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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

***In re* H.L.**

No. 24-317 (Nicholas County CC-34-2023-JA-34)

MEMORANDUM DECISION

Petitioner Mother C.M.[1] appeals the Circuit Court of Nicholas County's May 9, 2024, order terminating her parental rights to H.L., arguing that the circuit court erred in terminating her rights because the DHS failed to recommend specific treatment in the family case plans and the court should not have drawn a negative inference from her refusal to testify.[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 March 2023, the DHS filed a petition alleging that the petitioner abused controlled substances to the detriment of her parenting abilities and physically and emotionally abused H.L. The DHS also alleged that the petitioner was adjudicated as an abusing and neglecting parent based on her drug use and emotional abuse in 2010, during which she voluntarily relinquished her rights to the three children in that case. The DHS filed an amended petition on April 4, 2023, alleging that the petitioner pled guilty to domestic battery on H.L. stemming from an incident in which she yanked on the child's arm and grabbed her face, leaving marks.

At an adjudicatory hearing on April 26, 2023, the petitioner stipulated to the allegations of substance abuse and emotional and physical abuse of H.L. Accordingly, the court adjudicated the petitioner as an abusing and neglecting parent and H.L. as an abused and neglected child. The court

[1] The petitioner appears by counsel Anthony W. Selbe. The West Virginia Department of Human Services appears by counsel Attorney General John B. McCuskey and Assistant Attorney General Andrew T. Waight. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel. Counsel Susan Hill appears as the child'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 the 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).

also ordered the petitioner to undergo a parental fitness and psychological evaluation and participate in supervised visitation. The court deferred ruling on the petitioner's motion for an improvement period to allow the DHS to review provider notes from supervised visitation and to allow for a multidisciplinary treatment team ("MDT") meeting. The DHS subsequently filed several family case plans identifying areas where the petitioner needed to improve, including parenting skills, substance abuse, domestic violence, and control over behavior.

At a hearing on August 15, 2023, the court admitted the report from the petitioner's psychological evaluation and heard from the evaluating psychologist, who testified that the petitioner was unlikely to comply with the terms of the proposed improvement period and needed extensive counseling based on her lack of understanding about how her conduct affects H.L. The psychologist made recommendations for treatment if the petitioner was granted an improvement period, including "psychotropic intervention," "weekly individual counseling focusing on anger management training and psychoeducation related to substance abuse," parenting training, and frequent drug screens. The report also recommended that the petitioner's "exposure to underage children should be, at best, limited and supervised" until she could establish stability and sobriety. At the conclusion of the hearing, the court granted the petitioner a post-adjudicatory improvement period which included terms recommended by the MDT and incorporated the recommendations of the evaluating psychologist. In relevant part, the improvement period's terms required the petitioner to keep in contact with the DHS, to participate in supervised visitation, and to comply with drug screening.

At a November 2023 review hearing, the DHS reported that the petitioner had been having issues with her supervised visitation, as she refused all Saturday visits after a disagreement with the visitation supervisor and canceled visits on the basis that her car was broken, despite being offered transportation. Upon questioning, the petitioner admitted that she canceled all Saturday visits because she disagreed with the visitation supervisor's concerns for H.L.'s safety. The petitioner refused to do any further visits on Saturday due to this incident and claimed that she had "[her] house to work on." Following this, the guardian informed the court that the petitioner had not signed a release for the DHS to obtain her mental health records. At the hearing's conclusion, the court found that the petitioner's reasons for canceling Saturday visits were "completely irrational" and ordered the petitioner to execute a release of her mental health records. At a second review hearing in December 2023, the DHS noted that the petitioner was doing well in her improvement period but had issues communicating with the DHS.

In April 2024, the DHS filed a new family case plan recommending termination of the petitioner's parental rights. The case plan stated that the petitioner had shown no behavioral changes in the year following her adjudication and had failed to cooperate with the DHS, including a recent incident where the petitioner had to be removed from a virtual MDT meeting due to her disruptive behavior. Likewise, the guardian filed a report recommending termination of the petitioner's parental rights based on the petitioner's failure to comply with the terms of the improvement period and being unable to work with the DHS and service providers. The guardian explained that the petitioner was on her third visitation supervisor due to abusive behavior towards the previous supervisors, was unable to keep in contact with the DHS, and had several dilute drug screens. The guardian asserted that this conduct demonstrated that the petitioner failed to correct the conditions of abuse and neglect underlying her adjudications in both 2010 and 2023.

