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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* R.M.**

No. 25-630 (Nicholas County CC-34-2025-JA-19)

MEMORANDUM DECISION

Petitioner Mother B.M.[1] appeals the Circuit Court of Nicholas County's August 29, 2025, order terminating her parental and custodial rights to R.M., arguing that the circuit court erred by violating her due process rights at her contempt proceeding and terminating her rights.[2] Upon our review, we determine that oral argument is unnecessary and that a memorandum decision affirming the circuit court's August 29, 2025, order; reversing the circuit court's August 15, 2025, order holding the petitioner in criminal contempt of court; and remanding the matter is appropriate in accordance with the "limited circumstances" requirement of Rule 21(d) of the West Virginia Rules of Appellate Procedure.

In February 2025, the DHS filed an abuse and neglect petition alleging that the petitioner exposed her older children, A.M. and K.M.,[3] to sexual abuse by the children's babysitter and that she physically abused A.M. The DHS also included R.M. in the petition, stating that this child lived in the home with the petitioner, the father, A.M., and K.M. at the time the alleged abuse occurred.

At the March 2025 preliminary hearing, the circuit court ordered that, in relation to their belongings, "[t]he children shall receive anything they want from [the petitioner,] and if she does not provide it then the [DHS] shall go to her home to retrieve it." At an April 2025 adjudicatory hearing, the petitioner stipulated to all of the allegations in the petition and confirmed that R.M. lived in the home when the alleged abuse occurred. She asserted, however, that she believed A.M. and K.M. were lying about the sexual abuse they had disclosed to the DHS, that the children had never informed her of any such abuse, and that her physical abuse of A.M. had been justified because the child was disrespectful toward her. The court ultimately adjudicated the petitioner as an abusing and/or neglectful parent of all three children. The petitioner then voluntarily

[1] The petitioner appears by counsel Jeremy B. Cooper. The West Virginia Department of Human Services ("DHS") appears by counsel Attorney General John B. McCuskey and Assistant Attorney General Heather L. Olcott. Counsel Susie Hill 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).

[3] These two children are not at issue on appeal.

relinquished her rights to A.M. and K.M., which the court accepted. Accordingly, the court terminated her parental and custodial rights to these two children and denied the petitioner's oral motion for a post-adjudicatory improvement period.

Following the adjudicatory hearing, the DHS amended the petition to include allegations of the petitioner's failure to protect R.M. based on the her refusal to believe that A.M. and K.M. were sexually abused; her voluntary relinquishment of her parental and custodial rights to these two children; her admitted physical abuse of A.M.; and her tendency to place her children in abusive and/or neglectful situations. At a second adjudicatory hearing in July 2025, the court adjudicated the petitioner as an abusive and/or neglectful parent of R.M. once more based upon her stipulation to the new allegations. The court also ordered the petitioner to comply with its prior order that she give the children their belongings, because she had not yet done so.

Later in July 2025, the DHS filed a motion for contempt against the petitioner because when DHS workers attempted to retrieve the children's items from the petitioner's home, the petitioner was aggressive, threw the children's clothing at the workers, called them vulgar names, and refused to give the workers certain items. As such, the circuit court held a contempt hearing on August 13, 2025. The petitioner was not informed of her right to a jury trial nor did she waive that right. The court then heard testimony from the DHS workers about the incident leading to the filing of the contempt motion and took testimony from K.M. regarding certain items. By order entered on August 15, 2025, the court found that the items belonged to the children and that the petitioner was in clear criminal contempt of the court's orders by failing to hand those items over to the DHS. The court ordered that, as a sanction, the petitioner be immediately incarcerated for a period of ten days with five days suspended. The court further stated that any additional violation of its order concerning the children's possessions could result in an extension of the petitioner's incarceration.

