

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re X.M.-1, X.M.-2, and X.R.

No. 23-648 (Wood County CC-54-2023-JA-62, CC-54-2020-JA-119, and CC-54-2020-JA-120)

MEMORANDUM DECISION

Petitioner Mother D.M.¹ appeals the Circuit Court of Wood County’s October 5, 2023, order terminating her parental rights to the children X.M.-1, X.M.-2, and X.R., arguing that the circuit court erred by finding that the DHS made reasonable efforts to reunify the family 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.

After initiating proceedings against another adult respondent, the DHS filed an amended petition in March 2022, alleging that the petitioner abused and neglected X.M.-1 and X.R.³ by failing to provide a safe environment and abusing drugs. Specifically, law enforcement responded to an incident at the petitioner’s home and found her boyfriend deceased in the bathroom surrounded by drug paraphernalia. The responding officer observed dogs, feces, and urine throughout the home, and the petitioner admitted to using drugs but denied knowledge of her deceased boyfriend’s drug use.

¹ The petitioner appears by counsel William B. Summers. The West Virginia Department of Human Services appears by counsel Attorney General John B. McCuskey and Assistant Attorney General Heather Olcott. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel. Counsel Michael D. Farnsworth Jr. 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). Additionally, because two children share the same initials, we refer to them as X.M.-1 and X.M.-2.

³ X.M.-2 had not yet been born.

In April 2022, the petitioner stipulated to neglecting the children by failing to provide a safe home environment and failing to supervise the children, as evidenced by the drug overdose death that occurred in her home and that was witnessed by her children. The court adjudicated her of neglecting the children and granted her a post-adjudicatory improvement period, the terms of which required, among other things, that the petitioner maintain a clean home, abstain from drugs and alcohol, notify her caseworker if she entered a new relationship, and refrain from associating with individuals who abuse substances, unless in a therapeutic setting. The court held multiple review hearings, at which it was apprised that the petitioner entered a relationship with and was pregnant by W.F., an individual who was recently arrested for possession of methamphetamine and other crimes.

At a dispositional hearing in February 2023, the petitioner conceded that she initially tried to hide her relationship with W.F. but, after he battered her while she was pregnant, she had no intention to see W.F. again. Ultimately, the court granted the petitioner a post-dispositional improvement period, despite her “inability to be open and honest.” However, in March 2023, the DHS filed a third amended petition, alleging that when the petitioner gave birth to X.M.-2, she had not corrected the conditions of neglect to which she stipulated. The petition further alleged that W.F. abused X.M.-2 by abusing substances and by committing domestic battery against the petitioner while she was pregnant. In April 2023, the court held an adjudicatory hearing during which the petitioner testified that she had no contact with W.F. while he was in jail and admitted that the conditions that led to the filing of the initial petition were still present. In the following order, the court adjudicated the petitioner of neglecting X.M.-2, ordered that she continue her post-dispositional improvement period, and granted the DHS’s request to obtain W.F.’s recorded jail phone calls.

In June 2023, the DHS filed a motion to terminate the petitioner’s improvement period because she placed hundreds of calls to W.F. while he was incarcerated. The recorded calls revealed that W.F. was living with the petitioner when the domestic battery occurred. In the calls, the petitioner and W.F. discussed abusing drugs, deleting the petitioner’s call logs, how the petitioner attempted to hide the unclean state of the home, and how to deceive Child Protective Services (“CPS”) regarding their relationship. They also discussed how to sneak a vaping device into a drug treatment facility, the petitioner transporting large quantities of controlled substances for a friend of W.F.’s, and W.F.’s mother potentially selling marijuana to the petitioner. At a July 2023 hearing, the circuit court admitted the recorded calls into evidence, terminated the petitioner’s post-dispositional improvement period, and discontinued all services.