At two dispositional hearings in April and May 2024, the court heard from three visitation supervisors and a Child Protective Service ("CPS") worker. The visitation supervisors all testified that the petitioner and H.L. exhibited a strong emotional bond. However, their testimony also established that the petitioner refused to attend a substantial number of visits, despite being offered transportation and alternative dates. The visitation supervisors also testified that the petitioner became hostile and confrontational when corrected by them or when her visits were canceled due to her failure to confirm. The CPS worker then testified that the supervised visitation reports showed a dramatic decrease in the quality of the visits and that the petitioner had lashed out at the visitation supervisors both in front of H.L. and through text. Further, the CPS worker stated that the petitioner had been very inconsistent with attending drug screenings and that the petitioner had not provided a release of her mental health records. The CPS worker also represented that the petitioner was inconsistent in her communication with the DHS, including whole weeks without contact, and noted her erratic conduct during the recent MDT meeting. Following the presentation of this testimony, the petitioner chose not to testify.

Based on the foregoing, the circuit court found that the petitioner continually refused to comply with the terms of her improvement period, as evidenced by her failure to keep in contact with the DHS, her failure to attend visitation with H.L., her inappropriate conduct during supervised visitation, and her failure to comply with drug screening. In doing so, the court treated each abnormal or refused drug screen as a positive screen. The court also found that the petitioner had failed to correct the conditions of abuse and neglect, even with the services offered. Further, the court drew a negative inference from the petitioner's refusal to testify in response to the evidence presented by the DHS. Based on these findings, the court concluded that there was no reasonable likelihood that the conditions of abuse or neglect could be substantially corrected in the near future and that termination of the petitioner's parental rights was in the best interest of H.L. Accordingly, the court entered a dispositional order terminating the petitioner's parental rights to H.L.[3] It is from this 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). The petitioner asserts several arguments that the circuit court erred in terminating her parental rights, which we categorize into two main issues: (1) that the DHS failed to recommend specific treatment in the family case plan; and (2) that the court should not have drawn a negative inference from her refusal to testify.[4]

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[3] The father's parental rights were also terminated in the proceedings below. The permanency plan for the child is adoption in the current placement.

[4] In her brief, the petitioner combines several of her assignments of error for purposes of argument. We do the same in this memorandum decision to improve clarity and readability.

The petitioner raises additional assignments of error alleging that the circuit court erred in terminating her parental rights based on (1) issues addressed by the court at the adjudicatory hearing before the petitioner was granted an improvement period, (2) issues addressed by the court at the status hearing before the improvement period was extended, (3) the petitioner's conduct in

The petitioner first argues that the circuit court erred in terminating her parental rights because the family case plans filed by the DHS did not contain a treatment plan for the petitioner. Rule 28(a) of the Rules of Procedure for Child Abuse and Neglect Proceedings provides, in relevant part, that a family case plan must lay out (1) the changes the abusing parent must make to correct the problems of abuse and/or neglect, (2) services that will assist in remedying those problems, and (3) behavioral changes the parent must show to correct the problems. Although the family case plans did not set forth specific treatment measures, the petitioner fails to establish how she was prejudiced in any way by these purported deficiencies in the case plans. Here, the record shows, and the petitioner does not dispute, that she stipulated to the allegations of substance abuse, emotional abuse, and physical abuse and that she participated in MDT meetings where the services needed to correct these conditions were discussed. Evidence of these discussions is included in one of the case plans filed by the DHS and by the proposed improvement period terms filed with the court following an MDT meeting, which was signed by the petitioner. This Court has held that "[t]he purpose of the family case plan . . . is to clearly set forth an organized, realistic method of identifying family problems and the logical steps to be used in resolving or lessening these problems." Syl. Pt. 2, in part, *In re Desarae M.*, 214 W. Va. 657, 591 S.E.2d 215 (2003) (quoting Syl. Pt. 5, *State ex rel. W.Va. Dep't of Hum. Servs. v. Cheryl M.*, 177 W. Va. 688, 356 S.E.2d 181 (1987)). Essentially, the facts of this specific case show that the petitioner was well aware of the conditions she needed to correct and the behavior she needed to show in order to regain custody of H.L., including successfully completing supervised visitations. Critically, the petitioner does not argue that she was unaware that her compliance with the terms of the improvement period was key to any reunification with H.L. As such, we conclude that the specific circumstances of this case do not warrant vacating the dispositional order. *See* Syl. Pt. 3, *In re Emily G.*, 224 W. Va. 390, 686 S.E.2d 41 (2009) (requiring the vacation of dispositional orders where the process of abuse and neglect proceedings "has been substantially disregarded or frustrated"); *see also In re H.D.*, No. 23-148, 2024 WL 4503958, at *4 (W. Va. Oct. 16, 2024) (memorandum decision) (affirming termination of parental rights where the DHS failed to file a case plan where the petitioner "knew what was required to successfully address the conditions of abuse and neglect"); *In re T.G.*, No. 20-0228, 2020 WL 5652506, at *3 (W. Va. Sept. 23, 2020) (memorandum decision) (same).

