

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

In re T.G., J.R., and R.G.

No. 24-570 (Webster County CC-51-2024-JA-8, CC-51-2024-JA-9, and CC-51-2024-JA-10)

MEMORANDUM DECISION

Petitioner C.M.-G.,¹ the stepmother of T.G. and J.R. and mother of R.G., appeals the Circuit Court of Webster County’s September 10, 2024, order terminating her custodial rights to T.G. and J.R. and her parental rights to R.G., arguing that the circuit court erred by adjudicating her as an abusing and neglecting parent and by terminating her rights without first granting her a post-adjudicatory improvement period.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.

On February 7, 2024, the DHS filed a petition alleging that the petitioner and the children’s father abused and neglected the children. The DHS alleged that ten-year-old J.R. was placed in Highland Hospital, wherein she alleged sexual abuse by a noncustodial family member. During a Child Advocacy Center (“CAC”) interview, J.R. disclosed physical, verbal, and emotional abuse by the father, that the father and the petitioner did “inappropriate things in front of her,” that the father drank excessively and drove while intoxicated, and that she was underfed and denied food. CAC interviews were then conducted with twelve-year-old T.G., who admitted that he did not like being in the interview and alleged that J.R. made wild claims, and eight-year-old R.G., who stated that he liked living at home but that it had lots of bugs and sometimes cockroaches. The DHS also alleged that the petitioner tested positive for THC but stated she did not know why she had the positive result. The petition further asserted that the DHS discovered during an inspection of the petitioner’s and the father’s home that it had a terrible smell and was cluttered and unkempt; there was visible roach feces, but no visible roaches; and the kitchen and bathroom were dirty, with mold in the shower. The DHS stated that the petitioner’s parental rights to two children were involuntarily terminated in two separate prior cases. In the first case, the child suffered chemical burns after coming into contact with lye used to make methamphetamine. After the petitioner failed

¹ The petitioner appears by counsel Steven B. Nanners. The West Virginia Department of Human Services appears by counsel Attorney General John B. McCuskey and Assistant Attorney General James Wegman. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel. Counsel Mackenzie A. Holdren appears as the children’s guardian ad litem.

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

to complete the terms of her improvement period, the circuit court terminated her parental rights. In the second case, the petitioner's parental rights were terminated after the circuit court found that she abandoned the child. Based upon these assertions, the DHS alleged that the petitioner and his wife abused controlled substances, failed to provide a fit and suitable home for the children, and physically abused the children.

At a preliminary hearing on February 14, 2024, the court heard the testimony of two DHS workers regarding the state of the house, indicating that the shower was so filthy that it appeared the children were bathing in the sink and there was trash throughout the home. Following this testimony, the court ratified the emergency removal of the children from the home based on the imminent danger to the children's physical and/or emotional wellbeing stemming from the failure of the petitioner and the father to provide them a fit, apt, and suitable home. The DHS filed an amended petition in March 2024, after further CAC interviews were conducted following the children's removal from the home. In these interviews, J.R. additionally disclosed sexual abuse by the father, and T.G. made additional disclosures that he and J.R. were denied food, that the father had issues with alcohol (including drinking and driving) and called him offensive and derogatory names, and that the father and the petitioner had sex in front of him. Additionally, R.G. disclosed that the father gave him alcohol and that T.G. had previously told him about not receiving food. Based on these disclosures, the DHS alleged that the petitioner's drug use adversely affected her ability to effectively parent the children and that she failed to protect the children from the father and failed to provide suitable housing.

The court held a series of adjudicatory hearings in April 2024, during which the DHS presented the testimony of the CAC forensic interviewer. The forensic interviewer stated that the children's second interviews were scheduled after J.R. made disclosures of sexual abuse and T.G. and R.G. made disclosures of additional abuse to their foster placement. During this testimony, recordings of the CAC interviews were played for the court and admitted as evidence without objection.³ Further, the court treated the petitioner's refusal to testify at the hearing as affirmative evidence of her culpability and ultimately found that the petitioner physically abused the children, allowed abuse to occur in the home, failed to maintain a suitable home, and failed to provide appropriate food and clothing. Accordingly, the court adjudicated the petitioner of abusing and neglecting the children.

The matter came on for disposition in August 2024. Multiple witnesses testified to the petitioner's participation with services provided and her refusal to accept responsibility for the abuse and neglect of the children, instead blaming J.R. for all the problems in the home. A psychologist who conducted an evaluation of the petitioner testified that the petitioner "denied everything," portraying J.R. as a problematic child who needed help. The psychologist also testified that the petitioner's prognosis for improved parenting was extremely poor, that returning the children placed them at risk of retaliation from the petitioner and the father, and that she did not believe the petitioner was willing or able to correct the issues of abuse or neglect. A service provider testified that progress had been made in cleaning the house, but that the petitioner and the father would redirect conversations on parenting topics to blame J.R. The service provider also

³ The petitioner did not include recordings of the CAC interviews in the appendix record.

stated that the petitioner and father would not allow her to observe their bedroom. A Child Protective Services (“CPS”) worker similarly testified that the petitioner and father denied her access to the bedroom and placed a padlock on the door to prevent entry. The CPS worker also testified that the petitioner had been compliant with services in the case but stated that an improvement period would likely be futile, as the petitioner stated that she did not want J.R. to return to her care and that one of the petitioner’s prior terminations resulted from a failure to comply with services. The petitioner testified that she regretted “not getting [J.R.] the help that she needed” when asked what she needed to remedy during an improvement period.

