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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* V.B.**

No. 24-148 (Lewis County CC-21-2023-JA-13)

MEMORANDUM DECISION

Petitioner Mother S.S.[1] appeals the Circuit Court of Lewis County's February 14, 2024, order terminating her parental rights to V.B., arguing that the court erred by terminating her rights and by denying post-termination visitation.[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.

The proceedings below began in February 2023 when the petitioner, then self-represented, filed an abuse and neglect petition against the child's father. The petitioner alleged that the father neglected the child, then seven years old, by failing to seek medical care, exposing the child to domestic violence, emotionally abusing the child, and leaving the child in the care of an impaired adult. Following the petition's filing, the circuit court ordered the DHS and guardian to investigate the allegations.

After further investigation, the DHS and guardian believed the petitioner's allegations were unsubstantiated. However, the DHS and guardian filed an amended petition in March 2023 alleging that the petitioner abused and neglected the child by repeatedly exposing her to domestic violence. The child reported to a Child Protective Services worker that she did not feel safe in the petitioner's home because the child witnessed the petitioner's husband, J.S., hit the petitioner. The

[1] The petitioner appears by counsel Jeremy B. Cooper. 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 Melissa T. Roman appears as the child's guardian ad litem ("guardian"). Respondent Father C.B. appears by counsel Amy L. Lanham.

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).

child also reported that J.S. threatened to "rip [the child's] face off." The petition also alleged that the petitioner was now dating C.C., whom she obtained a domestic violence protective order against in November 2022. Additionally, the DHS alleged that the petitioner abused and neglected the child by repeatedly making allegations of abuse and neglect by the child's father that later proved unsubstantiated, subjecting the child to multiple interviews and investigations.

At a hearing in April 2023, the petitioner failed to comply with a court order to drug screen immediately but did screen later that afternoon. The petitioner tested positive for methamphetamine and amphetamine and was argumentative towards staff after being informed of the results. In May 2023, the DHS and guardian filed a second amended petition to include the petitioner's positive drug screen. The petitioner was then ordered to submit two negative drug screens before being permitted to participate in supervised visitation.

The circuit court held an adjudicatory hearing in June 2023. First, the court granted the petitioner's motion to dismiss her original petition. The petitioner then offered a written stipulation, admitting to "poor choices in romantic partners" which caused "emotional trauma to the child." The court questioned the petitioner regarding the voluntariness of the stipulation, including asking the petitioner if she understood that she did not have to make any admissions. The court accepted the stipulation but allowed the DHS and guardian to present evidence regarding the additional allegations in their petition.

The petitioner testified and denied ever using methamphetamine despite her earlier positive drug screen. She explained that the physical violence the child thought she witnessed between the petitioner and J.S. was actually her and J.S. practicing self-defense maneuvers. She also explained that J.S. said he would rip someone's face off as a "figure of speech" but that the child "took it personally." She admitted to having verbal altercations with J.S. in the presence of the child while she believed J.S. was under the influence of methamphetamine and that she filed a domestic violence petition against J.S. after an incident of physical violence. She also testified to filing another domestic violence petition against C.C., her recent boyfriend, after he kicked her door and threatened to burn the house down but later testified that she was "dropping it" because it was all just a "financial dispute." The DHS admitted the domestic violence petitions filed against J.S. and C.C. and the child's recorded Child Advocacy Center interviews into evidence without objection. The child's therapist testified that the child remained consistent in her disclosures regarding domestic violence in the petitioner's home and that the child reported that the petitioner did not believe the child's disclosures about J.S.

Ultimately, the circuit court found that the petitioner lacked credibility and that the child was consistent with her disclosures. The court further found that the petitioner exposed the child to domestic violence and exhibited "a continued pattern of exposing her child to her poor choices in romantic relationships involving domestic violence as well as exposing her child to a man who abused alcohol and methamphetamine[]." Accordingly, the court adjudicated the petitioner as an abusing parent[3] and the child as an abused and neglected child.

[3] West Virginia Code § 49-1-201 defines an "abusing parent" to include a parent adjudicated of either abuse or neglect.

Thereafter, the petitioner displayed inconsistent compliance with required services, as she tested positive for methamphetamine and amphetamine and sometimes failed to drug screen prior to visits, resulting in visits being cancelled. Further, the petitioner expressed an unwillingness to conform with many proposed terms of a possible improvement period, including individual therapy. At a November 2023 hearing, the petitioner testified that her participation in an improvement period would "depend on the terms," explained that the DHS was "biased" against her, denied the issues identified in her psychological evaluation, and continued to deny drug use. The court found that the petitioner demonstrated a pattern of communication issues with the DHS and had been "either unwilling or unable to conform to the terms preliminarily set" by the court and the multidisciplinary team. The court denied the petitioner's motion for a post-adjudicatory improvement period and set the matter for disposition.

