

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re C.B.

No. 23-585 (Roane County CC-44-2023-JA-68)

MEMORANDUM DECISION

Petitioner Mother W.H.¹ appeals the Circuit Court of Roane County’s September 11, 2023, order terminating her parental rights to C.B., arguing that the court erred in denying her motion for an 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 June 2023, the DHS filed a petition alleging that the petitioner’s substance abuse impaired her ability to properly parent the child. The petition was filed after the petitioner tested positive for methamphetamine while on probation for “the felony crime of Attempt to Commit a Felony, To-Wit: Child Neglect Creating Substantial Risk of Death or Serious Bodily Injury.” The petition further alleged that the petitioner had twice been adjudicated of abusing and/or neglecting the child as a result of her substance abuse, although she was able to regain custody of the child in both prior proceedings after successfully completing improvement periods. The most recent proceeding was dismissed roughly eight months prior to the filing of the instant petition. Following an adjudicatory hearing in July 2023, during which she admitted to the allegations in the petition, the court adjudicated the petitioner as an abusing parent based on her substance abuse and its impact on the child.

¹ The petitioner appears by counsel Blake Pennington. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Deputy Attorney General Steven R. Compton. Counsel Ryan M. Ruth appears as the child’s guardian ad litem (“guardian”).

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).*

Subsequently, the DHS and guardian filed a joint notice of intent to seek termination of the petitioner's parental rights on the basis that this was the third proceeding in which the petitioner was adjudicated as an abusing parent in regard to C.B. based upon her substance abuse. Given the extensive services that the petitioner received in the prior proceedings, the DHS and guardian asserted that there was no likelihood that the petitioner could appropriately care for the child. The petitioner later filed a motion for a post-adjudicatory improvement period.

The matter came on for a final dispositional hearing in August 2023, during which the court heard testimony from a DHS worker, an employee from a long-term substance abuse treatment program in which the petitioner had recently enrolled after completing a short-term rehabilitation program, and the petitioner. Based on the evidence, the court denied the petitioner's motion, finding that the DHS made efforts to remedy the petitioner's substance abuse "over a span of five years and in two separate post-adjudicatory periods of improvement," and yet, despite two prior reunifications, the petitioner's substance abuse issue persisted. Based on the extensive services the petitioner already received, the court concluded that another improvement period would not be in the child's best interests "as it would serve no purpose other than to delay the ability to achieve permanency" for the child. Specifically, the court noted that the child, then five years old, had been placed in DHS custody "for nearly a quarter" of her life across the three total proceedings. The court relied on this same evidence to find that there was no reasonable likelihood that the petitioner could substantially correct the conditions of abuse and neglect. As such, the court terminated the petitioner's parental rights to the child.³ The petitioner appeals from the dispositional order.

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 it was error to deny her motion for a post-adjudicatory improvement period. The petitioner correctly asserts that, in order to obtain a post-adjudicatory improvement period, a parent is required to "demonstrate[], by clear and convincing evidence, that the [parent] is likely to fully participate in the improvement period." *See* W. Va. Code § 49-4-610(2)(B). However, the petitioner ignores the fact that it is in the circuit court's discretion to deny an improvement period when no improvement is likely. *See In re Tonjia M.*, 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002). While the petitioner argues that she demonstrated she was likely to comply by virtue of her successful completion of a short-term substance abuse treatment program and her acceptance into a long-term program roughly two weeks prior to the dispositional hearing, the court concluded that this evidence was insufficient to demonstrate a likelihood that she could correct the issue. As the circuit court noted, the petitioner's substance abuse persisted across three separate abuse and neglect proceedings over five years. Although the petitioner was able to regain custody of the child in two prior proceedings, the court believed that the petitioner's history of repeatedly relapsing into substance abuse, including less than one year after the prior proceeding was dismissed, demonstrated that she was unlikely to successfully remedy the problem through another improvement period. Essentially, the petitioner asks this Court to give more weight to evidence she believes was favorable to her below, including her own testimony, but we decline to disturb

³ The father's parental rights were terminated in a prior proceeding, and the permanency plan for the child is adoption in the current placement.

the circuit court’s determinations in this regard. *See State v. Guthrie*, 194 W. Va. 657, 669 n.9, 461 S.E.2d 163, 175 n.9 (1995) (“An appellate court may not decide the credibility of witnesses or weigh evidence as that is the exclusive function and task of the trier of fact.”). As such, we find no abuse of discretion in the circuit court’s denial of the petitioner’s motion for a post-adjudicatory improvement period.⁴

For the foregoing reasons, we find no error in the decision of the circuit court, and its September 11, 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

⁴ The petitioner concludes her assignment of error by asserting that, because she demonstrated that she was likely to fully participating in an improvement period, the circuit court erred in denying her motion and, instead, terminating her parental rights. We note, however, that the petitioner provides no argument in support of her assertion that termination of her rights was in error. As we have explained, “[a] skeletal ‘argument,’ really nothing more than an assertion, does not preserve a claim Judges are not like pigs, hunting for truffles buried in briefs.” *State v. Kaufman*, 227 W. Va. 537, 555 n.39, 711 S.E.2d 607, 625 n.39 (2011) (quoting *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991)). Because the petitioner provides no actual argument in this regard, she has failed to preserve the issue of termination on appeal.