

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

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

In re N.M.

No. 25-522 (Randolph County CC-42-2023-JA-44)

MEMORANDUM DECISION

Petitioner Mother J.W.¹ appeals the Circuit Court of Randolph County’s July 14, 2025, order terminating her parental rights to N.M., arguing that the circuit court erred by adjudicating her based upon inadmissible evidence and failing to address her motions.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 May 2023, the DHS filed a petition alleging that the petitioner abused and neglected then-six-year-old N.M. by failing to adequately supervise the child.³ Specifically, the DHS alleged that the petitioner allowed her husband, R.W., who is a registered sex offender prohibited from contact with any children, to supervise the child, resulting in his sexual abuse of the child. The DHS further alleged that the petitioner was dishonest with Child Protective Services (“CPS”) regarding R.W.’s status as a sex offender and insisted all interactions between the child and R.W. were supervised. Further, R.W.’s probation officer informed CPS that R.W. was barred from visiting or living with a minor or engaging in a relationship with the parent of a minor child. The DHS filed an amended petition in June 2023 alleging that the petitioner coached the child to refrain from speaking to police or CPS. CPS workers spoke with the child, who disclosed that R.W. supervised her alone. The child also disclosed that she was married to R.W., that they kissed, and that he kissed her chest, stomach, genitals, buttocks, and upper thighs. The DHS filed a second amended petition in August 2023 alleging that the guardian interviewed the child, who disclosed that she was married to “Daddy [R.W.]” and they did things that married people do including tongue kissing and wearing rings. The child further disclosed that R.W. bathed her while the petitioner was asleep in another room. The petitioner thereafter failed to appear at the preliminary hearing, although she was represented by counsel.

¹ The petitioner appears by counsel Jeremy B. Cooper. The West Virginia Department of Human Services (“DHS”) appears by Attorney General John B. McCuskey and Assistant Attorney General Katica Ribel. Counsel Melissa T. Roman appears as the child’s guardian ad litem (“guardian”).

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

³ The petition also involved another child who is not at issue here.

In November 2023, the parties convened for adjudication, but the petitioner requested and was granted new appointed counsel for the second time, resulting in the court continuing the hearing. However, the circuit court noted that the petitioner was posting confidential information about the case on social media and ordered her to stop. The parties reconvened for adjudication in February 2024, but the petitioner's counsel requested to withdraw due to a breakdown in communication. The petitioner stated that she would hire her own counsel. The court ultimately continued the hearing but ordered that there would be no more continuances and directed the petitioner to appear at the next hearing with counsel. On April 15, 2024, the court held a status hearing to determine if the petitioner obtained counsel, as adjudication was set for May 2024. However, the petitioner did not appear.

In April 2024, the petitioner filed no less than seven self-represented motions,⁴ including a motion for new appointed counsel; a motion alleging that the DHS violated West Virginia Code § 49-4-408, which requires the DHS to develop a unified child and family case plan and file the case plan within sixty days of the child coming into foster care (if applicable); and a motion alleging that the circuit court failed to hold a hearing to determine whether reasonable efforts were made to stabilize and maintain the family situation before the child was placed outside the home pursuant to West Virginia Code § 49-4-105. On April 22, 2024, the court granted the petitioner's request for new appointed counsel—her fourth appointed counsel in this matter. The court subsequently entered an order setting the adjudicatory hearing for August 2024.

The circuit court held the first adjudicatory hearing in August 2024, where it denied the petitioner's motion to continue the hearing. A DHS worker testified to her investigation of the initial allegations, noting that the child was removed from the home where the petitioner and R.W. resided. The worker recounted the child's disclosures that R.W. kissed her on the face, mouth, neck, chest, and groin. R.W.'s probation officer testified that R.W.'s probation terms prohibited him from living with, having contact with, or visiting any minor under the age of sixteen. The court then addressed the petitioner's request for the child to testify in camera, but she withdrew that request. The petitioner then called the guardian as a witness, but the court disallowed the guardian from testifying. The second adjudicatory hearing was held in December 2024, where R.W.'s probation officer testified that he repeatedly made R.W. and the petitioner aware that R.W. was to have no contact with minors. The officer further testified that he filed a violation of probation due to R.W. having contact with the child. Then, the child's foster parent testified to the child's disclosures of sexual abuse by R.W. and that the child stated that the petitioner told her to lie to CPS or she would be taken away. Next, the child's therapist, who began seeing the child in July 2023, testified that the child's disclosures during therapy sessions were consistent with the disclosures the child made to CPS and her foster parent. The petitioner testified that she knew R.W. was prohibited from having contact with minors as a term of his probation but stated that she did not believe R.W. sexually abused her child. On April 6, 2025, several months after the conclusion of the adjudicatory hearing, the petitioner filed a motion to exclude the testimony of the DHS worker, the child's foster mother, and the child's therapist, arguing that their testimony

⁴ While the court did not specifically address each of the petitioner's numerous motions, she concedes that the court addressed many of the issues she asserted therein. However, we limit our discussion to the motions and issues she argues in her brief.

regarding the child's disclosures was inadmissible hearsay. The court entered its adjudicatory order on April 16, 2025, finding that the petitioner was fully aware of R.W.'s status as a sex offender and the attendant restrictions on his contact with children yet allowed R.W. to have contact with her child. Based upon the evidence, the court found that the petitioner abused and neglected the child by failing to protect the child from R.W.'s sexual abuse. The court also found that the petitioner instructed the child to lie to law enforcement and CPS regarding the abuse.

