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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

***In re* F.S. and N.S.**

No. 23-552 (Berkeley County CC-02-2022-JA-172 and CC-02-2022-JA-173)

MEMORANDUM DECISION

Petitioner Mother A.F.[1] appeals the Circuit Court of Berkeley County's August 22, 2023, order terminating her parental rights to F.S. and N.S., arguing that the court erred in accepting her stipulation to adjudication, denying her an improvement period, and terminating her parental 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 October 2022, the DHS filed a petition alleging that the petitioner had recently lacked housing for her and the children; left the children, then ten and eight years old, alone for extended periods, which resulted in law enforcement being called; failed to provide food for the children; physically abused F.S. and "smashed" the child's phone; abused drugs; suffered from untreated mental health issues; was arrested for domestic battery of F.S.; violated a domestic violence protective order obtained by a boyfriend, which was still in effect when the abuse and neglect petition was filed; and was previously charged with negligent homicide, among other allegations. The petition further alleged that the petitioner "described herself as a bad mother," admitted to physically striking F.S., and stated that she had been diagnosed with schizophrenia. Based on these allegations, the DHS asserted that the petitioner abused and neglected the children.

In March 2023, the petitioner filed an "Answer and Admissions of [A.F.], Respondent Mother," in which she "admit[ted] to general abuse and neglect of her children" and waived her

[1] The petitioner appears by counsel Jason T. Gain. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrisey and Deputy Attorney General Steven R. Compton. Counsel Tracy Weese appears as the children's guardian ad litem ("guardian"). Respondent Father J.S. appears by counsel Ian T. Masters.

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).

right to a contested adjudicatory hearing. The petitioner further admitted, with specificity, to "knowingly and intentionally" abusing an illegal substance "in the presence of the Infants in 2020," although she denied using substances "on an ongoing basis"; engaging in domestic violence with and excessive corporal punishment of F.S. and injuring the child; failing to protect the children from abuse by engaging in domestic violence in their presence; abusing the children emotionally by failing to provide them with adequate emotional support; suffering from "mental/emotional illness, with a diagnosis of depression and anxiety for which she [was] actively seeking treatment"; and having pled guilty to two counts of domestic battery and one count of violating a protective order. In the filing, the petitioner also claimed she was "ready and willing to engage in services to address the issue of addiction" and "desire[d] to correct the issues which led to the filing of the Petition herein."

Later in March 2023, the court held an adjudicatory hearing, during which the petitioner indicated that she wished to admit to a variety of allegations against her in accordance with her written answer. The DHS indicated its agreement, stating its satisfaction with the scope of the petitioner's admissions, as she "tender[ed] admissions to all of the significant issues [the DHS] believe[d] exist." The petitioner then testified in support of her stipulated adjudication, admitting to the same allegations outlined in her written answer and further admitting that she entered a global plea to multiple charges "involving negligent . . . homicide" and "pertain[ing] to the allegations in this petition of domestic battery." The petitioner confirmed that she understood her conduct constituted abuse and neglect and that she would be adjudicated based on her admissions. The petitioner also expressed a desire to "correct the issues that led to the filing of this petition" and indicated she would do anything necessary to achieve this goal. Nevertheless, during cross-examination by the guardian, the petitioner contradicted some of her admissions. Specifically, the petitioner denied biting F.S. during an altercation; conceded that she felt like she was "being forced" to admit to biting F.S. despite it being untrue; explained that she was not admitting to a pattern of domestic violence with the children, only that she and F.S. "fought one time"; stated that she was not admitting to excessive corporal punishment of the children resulting in multiple injuries; and indicated that she did not abuse the children. In the resulting order, the court noted concern from respondents that the petitioner "still claimed she did not abuse and neglect the infants." However, the court found that the petitioner admitted to using illegal substances in the children's presence, engaging in domestic violence with F.S. which injured the child, engaging in excessive corporal punishment, failing to protect the children by engaging in domestic violence in their presence, emotionally abusing the children by providing inadequate emotional support, and not addressing her mental illness. Accordingly, the court concluded that the petitioner abused and neglected the children. The court also directed the DHS to provide the petitioner remedial services.

Following this hearing, the petitioner filed a written motion for a post-adjudicatory improvement period in which she reiterated her admissions to abusing and neglecting the children and indicated that she was working to address these issues. Specifically, the petitioner asserted that she would attend parenting classes; attend Community Alternatives to Violence classes or any alternative thereto; attend counseling or therapy; and undergo a psychological evaluation, among other services.

In May 2023, the court held a dispositional hearing and addressed the petitioner's pending motion for an improvement period. Shortly before this hearing, however, the petitioner filed a

"second Answer" in which she "seemingly affirmed her prior admissions" but also "made certain qualifications and retractions regarding the allegation of domestic violence towards the children and allegations of general abuse and neglect."[3] Specifically, the court noted that in regard to an allegation that the petitioner "took F.S. into the middle of the street and beat her" before smashing the child's phone, the petitioner now admitted only to damaging the phone. In regard to other allegations of striking and injuring F.S., the petitioner now claimed that she "did smack infant F.S. on the arms but does not recall observing the referenced red marks that were allegedly observed." According to the court, this constituted "both a minimization of the incident and a denial that there was any harm to [F.S.] as a result of the incident." Further, the petitioner indicated that she amended her answer because "she felt that the last time she was in court" she admitted to things that she did not do, such as biting F.S. The court "view[ed] these attempts at minimization and qualifications of her previously unambiguous admissions to having anger issues and domestic violence towards [F.S.] as failures to accept responsibility for her actions."

