

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re J.O.

No. 24-551 (Kanawha County CC-20-2023-JA-112)

MEMORANDUM DECISION

Petitioner Mother M.B.¹ appeals the Circuit Court of Kanawha County’s September 13, 2024, order terminating her parental right to J.O., arguing that the court erred in terminating her parental rights without first granting her a post-dispositional improvement period because she significantly overcame the issues that led to the filing of the petition and because termination was not the least restrictive dispositional alternative.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 tested positive for fentanyl and buprenorphine during her pregnancy with J.O.; failed to provide the child with necessary food, clothing, supervision, and housing upon her birth; and that the petitioner’s parental rights to three other children had been involuntarily terminated nine months earlier due to her substance abuse and mental health issues. The DHS further alleged that J.O.’s father, whose parental rights to two other children were also terminated in the prior proceedings, was still involved in the petitioner’s life and potentially lived with the petitioner. Following a preliminary hearing in April 2023, the circuit court found that aggravated circumstances existed due to the petitioner’s prior terminations and denied the petitioner’s motion for services and supervised visitation. In May 2023, the petitioner filed a handwritten motion “for [a] hearing,” disputing the allegations of substance use or abuse and unsuitable housing and alleging that she was engaging in parenting classes and therapy. The petitioner also claimed that her job created a risk of contact with customers who were under the influence of drugs. On July 14, 2023, the petitioner filed a motion for a preadjudicatory improvement period based upon her participation in parenting classes and therapy.

¹ The petitioner appears by counsel Jennifer N. Taylor. The West Virginia Department of Human Services appears by counsel Attorney General John B. McCuskey and Assistant Attorney General Heather L. Olcott. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel. Counsel J. Rudy Martin appears as the child’s guardian ad litem. Intervenor L.A. and M.M., the child’s foster parents, appear by counsel Jennifer Dempsey Meeteer.

² We use initials where necessary to protect the identities of those involved in this case. *See* W. Va. R. App. P. 40(e).

At an adjudicatory hearing on July 31, 2023, the petitioner stipulated to the prior termination of her parental rights and to testing positive for drugs while pregnant with J.O. Based on these stipulations, the court adjudicated the petitioner of abusing and neglecting J.O. The petitioner then moved for a post-adjudicatory improvement period, which the court held in abeyance. The court ordered services for the petitioner, including random drug screening, parenting classes, and supervised visitation. In December 2023, the court granted the joint motion of the DHS and the petitioner to change service providers from Liam's Place to Children's First after a multidisciplinary team meeting, during which the parties discussed concerns about the petitioner's compliance with services. The court continued the dispositional hearing at least seven times between September 2023 and September 2024, with at least four such continuances based on the DHS's request to allow the petitioner the opportunity to reach full compliance with services.

The final dispositional hearing was held in September 2024, during which the DHS presented evidence that the petitioner failed to comply with services throughout the proceedings. Service providers from Children's First testified that the petitioner failed to comply with requests to make her home safer for a small child, that J.O.'s biological father was seen leaving the petitioner's home after having his parental rights terminated due to ongoing substance abuse, and that the petitioner's compliance with services was "hit or miss." The witnesses also testified that the petitioner often failed to check in with service providers for her random drug screening and missed drug screens "at least once a week" since Children's First began screening her in January 2024, despite the petitioner being aware that missed screens were treated as positive. The DHS worker then testified that the petitioner's noncompliance with services had persisted despite the change in providers and that the petitioner's prior involuntary terminations were based upon the same conditions that occurred in this case (i.e., drug use, non-compliance with services, failure to take responsibility, mental health concerns, and failure to provide the DHS with documentation of any alleged mental health treatment she may have received). The DHS worker further stated that, despite the petitioner's stipulations, the petitioner told the worker and service providers that she "didn't do anything wrong." The petitioner testified that she had not had contact with J.O.'s biological father, that she was employed, that the home was safe, and that she was receiving mental health counseling on her own. The petitioner denied ever using drugs, claiming that she was exposed to fentanyl at her job at a fast-food restaurant and that her prior terminations were based on the father's drug use rather than her own.

Ultimately, the court found that the petitioner had not corrected the conditions of abuse and neglect because she had not followed through with rehabilitative services designed to reduce or prevent those conditions. The court noted that the petitioner tested positive for fentanyl and buprenorphine during her pregnancy despite being provided services during the pendency of the previous abuse and neglect proceeding, which had concluded only nine months prior to the instant action and also involved substance abuse. The court found that the petitioner's explanation for her positive drug screens for fentanyl was not credible, and that the petitioner consistently refused to drug screen during the pendency of the proceedings. The court also found that, in the seventeen months since the DHS filed the petition, the petitioner failed to correct concerns identified by service providers, despite being granted a new service provider; never accepted responsibility for her actions; and continued to have J.O.'s biological father in her life. Based on these findings, the court concluded that there was no reasonable likelihood that the conditions of neglect or abuse

could be substantially corrected in the near future. The court also addressed the child's welfare, stating that the continuation of the above-described conditions threatened the health, welfare, or life of the child and that termination of the petitioner's parental rights was in the child's best interest. Accordingly, the circuit court entered an order terminating the petitioner's parental rights.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). Recognizing this deferential standard, the petitioner argues before this Court that the circuit court's factual determinations were clearly erroneous and contrary to the record in this case. Specifically, she asserts that she "substantially modified her behavior and corrected the conditions of abuse or neglect with which she was charged," claiming that she no longer uses drugs, is no longer living with the child's father, and has obtained ongoing treatment for her mental health issues.

