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C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

***In re* A.W.**

No. 23-449 (Boone County CC-03-2021-JA-46)

MEMORANDUM DECISION

Petitioner Mother R.B.-1[1] appeals the Circuit Court of Boone County's July 13, 2023, order terminating her parental, custodial, and guardianship rights to A.W.,[2] arguing that the circuit court erred in terminating her 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 May 2021, the DHS filed a petition alleging that the child was abused and neglected due to the petitioner's drug use and unsafe living conditions. The DHS alleged that the petitioner had a criminal history and repeatedly violated the conditions of her parole by, among other things, failing multiple drugs screens; violating curfew; and committing multiple misdemeanors in the prior year, including driving under the influence and possession of a controlled substance. While investigating the petitioner's home in the current matter, the DHS and law enforcement discovered numerous guns, ammunition, and drug paraphernalia accessible by the child, as well as animal feces throughout the home. The petitioner was arrested for parole violations and possession of a firearm by a prohibited person. At the time of her arrest, the petitioner tested positive for methamphetamine, amphetamine, and marijuana.

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[1] The petitioner appears by counsel Lauren Thompson. The West Virginia Department of Human Services appears by counsel Attorney General John B. McCuskey and Assistant Attorney General Kristen E. Ross. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel. Counsel Allison K. Huson 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). Further, because the petitioner and her mother share the same initials, we refer to them as R.B.-1 and R.B.-2, respectively.

Following numerous continuances, the court held an adjudicatory hearing on December 22, 2021. The petitioner admitted to having a substance abuse problem that affected her ability to appropriately parent the child and was granted a six-month post-adjudicatory improvement period. The terms of the improvement period included continuing her sobriety, participating in visitation, attending parenting classes, maintaining employment, and obtaining a stable home.

Over the next year, the petitioner demonstrated compliance with her improvement period and progressed to unsupervised overnight visits with the child.[3] Additionally, the petitioner was no longer required to submit to drug screens. However, the petitioner later violated restrictions imposed by the multidisciplinary treatment team ("MDT") regarding her mother, R.B.-2, having unsupervised access to the child.[4] Concerningly, the petitioner was dishonest with the MDT about R.B.-2 living in her home. Despite repeatedly instructing the petitioner to prohibit unsupervised contact between R.B.-2 and the child, the petitioner permitted such contact on multiple occasions. Furthermore, just days before reunification was scheduled, a DHS worker witnessed the petitioner smoking marijuana, and the petitioner later tested positive for marijuana despite initially denying such use.

On March 28, 2023, the guardian filed a report recommending termination of the petitioner's parental rights and a motion for the same. On April 3, 2023, the first of two dispositional hearings was held. Despite admitting that the petitioner recently tested positive for marijuana and had not remedied the conditions of abuse and neglect at issue, the DHS proposed reunifying the petitioner with the child. A DHS worker explained that it would likely take six months before reunification could occur, given the ongoing issues. Additionally, the child's therapist testified that she had concerns about the child's wellbeing if she was reunified with the petitioner. The therapist explained that the child reported sleeping in bed with R.B.-2 and being scared of "strangers coming to the apartment." The therapist also explained that, during a "family session," the petitioner revealed that R.B.-2 was abusing drugs.

At the continuation of the dispositional hearing on April 28, 2023, the petitioner testified to her participation in services, such as drug treatment and therapy, claiming to have ceased treatment for a period because she could not afford it. After initially denying it, the petitioner reluctantly admitted that she allowed the child to share a bed with R.B.-2. Further, despite acknowledging that two MDT meetings were held to address the issue, the petitioner claimed that she did not know R.B.-2 was an inappropriate person for the child to be around. Finally, the petitioner denied using "illegal substances" because she had used "legal marijuana from the gas station" and explained that she obtained a medical cannabis card in March 2023 to treat her post-traumatic stress disorder and anxiety. The petitioner admitted that she did not inform the DHS about her decision to obtain a medical cannabis card. The petitioner then presented testimony from multiple service providers who, collectively, testified that the petitioner was compliant with

[3] The court granted the petitioner a ninety-day extension of her post-adjudicatory improvement period at a review hearing held on June 21, 2022.

[4] The record indicates that the MDT deemed the petitioner's mother an inappropriate person based on several factors, including her suspected use of drugs and relationship with a known drug user.

services and were "surprised" that termination was being pursued. However, the recovery coach from the petitioner's outpatient program testified that she was unaware of the petitioner's relapsed drug use and contradicted the petitioner's testimony about ceasing treatment over financial issues. Instead, the coach testified that the petitioner stopped treatment because she believed it was no longer necessary.

