in terminating her rights rather than granting her a post-adjudicatory improvement period. 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.

On November 15, 2022, the DHS filed an abuse and neglect petition alleging that the petitioner’s mental health issues prevented her from appropriately supervising the child. According to the petition, on November 12, 2022, the petitioner was observed looking in the windows of the home of an elderly couple, which she had been instructed not to do on multiple occasions. The child, who was five years old at the time, was with the petitioner. The couple later observed the petitioner and the child sleeping in a car in the couple’s driveway. It was also discovered that the petitioner had left a bouquet of flowers at the couple’s door. When questioned by police, the petitioner stated that “[the man] was her father, [the woman] was an intimate partner and that she . . . owned one half of the residence and property”—none of which was true. The petitioner was arrested and charged with trespassing, harassment, and child neglect creating risk of injury. She remained incarcerated throughout the proceedings.

The adjudicatory hearing was held on March 27, 2023, during which a forensic psychological evaluation of the petitioner was admitted as evidence. The circuit court found that the statements and opinions in the psychological evaluation demonstrated that the petitioner had

¹ The petitioner appears by counsel Craig Mills. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Lee Niezgodka. Counsel Michael Hicks appears as the child’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).

severe mental health issues and was unable to provide the child with necessary supervision. As such, the circuit court found that the child was abused and neglected and adjudicated the petitioner as an abusing parent.

In July 2023, the circuit court held a dispositional hearing. The petitioner testified that she received two months of inpatient psychiatric treatment following the adjudicatory hearing. Her treatment included various therapies and medication management. The petitioner stated she felt a “night and day difference” after receiving treatment and planned to continue taking the prescribed medications. The petitioner further testified that she completed stress and anger management, parenting, and mental health recovery classes at the jail. She also explained that she was willing to complete any of the court’s conditions or requirements if granted an improvement period. Nevertheless, the petitioner maintained that she was unaware that she was unwelcome at the couple’s home; denied that the couple had previously told her to leave; tried to rationalize her presence at the home by stating a friend told her that the elderly man was her father; and continued to believe that the child was not in any danger because he was fed, clothed, warm, and properly restrained. The petitioner’s sister then testified that she had multiple conversations in September and October 2022, wherein she explained to the petitioner that “she was not in a relationship with [the elderly woman], she was not welcome [at their home], [the couple] did not want her there, and she needed to stop.” The sister stated that she would try to get the petitioner to leave the child with her whenever she would go to the couple’s home, but that the petitioner “would insist she was taking [the child] with her.”

After considering the evidence, the circuit court denied the petitioner’s motion for a post-adjudicatory improvement period finding that there was no reasonable likelihood the petitioner would participate in an improvement period as the petitioner did “not acknowledge in her testimony that she ha[d] committed any acts of abuse or neglect.” The circuit court further found that the petitioner’s “parenting skills [were] seriously impaired by her mental health.” As a result, the court found that the petitioner had an inadequate capacity to substantially correct the conditions of abuse and neglect for which she was adjudicated. Thus, the circuit court concluded that termination of the petitioner’s parental rights was in the child’s best interest. Accordingly, the circuit court terminated the petitioner’s parental rights.³ It is from the dispositional 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). Before this Court, the petitioner’s sole assignment of error is that the circuit court abused its discretion by terminating her parental rights instead of granting her a post-adjudicatory improvement period. Circuit courts have discretion to grant a post-adjudicatory improvement period when a parent “demonstrates, by clear and convincing evidence, that [he or she] is likely to fully participate in the improvement period.” W. Va. Code § 49-4-610(2)(B). Although the petitioner argues that she satisfied this burden because she engaged in extensive mental health treatment, she ignores her failure to acknowledge that her mental health

³ The child’s father successfully completed a pre-adjudicatory improvement period and consented to placing the child in a legal guardianship. The permanency plan for the child is to remain in the legal guardianship.

endangered the child. It is well-established 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, 363 (2013) (citation omitted). Indeed, the circuit court found that she failed to acknowledge that her actions and behavior constituted abusive or neglectful conduct. The petitioner does not dispute this finding. Therefore, we find that the circuit court did not abuse its discretion in denying the petitioner’s motion for a post-adjudicatory improvement period. *See In re Tonjia M.*, 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002) (explaining that circuit courts have discretion to deny an improvement period when no improvement is likely).

Furthermore, the circuit court properly terminated the petitioner’s parental rights. Despite receiving various mental health treatments and therapies, the petitioner still could not appreciate the seriousness of the situation to which she brought the child and maintained that the child was not abused or neglected; and the record shows that she continued to have an inappropriate fixation with the couple central to her adjudication and related criminal charges. As we have explained, “it is possible for an individual to show ‘compliance with specific aspects of the case plan’ while failing ‘to improve . . . [the] overall attitude and approach to parenting.’” *In re Jonathan Michael D.*, 194 W. Va. 20, 27, 459 S.E.2d 131, 138 (1995) (quoting *W.Va. Dep’t of Human Serv. v. Peggy F.*, 184 W. Va. 60, 64, 399 S.E.2d 460, 464 (1990)). Although the petitioner complied with services, it is clear that she made no improvement in her overall ability to parent. As such, the circuit court found that there was no reasonable likelihood the conditions of neglect or abuse could be substantially corrected in the near future and that termination was necessary for the child’s welfare. Circuit courts are permitted to terminate parental rights upon these findings. *See* W. Va. Code § 49-4-604(c)(6) (allowing courts to terminate parental rights “upon 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.”). We conclude that the circuit court did not err as its findings are well-supported by the record.

For the foregoing reasons, the circuit court’s August 4, 2023, order is hereby affirmed.

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