

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re E.S.

No. 23-591 (Cabell County 21-JA-195)

MEMORANDUM DECISION

Petitioner Mother C.C.¹ appeals the Circuit Court of Cabell County’s September 14, 2023, order terminating her parental rights to E.S., arguing that the circuit court erred by failing to impose a less restrictive dispositional alternative and finding that the DHS made reasonable efforts to preserve the family.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 an abuse and neglect petition against the petitioner alleging unsafe housing conditions.³ Specifically, the petition alleged that Child Protective Services (“CPS”) workers observed a significant amount of trash scattered throughout the home and were concerned with the child’s hygiene. The petitioner informed CPS workers that the home had a bedbug infestation and that she struggled with mental health issues. The petition also referenced several instances where the petitioner denied CPS workers entry to the home and denied in-home services.

In April 2022, the petitioner stipulated to unsanitary home conditions. Based on her stipulation, the circuit court adjudicated the petitioner as a neglecting parent. The court also found

¹ The petitioner appears by counsel Michael S. Bailey. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Heather L. Olcott. Counsel Robert E. Wilkinson 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).

³ The petition also alleged medical neglect of A.W., E.S.’s older sibling, and the petitioner later stipulated to medical neglect of A.W. However, A.W. is not at issue in this appeal because she reached the age of majority shortly after adjudication and was dismissed from the proceedings below.

that the DHS had made reasonable efforts to preserve the family at that time but continuation in the home was against the child's best interests. In May 2022, the court granted the petitioner a post-adjudicatory improvement period. The terms of the petitioner's improvement period included participating in parenting and adult life skills services, individual therapy, maintaining appropriate housing, visitation, and "being seen by a medical doctor."

The circuit court held a review hearing in October 2022, where the court found the petitioner was minimally compliant with her improvement period. The DHS reported issues with visitation, which included one incident where the petitioner yelled and cursed at the transportation provider resulting in the visit being canceled. The petitioner continued having issues with bedbugs in the home and was aware she needed proof of treating her home for bedbugs before in-home services could begin. At a second review hearing in November 2022, the DHS again reported that the petitioner was only minimally compliant. The condition of the home remained cluttered and unclean, and the petitioner failed to treat the home for bedbugs and failed to seek mental health treatment. At a hearing in January 2023, the DHS recommended terminating the petitioner's improvement period due to the petitioner's noncompliance, which included failing to obtain mental health treatment, failing to provide documentation to the DHS to facilitate workers assisting her with mental health treatment, failing to attend multidisciplinary team meetings, and failing to address the bedbug issue in her home. However, the court continued the petitioner's improvement period.

The circuit court held a dispositional hearing in February 2023, and the petitioner failed to appear but was represented by counsel. A DHS worker testified and confirmed that the petitioner still had not addressed the bedbug issue, resulting in the petitioner being unable to fully participate in services. The worker further testified that the petitioner failed to sign releases to allow the DHS to assist in her mental and physical health care or obtain proof of any care she may have received. The circuit court found that the petitioner failed to participate "in a reasonable improvement period plan." The court further found that the DHS made reasonable efforts to preserve the family, there was no reasonable likelihood that the conditions of neglect could be substantially corrected in the near future, and that termination was in the child's best interests. Accordingly, the court terminated the petitioner's parental rights to the child.⁴ It is from this 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). First, the petitioner argues that the DHS failed to make reasonable efforts to assist in reunifying the petitioner with her child specifically due to the DHS not offering "more assistance" in treating the bedbug infestation. We disagree.

West Virginia Code § 49-4-604(c)(6)(C)(iv) requires⁵ the circuit court, at disposition, to make a finding about the DHS's "reasonable efforts to preserve and reunify the family." The record

⁴ The father's parental rights were also terminated. The permanency plan for the child is adoption in the current placement.

⁵ The DHS is not required to make reasonable efforts to preserve the family when certain conditions not applicable to this appeal exist. *See* W. Va. Code § 49-4-604(c)(7).

supports the circuit court's finding that the DHS did make reasonable efforts, as it offered the petitioner several services including parenting classes, adult life skills classes, transportation, and visitation. Importantly, it was the petitioner's failure to address unsanitary conditions in her home prevented in-home services from beginning. We have explained that although the DHS is required to make reasonable efforts to preserve the family, West Virginia Code § 49-4-610(4)(B) provides that the parent has the responsibility "for the initiation and completion of all terms of the improvement period." *In re Katie S.*, 198 W. Va. 79, 90, 479 S.E.2d 589, 600 (1996). Further, the record reflects evidence of the petitioner's noncompliance with services unrelated to the bedbug infestation, including cancelled visits due to the petitioner's behavior, her failure to obtain mental health treatment, and her failure to sign releases to allow the DHS to assist in her mental and physical health care. Thus, the petitioner is entitled to no relief.

Next, the petitioner argues that the circuit court erred by terminating her parental rights rather than imposing a less restrictive dispositional alternative. However, the petitioner's argument ignores that circuit courts are permitted to terminate parental rights "without the use of intervening less restrictive alternatives when it is found that there is no reasonable likelihood . . . that conditions of neglect or abuse can be substantially corrected." Syl. Pt. 5, in part, *In re Kristin Y.*, 227 W. Va. 558, 712 S.E.2d 55 (2011) (quoting Syl. Pt. 2, in part, *In re R.J.M.*, 164 W. Va. 496, 266 S.E.2d 114 (1980)). There is no such likelihood when the parent has

not responded or followed through with a reasonable family case plan or other rehabilitative efforts of social, medical, mental health, or other rehabilitative agencies designed to reduce or prevent the abuse or neglect of the child, as evidenced by the continuation or insubstantial diminution of conditions which threatened the health, welfare, or life of the child[.]

W. Va. Code § 49-4-604(d)(3). As explained, the record is replete with evidence of the petitioner's noncompliance with the terms of her improvement period, including her failure to attend multidisciplinary team meetings and court hearings. Further, the court properly found that termination was in the child's best interests. Circuit courts are permitted to terminate parental rights upon these findings. *See* W. Va. Code § 49-4-604(c)(6) (permitting circuit courts to terminate parental rights "[u]pon 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."). Thus, the circuit court did not err in terminating the petitioner's parental rights.

For the foregoing reasons, we find no error in the decision of the circuit court, and its September 14, 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 C. Haley Bunn

DISSENTING:

Justice William R. Wooton

Wooton, Justice, dissenting:

I dissent to the majority's resolution of this case. I would have set this case for oral argument to thoroughly address the error alleged in this appeal. Having reviewed the parties' briefs and the issues raised therein, I believe a formal opinion of this Court was warranted, not a memorandum decision. Accordingly, I respectfully dissent.