We disagree. The record shows that there was sufficient evidence for the court to find that the petitioner's parental rights to three older children were involuntarily terminated nine months prior to the birth of J.O. due, in part, to drug use and that the DHS provided her with services in that case similar to the services provided here. Despite that experience, the petitioner tested positive for fentanyl at a prenatal appointment and for buprenorphine upon admission to the hospital for J.O.'s birth. Nonetheless, the court ordered and the DHS provided support and rehabilitative services to the petitioner in this case for seventeen months between the filing of the petition and the dispositional hearing. While it may be true that the petitioner "passed every drug screen she has taken" since the DHS agreed to change her service provider, it is certainly not true that she "has passed every drug screen she has taken since the filing of the petition." The evidence presented to the circuit court showed that the petitioner consistently failed to drug screen as required between January and September, 2024, missing at least one per week, with each missed drug screen being presumptively positive. Further, although the petitioner stipulated at adjudication to testing positive for fentanyl and buprenorphine at or around the time of J.O.'s birth, throughout the proceedings she repeatedly denied that she ever used drugs, including testifying to that effect at the dispositional hearing. She also refused to accept any responsibility for the substance abuse which resulted in her prior terminations. Instead, the petitioner claimed that she must have been exposed to fentanyl at her job and that the prior terminations were solely the result of the father's substance abuse, which the court found not to be credible. We refuse to disturb this determination on appeal. *See State v. Guthrie*, 194 W. Va. 657, 669 n.9, 461 S.E.2d 163, 175 n.9 (1995) ("An appellate court may not decide the credibility of witnesses or weigh evidence as that is the exclusive function and task of the trier of fact.").

Similarly, the record supports the court's factual findings that she failed to correct the safety issues presented by the condition of her home or her continued contact with J.O.'s biological father and that she failed to fully comply with or benefit from the support and rehabilitative services the DHS provided to her. To the contrary, the record shows that the petitioner consistently denied

³ The father's parental rights were also terminated in April 2024. The permanency plan for J.O. is adoption in the current placement.

responsibility for the conditions of abuse and neglect for which she was adjudicated. As we have explained, “[f]ailure 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 and in making an improvement period an exercise in futility.” *In re Timber M.*, 231 W. Va. 44, 55, 743 S.E.2d 352, 363 (2013) (quoting *In re Charity H.*, 215 W. Va. 208, 217, 599 S.E.2d 631, 640 (2004)). Therefore, we conclude that the circuit court’s factual findings were not clearly erroneous and the record supports the court’s conclusions that there was no reasonable likelihood that the petitioner could substantially correct the conditions of neglect or abuse in the near future and that termination of the petitioner’s parental rights was in the best interests of the child.

The petitioner also argues that the circuit court erred in terminating her parental rights, rather than imposing a less restrictive dispositional alternative, asserting that the circuit court could have imposed a post-dispositional improvement period instead. However, this argument fails for two reasons. First, the petitioner fails to show that she proved “by clear and convincing evidence that [she was] likely to participate in the improvement period.” See W. Va. Code § 49-4-610(3)(B). Rather, the record shows that, despite being given approximately a year and a half, the petitioner was never fully compliant with the services she was offered. Indeed, the court confirmed at the dispositional hearing that it never granted her motion for a post-adjudicatory improvement period because of her pervasive noncompliance despite multiple opportunities the court had given her throughout the proceedings to comply. Second, this Court has consistently stated that “[t]ermination of parental rights . . . may be employed without the use of intervening less restrictive alternatives when it is found that there is no reasonable likelihood . . . that the conditions of neglect or abuse can be substantially corrected.” Syl. Pt. 5, *In re Kristin Y.*, 227 W. Va. 558, 712 S.E.2d 55 (2011). As we stated above, the circuit court did not err in finding that there was no reasonable likelihood that the conditions of neglect or abuse could be substantially corrected in the near future and that termination was necessary for the child’s welfare. See W. Va. Code § 49-4-604(c)(6). As such, the petitioner is not entitled to relief.

For the foregoing reasons, we find no error in the decision of the circuit court, and its September 13, 2024, dispositional order is hereby affirmed.

Affirmed.

ISSUED: November 4, 2025

CONCURRED IN BY:

Justice C. Haley Bunn
Justice Charles S. Trump IV
Justice Thomas H. Ewing
Senior Status Justice John A. Hutchison

NOT PARTICIPATING:

Chief Justice William R. Wooton