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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

***In re* A.T.-1 and A.T.-2**

No. 24-131 (Berkeley County CC-02-2021-JA-197 and CC-02-2021-JA-198)

MEMORANDUM DECISION

Petitioner Mother B.T.[1] appeals the Circuit Court of Berkeley County's February 5, 2024, order terminating her parental rights to A.T.-1 and A.T.-2, arguing that the circuit court erred in failing to properly establish jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA") and denying her an improvement period.[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 September 2021, the DHS filed a petition alleging that the parents abused and neglected the children.[3] It is undisputed that the parents and children were residents of Pennsylvania, but the DHS's petition concerned conduct that occurred in West Virginia at the home of the children's grandmother. Specifically, the DHS alleged that the petitioner committed extensive physical and emotional abuse of A.T.-1, including hitting the child with a belt and choking him. According to A.T.-2's later statement to Child Protective Services, when the petitioner choked A.T.-1, the child's face turned blue. When emergency personnel transported A.T.-1 for a medical examination,

[1] The petitioner appears by counsel Phil Isner. The West Virginia Department of Human Services appears by counsel Attorney General John B. McCuskey and Assistant Attorney General Lee Niezgoda. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel. Counsel Jared M. Adams 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). Because the children share the same initials, we use numbers to differentiate them.

[3] The underlying proceedings involved a third child, B.T., who is not at issue in this appeal.

the child disclosed extensive abuse including choking and starvation. The petition also indicated that adult family members corroborated the children's disclosures.

Thereafter, the petitioner filed an answer in which she admitted to the allegations in the petition. At an adjudicatory hearing in November 2021, the petitioner again admitted to the allegations and waived her right to a contested adjudication. Accordingly, the court adjudicated the children as abused and neglected. The court also made a finding that the conduct constituted aggravated circumstances. However, it was not until after the adjudicatory hearing that the circuit court contacted a Pennsylvania court to address the UCCJEA and its jurisdiction. After the Pennsylvania court declined jurisdiction, the court entered an order memorializing the declination. The court then entered its adjudicatory order in January 2022.

At the subsequent dispositional hearing, the parents minimized the conduct giving rise to the petition, with the petitioner claiming that she simply lost her temper and spanked A.T.-1. The parents further blamed A.T.-1's behavioral problems for their conduct. The petitioner explicitly denied ever having choked A.T.-1. The court then terminated the parents' parental rights, after which they appealed to this Court. Ultimately, we concluded that in adjudicating the parents, "the circuit court exceeded the scope of its temporary, emergency jurisdiction in doing so prior to contacting the Pennsylvania court and obtaining jurisdiction to consider the merits of the abuse and neglect petition." *In re A.T.-1*, 248 W. Va. 484, 494, 889 S.E.2d 57, 67 (2023). Accordingly, we vacated the circuit court's adjudicatory and dispositional orders and, on remand, directed the court to contact the appropriate Pennsylvania court to confirm it declined to exercise jurisdiction. *Id*. Further, if the Pennsylvania court declined jurisdiction, then the circuit court was directed to conduct new adjudicatory and dispositional hearings. *Id*.

On remand, the circuit court commenced communication with the Pennsylvania court, which sent a letter in June 2023 agreeing to a conference call and confirming that Pennsylvania would decline jurisdiction upon several factors, including that substantial evidence pertaining to A.T.-1's strangulation was in West Virginia. The circuit court conducted a call, on the record, with the Pennsylvania court on June 21, 2023, during which the Pennsylvania court again declined jurisdiction and set forth the reasons on the record. The transcript of the call was entered into the record. The court then gave the parties the opportunity to present facts and legal arguments on the issue of jurisdiction by submitting briefs and holding a hearing in August 2023. Ultimately, the court found that it properly assumed jurisdiction upon Pennsylvania's declination.