At the August 2025 dispositional hearing, the petitioner requested an improvement period.[4] A DHS worker testified, based upon the results of the petitioner's psychological evaluation and the petitioner's uncooperative behavior toward DHS workers, that the DHS did not believe that the petitioner would be able to remedy the issues with her parenting. The DHS worker also testified that R.M. had not asked about the petitioner since being removed from her care, indicating a lack of a bond between them. The petitioner then testified that she had participated in services and would be willing to participate in an improvement period. When asked about K.M. and A.M., the petitioner adamantly stated that the children were lying about the abuse allegations giving rise to the petition, and that because they "choose to lie . . . [she] did not want them around [her,]" which led to her decision to relinquish her rights to those children. Ultimately, the court denied the petitioner's request for an improvement period, finding that the petitioner's willful violation of its prior orders to deliver certain belongings to the children and her "belligerent" behavior toward DHS workers when they attempted to retrieve those belongings constituted clear and convincing evidence that the petitioner could not comply with the terms of an improvement period. The court expressed concern over the petitioner's dismissal of A.M. and K.M.'s sexual abuse disclosures,

[4] The record does not indicate that the petitioner filed a written motion for an improvement period.

her insistence that the children were lying, and her justification for physically abusing A.M. The court further found that the petitioner's decision to voluntary relinquish her rights to A.M. and K.M. was irrational, defiant, and showed a "strange disconnection [between the petitioner and these two children] and [that] the disconnect cannot be fully separated from [R.M.]." In addition to those concerns, the court found that the petitioner's pattern of blaming others for her actions and defiant behavior would likely continue and threaten R.M.'s safety. Therefore, the court found that there was no reasonable likelihood that the petitioner could substantially correct the conditions of abuse and/or neglect in the near future and that, based on R.M.'s need for the continuity of care and caretakers, termination of the petitioner's rights was necessary for R.M.'s welfare. Accordingly, the court terminated the petitioner's parental and custodial rights to R.M.[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 for clear error, and issues of law de novo. Syl. Pt. 1, *In re K.S.*, 253 W. Va. 154, 930 S.E.2d 400 (2026). To begin, the petitioner argues that the circuit court violated her due process rights by failing to provide her with a jury trial for her criminal contempt proceeding. We agree. At the outset, we note that "[w]hether a contemnor has been found in civil or criminal contempt is a question of law reviewed *de novo*." Syl. Pt. 9, *State ex rel. Dilly v. Hall*, 250 W. Va. 155, 902 S.E.2d 487 (2024). Further, "[i]ndirect criminal contemnors are entitled to the same rights as criminal defendants" and have the right to a jury trial. *Id.* at 159, 902 S.E.2d at 491, Syl. Pt. 10 (quoting Syl. Pt. 1, in part, *State ex rel. Koppers Co. v. Int'l Union of Oil, Chem. & Atomic Workers*, 171 W. Va. 290, 298 S.E.2d 827 (1982)); *see also Dilly*, 250 W. Va. at 159, 902 S.E.2d at 491, Syl. Pt. 12 ("To the extent our cases hold or may be read to hold that an indirect criminal contempt may be punished without a jury trial, *see, e.g., In re Frieda Q.*, 230 W. Va. 652, 742 S.E.2d 68 (2013), they are overruled."). Having established the scope of our review and the right to a jury trial in cases of indirect criminal contempt, we turn to the specifics of the proceedings against the petitioner.

As we have explained, "[t]here are four classifications of contempt: direct criminal, indirect criminal, direct civil, and indirect civil." *Dilly*, 250 W. Va. at 159, 902 S.E.2d at 491, Syl. Pt. 4. In classifying whether the contempt is direct or indirect, we look to "the location of the contumacious act." *Id.* at 159, 902 S.E.2d at 491, Syl. Pt. 5, in part. "Direct contempt occurs in the actual physical presence of the court, while indirect contempt occurs entirely or partially outside of the actual physical presence of the court." *Id.* Further, "whether a contempt is civil or criminal depends upon the purpose to be served by imposing a sanction for the contempt." *Id.* at 159, 902 S.E.2d at 491, Syl. Pt. 6, in part (quoting Syl. Pt. 2, *State ex rel. Robinson v. Michael*, 166 W. Va. 660, 276 S.E.2d 812 (1981)). "Where the purpose to be served by imposing a sanction for contempt is to punish the contemnor for an affront to the dignity or authority of the court, or to preserve or restore order in the court or respect for the court, the contempt is criminal." *Id.* at 159, 902 S.E.2d at 491, Syl. Pt. 8 (quoting Syl. Pt. 4, *State ex rel. Robinson v. Michael*, 166 W. Va. 660, 276 S.E.2d 812 (1981)). Here, the contumacious action (the petitioner's alleged failure to give the DHS certain belongings and her aggressive behavior) was indirect because it occurred outside the physical presence of the court. We further conclude that the contempt was criminal because, in addition to its explicit characterization as such, the court sought to punish the petitioner for her noncompliance through

