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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* M.V.**

No. 24-683 (Berkeley County CC-02-2024-JA-7)

MEMORANDUM DECISION

Petitioner Mother R.P.[1] appeals the Circuit Court of Berkeley County's October 25, 2024, order terminating her parental rights to M.V., arguing that the circuit court erred in terminating her rights because the DHS failed to provide reasonable accommodations in accordance with the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12101 to 12213, during her 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.

The DHS filed a petition in January 2024, alleging that the petitioner engaged in excessive corporal punishment and domestic violence toward M.V. The DHS also alleged that the petitioner failed to protect M.V., as she knowingly allowed her boyfriend to "commit physical touching of a sexual nature upon the [child]." M.V. disclosed to Child Protective Services ("CPS") that when she told the petitioner that the boyfriend made her uncomfortable and had touched her on her legs and put his hand down the back of her pants, the petitioner made the child stand in the corner and "banged [the child's] head against the wall."

At a contested preliminary hearing in February 2024, the petitioner testified that she had "smack[ed] [the child] in the mouth for running her mouth" and made the child stand in the corner for about thirty minutes. She stated that the child never told her about the inappropriate touching and, further, that she did not believe the child's disclosures to CPS. She stated that "[the boyfriend] did nothing wrong" and that she still allowed the boyfriend in their home. The court recessed to allow the petitioner to watch video recordings that the child had taken of the boyfriend's inappropriate touching. When the hearing resumed, the court found that, based on the evidence presented, imminent danger existed at the time of removal.

[1] The petitioner appears by counsel Jeremy B. Cooper. The Department of Human Services ("DHS") appears by counsel Attorney General John B. McCuskey and Assistant Attorney General Lee Niezgoda. Counsel Susan J. MacDonald appears as the child'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).

The court held a contested adjudicatory hearing in February 2024, at which it heard from a CPS worker regarding the petition's allegations as well as from the petitioner's boyfriend, who confirmed he was depicted touching the child's leg and lower back in the child's videos. The court heard testimony from the child in camera. The court then continued the hearing to March 2024, at which time the petitioner testified that the child had fabricated the allegations and that the child "was never uncomfortable around [the boyfriend]." The petitioner did not "see anything sexual in th[e] videos" and stated that although she and the boyfriend were no longer in a relationship, "if [the boyfriend] wanted to be around, he could be." Based upon this evidence, the court adjudicated the petitioner as a neglecting parent due to "her failure to protect," noting that the petitioner "fail[ed] to separate her own needs from [the child's]" and that the petitioner's response to the allegations was to blame the child. The court granted the petitioner a post-adjudicatory improvement period.

At a subsequent hearing in April 2024, the petitioner acknowledged that she had reviewed and understood the terms of her improvement period and executed a copy of the same. These terms included that the petitioner maintain communication with the DHS, complete a psychological evaluation, and participate in parenting classes and individual counseling. At a review hearing later that month, the petitioner was assigned a parent coach to assist in her improvement period. At a review hearing in May 2024, the petitioner's counsel proffered that she was meeting with her coach, had started parenting classes, and completed the psychological evaluation. In June 2024, however, the DHS moved to revoke the petitioner's improvement period because the petitioner had not begun individual counseling and continued to deny the child's allegations. In July 2024, the petitioner filed a response in opposition to the DHS's motion, arguing that she was fully complying with the terms of her improvement period and notifying the DHS that, per the report from her psychological evaluation, she "qualifie[d] for protection under the [ADA]" due to "an intellectual disability" and "require[d] adaptive or modified services to achieve reunification." However, the petitioner did not mention or request any specific modifications. At a review hearing in September 2024, the court found that the petitioner had still not begun individual counseling and set the matter for disposition.

The court held a dispositional hearing in October 2024. A CPS worker testified that the petitioner had not communicated regularly with the DHS, had not asked for contact with the child during the proceedings, and did not begin individual counseling until earlier that month. The DHS recommended termination of R.P.'s parental rights, which was also the then-fourteen-year-old child's expressed wish. On cross-examination, the worker acknowledged that the DHS did not modify the improvement period's terms in light of the petitioner's reported intellectual disability. During the hearing, the court admitted the report from the petitioner's psychological evaluation into evidence. According to the evaluating psychologist, the petitioner disputed "just about all" of the DHS's allegations. The report also stated that the petitioner's "general cognitive ability [was] within the [b]orderline to [l]ow [a]verage range of intellectual ability." While acknowledging that the petitioner "may experience difficulty keeping up with her peers in a wide variety of situations that require thinking and reasoning abilities," the report did not recommend additional or modified services. The report concluded that the petitioner's prognosis was "guarded," as she "made statements that [the child] [was] lying." The court also heard from the petitioner's treating psychologist, who testified to her interpretation of the report. She noted that "the psychological evaluation indicate[d] that [the petitioner] ha[d] [an] intellectual disability" which caused "her