The court then held multiple adjudicatory hearings, culminating in a final hearing in December 2023 to address the petitioner's adjudication and pending motion for a preadjudicatory improvement period. Upon consideration of the evidence, including the children's Child Advocacy Center ("CAC") forensic interviews, A.T.-1's medical records, the petitioner's written admissions, and testimony from two adults who witnessed the incident at the grandmother's home, the court found that the petitioner abused and neglected the children. The court found that A.T.-1's medical records included a clear belt mark on his thigh and buttocks and that photographs of the child were consistent with his description of the petitioner choking him. The court concluded that A.T.-1 was abused in the presence of A.T.-2 at the grandmother's home and was repeatedly abused in A.T.-2's presence in the parents' home. The court further denied the petitioner's motion for an improvement period, finding that she failed to fully acknowledge the extent of the abuse and repeatedly blamed

A.T.-1 for the abuse. The parents also failed to fully acknowledge that their discipline of A.T.-1 "was exceedingly emotionally abusive" and included locking the child in a closet, not allowing him to eat with the family, and using food as a punishment.

The matter came on for a final dispositional hearing in February 2024, at which time the court addressed the petitioner's pending motion for a post-adjudicatory improvement period. Again, the court denied the petitioner's motion for an improvement period because of her continued minimization of the abuse in the home. The court cited the children's CAC interviews, in which all three[4] children gave the same account of the physical abuse at the grandmother's home with no discrepancy concerning the excessive corporal punishment and mental abuse that occurred in the parents' home. The court also found that the parents' explanation for withholding food from A.T.-1 "shows [they] are unable to understand how harmful their actions were." After taking away "all items [o]f nurturing to" A.T.-1, including blankets and his bed, the parents "locked [him] in a closet for extended periods of time." When the child escaped to get food because he was sent to bed hungry, the parents "escalated [h]is confinement, using zip ties to secure the door." The court noted that the petitioner participated in various services that she secured herself, given that the DHS was absolved of a duty to provide remedial services due to a finding of aggravated circumstances. However, the court discounted this participation based on the petitioner's "recalcitrant denial of the abuse disclosed by the children" that "illustrate[d] that granting the improvement period[] would be an exercise in futility at the children's expense." Crucially, the court concluded that there were "no terms of an improvement period that can be crafted to overcome the inability of the [petitioner] to fully acknowledge the extent of the abuse in the[] home." The court then found that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future and that termination of the petitioner's parental rights was necessary for the children's welfare. The court, accordingly, terminated the petitioner's parental rights to the children.[5] The petitioner appeals from the dispositional order.

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). Furthermore, "[w]here the issue on an appeal from the circuit court is clearly a question of law or involving an interpretation of a statute, we apply a de novo standard of review." Syl. Pt. 1, *Chrystal R.M. v. Charlie A.L.*, 194 W. Va. 138, 459 S.E.2d 415 (1995). Before this Court, the petitioner first argues that the circuit court erred in obtaining jurisdiction under the UCCJEA because it did not permit the parents to participate in its communications with the Pennsylvania court. In support, the petitioner cites to West Virginia Code § 48-20-110(b), which governs communications between courts under the UCCJEA and sets forth the following: "The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made." We begin by noting that use of the word "may" in a statute is permissive and connotes discretion. *See In re Chevie V.*, 226 W.

[4] This included the CAC interview of the child who is not at issue in this appeal.

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

Va. 363, 372, 700 S.E.2d 815, 824 (2010) (citation omitted). Here, we find that the circuit court did not abuse its discretion in conducting its discussions with the Pennsylvania court in the petitioner's absence. The only basis upon which the petitioner argues that the court abused its discretion is that she believes that she had crucial evidence that would have influenced the Pennsylvania court as to whether West Virginia was the more convenient forum. This is simply not compelling, as the record demonstrates that the circuit court's discussions with the Pennsylvania court were sufficient and confirmed that the parties were not involved in any court proceedings in Pennsylvania, other than the proceeding in which the parents adopted the children in 2014. The petitioner acknowledges that evidence existed in West Virginia related to the incident of physical abuse at the grandmother's home, yet argues that evidence from her home in Pennsylvania should have carried more weight. In essence, the petitioner is simply arguing that she would have preferred to proceed in Pennsylvania, which does not establish an abuse of discretion. Further, the petitioner's argument that she was required to have the opportunity to present facts and arguments before the *Pennsylvania court* declined jurisdiction is unavailing. The statute is clear that this opportunity must be granted before a decision on jurisdiction is made, and it was the *West Virginia court* that made the decision in question. *See* W. Va. Code § 48-20-201(a) (setting forth the requirements for "a court *of this state*" to exercise jurisdiction) (emphasis added); Syl. Pt. 4, *In re J.C.*, 242 W. Va. 165, 832 S.E.2d 91 (2019) (explaining that, in order "for a circuit court to obtain subject matter jurisdiction of a child whose home state is not West Virginia," a court in the child's home state must first decline to exercise jurisdiction). The petitioner does not dispute that she was given the requisite opportunity prior to the circuit court's decision to exercise jurisdiction. Therefore, she is entitled to no relief.