The circuit court held a dispositional hearing in June 2025, at which the petitioner did not appear but was represented by counsel. In the resulting dispositional order, the court found no reasonable likelihood that the conditions of neglect or abuse could be substantially corrected in the near future because the petitioner continued to deny any issues and was still married to R.W. Finding that termination was necessary for the child's welfare, the court terminated the petitioner's parental rights. It is from the dispositional order that the petitioner now appeals.⁵

On appeal from a final order in an abuse and neglect proceeding, this Court reviews the circuit court's substantive rulings for abuse of discretion, factual findings are reviewed for clear error, and issues of law are reviewed de novo. Syl. Pt. 1, *In re K.S.*, -- W. Va. --, 930 S.E.2d 400 (2026). Before this Court, the petitioner argues that the court erred by relying upon the child's disclosures—which she asserts were inadmissible hearsay—as a basis for her adjudication. However, the petitioner concedes that she did not timely object to the admission of those disclosures during the proceedings below; thus, she asks that this Court find that the circuit court plainly erred. We decline to do so. Our general rule is “[w]here objections were not shown to have been made in the trial court, and the matters concerned were not jurisdictional in character, such objections will not be considered upon appeal.” Syl. Pt. 7, *Wheeling Dollar Sav. & Tr. Co. v. Leedy*, 158 W. Va. 926, 216 S.E.2d 560 (1975) (citing Syl. Pt. 1, *State Rd. Comm'n v. Ferguson*, 148 W. Va. 742, 137 S.E.2d 206 (1964)). Simply put, because the petitioner failed to contemporaneously object to the testimony of the DHS's witnesses at the time they testified, the petitioner waived the issue on appeal and is thus entitled to no relief in this regard.⁶

Next, the petitioner argues that the circuit court erred by failing to rule on her motion for a hearing to determine if reasonable efforts had been made prior to the child's removal.⁷ According to West Virginia Code § 49-4-105,

[a] hearing by a circuit court of competent jurisdiction is required to determine whether or not “reasonable efforts” have been made to stabilize and maintain the family situation before any child may be placed outside the home, except that in the event any child appears in imminent danger of serious bodily or emotional

⁵ N.M.'s father's parental rights were terminated. The child's permanency plan is adoption in the current placement.

⁶ Because we find no error in the court's adjudication of the petitioner, we will not address her argument that disposition was in error due to her defective adjudication.

⁷ The petitioner generally asserts that the court failed to address her numerous self-represented motions but only substantively argues about the two motions discussed herein.

injury or death in any home, a post-removal hearing shall be substituted for the pre-removal hearing.

However, the court held a preliminary hearing—at which the petitioner did not appear—and determined that removal was necessary due to imminent danger to the child’s physical wellbeing *and* that the DHS made reasonable efforts to preserve the family and prevent removal. Accordingly, the petitioner’s argument in this regard has no merit.

Finally, the petitioner correctly argues that the DHS failed to file a family case plan within sixty days of the child’s placement in foster care and that the court failed to address her motion regarding the same. *See* W. Va. Code § 49-4-408(a) (requiring the DHS to develop a unified child and family case plan and, when the child is placed in foster care, file the case plan within sixty days of placement). While the DHS failed to comply with this requirement, we note that it did timely file a case plan pursuant to West Virginia Code § 49-4-604(a) which requires the DHS to file a case plan after the child is adjudicated as an abused or neglected child. *See also* W. Va. R. P. Child Abuse & Neglect Procs. 29 (requiring the DHS to file a case plan “at least five (5) judicial days prior to the disposition hearing”). We have explained 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 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)). Here, the petitioner’s failure to acknowledge R.W.’s sexual abuse of her child and the petitioner’s failure to protect her child rendered the conditions of abuse and neglect untreatable. *See In re Timber M.*, 231 W. Va. 44, 55, 743 S.E.2d 352, 363 (2013) (“In order to remedy the abuse and/or neglect problem, the problem must first be acknowledged.” (quoting *In re Charity H.*, 215 W. Va. 208, 217, 599 S.E.2d 631, 640 (2004))). The petitioner claims that the absence of a case plan left her unable to ascertain the kind of efforts necessary to remedy the problems of abuse and neglect. However, the lack of a case plan was not prejudicial error under the specific circumstances of this case because, as discussed above, the petitioner failed to acknowledge the abuse and allowed her daughter to be exposed to R.W., even knowing that R.W.’s probation prohibited him from visiting or living with a minor or engaging in a relationship with the parent of a minor child. All of this rendered the petitioner’s abuse and neglect of her child untreatable and the use of remedial efforts futile. *See id.* (“Failure 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”); *cf. In re M.Z.-I*, No. 15-0818, 2016 WL 1456024, at *3 (W. Va. Apr. 12, 2016) (memorandum decision) (explaining that the “petitioner’s lack of compliance, not a deficient family case plan” led to the termination of his parental rights). Accordingly, the petitioner is entitled to no relief.

For the foregoing reasons, we find no error in the decision of the circuit court, and its July 14, 2025, order is hereby affirmed.

Affirmed.

ISSUED: August 25, 2026

CONCURRED IN BY:

Chief Justice C. Haley Bunn
Justice William R. Wooton
Justice Charles S. Trump IV
Justice H. L. Kirkpatrick
Justice James W. Flanigan