capacity to problem solve" and "to process verbally given information . . . to be somewhat impaired." The petitioner's psychologist did not conduct her own evaluation and relied solely on the prior report. The psychologist stated that, due to the petitioner's "impairments in working memory" and "processing speed," information needed to be presented to her "in a very concrete and simple[] manner." This was how the psychologist and her colleagues—who recently began the petitioner's individual counseling and had been providing "therapeutic mentoring" parenting services since July 2024—worked with the petitioner to ensure that she understood the information and was not overwhelmed. The psychologist testified that there was "nothing wrong with [how] the [improvement period's] terms . . . were written," and that the petitioner's intellectual disability did not affect her ability to understand that the child had been sexually abused. She also admitted that the petitioner had not acknowledged the sexual abuse, and that "[i]f a parent has not fully acknowledged all of the areas that have brought [a] child in[to] the care [of the DHS], then we're not going to pursue . . . having the child come in" for family therapy.

The petitioner testified that she had participated in services and requested supervised visitation with the child. The petitioner also testified that she experienced no difficulties with everyday life, was employed, and owned a vehicle and her home. She then stated that the proceedings began because of "[s]exual abuse that never happened." The petitioner acknowledged that her psychologist could not recommend family therapy to work toward reunification if that was her belief, stating: "It's not my belief. It's the truth." The petitioner also admitted to making a social media post in September 2024 indicating that the child was lying and that the petitioner "would not apologize for [her] relationship with [the boyfriend]" whom she loved and "would have married." The petitioner knew the child was able to see her post.

Based on this evidence, the court found that the petitioner could not accept "[the] child's truth that [she] was a victim of [the boyfriend's] sexual abuse" and that this "ha[d] totally destroyed [the petitioner's] ability to reunify with [the child]." Because the petitioner "[was] still stuck at the beginning of th[e] case when she put her own needs above the safety of her child," and continued to make "statements that [the child] lied and [the boyfriend] never sexually abused her," the court "[could not] find that [the petitioner] [was] substantially likely to change." The court further found that the petitioner "continue[d] to make extremely poor choices" during the proceedings, including making the recent social media post, knowing the child would see it. Based on the petitioner's inability to protect the child, the court concluded that "there [was] no less restrictive alternative than to terminate [the petitioner's] parental rights." Accordingly, the court terminated the petitioner's rights.[3] It is from this dispositional 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). Before this Court, the petitioner asserts that the circuit court erred in terminating her parental rights because the DHS failed to provide reasonable

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

accommodations, as required by the ADA, during her improvement period.[4] Because the record does not support the petitioner's assertion that the DHS denied her reasonable accommodations that were necessary for "meaningful access to reunification and family preservation services," we reject this argument. The circuit court was presented with extensive testimony concerning the petitioner's psychological evaluation and the services she was offered, and the court did not find that the petitioner had been unable to meaningfully access DHS services due to her reported disability. And while the petitioner notified the DHS that she "require[d] . . . modified services," at no point in the proceedings did she identify or request specific accommodations. Regardless, the treating psychologist testified that she and her colleagues *had* modified the petitioner's services to ensure that the petitioner understood the material presented.

Ultimately, however, and critical to this appeal, the circuit court did not base its dispositional decision on an issue affected in any way by the petitioner's reported disability, should it exist. Instead, the circuit court terminated the petitioner's parental rights because she resolutely refused to acknowledge that her boyfriend had sexually abused the child. We have explained that "in order to remedy the abuse and/or neglect problem, the problem must first be acknowledged." *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)). This is because "[f]ailure to acknowledge the existence of the problem, i.e., the truth of the basic allegation pertaining to the alleged abuse and neglect or the perpetrator of said abuse and neglect, results in making the problem untreatable." *Id*. at 55, 743 S.E.2d at 363. At disposition, the psychologist's testimony confirmed that the petitioner was able to understand that the child had been molested. Yet the record shows that the petitioner firmly denied the child's sexual abuse at every stage of the proceedings. As such, the circuit court determined that the petitioner's failure to acknowledge the sexual abuse rendered the conditions of neglect impossible to correct. The court further found that the petitioner had prioritized her needs over the child's safety and was unable to protect the child, concluding that there was no less restrictive alternative than to terminate the petitioner's parental rights. Accordingly, the record indicates that there was no reasonable likelihood that the conditions of neglect 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 October 25, 2024, order is affirmed.

Affirmed.

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[4] The petitioner cites to West Virginia Code § 49-4-604(a)(1) to support her assertion that the DHS was required to provide accommodations. This statute provides that family case plans must include "any reasonable accommodations in accordance with the [ADA] to parents with disabilities in order to allow them meaningful access to reunification and family preservation services." *Id*. The ADA itself provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subject to discrimination by any such entity." 42 U.S.C. § 12132.

ISSUED: November 25, 2025

CONCURRED IN BY:

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