After hearing several witnesses for the parties, the court entered a dispositional order in which it recognized the petitioner's efforts to address the abuse and neglect at issue. This included participation in the Community Alternatives to Violence program, a psychological evaluation, and participation in therapy and medication management, among other efforts. However, the court noted the petitioner's testimony that she did "not really think that she ha[d] any issues with parenting children." The court further noted the petitioner's testimony that she "had to" plead guilty to the domestic battery charge against F.S. because, although she "did not do it, . . . she had to take the best offer that she could take." The court further relied on the petitioner's admission that she was not taking all of her prescribed medications for her various mental health diagnoses, including depressive disorder and bipolar disorder, to conclude that she was "unwilling to engage fully in her program of medications," which constituted a "key component" to her correction of the conditions of abuse and neglect at issue. Further, the court found that the petitioner "does not believe she has a substance abuse problem," as her addiction severity index evaluator cited her lack of honesty regarding past substance abuse as a barrier to issuing a specific substance use diagnosis. The court also referenced the psychological evaluator's "guarded" prognosis for the petitioner, given her tendency to blame others for her situation, among other concerns. Finally, the court found that F.S.'s therapist diagnosed the child with post-traumatic stress disorder ("PTSD") as a result of "the violence visited upon her by" the petitioner. Based on the evidence, the court found that the petitioner failed to demonstrate that she was likely to fully participate in an improvement period and that, because she failed to acknowledge the conditions of abuse and neglect, an improvement period would be futile. The court further found that the petitioner was not truthful in her testimony and that, without acknowledging the issues, she could "check off the boxes" of required services without making any progress to correct the underlying issues. Accordingly, the court concluded that there was no reasonable likelihood that the petitioner could substantially correct the conditions of abuse and neglect in the near future and that the children's welfare required termination of her parental rights. As such, the court terminated the petitioner's parental rights.[4] The petitioner appeals from the dispositional order.

[3] The petitioner failed to include this document in the appendix record before this Court.

[4] The permanency plan for the children is to remain with the nonabusing father.

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 first argues that the circuit court erred in accepting her stipulation at adjudication because it did not comport with the applicable requirements.[5] As the petitioner correctly notes, Rule 26(a) of the Rules of Procedure for Child Abuse and Neglect Proceedings requires that a stipulated adjudication must include "(1) [a]greed upon facts supporting court involvement regarding the respondent's(s') problems, conduct, or condition; and (2) [a] statement of respondent's problems or deficiencies to be addressed at the final disposition." *See also* Syl. Pt. 3, *In re Z.S.-1*, 249 W. Va. 14, 893 S.E.2d 621 (2023). To begin, the petitioner argues that because her written admissions and testimony "largely disputed" the allegations in the petition and "the parties did not agree on nearly any facts," the stipulation was deficient. Inherent in these assertions, however, is that there was some agreement among the parties. Indeed, as laid out above, the parties agreed on many facts, including that the petitioner pled guilty pursuant to a global plea agreement that included domestic battery against F.S., that she abused substances in the children's presence, and committed domestic violence in the children's presence, among other facts. Importantly, Rule 26 does not require complete agreement among the parties on all issues. Instead, it requires only agreement on sufficient facts to support an adjudication, which occurred in this matter. Further, the petitioner claims that the stipulation did not comply with Rule 26(a) because her "problems or deficiencies" could not be agreed upon and it was unclear "what would be 'addressed at the final disposition.'" This claim is disingenuous as the petitioner's stipulation clearly indicated that she would engage in services to address her substance abuse and that she desired to correct the conditions that led to the filing of the petition, to which she made extensive admissions.[6] Accordingly, we conclude that the court did not err in accepting the petitioner's stipulation.

In support of her various arguments before this Court, the petitioner relies heavily on the *In re Z.S.-1* decision, but her reliance on this case is misplaced. In that matter, we found that stipulations were deficient, in part, because the parents simply indicated that their child suffered

[5] In support of this assignment of error, the petitioner cites to various authorities governing the required contents of petitions in abuse and neglect proceedings. We note, however, that the petitioner cites to no portion of the record where she challenged the sufficiency of the petition. Instead, the record shows that in answering the petition, the petitioner expressly admitted to the allegations against her. Accordingly, she has waived any challenge to the sufficiency of the petition on appeal. *See Noble v. W. Va. Dep't of Motor Vehicles*, 223 W. Va. 818, 821, 679 S.E.2d 650, 653 (2009) ("'Our general rule is that nonjurisdictional questions . . . raised for the first time on appeal, will not be considered.' *Shaffer v. Acme Limestone Co., Inc.*, 206 W.Va. 333, 349 n. 20, 524 S.E.2d 688, 704 n. 20 (1999).").

