

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re L.F.

No. 24-151 (Lewis County CC-21-2023-JA-26)

MEMORANDUM DECISION

Petitioner Mother H.B.¹ appeals the Circuit Court of Lewis County’s January 23, 2024, order terminating her parental rights to L.F.,² arguing that the termination was erroneous because the DHS failed to meet its burden of proof. 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 2023, the DHS filed a petition alleging that L.F. was an abused and neglected child because the petitioner and the father used methamphetamine while the petitioner was pregnant with L.F. The DHS further alleged that the petitioner had an ongoing abuse and neglect case involving her older children that commenced in April 2022.³ According to the record, in June 2022, the petitioner stipulated to abusing and neglecting her older children due to the parents’ drug use and the deplorable condition of their home. The petitioner was granted a post-adjudicatory improvement period, during which she and the father conceived L.F. and tested positive for methamphetamine.

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 Lee Niezgodka. 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.

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 older children are not at issue in this appeal.

In June 2023, a dispositional hearing was held regarding the older children. The court heard testimony that the petitioner frequently failed to submit to urine drug screens, particularly from September 2022 to November 2022; submitted numerous insufficient or diluted urine samples, which are considered administrative failures; had follicle tests positive for methamphetamine in November 2022 and January 2023; and had urine screens positive for morphine and codeine in January 2023 and methamphetamine in April 2023. The petitioner admitted to using methamphetamine on one occasion in September 2022. However, she disputed her January 2023 positive drug screen for codeine and morphine, blaming it on her consumption of poppy seeds, and her April 2023 positive drug screen for methamphetamine, claiming it was a laboratory error. Ultimately, the circuit court terminated the petitioner's parental rights to her older children, finding that she did not successfully complete her improvement period, admitted to using methamphetamine in September 2022, delayed in participating in services to remediate her parenting deficiencies and drug addiction, remained in a relationship and lived with the father, and denied drug use throughout her pregnancy.⁴

In July 2023, the DHS filed an amended petition to add allegations based on the involuntary termination of the petitioner's parental rights to her older children. At a hearing on August 1, 2023, the petitioner entered into a stipulated adjudication, wherein she admitted to using methamphetamine in April 2023 while pregnant with L.F. and that her parental rights to her older children were involuntarily terminated, which the record indicates was due to her substance abuse. Based on the petitioner's admissions, the circuit court concluded that L.F. was abused and neglected and adjudicated the petitioner as an abusing parent. At a hearing on August 31, 2023, the petitioner advised the court that she was entering a twenty-eight-day inpatient drug rehabilitation program following the hearing. She also indicated that she and the father, whose rights to other children had also been terminated, remained in a relationship and were still living together.

The court held multiple dispositional hearings in October 2023 and December 2023. The court heard testimony from the case worker, who stated that the DHS recommended terminating the petitioner's parental rights because the conditions of abuse and neglect had not changed since her parental rights were terminated in June 2023 as she continued to deny drug use. The court then heard testimony from the petitioner who testified that she had improved the conditions that resulted in the termination of her parental rights to her older children because she successfully completed an inpatient drug rehabilitation program and accepted responsibility for her actions. When questioned about her drug use, the petitioner again admitted to using methamphetamine in April 2023 while pregnant and further admitted to lying to the court and the father regarding her use of methamphetamine. However, she denied any other drug use and continued disputing the accuracy of her positive urine screen from January 2023. In addition, both the petitioner and the father gave conflicting testimony about their ongoing relationship. Finally, a provider who administered the petitioner's drug screens testified that, while all of the petitioner's drug screens since L.F. was born had been negative, the provider observed behavior by the petitioner that indicated she was trying to defeat the drug screens.

⁴ We affirmed the circuit court's decision to terminate the petitioner's parental rights. *See In re C.K.*, No. 23-454, 2024 WL 3984345 (W. Va. Aug. 27, 2024) (memorandum decision).