Finally, the petitioner argues that the circuit court erred in denying her an improvement period upon an erroneous finding that she failed to accept responsibility for the abuse at issue. In support, the petitioner spends a significant portion of her brief arguing that she did not choke A.T.-1 because she did not have her hands around A.T.-1's neck but, instead, had her hands on the child's collarbone. Essentially, the petitioner seeks to minimize her conduct while also alleging that the circuit court erred in finding that the parents did not acknowledge the extent of the mother's abuse. We note, however, that the circuit court was presented with the evidence upon which the petitioner relies and found it lacking. Further, the court was presented with evidence from all three children's CAC interviews and testimony from two adults who witnessed the choking incident that supported the court's findings. As such, we decline to disturb the court's credibility determinations on appeal. *See Michael D.C. v. Wanda L.C.*, 201 W. Va. 381, 388, 497 S.E.2d 531, 538 (1997) ("A reviewing court cannot assess witness credibility through a record. The trier of fact is uniquely situated to make such determinations and this Court is not in a position to, and will not, second guess such determinations.").

In further support of this assignment of error, the petitioner asserts that she engaged in extensive services to remedy the conditions and made many admissions to the conduct during the proceedings. Tellingly, however, the petitioner continues to minimize her actions and blame A.T.-1 for the abuse that she inflicted on the child. For example, the petitioner accuses the court of

> refus[ing] to contend with the fact that the parents were at a loss to to [sic] contend with A.T.-1's behavioral problems, and that the circumstances the Court considered

> "abuse" (like . . . restricting [A.T.-1's] physical movement at night-time to a closet to prevent him from wandering outside the home at night) were acts of cruelty rather than attempts to deal with an extremely difficult set of circumstances.

In advancing this argument, the petitioner is explicitly refusing to accept that locking a child in a closet overnight constitutes abuse and blaming A.T.-1 for the petitioner's abusive conduct. This evidences a clear refusal to acknowledge the conduct. As we have explained, "[f]ailure to acknowledge the existence of the problem, i.e., the truth of the basic allegation pertaining to the alleged abuse and neglect . . . , results in making the problem untreatable and in making an improvement period an exercise in futility at the child's expense." *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)).

The petitioner accuses the circuit court of misapplying this law, as she asserts that the facts of the underlying case differ substantially from those in *In re Timber M.* While the petitioner is correct that, factually, the two cases differ somewhat, in that *In re Timber M.* concerned a parent who "did not believe that she had done *anything* inappropriate or *anything* to cause a need for improvement," *id.* at 55, 743 S.E.2d at 363 (emphasis added), the fact remains that her refusal to acknowledge that many of her actions constituted abuse renders the circuit court's application of *In re Timber M.* appropriate. Further, to the extent that the petitioner argues that her compliance with services dictated an improvement period, she ignores the fact that "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)). As the circuit court found, the petitioner's participation in services was meaningless without acknowledgement of her conduct, thereby rendering an improvement period an exercise in futility. *See also In re Tonjia M.*, 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002) (granting circuit courts discretion to deny an improvement period when no improvement is likely). Accordingly, we conclude that the court did not err in denying the petitioner's motion.[6]

For the foregoing reasons, we find no error in the decision of the circuit court, and its February 5, 2024, order is hereby affirmed.

Affirmed.

ISSUED: March 4, 2025

[6] In support of this assignment of error, the petitioner further argues that the circuit court erred in basing the finding that there was no reasonable likelihood that she could substantially correct the conditions of abuse and neglect upon her failure to acknowledge the existence of a problem. Having concluded that the court did not err in finding that the petitioner failed to acknowledge the conditions of abuse, we similarly conclude that it was not error to use this finding as a basis for the finding that there was no reasonable likelihood the conditions could be corrected.

CONCURRED IN BY:

Chief Justice William R. Wooton
Justice Elizabeth D. Walker
Justice Tim Armstead
Justice C. Haley Bunn

DISQUALIFIED:

Justice Charles S. Trump IV