

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re S.B.

No. 23-692 (Kanawha County 22-JA-228)

MEMORANDUM DECISION

Petitioner Mother K.M.¹ appeals the Circuit Court of Kanawha County’s November 6, 2023, order terminating her parental rights to S.B., arguing that the circuit court erred by denying her motion for an improvement period and failing to apply the least restrictive alternative disposition.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 earlier proceedings involving children not at issue in this appeal, the DHS filed an amended petition in May 2022, alleging that the petitioner abused and neglected her newborn child, S.B., by failing to attend prenatal appointments and provide the child with necessary supervision, housing, and financial support. At a June 2022 adjudicatory hearing, the petitioner admitted to certain allegations in the petition; thus, the circuit court adjudicated the petitioner of abusing and neglecting the child. Shortly after the adjudicatory hearing, the petitioner filed a written motion for a post-adjudicatory improvement period.

In September 2022, the DHS filed an amended petition alleging that in June 2022, the petitioner’s parental rights to her three other children were involuntarily terminated because she engaged in illegal drug use, lacked stability due to unemployment and inappropriate housing, failed

¹ The petitioner appears by counsel Sandra K. Bullman. The West Virginia Department of Human Services appears by counsel Attorney General John B. McCuskey and Deputy Attorney General Steven R. Compton. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel. Counsel Maggie J. Kuhl 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).

to provide financially for the children, and had not cooperated with services or the proceedings.³ In May 2023, the DHS filed another amended petition alleging that the child’s father pled guilty to battery and was sentenced to one year of unsupervised probation. The amended petition further alleged that the petitioner continued her relationship with and lived with the father. In a subsequent order, the court directed that the father leave the petitioner’s home, as his behavior detracted from the petitioner’s improvements. In August 2023, the court entered an adjudicatory order, noting that the petitioner’s rights to her other children were terminated for her failure to follow through with a case plan designed to ameliorate her substance abuse and domestic violence issues. The court found that the petitioner remained in a relationship with the father despite his recent battery conviction and that “she continue[d] to make decisions that impede[d] her ability to effectively parent her child.” The court further found that the aforementioned conditions continued, unabated, and adjudicated her of abusing and neglecting the child. The court denied the petitioner’s motion for a post-adjudicatory improvement period, noting that the petitioner had recently tested positive for cocaine.

In September 2023, the circuit court held a dispositional hearing, at which a Child Protective Services worker testified that the conditions of drug use and domestic violence that led to the petitioner’s prior terminations persisted and were exacerbated by the petitioner’s ongoing relationship with the child’s father. The witness noted that the court ordered the petitioner to not reside with the father, but, at the time of the dispositional hearing, they lived together. The petitioner testified that she continued to be in a relationship with the father and admitted that she had an untreated substance abuse problem. In the following dispositional order, the court determined that the petitioner had not remedied the conditions of abuse and neglect that led to the prior involuntary termination of her parental rights to her other children as evidenced by her continued drug use and her choice to remain in a relationship with the father, whose parental rights to his other children were previously terminated due to his “severe” domestic violence and drug use issues. Ultimately, the court found that there was no reasonable likelihood that the conditions of abuse and neglect could be corrected in the near future and that termination of the petitioner’s parental rights was in the child’s best interest. The court specifically found that the petitioner failed to follow through with a reasonable family case plan or other rehabilitative services and there were no reasonable, available, less drastic alternatives to termination. Accordingly, 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 denying her motion for a post-adjudicatory improvement period and contends that her participation in visits and drug screens prove that an improvement period was warranted. We disagree. In order to receive an improvement period, the parent must, among other things,

³ On appeal to this Court, we upheld termination of the petitioner’s parental rights as to those children. *See In re G.P. III*, No. 22-0507, 2023 WL 3196941, at *2 (W. Va. May 2, 2023) (memorandum decision).

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

“demonstrate[], by clear and convincing evidence, that the [parent] is likely to fully participate in the improvement period.” W. Va. Code § 49-4-610(2)(B). Furthermore, “a parent charged with abuse and/or neglect is not unconditionally entitled to an improvement period.” *In re Charity H.*, 215 W. Va. 208, 216, 599 S.E.2d 631, 639 (2004). Here, the evidence indicated that the petitioner undertook no effort to remedy the drug use that led to the termination of her rights to her other children and continued to live with the father despite his battery conviction and in violation of the court’s order directing otherwise. Based upon ample evidence, the court found that the petitioner was unlikely to fully participate, thus, an improvement period was not warranted. *See In re Tonjia M.*, 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002) (“[A] circuit court has the discretion to refuse to grant an improvement period when no improvement is likely.”). As such, the petitioner is entitled to no relief.

The petitioner also argues that the circuit court erroneously terminated her parental rights because it did not employ the least restrictive alternative. However, “[t]ermination of parental rights . . . may be employed without the use of intervening less restrictive alternatives when it is found that there is no reasonable likelihood under [West Virginia Code § 49-4-604(c)(6)] that conditions of neglect or abuse can be substantially corrected” and when necessary for the welfare of the child. Syl. Pt. 5, in part, *In re Kristin Y.*, 227 W. Va. 558, 712 S.E.2d 55 (2011) (quoting Syl. Pt. 2, *In re R.J.M.*, 164 W. Va. 496, 266 S.E.2d 114 (1980)); *see also* W. Va. Code § 49-4-604(c)(6) (permitting circuit courts to terminate parental rights upon finding no reasonable likelihood that the conditions of abuse and neglect can be substantially corrected in the near future and when necessary for the child’s welfare). There is no reasonable likelihood that the 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 . . . as evidenced by the continuation or insubstantial diminution of conditions which threatened the health, welfare, or life of the child.” *Id.* § 604(d)(3). Furthermore, “the minimum threshold of evidence necessary for termination” of parental rights is reduced when a parent’s parental rights to another child were previously involuntarily terminated. Syl. Pt. 2, in part, *In re George Glen B., Jr.*, 205 W. Va. 435, 518 S.E.2d 863 (1999). Here, the court specifically found that the petitioner failed to correct the drug use that led to the involuntary termination of her parental rights to her three other children and continued her relationship with the father, despite his history of violence, drug use, and prior terminations. The court found that there was no reasonable likelihood that the petitioner could remediate the conditions of abuse and neglect that persisted, unabated, across the entirety of the proceedings and that the child’s best interests required termination. Based upon ample evidence, the court terminated the petitioner’s parental rights, and we decline to disturb its decision.

For the foregoing reasons, we find no error in the decision of the circuit court, and its November 6, 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