

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re E.B., A.P., and C.P.

No. 23-716 (Wood County CC-54-2022-JA-352, CC-54-2022-JA-354, and CC-54-2022-JA-355)

MEMORANDUM DECISION

Petitioner Mother L.P. (“the mother”) and Petitioner Father R.P. (“the father”)¹ jointly appeal the Circuit Court of Wood County’s November 15, 2023, order terminating their rights to E.B., A.P., and C.P.,² arguing that the circuit court erred by adjudicating them as abusing and neglecting parents based on the evidence, denying their joint motion for improvement periods, and ultimately terminating their parental rights. 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 2022, the DHS filed a petition alleging that the father sexually abused then-thirteen-year-old E.B., with A.P. and C.P. residing in the home, and that the mother failed to protect the children.³ The father denied the allegations, and the mother did not believe E.B.’s disclosures,

¹ The petitioners appear by counsel J. Morgan Leach. The West Virginia Department of Human Services appears by counsel Attorney General John B. McCuskey and Assistant Attorney General Lee Niezgod. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel. Counsel Courtney L. Ahlborn appears as the children’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 mother and father are married and resided together with E.B., A.P., and C.P. in the home. The mother is E.B.’s biological mother; however, the father is not E.B.’s biological father. E.B.’s biological, nonabusing father shared custody of E.B. with the mother. The father is the biological father of the other two children, A.P. and C.P.; however, the mother is not their biological mother. The biological mother of A.P. and C.P. had her custodial rights terminated in a separate proceeding.

despite the child's "very specific descriptions" of the sexual abuse and her diagnosis of bacterial vaginosis. Therefore, the DHS alleged that all three children in the home were abused and neglected.

Testimony at adjudicatory hearings held in May, June, and August 2023, revealed that in September 2022, E.B. initially reported conduct by the father that a Child Protective Services ("CPS") worker described as "grooming." When the CPS worker spoke with the family following E.B.'s reports, she observed the mother's lack of "concern or compassion for her daughter" and stated that the mother "did not believe her . . . [and] blamed it on attention seeking." Furthermore, the CPS worker advised the mother, who was not yet married to the father at the time, that there was "no doubt" the father would sexually abuse E.B. because, in her experience, grooming behavior typically preceded sexual abuse. Despite this warning, the mother and father were married approximately one month later, and they remained together throughout the proceedings. E.B. then reported sexual abuse by the father in December 2022, which prompted the DHS's petition. E.B. participated in forensic interviews at that time, which were admitted into evidence. However, the mother testified that "I don't believe her . . . because she has lied before," referring to a prior disclosure of sexual abuse that the child recanted. The father also testified and denied sexually abusing the child, although he admitted that there were times the two were alone together. The father, mother, and the child's grandparents all testified to the child's recent behavioral issues, including "meltdowns" and attempted self-harm. The forensic evaluator who interviewed the child testified that E.B. exhibited "trauma-related" traits and that her behavioral issues were "grounded in an abusive history." A physician also testified regarding the child's diagnosis of bacterial vaginosis, indicating that "it can be associated with sexual activity, but . . . it is not exclusive to that." Considering the foregoing, the circuit court found clear and convincing evidence that E.B. was abused and neglected based on the father's sexual abuse and the mother's failure to protect the child. The court further found A.P. and C.P. were also abused and neglected children because they resided in the home where E.B. was sexually abused. The petitioners thereafter filed a joint motion for improvement periods.