The circuit court held two dispositional hearings in January 2024. A DHS worker testified that the petitioner would not cooperate in creating a case plan for reunification and refused several proposed terms, such as counseling and substance abuse treatment. The worker further testified that the petitioner failed to communicate with the DHS and cancelled several visits with the child due to scheduling issues or the petitioner's failure to drug screen prior to the visit. The petitioner testified to recently seeking out a domestic violence counselor, substance abuse counselor, and substance abuse support group. However, she stated that she only attended substance abuse treatment to "stop smoking" as she did not have a substance abuse problem. Despite her participation in these services, the court found that "it was clear that [the petitioner] only recently sought these services in response to her failure to persuade the Court that she could be successful if granted a post adjudicatory improvement period." The court also found that the petitioner opposed terms and conditions imposed upon her "every step of the way," failed to meaningfully participate in the development of a case plan that would allow for reunification, and continued to deny accountability for the circumstances giving rise to the petition. Upon finding that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future and that termination was consistent with the best interests of the child, the court terminated the petitioner's parental rights to the child. The court additionally found that post-termination visitation between the petitioner and the child would be contrary to the child's best interest. It is from this dispositional 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). The petitioner argues that the circuit court erred by terminating her parental rights because the record did not support a finding that the petitioner failed to correct the conditions of abuse and neglect. On appeal, the petitioner concedes that she "ha[d] not demonstrated grounds for reunification" at the time of the dispositional hearing. Still, the petitioner argues that she should have been granted a less restrictive dispositional alternative, such as disposition pursuant to West Virginia Code § 49-4-604(c)(5).[5]

[4] The permanency plan for the child is to remain in the custody of her nonabusing father.

[5] With respect to disposition, West Virginia Code § 49-4-604(c)(5) provides that a circuit court may "commit the child temporarily to the care, custody, and control of the [DHS], a licensed private child welfare agency, or a suitable person who may be appointed guardian by the court" if

It is critical to note that the circuit court expressly considered alternative dispositions, such as terminating only the petitioner's custodial rights. However, the court concluded that this would not be in the child's best interests due to the child's young age, the petitioner's pattern of non-compliance, and her animosity toward the child's father. Further, we have previously held that termination 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." 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)). There is no reasonable likelihood that the conditions of abuse and neglect can be substantially corrected where the parent "willfully refused or [was] presently unwilling to cooperate in the development of a reasonable family case plan designed to the lead to the child's return to [the parent's] care, custody and control." W. Va. Code § 49-4-604(d)(2). The court found that the petitioner was uncooperative in developing a case plan to reunify the petitioner and the child, and the record supports this finding. Moreover, the petitioner denied the child's disclosures, denied substance abuse despite positive drug tests, and minimized her role in the child's trauma. This Court has explained that "[i]n order to remedy the abuse and/or neglect problem, the problem must first be acknowledged." *In re Timber M.*, 231 W. Va. 44, 55, 743 S.E.2d 352, 363 (2013) (citation omitted). As such, it is clear that there was no reasonable likelihood the petitioner could correct the conditions of abuse and neglect. Further, the record supports the court's finding that termination was in the child's best interests. Termination of parental 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"). Accordingly, we conclude there was no error in the termination of the petitioner's parental rights.

Finally, the petitioner argues that the circuit court erred by denying her post-termination visitation with the child. We first note that the right to post-termination belongs to the child, not the petitioner. *See In re K.S.*, 246 W. Va. 517, 530, 874 S.E.2d 319, 332 (2022) ("The Court has made clear that [post-termination] visitation is the right of the child."). Although the circuit court is directed to consider "whether a close emotional bond has been established between parent and child and the child's wishes," post-termination visitation may only be granted where such visitation "would not be detrimental to the child's well being and would be in the child's best interest." Syl. Pt. 5, in part, *In re Christina L.*, 194 W. Va. 446, 460 S.E.2d 692 (1995). The circuit court acknowledged the bond between the petitioner and the child. However, the record also reflected the child's fear of being in the petitioner's home and fear that the petitioner would bring men with her to visits with the child. Ultimately, the court found that post-termination visitation was not in the best interests of the child, and we decline to disturb the court's findings.

Accordingly, we find no error in the decision of the circuit court, and its February 14, 2024, order is hereby affirmed.

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the court finds that the parent is "presently unwilling or unable to provide adequately for the child's needs."

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