In June 2023, the circuit court entered an order terminating the petitioner's parental, custodial, and guardianship rights. The court found that while the petitioner had been complying with services, participating in visits, and maintaining employment and stable housing, she still "demonstrated critical thinking errors in regard to contacts with her child, and in using controlled substances." The court further found that the petitioner's testimony regarding her substance abuse recovery was not credible as it was directly contradicted by that of her recovery coach. Additionally, the court found that the petitioner "was in violation of the no unsupervised contact provision of the improvement plan." The court found that the petitioner's testimony feigning ignorance as to her violation of this provision by allowing R.B.-2 to stay at her home and share a bed with the child was "disingenuous at best." The court also found that this testimony demonstrated the petitioner's inability to properly supervise and protect the child. Based on the evidence, the circuit court concluded that the petitioner did not successfully complete her improvement period and would not be able to correct the conditions of abuse and neglect in the near future. The court further concluded that termination of the petitioner's rights was in the child's best interest. Accordingly, the court terminated the petitioner's parental, custodial, and guardianship rights.[5] It is from the dispositional 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). Before this Court, the petitioner argues that the circuit court's "Machiavellian decision" to terminate her rights was erroneous because it was, in essence, against the weight of the evidence.[6] In support, the petitioner relies on the fact that the

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

[6] In addition to the assignment of error addressed here, the petitioner also alleges that the circuit court erred by (1) terminating her rights because the case plan filed by the DHS did not "give notice to [her] that her rights would be terminated," (2) ordering unsupervised visitation with the child to continue beyond the statutory expiration of her improvement period, and (3) finding that the DHS should have moved for termination as the child was out of the home for fifteen of the last twenty-two months when the DHS "create[d] significant delays in the [petitioner's] ability to quickly seek the return of her child." However, outside of generally referring to Chapter 49 of the West Virginia Code, the petitioner fails to cite to any authority supporting these arguments. As we have stated, "issues . . . not supported with pertinent authority, are not considered on appeal." *State v. Larry A.H.*, 230 W. Va. 709, 716, 742 S.E.2d 125, 132 (2013) (quoting *State v. LaRock*, 196 W. Va. 294, 302, 470 S.E.2d 613, 621 (1996)). Furthermore, Rule 10(c)(7) of the West Virginia Rules of Appellate Procedure requires that "[t]he brief must contain an argument exhibiting clearly the points of . . . law presented . . . and citing the authorities relied on." Accordingly, we decline to address these assignments of error on appeal.

DHS and its service providers opposed terminating her rights.[7] The petitioner additionally relies on the fact that she complied with the directives of the MDT. However, we find the petitioner's argument unavailing. The record shows that, despite receiving services for over a year, the petitioner was unable to refrain from using illegal substances or protect the child from inappropriate persons and dangerous situations *without oversight or intervention by the court*. Indeed, the petitioner relapsed as soon as the drug screening requirement was removed and allowed R.B.-2, whom she believed to be abusing drugs, to live with her and sleep with the child. Even more troubling is the fact that the petitioner continued to permit R.B.-2 to have unsupervised contact with the child on multiple occasions after being instructed not to and was dishonest about the situation. As we have explained, "it 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.'" *In re Jonathan Michael D.*, 194 W. Va. 20, 27, 459 S.E.2d 131, 138 (1995) (quoting *W. Va. Dep't of Human Serv. v. Peggy F.*, 184 W. Va. 60, 64, 399 S.E.2d 460, 464 (1990)). Although the petitioner complied with services, it is clear that she made no improvement in her overall ability to appropriately parent or protect the child.

Furthermore, the record shows that the circuit court considered the recommendations of the DHS and its service providers, as well as the petitioner's compliance with the MDT's directives, in reaching its dispositional decision. The circuit court was free to accord appropriate weight to the recommendations and testimony of the DHS and its service providers, and we refuse to disturb these determinations 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."). Contrary to the petitioner's arguments, the record supports the circuit court's findings that there was no reasonable likelihood the conditions of abuse or neglect could be substantially corrected and that termination was necessary for the child's welfare. Specifically, it is clear that the petitioner "demonstrated an inadequate capacity to solve the problems of abuse or neglect on her own or with help." W. Va. Code § 49-4-604(d) (defining "[n]o reasonable likelihood that conditions of neglect or abuse can be substantially corrected"). Further, the court was correct that the child required permanency and stability after being "caught in [an] untenable situation[]." Termination of parental, custodial, and guardianship rights is appropriate upon such findings. *See* W. Va. Code § 49-4-604(c)(6) (permitting termination of 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").

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[7] We note that, on appeal, the DHS argues that the circuit court's decision to terminate the petitioner's rights was supported by sufficient evidence and should be affirmed. Specifically, the DHS contends that "during her improvement period, Petitioner did well under supervision but when unmonitored, Petitioner used marijuana and continued to allow inappropriate and dangerous individuals access to A.W." Additionally, the DHS acknowledged that, pursuant to West Virginia Code § 49-4-605(a)(1), it was required to seek termination of the petitioner's parental rights because the child had been in foster care for more than fifteen of the previous twenty-two months and none of the exceptions outlined in West Virginia Code § 49-4-605(b) were applicable.

The petitioner also briefly argues that termination of her rights was "extreme under the circumstances" as "other less restrictive measures [were] available." However, the petitioner fails to acknowledge that "[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(d)] . . . 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 re R.J.M.*, 164 W. Va. 496, 266 S.E.2d 114 (1980)). As explained above, ample evidence supports the circuit court's decision to terminate the petitioner's rights. Therefore, we discern no error in the circuit court's decision to terminate the petitioner's parental, custodial, and guardianship rights.

For the foregoing reasons, the circuit court's July 13, 2023, order is hereby affirmed.

Affirmed.

ISSUED: March 4, 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