

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

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

In re T.W. and J.M.-1

No. 24-741 (Wood County CC-54-2023-JA-87 and CC-54-2023-JA-88)

MEMORANDUM DECISION

Petitioner Mother J.M.-2¹ appeals the Circuit Court of Wood County’s November 13, 2024, order terminating her parental rights to T.W. and J.M.-1, arguing that the circuit court erred by finding that there was no reasonable likelihood that the conditions of neglect could be substantially corrected in the near future and by failing to consider less restrictive dispositional alternatives.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 April 2023, the DHS filed a petition alleging that the petitioner, who was residing at her mother’s house with the children, abused controlled substances in the presence of the children to the extent that her proper parenting skills were impaired.³ The petitioner later stipulated to these allegations at an adjudicatory hearing in May 2023. Accordingly, the circuit court adjudicated the petitioner of neglecting the children based upon her substance abuse. The court also granted the petitioner a post-adjudicatory improvement period, with terms to be established in an agreed order, and ordered that she begin supervised visitation with the children so long as she participated in drug screening. Over the next several months, the court held a series of review hearings for the petitioner’s improvement period. However, despite repeated continuances to accommodate the petitioner’s approval of the terms and conditions of her improvement period, the matter culminated in a final review hearing in June 2024, where a DHS report was entered into evidence without objection. This report contained a copy of the case plan, which outlined the various services offered to the petitioner. These services included parenting and life skills classes, drug screening, supervised visitation, and individualized counseling. The report also stated that the petitioner had

¹ The petitioner appears by counsel Jessica E. Myers. The West Virginia Department of Human Services (“DHS”) appears by counsel Attorney General John B. McCuskey and Assistant Attorney General Wyclif S. Farquharson. Counsel Keith White 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). Because one child and the petitioner share the same initials, we refer to them as J.M.-1 and J.M.-2, respectively.

³ The proceedings below included children and adult respondents who are not at issue on appeal.

not contacted the caseworker or service providers to begin these services and that the petitioner had not otherwise agreed to the terms of the proposed improvement period.

At the first dispositional hearing in August 2024, the DHS requested the termination of the petitioner's parental rights. A DHS caseworker testified that the petitioner had not participated in any of the services offered to her from the start of the case and that she was never able to make contact with the petitioner outside of multidisciplinary team meetings, despite making repeated attempts. The DHS worker acknowledged that the petitioner completed an inpatient drug treatment program but stated that the petitioner did not participate in any of the services offered by the DHS following this treatment. The court then heard from the petitioner, who represented that she was drug free after completing treatment at an inpatient drug rehabilitation program from October 31 to December 2, 2023. The petitioner claimed that, following treatment, she made several unsuccessful attempts to contact the DHS caseworker via text before she lost phone service. The petitioner further alleged that she had not participated in services following an April 2024 hearing because she had not been provided paperwork to sign and did not have a valid identification card, but stated that she was willing to participate in services. The petitioner then expressed her desire for the children to stay in their placement so that she could "get [herself] together," and requested that the court not terminate her parental rights. The circuit court then continued the hearing and asked the DHS to assist the petitioner in obtaining an identification card so that she could participate in services. A second dispositional hearing was held in September 2024, where the petitioner did not appear but was represented by counsel. The DHS entered a report into evidence, without objection, stating that the petitioner had not contacted the caseworker following the prior hearing, and again moved for the termination of the petitioner's parental rights. The petitioner's counsel objected to termination of the petitioner's parental rights and instead moved for termination of only the petitioner's custodial rights.

After taking notice of the record, the circuit court found that the petitioner "failed to participate in any of the services offered" despite being given multiple chances to do so and being granted additional time following the August 2024 hearing. Based upon this finding, the court concluded that there was no reasonable likelihood that the conditions of neglect could be substantially corrected in the near future. The court further found that the children needed permanency and that termination of the petitioner's parental rights was therefore necessary for their welfare. Accordingly, the court terminated the petitioner's parental rights to the children.⁴ It is from the 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 first argues that the circuit court erred in finding that there was no reasonable likelihood that the conditions of neglect could be substantially corrected in the near future, asserting that her completion of the inpatient drug treatment program demonstrated her ability to remedy the problems of neglect.

⁴ The parental rights of T.W.'s father have also been terminated. J.M.-1's father voluntarily relinquished his parental rights to the child. The permanency plan for the children is adoption in their current placement.

Upon review, we find no error. The circuit court expressly found that the petitioner failed to comply with any of the remedial services offered. Pursuant to West Virginia Code § 49-4-604(d)(3), a circuit court may find that there is no reasonable likelihood that the conditions of neglect can be substantially corrected when “[t]he abusing parent . . . [has] not responded to or followed through with a reasonable family case plan or other rehabilitative efforts.” Here, the DHS presented evidence that the petitioner never contacted the caseworker to begin services or even agree to the terms of a proposed improvement period. Further, the petitioner’s failure to drug screen rendered her unable to visit her children over a period of sixteen months, and we have explained that “the level of interest demonstrated by a parent in visiting his or her children while they are out of the parent’s custody is a significant factor in determining the parent’s potential to improve sufficiently and achieve minimum standards to parent the child.” *In re Katie S.*, 198 W. Va. 79, 90 n.14, 479 S.E.2d 589, 600 n.14 (1996) (citations omitted). As such, the record contains sufficient evidence to support the circuit court’s finding that there was no reasonable likelihood that the petitioner could correct the conditions of neglect in the near future. *See* W. Va. Code § 49-4-604(d) (“‘No reasonable likelihood that conditions of neglect . . . can be substantially corrected’ means that, based upon the evidence before the court, the abusing adult or adults have demonstrated an inadequate capacity to solve the problems of abuse or neglect on their own or with help.”).

The petitioner further argues that the circuit court erred by failing to consider less restrictive alternatives than the termination of her parental rights, such as terminating only her custodial rights, to “permit her sufficient time to address her current situation” and allow her to move for the modification of the disposition at a later date. We have held that 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 under [West Virginia Code § 49-4-604(c)(6)] that conditions of neglect . . . can be substantially corrected.” Syl. Pt. 5, in part, *In re Kristin Y.*, 227 W. Va. 558, 712 S.E.2d 55 (2011) (quoting Syl. Pt. 2, *In re R.J.M.*, 164 W. Va. 496, 266 S.E.2d 114 (1980)). As stated above, the court properly found that there was no reasonable likelihood that the conditions of neglect could be substantially corrected in the near future. Further, the record supports the court’s finding that the children’s welfare required termination in order to achieve permanency, which would be jeopardized by the termination of the petitioner’s custodial rights only. As such, we conclude that the circuit court did not err in terminating the petitioner’s parental rights. *See* W. Va. Code § 49-4-604(c)(6) (allowing the termination of parental rights “[u]pon a finding that there is no reasonable likelihood that the conditions of neglect . . . can be substantially corrected in the near future and, when necessary for the welfare of the child”).

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

Affirmed.

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