The circuit court proceeded to disposition in September 2023, at which time the DHS and guardian ad litem supported termination of the petitioners' rights. Based on the evidence, the court terminated the mother's parental rights to E.B. and terminated father's parental rights to A.P. and C.P. and "any rights he may have to E.B." Regarding the father, the court noted that the DHS was not required to make reasonable efforts due to the finding of sexual abuse. Regarding the mother, the court found that she did not believe the child and there was "no evidence that position has changed whatsoever . . . [The mother] has essentially chosen [the father] over her own child and she continues to do so." Furthermore, the court found evidence that the DHS made reasonable efforts to reunify the family to the extent possible by allowing the mother to participate in phone visits with E.B.; however, due to the mother's failure to acknowledge the abuse, services were frustrated. Therefore, the court found it would be an exercise in futility to grant the petitioners an improvement period and denied their motion. The court further found no reasonable likelihood that the conditions of abuse or neglect could be substantially corrected in the near future and that

continuation in the home would be contrary to the welfare of the children. It is from the dispositional order that the petitioners appeal.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). The petitioners first argue that the evidence did not support the circuit court's finding that they abused and neglected the children. West Virginia Code § 49-4-601(i) requires the circuit court to determine "whether the child is abused or neglected . . . based on conditions existing at the time of the filing of the petition and proven by clear and convincing evidence." Furthermore, "[t]he statute . . . does not specify any particular manner or mode of testimony or evidence by which the [DHS] is obligated to meet this burden." Syl. Pt. 3, *In re F.S.*, 233 W. Va. 538, 759 S.E.2d 769 (2014) (quoting Syl. Pt. 3, *In re Christina L.*, 194 W. Va. 446, 460 S.E.2d 692 (1995)). Petitioners assert that the weight of the evidence did not support a finding of abuse and neglect, maintaining on appeal the "untruthfulness of the child's statements." Upon our review of the record, we disagree. Although the petitioners insist that the only evidence presented was E.B.'s statements given during the forensic interview, the petitioners ignore the testimonial evidence of the forensic interviewer. In any event, we have stated that "sexual abuse may be proven solely with the victim's testimony, even if that testimony is uncorroborated." *In re K.P.*, 235 W. Va. 221, 230, 772 S.E.2d 914, 923 (2015) (citing Syl. Pt. 5, *State v. Beck*, 167 W. Va. 830, 286 S.E.2d 234 (1981)). The court clearly weighed all the evidence, and we refuse to disturb its findings of abuse and neglect on appeal. *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.").

The petitioners further argue that the circuit court's decision to deny their motion for improvement periods was erroneous. Pursuant to West Virginia Code § 49-4-610(2)(B), "a court may grant a respondent an improvement period . . . when . . . [t]he respondent demonstrates, by clear and convincing evidence, that the respondent is likely to fully participate in the improvement period." Despite this burden, the petitioners failed to present any evidence of their likelihood to fully participate in an improvement period and never acknowledged their abusive and neglectful conduct. In fact, on appeal before this Court, the petitioners continue to "vehemently deny any wrongdoings." *See 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)) (determining that "an improvement period is an exercise in futility at the child's expense" when a respondent "fail[s] to acknowledge the existence of the problem"). Although the petitioners argue that because they participated in multidisciplinary team meetings and sought visits with the children they demonstrated their likelihood to improve their relationships with the children, this is insufficient under the circumstances to warrant the granting of an improvement period, and we see no abuse of discretion in the circuit court's decision. *See In re Tonjia M.*, 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002) ("The circuit court has the discretion to refuse to grant an improvement period when no improvement is likely.").

⁴ The permanency plan for E.B. is a legal guardianship with foster placement pursuant to her nonabusing father's consent, and the permanency plan for A.P. and C.P. is adoption in a kinship placement.

We further find no error in the circuit court’s ultimate decision to terminate the petitioners’ rights. The petitioners’ argument that the court erred in this regard is grounded in their assertion that the underlying allegations “simply did not happen.” Having discerned no error in the circuit court’s finding of abuse and neglect, the petitioners are not entitled to relief. Circuit courts are permitted to terminate parental, custodial, and guardianship 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, when necessary for the welfare of the child,” and we see no error in the court’s findings upon our review of the record here. *See* W. Va. Code §49-4-604(c)(6).

Accordingly, we find no error in the decision of the circuit court, and its November 15, 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