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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* B.B., A.B., and K.B.**

No. 24-307 (Roane County CC-44-2022-JA-73, CC-44-2022-JA-74, and CC-44-2022-JA-75)

MEMORANDUM DECISION

Petitioner Mother S.D.[1] appeals the Circuit Court of Roane County's April 23, 2024, order terminating her parental rights to B.B., A.B., and K.B., arguing that the circuit court incorrectly concluded that she did not successfully complete her improvement period, as well as its June 18, 2024, order denying her post-termination visitation with the children.[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 DHS filed its initial petition[3] in September 2022, alleging deplorable housing conditions and that the petitioner failed to supply the children with necessary food, clothing, shelter, supervision, medical care, and education. Controlled substances and drug paraphernalia were also found in the home. In October 2022, the DHS filed an amended petition to include the petitioner's history of domestic violence with the children's father, which caused the children "substantial emotional trauma." The DHS specifically noted a recent altercation, "mutual in nature," which resulted in a mental hygiene pick-up order and a domestic violence protective order against the petitioner and the father's arrest.

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[1] The petitioner appears by counsel John J. Balenovich. The West Virginia Department of Human Services appears by counsel Attorney General John B. McCuskey and Assistant Attorney General Wyclif S. Farquharson. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel. Counsel Erica M. Brannon appears as the children's guardian ad litem ("guardian").

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 proceedings below concerned additional children and respondents not at issue on appeal.

At an adjudicatory hearing in November 2022, the DHS moved, without objection, to amend its petition to include that the petitioner's substance abuse impaired her ability to parent to such a degree as to pose a risk to the children. The petitioner then admitted to deplorable housing conditions, substance abuse, and that the children were subjected to domestic violence resulting in substantial emotional trauma. On this basis, the circuit court adjudicated the petitioner as an abusing parent and the children as abused and neglected children. The parties tendered a signed family case plan outlining the terms and conditions of a proposed post-adjudicatory improvement period, which the circuit court granted the petitioner. The terms and conditions included, among other things, that the petitioner drug screen and maintain sobriety (obtaining treatment as needed), complete parenting and adult life skills classes, and participate in a parental fitness evaluation and follow the provider's recommendations.

In January 2023, the matter came on for review, and the court found that the petitioner was adequately complying with the terms of the improvement period. In May 2023, the DHS moved to extend the petitioner's improvement period, given her recent positive drug screens for marijuana, to allow her additional time to correct the issue. The court granted the motion. However, in October 2023, the DHS and the guardian filed a joint motion to terminate the petitioner's parental rights based upon her failure to successfully complete the terms and conditions of her improvement period and to substantially correct the conditions of abuse and neglect that caused the petition for abuse and neglect to be filed. The motion averred that the petitioner repeatedly tested positive for THC and continued to associate with a known felon despite being advised at a prior multi-disciplinary team meeting that he was an inappropriate person with whom she should not have contact.

The matter came on for a dispositional hearing in February 2024. The petitioner admitted that she continued to use marijuana, despite knowing that it jeopardized her parental rights. She testified that she had been passing her drug screens for a time, but stated the DHS was partly at fault for her relapse. Had the DHS "done [its] job properly" and provided her with "good workers and good services," she "wouldn't be under much stress" and "probably wouldn't have started back up." She minimized the domestic violence in the home, as well as its deplorable condition, stating that it was merely "a little cluttered with toys and some clothes" when the children were removed. The petitioner also denied abusing or neglecting the children and denied that they were ever endangered. The court heard from several other witnesses, including a DHS worker who testified that, although the petitioner made efforts to improve, she ultimately did not complete her improvement period due to her ongoing marijuana use and that the DHS felt termination was in the children's best interest. The DHS worker, as well as two other witnesses who had supervised visits between the petitioner and the children, testified that they shared a bond.

Based on this evidence, the court found that the petitioner "continue[d] to abuse illegal drugs, and although she made admissions at adjudication, after [eighteen] months of services, denie[d] she ever abused or neglected her children." The court also noted the report from the petitioner's parental fitness evaluation, previously filed with the court, in which the examiner concluded that the petitioner's prognosis for improved parenting was "very poor," given "her reluctant acceptance of responsibility, her history of involvement with [Child Protective Services] and previous receipt of services, the possibility that she is minimizing the violence and aggression

of her actions, and her tendency to make extremely poor choices that endanger and negatively impact her children." Ultimately, the court concluded that the petitioner failed to substantially comply with the terms of her improvement period, citing, among other things, "her denial of any issues" and "her continued illegal use of marijuana." Even if the petitioner had completed the requirements of her improvement period, the court "could not find that returning the [children] to her care would be in their best interests." The court considered the children's need for continuity of care and caretakers, and the amount of time required for the children to be integrated into a stable and permanent home environment, concluding that these factors favored termination. Finding that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future, the court terminated the petitioner's parental rights to B.B., A.B., and K.B.[4]

