

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re C.Y. and N.M.

No. 24-107 (Cabell County 22-JA-63 and 22-JA-64)

MEMORANDUM DECISION

Petitioner Mother H.M.¹ appeals the Circuit Court of Cabell County’s January 16, 2024, order terminating her parental rights to the children C.Y. and N.M., arguing that termination was erroneous.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 May 2022, the DHS filed a petition alleging that the petitioner abused drugs, failed to provide the children with adequate housing and neglected the children’s hygiene. According to the DHS’s petition, then-seven-year-old N.M. had missed thirty-two days of school and begged for food at school. The DHS also alleged that the petitioner failed to obtain adequate medical treatment for then-three-month-old C.Y. who had an eye infection and diaper rash. The DHS further alleged that after implementing an in-home safety plan and services a month prior, the DHS was notified that the petitioner and C.Y.’s father were evicted from the homeless shelter where they lived due to methamphetamine use and the deplorable, unhygienic condition of their room.

On August 9, 2022, the parties convened for a multidisciplinary treatment team meeting during which a family case plan was developed. The terms of the case plan included drug screens, substance abuse treatment, visits with the children, and that the petitioner obtain adequate housing. Then, on August 23, 2022, the petitioner underwent a psychological evaluation which stated, “[h]er

¹ The petitioner appears by counsel Bradley D. Dunkle. The West Virginia Department of Human Services appears by Attorney General John B. McCuskey and Assistant Attorney General Kristen Ross. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel. Counsel Krista Karickhoff Conway 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).

most significant hurdle to capable parenting is based on her dependent personality traits, which prompt her to sacrifice the children’s wellbeing when it conflicts with her needs . . . and place[] her need for a relationship ahead of her children’s safety.” The psychologist concluded that the petitioner’s prognosis for improved parenting was poor due to her minimal acceptance of responsibility, highly dysfunctional personality traits, and her tendency to self-medicate with illegal drugs.

In October 2022, the circuit court held an adjudicatory hearing at which the petitioner stipulated to neglecting the children by abusing drugs and failing to provide adequate housing. The court granted the petitioner a post-adjudicatory improvement period. At a January 2023 review hearing, the court noted that the petitioner had not begun drug treatment or counseling, as required, and specifically ordered that she begin both. Then, the court granted the petitioner an extension of her post-adjudicatory improvement period. At a review hearing in April 2023, the court noted that the petitioner’s improvement period was due to expire and granted her another extension.

In July 2023, the court held a dispositional hearing at which a Child Protective Services (“CPS”) worker testified that the petitioner was “minimally compliant” with her improvement period. The worker testified that she visited the petitioner’s home and observed an unidentified individual that appeared to be living there, evidence of other individuals staying there, multiple pets, trash, feces, bugs, piles of collected metal, and a lack of running water. The worker noted that the petitioner had not drug screened since March 2023, missed a total of twenty-two drug screens, did not complete parenting classes, missed multiple visits with the children, and lied to service providers about her employment status. At the conclusion of the hearing, the petitioner requested a post-dispositional improvement period.

In the resulting dispositional order, the court recounted the CPS worker’s description of the deplorable condition of the petitioner’s home. The court pointed out the petitioner’s “lack of marked improvement” and found that the issues of inadequate housing and substance abuse had not been addressed. Based upon the evidence, the court concluded that the petitioner failed to comply with her case plan and failed to remediate the conditions that prompted the petition’s filing. The court found that there was no reasonable likelihood that the conditions of neglect would be substantially corrected in the near future and the children’s welfare necessitated termination. Ultimately, rather than granting the petitioner an additional improvement period, the court terminated the petitioner’s parental rights. It is from this order that the petitioner appeals.³

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 terminating her parental rights because a less restrictive dispositional alternative, specifically, a post-dispositional improvement period, was warranted. In support of her

³ C.Y.’s father’s parental rights were also terminated. The permanency plan for C.Y. is adoption in the current placement. N.M. was placed with his nonabusing father, and the permanency plan is for N.M. to remain in his care.

argument, the petitioner claims that the court failed to account for her “meritorious compliance” with her case plan.⁴ However, we have held as follows:

“Termination of parental rights, the most drastic remedy under the statutory provision covering the disposition of neglected children, [West Virginia Code § 49-4-604] 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.” Syllabus point 2, *In re R.J.M.*, 164 W.Va. 496, 266 S.E.2d 114 (1980).

Syl. Pt. 5, *In re Kristin Y.*, 227 W. Va. 558, 712 S.E.2d 55 (2011). There is no reasonable likelihood that conditions of neglect or abuse can be substantially corrected when the parent “ha[s] not responded to or followed through with a reasonable family case plan or other rehabilitative efforts . . . designed to reduce or prevent the abuse or neglect of the child, as evidenced by the continuation or insubstantial diminution of conditions which threatened . . . the child.” W. Va. Code § 49-4-604(d)(3). Here, the petitioner never obtained drug treatment, missed twenty-two drug screens, sporadically participated in visits, did not complete parenting classes, and failed to remediate her housing situation. Based upon this evidence, the court found that the petitioner did not comply with her case plan and that there was no reasonable likelihood that she could remedy the substance abuse and inadequate housing that prompted the filing of the petition. As such, we decline to disturb the circuit court’s decision.

Inasmuch as the petitioner argues that a post-dispositional improvement period was appropriate, we disagree, as “the circuit court has the discretion to refuse to grant an improvement period when no improvement is likely.” *In re Tonjia M.*, 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002). In order to obtain a post-dispositional improvement period after having previously received an improvement period, a parent is required to “demonstrate[] that since the initial improvement period, the [parent] has experienced a substantial change in circumstances” and “that due to that change in circumstances, the [parent] is likely to fully participate.” W. Va. Code § 49-4-610(3)(D). The petitioner fails to point to any facts that demonstrated a change in circumstances and instead reiterates that her “meritorious compliance” with her previous improvement period entitled her to another. However, the court specifically found that none of the issues had been addressed and the petitioner did not make progress throughout the case. As such, we find no error in the circuit court’s refusal to grant the petitioner’s request for a post-dispositional improvement period.

⁴ The petitioner supports her argument by claiming that, early in the case, a service provider gave her advice that was contrary to her case plan but fails to provide any details regarding the issue or explain how she was allegedly misled. Regardless, the circuit court acknowledged an issue with the service provider, removed that provider from the case, and granted the petitioner an extension of her improvement period to accommodate for the delay. Moreover, the petitioner fails to explain how this issue resulted in her noncompliance *after* that service provider was removed. Thus, the petitioner’s argument is meritless.

For the foregoing reasons, we find no error in the decision of the circuit court, and its January 16, 2024, 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