After considering the evidence, the circuit court entered a dispositional order which concluded that the DHS proved⁵ that there had been no change in the petitioner's circumstances since the termination of her parental rights in June 2023. Specifically, the circuit court found that the petitioner "did not take responsibility for [her] drug addiction" in the prior abuse and neglect case and "continue[s] to not take responsibility for [her] drug addiction in [this case]." The court explained that the petitioner had been dishonest with the court because she "testified, under oath, to multiple versions of [her] self-proclaimed sobriety, and continue[d] to make excuses for failed drug screens" by "blam[ing] poppy seed chicken for her positive drug screen." The circuit court further found that the petitioner's testimony concerning her separation from the father was not credible because she and the father testified "to multiple versions of their self-proclaimed separation." Based on these findings, the circuit court determined that there was no reasonable likelihood the petitioner could substantially correct the conditions of abuse and neglect in the near future and that termination of the petitioner's parental rights was in L.F.'s best interest. Accordingly, the circuit court terminated the petitioner's parental rights to L.F.⁶ 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 evidence did not support the circuit court's finding that there was no reasonable likelihood she could substantially correct the conditions of abuse and neglect in the near future. The petitioner contends that the "vast majority of test results in this case were negative," which demonstrates that the petitioner was not "irredeemably mired in drug use." We find no merit in the petitioner's argument as the record is replete with evidence supporting the circuit court's findings. West Virginia Code § 49-4-604(d) defines "no reasonable likelihood that conditions of neglect or abuse can be substantially corrected" to mean that "the abusing adult or adults have demonstrated an inadequate capacity to solve the problems of abuse or neglect on their own or with help." It is well-established that "to remedy the abuse and/or neglect problem, the problem must first be acknowledged. Failure to acknowledge the existence of the problem . . . results in making the problem untreatable." *In re Timber M.*, 231 W. Va. 44, 55, 743 S.E.2d 352, 363 (2013) (quoting *In*

⁵ The record indicates that there was confusion amongst the parties and the circuit court concerning who bears the burden of proof in abuse and neglect cases when the abusing parent's parental rights to another child have previously been involuntarily terminated. Although it should be axiomatic, we remind the circuit court and the parties that West Virginia Code § 49-4-601(i) places the burden on the DHS to prove, by clear and convincing evidence, that a respondent parent abused or neglected his or her child. *Accord* Syl. Pt. 1, *In re S.C.*, 168 W. Va. 366, 284 S.E.2d 867 (1981). Furthermore, "the burden of proof in a child neglect or abuse case *does not shift from the [DHS] to the parent, guardian or custodian of the child. It remains upon the [DHS] throughout the proceedings.*" Syl. Pt. 4, *In re K.L.*, 233 W. Va. 547, 759 S.E.2d 778 (2014) (emphasis added) (quoting Syl. Pt. 2, in part, *In re S.C.*, 168 W. Va. 366, 284 S.E.2d 867 (1981)). Indeed, this necessarily includes abuse and neglect cases wherein the abusing parent's parental rights to another child have previously been involuntarily terminated.

⁶ The father's parental rights were also terminated. The permanency plan for the child is adoption in her current placement.

re Charity H., 215 W. Va. 208, 217, 599 S.E.2d 631, 640 (2004)). Throughout the proceedings, the petitioner failed to acknowledge the extent of her drug addiction as she denied using opioids while pregnant with L.F., continued blaming her positive urine screen on food, and misled the court about the status of her relationship with the father. Moreover, the court determined that the petitioner’s testimony was not credible, and we decline to disturb this finding 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.”). Although we commend the petitioner for completing an inpatient rehabilitation program, her steadfast denial of opioid use despite a positive drug screen while continuing her relationship with the father demonstrates that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future. The evidence further supports the circuit court’s determination that termination was necessary for L.F.’s welfare. As such, the circuit court had a sufficient basis upon which to make the findings necessary to terminate the petitioner’s parental rights to L.F. *See* W. Va. Code § 49-4-604(c)(6) (permitting termination of parental rights upon finding “there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future” and that termination is necessary for the welfare of the child). Accordingly, we conclude that the circuit court did not err in terminating the petitioner’s parental rights to L.F.

For the foregoing reasons, the circuit court’s January 23, 2024, order is hereby affirmed.

Affirmed.

ISSUED: March 19, 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