The petitioner subsequently filed a motion for post-termination visitation, which came on for a hearing in May 2024. The court took judicial notice of the testimony at disposition, and the petitioner testified to her strong bond with the children and that they would suffer if it was severed. The DHS and the guardian objected to post-termination visitation, expressing concern that it would negatively affect the children's permanency and citing the petitioner's failure to accept responsibility. The guardian felt that continued visitation would "leave[] the door open to more trauma" and that the children needed the "chance to move on and heal." The court denied the petitioner's motion, finding that visitation would be detrimental and not in the children's best interest, adopting the factual findings from its dispositional order as well as the DHS and guardian's arguments. On the record, the court noted "a close emotional bond" existed between the petitioner and the children, but gave "significant weight [to] the fact that, even at the end, [the petitioner] refuse[d] to acknowledge that problems existed in the case." The petitioner appeals from both the court's dispositional order and its order denying post-termination visitation.

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 asserts that the circuit court's conclusion that she did not fulfill the requirements of her improvement period was clearly erroneous, as was its subsequent termination of her parental rights. Specifically, the petitioner argues that the court's "[o]rder reads like a judicial exercise in not seeing the forest for . . . the trees," as it "concentrated on isolated facts taken out of context." In essence, the petitioner argues that the court gave too much weight to certain facts—such as her denial that she abused or neglected the children—and insufficient weight to others—such as her completion of the conditions of her improvement period *other* than her ongoing marijuana use. This argument "displays a fundamental misunderstanding of our role as a reviewing court. We review the circuit court's decision under . . . deferential standards . . . and do not reweigh the evidence or make credibility determinations." *In re D.S.*, -- W. Va. --, --, 914 S.E.2d 701, 707 (2025). The circuit court's order extensively cites the evidence on which it based its findings, specifically quoting the petitioner's testimony minimizing the domestic violence and the home's deplorable condition and, critical to this appeal, her denial that she abused and neglected the children.

[4] The court also terminated the father's parental rights to B.B., A.B., and K.B. The permanency plan for the children is adoption by their current placements.

We conclude that the circuit court appropriately terminated the petitioner's parental rights. As we have explained, "in order to remedy [an] abuse and/or neglect problem, the parent must recognize and acknowledge that . . . her conduct constituted abuse." *In re Timber M.*, 231 W. Va. 44, 55, 743 S.Ed.2d 352, 363 (2013). "Failure 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." *Id.* (quoting *In re Charity H.*, 215 W. Va. 208, 217, 599 S.E.2d 631, 640 (2004)). At disposition, the petitioner minimized the conditions that led to the petition's filing and denied abusing and neglecting the children. As such, the conditions of abuse and neglect were not correctable. Moreover, "[i]n making the final disposition in a child abuse and neglect proceeding, the level of a parent's compliance with the terms and conditions of an improvement period is just one factor to be considered. The controlling standard [governing] any dispositional decision remains the best interest of the child." Syl. Pt. 3, *In re F.N.*, 247 W. Va. 620, 885 S.E.2d 558 (2022) (quoting Syl. Pt. 4, *In re B.H.*, 233 W. Va. 57, 754 S.E.2d 743 (2014)). Here, the court found that termination was in the children's best interest—a finding the petitioner does not challenge on appeal. West Virginia Code § 49-4-604(c)(6) directs circuit courts to terminate a parent's rights upon these findings. *See* W. Va. Code § 49-4-604(c)(6) ("The court shall . . . [u]pon a 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, terminate the parental . . . rights . . . of the abusing parent.").

Finally, the petitioner argues that the circuit court erred in denying her post-termination visitation, alleging that its ruling was not supported by the weight of the evidence as multiple witnesses testified to the petitioner's bond with the children. The petitioner is correct that a circuit court "may . . . consider whether continued visitation . . . with the abusing parent is in the best interest of the child" after terminating that parent's rights, and in doing so, should determine "whether a close emotional bond has been established between the parent and child." *See* Syl Pt. 11, *In re Daniel D.*, 211 W. Va. 79, 562 S.E.2d 147 (2002) (quoting Syl. Pt. 5, *In re Christina L.*, 194 W. Va. 446, 460 S.E.2d 692 (1995)). Ultimately, however, "[t]he evidence must indicate that such visitation . . . would not be detrimental to the child's well being and would be in the child's best interest." *Id.*; *see also* W. Va. R. P. Child Abuse & Neglect Proc. 15(b)(2)(A) (permitting post-termination visitation only if the court finds that it is in the child's best interests). Here, the circuit court noted the bond the petitioner shared with her children. But having weighed all the evidence, it determined that post-termination visitation was not in the children's best interest and would be detrimental to their well being, given, among its other findings, the petitioner's refusal to acknowledge the abuse. Again, we will not disturb the circuit court's weighing of the evidence on appeal.

For the foregoing reasons, we find no error in the decisions of the circuit court, and its April 23, 2024, and June 18, 2024, orders are affirmed.

Affirmed.

ISSUED: July 30, 2025

CONCURRED IN BY:

Chief Justice William R. Wooton
Justice Tim Armstead
Justice C. Haley Bunn
Justice Charles S. Trump IV