Based on this evidence, the circuit court found that the petitioner had “gone through the motions” but had not benefited from services offered in this case. The court also found that the petitioner refused to accept responsibility at any point in the case. As a result, the court concluded that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future and that no less restrictive alternative to termination was available to protect the health, safety, and welfare of the children. Accordingly, the court entered an order terminating the petitioner’s custodial rights to T.G. and J.R. and her parental rights to R.G. 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). Before this Court, the petitioner first argues that the circuit court erred in finding that the DHS proved by clear and convincing evidence that she abused and neglected the children. Upon our review of the record, we disagree. West Virginia Code § 49-4-601(i) requires the circuit court to determine “whether the child is abused . . . based on conditions existing at the time of the filing of the petition and proven by clear and convincing evidence.” However, “[t]he statute . . . does not specify any particular manner or mode of testimony or evidence by which the [DHS] is obligated to meet this burden.” Syl. Pt. 3, in part, *In re F.S.*, 233 W. Va. 538, 759 S.E.2d 769 (2014) (quoting Syl. Pt. 3, *In re Christina L.*, 194 W. Va. 446, 460 S.E.2d 692 (1995)). In arguing that the evidence did not support the adjudicatory findings, the petitioner focuses largely on her claims that the DHS failed to properly investigate the credibility of J.R.’s statements, which the petitioner claims were inconsistent with the statements of the other children. However, the petitioner’s argument focuses solely on the statements of T.G. and R.G. from their first CAC interviews, which were presented at the preliminary hearing. As the petitioner admits in her brief, the children also made allegations of abuse and neglect by her and her husband during their second CAC interviews, which were conducted after the preliminary hearing. The record clearly shows that the circuit court weighed the statements of the children and the testimony of the CAC interviewer and we refuse to disturb these determinations 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.”). Further, the petitioner’s refusal to testify in response to the evidence presented permitted the circuit court to properly consider that silence as affirmative evidence of her culpability. See Syl. Pt. 2, *W. Va. Dep’t of Health & Hum. Res. ex rel. Wright v. Doris S.*,

⁴ The parental rights of the children’s father and the mother of T.G. and J.R. were also terminated. The permanency plan for the children is adoption in their current placements.

197 W. Va. 489, 475 S.E.2d 865 (1996) (holding that the remedial purpose of abuse and neglect proceedings allows lower courts to “properly consider [a parent]’s silence as affirmative evidence of that [parent]’s culpability”). Based on the foregoing, we conclude that the circuit court did not err in adjudicating the petitioner as an abusive and neglectful parent.

The petitioner also argues that the circuit court erred in terminating her parental and custodial rights without first granting her a post-adjudicatory improvement period. In support of this argument, the petitioner asserts that her compliance with services throughout the case demonstrates that she would have been likely to complete an improvement period and remedy the conditions of abuse and neglect. However, the petitioner cites to no portion of the record establishing that she filed a written motion requesting an improvement period, which is a mandatory prerequisite. *See* Syl. Pt. 4, in part, *State ex rel. P.G.-1 v. Wilson*, 247 W. Va. 235, 878 S.E.2d 730 (2021) (“A circuit court may not grant a post-adjudicatory improvement period under W. Va. Code § 49-4-610(2) . . . unless the [parent] files a written motion requesting the improvement period.”). As such, the petitioner’s argument in this regard does not comply with Rule 10(c)(7) of the West Virginia Rules of Appellate Procedure, which requires the argument contain “citations that pinpoint when and how the issues . . . were presented to the lower tribunal.” Notwithstanding this deficiency, the petitioner’s argument also disregards the court’s findings that she refused to accept responsibility for the abuse and neglect of the children. In this regard, we have stated that the “[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 at the child[ren]’s expense.” *In re Timber M.*, 231 W. Va. 44, 55, 743 S.E.2d 352, 363 (2013). While the petitioner claims that she “accepted responsibility in the sense that she testified that she would have tried to get J.R. more psychological help,” this is clearly not the same as accepting responsibility for the abuse and neglect of the children, which she continuously denied. The petitioner’s continued failure to acknowledge her abuse and neglect of the children, in spite of her adjudication, supports the court’s findings that there was no reasonable likelihood that the conditions of neglect or abuse could be substantially corrected in the near future. *See* W. Va. Code § 49-4-604(d) (“‘No reasonable likelihood that the conditions of neglect or abuse can be substantially corrected’ means that . . . the abusing adult . . . [has] demonstrated an inadequate capacity to solve the problems of abuse or neglect on their own or with help.”). Further, the court found that termination was necessary for the children’s welfare, a finding the petitioner does not challenge on appeal. Circuit courts are permitted to terminate a parent’s rights upon these findings. *See* W. Va. Code § 49-4-604(c)(6); *see also* Syl. Pt. 5, *In re Kristin Y.*, 227 W. Va. 558, 712 S.E.2d 55 (2011) (“Termination 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.” (quoting Syl. Pt. 2, *In re R.J.M.*, 164 W. Va. 496, 266 S.E.2d 114 (1980))). As such, the circuit court did not err in terminating the petitioner’s parental and custodial rights without first granting her a post-adjudicatory improvement period.

For the foregoing reasons, we find no error in the decision of the circuit court, and its September 10, 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