

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re J.N. and K.N.

No. 24-244 (Clay County CC-08-2022-JA-65 and CC-08-2022-JA-66)

MEMORANDUM DECISION

Petitioner Mother R.N.¹ appeals the Circuit Court of Clay County’s March 26, 2024, order terminating her parental rights to J.N. and K.N., arguing that the termination of her rights 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 December 2022, the DHS filed a petition alleging that the petitioner and K.S., the father of J.N., abused and neglected J.N. and K.N. due to the deplorable conditions of the home and physically abused K.N.³ The petition also alleged that the petitioner failed to protect the children by allowing a known sex offender to babysit, which resulted in the sexual abuse of K.N. The petitioner voluntarily admitted to unsafe housing conditions, failing to protect K.N. from sexual abuse, and physically abusing K.N. Accordingly, the circuit court adjudicated the petitioner as an abusing and neglecting parent. After the petitioner and K.S. testified at a hearing in March 2023, the court found that both parents “failed to accept responsibility regarding the abuse and neglect” of the children and “attempted to mislead” law enforcement during the investigation of K.N.’s sexual abuse. Despite these findings, the court granted both parents a post-adjudicatory improvement period. The terms of the petitioner’s improvement period required her to obtain verifiable employment, remain drug and alcohol free, maintain a fit and suitable home, and

¹ The petitioner appears by counsel Wayne King. The West Virginia Department of Human Services appears by counsel 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 Mackenzie Holdren 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).

³ The petition also contained allegations regarding another child not at issue in this appeal.

participate in educational services, among other requirements. At a review hearing in September 2023, the court granted an extension of the petitioner's improvement period.

In November 2023, the DHS filed a motion to revoke the petitioner's improvement period and terminate the petitioner's parental rights. The DHS argued that the petitioner failed to maintain a fit home, obtain verifiable employment, and benefit from services provided by the DHS including parenting and adult life skills classes. The guardian's report likewise recommended revoking the petitioner's improvement period, expressing concern that visitation providers reported observing fleas on K.S. during visits and that the foster mother reported behavioral issues from the children following supervised visits with the petitioner and K.S. The guardian also explained that the petitioner refused to provide the DHS with specific information about her employer to allow the DHS to verify her employment.

The circuit court held several dispositional hearings in January 2024 and heard testimony from Child Protective Services ("CPS") workers, service providers, K.S., and the petitioner. CPS workers testified that the petitioner did not benefit from services despite completing three rounds of parenting classes, and a provider also testified that the petitioner was unable to implement strategies discussed in parenting classes during supervised visits. The provider explained that the petitioner would become overwhelmed during classes and quit the session. The testimony further established that, despite purchasing a new home in June 2023, the new home was cluttered, dirty, and overwhelmingly smelled of cat urine by September 2023. Between dispositional hearings, the court directed the DHS to again inspect the conditions of the petitioner's home. The DHS workers visited the home and testified that the home remained cluttered, dirty, and unfit for the children.

Ultimately, the court found that, because the children had been in foster care for more than thirteen months, an extension of the petitioner's improvement period could only be granted if compelling circumstances warranted an extension and that no such compelling circumstances existed here. The court further found that the petitioner remained unemployed and that the home remained in an unfit condition, despite the petitioner's participation in services. Upon finding that the petitioner was not likely to correct the conditions of abuse and neglect in the "reasonable future" and that the best interests of the children required termination, the court terminated the petitioner's parental rights to the children. 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 court's finding that she was unable to correct the conditions of abuse and neglect was not supported by the record.⁵ We disagree. To the extent that

⁴ The parental rights of the father of J.N. were also terminated, and K.N.'s father is deceased. The permanency plan for J.N. and K.N. is adoption.

⁵ The petitioner mentions, in passing, that she struggled to comply with services due to her "lead poisoning disability." To support this assertion, the petitioner cites to testimony during a dispositional hearing that discussed the petitioner's psychological evaluation including a finding that her "reading fell in low range, and sentence comprehension fell in the below average range."

the petitioner argues that she complied with certain aspects of her improvement period, such as remaining drug and alcohol free and completing parenting classes, we have previously explained 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)). Not only did the petitioner frequently quit parenting education sessions when overwhelmed, but she was unable to benefit from the coursework and unable to implement parenting strategies during supervised visits. Accordingly, it is clear that the petitioner failed to improve despite the benefit of these services.

Further, the petitioner argues that the “conditions that require termination” either “do not exist” or could “easily be corrected with the help of the [DHS].” However, the record is clear that the petitioner received nine months of services and yet, the home remained unfit and unsafe for the children—even after the petitioner purchased a new home. West Virginia Code § 49-4-604(d) provides that “[n]o reasonable likelihood that conditions of neglect or abuse can be substantially corrected means that . . . the [parent or parents] have demonstrated an inadequate capacity to solve the problems of abuse or neglect on their own or with help.” At the time of disposition, the petitioner’s home remained in an unfit condition despite months of services. Thus, the circuit court’s finding that the petitioner was unable to correct the conditions of abuse and neglect is supported by the record. Additionally, the circuit court found that termination of the petitioner’s parental rights was in the best interests of the children, a finding the petitioner does not challenge on appeal. We have consistently held that the “controlling standard that governs any dispositional decision remains the best interests of the child.” Syl. Pt. 4, *In re B.H.*, 233 W. Va. 57, 754 S.E.2d 743 (2014). As such, we cannot conclude that the termination of the petitioner’s parental rights was erroneous. *See* W. V. 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 find no error in the decision of the circuit court, and its March 26, 2024, order is hereby affirmed.

Affirmed.

ISSUED: March 19, 2025

The petitioner fails to cite to any point in the record in which she made any argument to the circuit court regarding an alleged disability. As such, to the extent that the petitioner argues this disability prevented her from complying with services, we decline to address this argument on appeal. *See Noble v. W. Va. Dep’t of Motor Vehicles*, 223 W. Va. 818, 821, 679 S.E.2d 650, 653 (2009) (“Our general rule is that nonjurisdictional questions . . . raised for the first time on appeal, will not be considered.” (citation omitted)); *see also* W. Va. R. App. P. 10(c)(7) (requiring the petitioner to include “citations that pinpoint when and how the issues in the assignments of error were presented to the lower tribunal”).

CONCURRED IN BY:

Justice Elizabeth D. Walker
Justice Tim Armstead
Justice C. Haley Bunn
Justice Charles S. Trump IV

DISQUALIFIED:

Chief Justice William R. Wooton