The petitioner further argues that the circuit court erred in finding no reasonable likelihood that the conditions of neglect or abuse could be substantially corrected as she was never allowed unsupervised visitation with H.L. during her improvement period, and was thus unable to demonstrate that she could appropriately parent H.L. In support of this argument, the petitioner

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the courtroom and actions towards service providers during the improvement period, and (4) a finding of emotional harm to H.L. in the absence of a qualified psychologist's testimony. However, in making these arguments, the petitioner fails to cite to any authority supporting these arguments. As we have stated, "issues . . . not supported by pertinent authority, are not considered on appeal." *State v. Larry A.H.*, 230 W. Va. 709, 716, 742 S.E.2d 125, 132 (2013) (quoting *State v. LaRock*, 196 W. Va. 294, 302, 470 S.E.2d 613, 621 (1996)). Furthermore, Rule 10(c)(7) of the West Virginia Rules of Appellate Procedure requires that "[t]he brief must contain an argument clearly exhibiting the points of . . . law presented . . . and citing the authorities relied on." Accordingly, we decline to address these assignments of error on appeal.

cites to *In re B.H.*, No. 22-678, 2023 WL 7439170 (W. Va. Nov. 9, 2023) (memorandum decision). In that case, this Court vacated a dispositional order terminating parental rights based on the parents' failure to attend medical appointments as required under their improvement period, despite the fact that they were not permitted to attend those appointments. *Id.* at *7. The Court also concluded that the circuit court could not terminate the mother's parental rights on this alleged failure because she had been adjudicated solely on the basis of her stipulation to "drug use impairing ability to parent." *Id.* Although here the petitioner takes issue with the dispositional order finding that "[f]urther physical abuse has not been possible because the child has been out of the [petitioner]'s custody throughout these proceedings and visits have been supervised," she cannot show how she was prejudiced by this finding, especially given the fact that the court terminated her parental rights based on her failure to comply with the terms of the improvement period, which she does not challenge. Rather, the record supports the circuit court's findings that the petitioner failed to attend numerous supervised visits with H.L and that her inappropriate conduct during the visits she did attend resulted in continued emotional abuse to H.L. As a result, the petitioner is entitled to no relief on this basis.

The petitioner also argues that the circuit court erred in drawing a negative inference from her refusal to testify at the dispositional hearing. In support of her position, the petitioner asserts that "the ability of the [circuit court] to rely on silence presumes probative evidence against the adult respondent is clear and convincing." This Court has held that

> [b]ecause the purpose of an abuse and neglect proceeding is remedial, where the parent or guardian fails to respond to *probative* evidence offered against him/her during the course of an abuse and neglect proceeding, a lower court may properly consider that individual's silence as affirmative evidence of that individual's culpability.

Syl. Pt. 2, *W. Va. Dep't of Health & Hum. Res. ex rel. Wright v. Doris S.*, 197 W. Va. 489, 475 S.E.2d 865 (1996) (emphasis added). Here, the circuit court did not go as far as to state that the petitioner's silence indicated culpability, but only that the court drew a negative inference, and did not expand further on that finding. Further, even with the petitioner's silence, the DHS still "must produce clear and convincing evidence that there is 'no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future' before a circuit court may sever the custodial rights of the natural parents." Syl. Pt. 3, *State v. C.N.S.*, 173 W. Va. 651, 656, 319 S.E.2d 775, 780 (1984). Here, the DHS presented the circuit court with sufficient evidence to support its finding of no reasonable likelihood that the conditions of neglect or abuse could be corrected in the near future through testimony on the petitioner's inconsistent and often hostile participation in her supervised visitation, her inconsistent drug screens, her failure to remain in contact with the DHS, and her erratic conduct during MDT meetings. Further, contrary to petitioner's argument, we have clearly stated that "[t]here is no basis in law for requiring that a court be disallowed from considering a parent's or guardian's choice to remain silent as evidence of civil culpability." *Doris S.*, 197 W. Va. at 497, 475 S.E.2d at 873. The record shows that the petitioner chose not to testify at the dispositional hearing to refute the probative evidence presented by the DHS in support of terminating her parental rights. As a result, the circuit court acted well within its authority to draw a negative inference from the petitioner's silence. The record supports the circuit court's findings that the petitioner failed to comply with the terms of her improvement

period, and we conclude that the court did not err in terminating her parental rights on this basis. *See In re K. L.*, 247 W. Va. 657, 666–67, 885 S.E.2d 595, 604–05 (2022) (stating a parent's failure to participate in an improvement period is "a statutorily-recognized basis upon which this Court regularly affirms termination of parental rights"); *see also* W. Va. Code § 49-4-604(c)(6) and (d)(1)–(3) (permitting termination of parental rights where "no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future," including failure to respond to or follow through with recommended treatment or refusal to cooperate in development of family case plan).

For the foregoing reasons, we find no error in the decision of the circuit court, and its May 9, 2024, order is hereby 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