[6] In support of this assignment of error, the petitioner also asserts that because her stipulation failed to comply with Rule 26(a), the court failed to comply with the requirement in Rule 26(b) that "the parties understand the content and consequences of the admission or stipulation." Having found that the stipulation met the requirements of Rule 26(a), the petitioner is not entitled to any relief for an argument predicated entirely on the court's failure to comply with that rule.

injuries while in their care, but that they did not know how the injuries occurred. *In re Z.S.-1*, 249 W. Va. at --, 893 S.E.2d at 630. In regard to the mother in that case, we found that this language "acknowledges the child's injuries, but does not explain how they are related to her being named as a respondent parent in the case." *Id.* The stipulation here is drastically different, as the petitioner admitted to several different types of conduct that constituted abuse and/or neglect of the children, including having pled guilty in relation to an incident of domestic battery against F.S. As a further basis for our decision to vacate the underlying order in *In re Z.S.-1*, we noted that neither parents' stipulation contained *any* statement of problems or deficiencies to be addressed at disposition. *Id.* at --, 893 S.E.2d at 630-31. Again, we note that here, the petitioner expressly indicated in her stipulation that she would participate in services to address the issues set forth in the petition to which she made extensive admissions. Further, the petitioner's clear understanding of the issues she needed to address is obvious from her subsequent motion for an improvement period, in which she set forth a substantial list of specific services in which she would participate. Because the petitioner's stipulation herein differs considerably from those submitted in *In re Z.S.-1*, the petitioner is entitled to no relief.

Additionally, the petitioner argues that the court's failure to properly adhere to Rule 26 in adjudicating her upon her stipulation created deficiencies in her disposition. The petitioner asserts that, "although the lower court had a reason to adjudicate the children based upon [her] stipulation alone, it went a step further . . . by assuming that the State's version of facts was correct and thus held the nature of the stipulation of the mother against her." This confusing assertion has no basis in the record, as it is clear that the circuit court not only adjudicated the petitioner upon the facts *to which she stipulated*, but based termination of her rights upon this appropriate adjudication. In support of this assertion, the petitioner cites to the circuit court's reliance upon reports from treating professionals at the dispositional hearing as evidence that the court "decided for itself that the State was correct all along." Contrary to the petitioner's assertion that the court's reliance on the evidence from treating professionals was used to adjudicate her, the record shows that the court relied on this evidence to support its finding that the petitioner refused to acknowledge her abusive and neglectful conduct for which she had already been adjudicated.

Next, the petitioner argues that she should have been entitled to an improvement period because she was substantially compliant with services. We disagree, as the court's conclusion that she denied any abusive conduct was determinative of the issue. Indeed, as we have explained, "[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) (quoting *In re Charity H.*, 215 W. Va. 208, 217, 599 S.E.2d 631, 640 (2004)). The petitioner, however, argues that the court below misapplied this holding, given that she admitted to problems and was successful in treating them. This argument contradicts the petitioner's clear testimony at disposition that she did "not really think that she ha[d] any issues with parenting children." While the petitioner attempts to argue semantics over specific facts upon which the circuit court relied in denying her motion and proceeding to termination, this explicit statement from the petitioner evidences her belief that she had *no* abusive or neglectful conduct in need of correcting. This was further bolstered by the petitioner's psychological evaluator, who found her untruthfulness resulted in a guarded prognosis for improved parenting. As we have explained, the circuit court has 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). Accordingly, we see no abuse of the court's discretion.

Finally, the court did not err in terminating the petitioner's parental rights. As the circuit court correctly concluded, the petitioner's refusal to acknowledge the conditions of abuse and neglect resulted in there being no reasonable likelihood that she could substantially correct them. Further, the court determined that the children's welfare required termination, considering the fact that F.S. suffered from PTSD as a result of the petitioner's abuse. The petitioner cites to her compliance with services, but we note that "the level of a parent's compliance with the terms and conditions of an improvement period is just one factor to be considered" at disposition in abuse and neglect cases, given that "[t]he controlling standard that governs any dispositional decision remains the best interests of the child." Syl. Pt. 4, in part, *In re B.H.*, 233 W. Va. 57, 754 S.E.2d 743 (2014). While it may be true that the petitioner complied with some services, the record overwhelmingly establishes that her refusal to acknowledge her parenting deficiencies resulted in the conditions of abuse and neglect being untreatable. *See also In re Jonathan Michael D.*, 194 W. Va. 20, 27, 459 S.E.2d 131, 138 (1995) ("[I]t 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.'" (quoting *W. Va. Dep't of Hum. Serv. v. Peggy F.*, 184 W. Va. 60, 64, 399 S.E.2d 460, 464 (1990))). Based on the evidence, the circuit court made the findings necessary for termination of parental rights, and we conclude that termination here was not in error. *See* W. Va. Code § 49-4-604(c)(6) (permitting termination of parental rights upon finding "there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future" and that termination is necessary for the welfare of the children).

For the foregoing reasons, we find no error in the decision of the circuit court, and its August 22, 2023, order is hereby affirmed.

Affirmed.

ISSUED: November 6, 2024

CONCURRED IN BY:

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