Following a dispositional hearing in September 2023, the circuit court terminated the petitioner’s parental rights. The court noted that the petitioner had multiple chances to improve but did not take advantage of those opportunities and that, based upon the jail calls, “it is clear that at no point has [the petitioner] taken this case seriously or had any intentions of changing the conditions of neglect.” The court found that the petitioner had “zero recognition” that her relationships were what put her children in danger at the outset of the proceedings. The court further found that the petitioner was unwilling to comply with a reasonable family case plan, there was no reasonable likelihood she could substantially correct the conditions of neglect in the near future, and that the children’s need for continuity of care and caretakers necessitated termination.

Ultimately, the court terminated the petitioner's parental rights. It is from this order that the petitioner appeals.⁴

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 finding that the DHS made reasonable efforts to address the conditions of neglect. *See* W. Va. Code § 49-4-604(c)(6)(C)(iv)⁵ (requiring a dispositional order to indicate "[w]hether or not the department made reasonable efforts to preserve and reunify the family . . . including a description of what efforts were made or that those efforts were unreasonable due to specific circumstances"). However, the petitioner does not dispute that she received extensive remedial services. Instead, she argues that the services were inadequate and, in some instances, "punitive." This argument has no basis in the record, given the petitioner's dishonesty with CPS and her refusal to engage in the services offered. As set forth above, the petitioner colluded with W.F. to deceive the DHS and the circuit court about their relationship and her involvement with drugs. The court correctly found that the DHS made reasonable efforts to preserve the family through the services offered to the petitioner. Thus, the petitioner is entitled to no relief.

The petitioner also argues that the circuit court erroneously terminated her parental rights in the absence of adequate evidence and without considering the children's "need for continuity of caretakers." *See* W. Va. Code § 49-4-604(c)(6)(A). However, West Virginia Code § 49-4-604(c)(6) permits termination of parental rights upon finding that "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 children's welfare. Specifically, there is no reasonable likelihood that conditions of neglect or abuse can be substantially corrected when "[t]he abusing parent or parents have not responded to or followed through with a reasonable family case plan or other rehabilitative efforts." W. Va. Code § 49-4-604(d)(3). Moreover, a reviewing court "must affirm a finding if the circuit court's account of the evidence is plausible in light of the record viewed in its entirety." Syl. Pt. 1, in part, *In re Tiffany Marie S.*, 196 W. Va. 223, 470 S.E.2d 177 (1996). Here, the record is replete with evidence that the petitioner failed to comply with her case plan, actively attempted to mislead the parties and the court, and made no effort to correct the conditions of neglect that led to the filing of the initial petition. Based upon ample evidence, the court found that there was no reasonable likelihood that the conditions of neglect could be substantially corrected in the near future and, contrary to the petitioner's assertion otherwise, that termination was necessary, particularly in light of the children's need for continuity of care and caretakers. Though the petitioner contends that, in fact, the children's need for continuity of care and caretakers was not adequately considered given that one of the children was placed in multiple foster homes during the pendency of the proceedings, we find that the children's temporary

⁴ X.M.-1 and X.R.'s father's custodial rights were terminated; however, the DHS is seeking modification and termination of his parental rights. X.M.-2's father, W.F., has not yet been adjudicated. The permanency plan is adoption in the current placement.

⁵ The petitioner makes numerous references to West Virginia Code § 49-4-604(b)(6), which does not exist. It appears that the petitioner is referring to West Virginia Code § 49-4-604(c)(6), thus we discuss her arguments with that understanding.

placements have no bearing on the court's findings that support termination of the petitioner's parental rights. As such, the petitioner is entitled to no relief.⁶

For the foregoing reasons, we find no error in the decision of the circuit court, and its October 5, 2023, order is hereby affirmed.

Affirmed.

ISSUED: January 29, 2025

CONCURRED IN BY:

Chief Justice William R. Wooton
Justice Elizabeth D. Walker
Justice Tim Armstead
Justice C. Haley Bunn
Justice Charles S. Trump IV

⁶ The petitioner also argues that termination of her rights was contrary to the children's best interests but supports her assertion by again claiming that services were inadequate. Having already discerned no error in the court's finding that the DHS made reasonable efforts to preserve the family through the services offered, we need not address this claim.