[5] Permanency has been achieved as the child remains with the nonabusing father.

her brief incarceration and threatened further punishment for additional violations. Despite her right to a jury trial, the record shows that the petitioner was not informed of her right and did not waive the same. "The failure to follow proper contempt procedure is reversible error." *Trecost v. Trecost*, 202 W. Va. 129, 133, 502 S.E.2d 445, 449 (1998) (quoting *P.G. & H. Coal Co. v. Int'l Union, United Mine Workers of America*, 182 W. Va. 569, 574, 390 S.E.2d 551, 556 (1988)). Accordingly, we conclude that the circuit court's August 15, 2025, order holding the petitioner in contempt is erroneous and hereby reverse that decision.

However, despite the above error, we affirm the circuit court's August 29, 2025, order terminating the petitioner's parental and custodial rights as that decision was supported by sufficient evidence. Circuit courts are permitted to terminate parental rights "[u]pon a finding that there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future and, when necessary for the welfare of the child." W. Va. Code § 49-4-604(c)(6). According to West Virginia Code § 49-4-604(d), "'[n]o reasonable likelihood that 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 [her] own or with help." Although the petitioner demonstrated some compliance with services below, the record supports the circuit court's findings that she continued to blame others for her conduct, insisted that the older children were lying about their abuse (despite her earlier stipulations), attempted to justify her physical abuse of A.M., and could not work respectfully with the DHS. As we have explained, "it is possible for an individual to show 'compliance with specific aspects of the case plan' while failing 'to improve . . . [the] overall attitude and approach to parenting.'" *In re Jonathan Michael D.*, 194 W. Va. 20, 27, 459 S.E.2d 131, 138 (1995) (quoting *W. Va. Dep't of Human Serv. v. Peggy F.*, 184 W. Va. 60, 64, 399 S.E.2d 460, 464 (1990)). Further, the failure to acknowledge abuse or neglect results in those conditions being untreatable. *See In re Timber M.*, 231 W. Va. 44, 55, 743 S.E.2d 352, 363 (2013). Therefore, ample evidence supported the court's finding that there was no reasonable likelihood the petitioner could substantially correct the conditions of abuse and/or neglect in the near future. Moreover, the court appropriately considered R.M.'s need for continuity of care and caretakers in determining that termination was necessary for the child's welfare. Accordingly, the court did not err in terminating the petitioner's parental and custodial rights to R.M.[6]

For the foregoing reasons, we affirm the circuit court's August 29, 2025, order terminating the petitioner's rights; reverse the circuit court's August 15, 2025, order finding the petitioner in

[6] Although the petitioner takes issue with the court's denial of an improvement period, the record does not indicate that she filed a written motion; thus, she was not entitled to one. *See* Syl. Pt. 4, *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[n] . . . improvement period under W. Va. Code § 49-4-610 . . . unless the respondent to the abuse and neglect petition files a written motion requesting the improvement period."). Additionally, despite the petitioner's contentions otherwise, the court was not required to grant her an improvement period before proceeding to terminate her rights. *See* Syl. Pt. 5, *In re Kristin Y.*, 227 W. Va. 558, 712 S.E.2d 55 (2011) (permitting termination of rights "without the use of intervening less restrictive alternatives when it is found that there is no reasonable likelihood . . . that 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))). Thus, the petitioner is not entitled to relief.

contempt; and remand the matter for the entry of an order consistent with this decision. The Clerk is hereby instructed to issue the mandate forthwith.

Affirmed, in part; reversed, in part; and remanded with directions.

ISSUED: November 24, 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