

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**FILED
November 4, 2020**

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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

In re T.S., K.C., G.B., and A.M.

No. 20-0384 (Logan County 19-JA-82, 19-JA-83, 19-JA-84, and 19-JA-85)

MEMORANDUM DECISION

Petitioner Mother M.C., by counsel J. Christopher White and her guardian ad litem Steven M. Thorne, appeals the Circuit Court of Logan County’s March 12, 2020, order terminating her parental rights to T.S., K.C., G.B, and A.M.¹ The West Virginia Department of Health and Human Resources (“DHHR”), by counsel Katherine A. Campbell, filed a response in support of the circuit court’s order. The children’s guardian ad litem, Karen S. Hatfield, filed a response on their behalf in support of the circuit court’s order. On appeal, petitioner argues that the circuit court erred in denying her motion to continue the dispositional hearing and in terminating her parental rights.

This Court has considered the parties’ briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision affirming the circuit court’s order is appropriate under Rule 21 of the Rules of Appellate Procedure.

In June of 2019, the DHHR filed a child abuse and neglect petition alleging that petitioner’s use of controlled substances negatively affected her ability to parent the children as evidenced by her unsanitary home and the children’s chronic lice and hygiene issues. The DHHR alleged that petitioner submitted to a drug screen at the case worker’s request and tested positive for amphetamine, methamphetamine, and marijuana. However, neither petitioner nor the father of G.B., who was living in petitioner’s home at the time, appeared to discuss the issues with the case worker as requested. Petitioner later waived her preliminary hearing. The circuit court ordered petitioner to submit to random drug screens at least twice per week and further ordered that the DHHR provide petitioner supervised visitation with the children contingent upon negative drug screen results.

¹Consistent with our long-standing practice in cases with sensitive facts, we use initials where necessary to protect the identities of those involved in this case. *See In re K.H.*, 235 W. Va. 254, 773 S.E.2d 20 (2015); *Melinda H. v. William R. II*, 230 W. Va. 731, 742 S.E.2d 419 (2013); *State v. Brandon B.*, 218 W. Va. 324, 624 S.E.2d 761 (2005); *State v. Edward Charles L.*, 183 W. Va. 641, 398 S.E.2d 123 (1990).

In September of 2019, the circuit court held an adjudicatory hearing. Petitioner did not appear but was represented by counsel. The DHHR and petitioner's counsel proffered information that petitioner was seen behaving erratically, such as talking to herself, and was generally noncompliant with the DHHR's efforts. Upon motion by petitioner's counsel, the circuit court appointed petitioner a guardian ad litem and continued the hearing. Later in September of 2019, the DHHR filed an amended petition and alleged that a DHHR case aide witnessed petitioner exhibiting signs of mental illness. In response, the case aide filed a petition to involuntarily commit petitioner. The DHHR alleged that, following the filing of the petition for commitment, petitioner agreed to return to the Logan and Mingo Area Mental Health facility, but failed to do so. The DHHR further alleged that petitioner subsequently tested positive for methamphetamine and failed to participate in the proceedings. Thereafter, the circuit court ordered petitioner to participate in a parental fitness and psychological evaluation.

In January of 2020, the circuit court held an adjudicatory hearing. Petitioner appeared at the hearing.² The DHHR presented evidence that the children were living in deplorable conditions as their home was filled with trash, roaches, and other bugs. Additionally, the evidence showed that although petitioner admitted to marijuana use, she tested positive for methamphetamine immediately after the removal of the children and several times since their removal. Petitioner presented no evidence. Based on petitioner's multiple positive drug screen results, the circuit court found that she was a habitual user of illegal substances and, as a result, the DHHR prohibited petitioner from visiting with the children "for months." The circuit court further found that petitioner failed to participate in the proceedings or services, including in-home services. The circuit court concluded that the children were abused and neglected children and adjudicated petitioner as an abusing parent. Thereafter, the DHHR filed a motion to terminate petitioner's parental rights.

In February of 2020, the circuit court held the final dispositional hearing. Petitioner failed to appear but was represented by counsel. The DHHR presented testimony that petitioner submitted to ten random drug screens since the adjudicatory hearing and tested positive for methamphetamines on three occasions. However, the DHHR indicated that petitioner was cooperating in other services. The circuit court found there was no evidence that petitioner participated in DHHR recommended services to treat her mental health problems or her substance abuse. To the contrary, petitioner was referred to the "Fresh Start" program, a local substance abuse treatment program, but did not participate in the program. Likewise, the circuit court found that petitioner refused to follow the treatment directives of the "Logan and Mingo Area Mental Health" facility and refused to take medication recommended and prescribed by the facility's staff. The circuit court also found that, despite petitioner's compliance in completing the psychological evaluation, she failed to follow through with any of the evaluator's recommendations, which included substance abuse treatment and weekly individualized psychotherapy.

²According to the record, the adjudicatory hearing was delayed multiple times at the request of the respondent parents, partly in order to excuse and re-appoint the parents' respective counsel.

Following the presentation of evidence, the circuit court found that there was no evidence that petitioner meaningfully addressed the issues that led to the filing of the petition. The court found that the DHHR used all reasonable efforts to reunify the family, but petitioner failed to take advantage of those services. The circuit court concluded that there was no reasonable likelihood that the conditions of abuse and neglect could be corrected in the near future and that termination of petitioner's parental rights was necessary for the welfare of the children. Accordingly, the circuit court terminated petitioner's parental rights to the children by its March 12, 2020, order. Petitioner now appeals that order.³

The Court has previously held:

“Although conclusions of law reached by a circuit court are subject to *de novo* review, when an action, such as an abuse and neglect case, is tried upon the facts without a jury, the circuit court shall make a determination based upon the evidence and shall make findings of fact and conclusions of law as to whether such child is abused or neglected. These findings shall not be set aside by a reviewing court unless clearly erroneous. A finding is clearly erroneous when, although there is evidence to support the finding, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. However, a reviewing court may not overturn a finding simply because it would have decided the case differently, and it must affirm a finding if the circuit court's account of the evidence is plausible in light of the record viewed in its entirety.” Syl. Pt. 1, *In Interest of Tiffany Marie S.*, 196 W.Va. 223, 470 S.E.2d 177 (1996).

Syl. Pt. 1, *In re Cecil T.*, 228 W. Va. 89, 717 S.E.2d 873 (2011). Upon review, this Court finds no error in the proceedings below.

On appeal, petitioner argues that the circuit court erred in terminating her parental rights rather than imposing a less-restrictive dispositional alternative. She asserts that the appropriate disposition was a “brief continuance” for the purpose of an additional psychological evaluation “that may have specified treatment.” Further, petitioner argues that the circuit court's finding that there was no reasonable likelihood that the conditions of neglect or abuse could be substantially corrected in the near future is not supported by the evidence. She avers that the DHHR “offered to continue to offer services” if the circuit court granted her motion to continue the proceedings and that she “may well have benefitted from such services.” Upon our review, we find no error in the proceedings below.

Pursuant to West Virginia Code § 49-4-604(c)(6), a circuit court may terminate an abusing parent's parental rights upon findings that “there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future” and that termination is necessary

³The father of K.C., a nonabusing parent, retains his parental rights and that child has achieved permanency in her father's custody. M.B.'s father's parental rights were terminated below. The circuit court also terminated T.S.'s father's parental rights in a prior proceeding. A.M.'s father is deceased. According to the parties, the permanency plan for T.S., G.B., and A.M. is adoption in their current foster placements.

for the children's welfare. The circuit court may find that "there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future" when

[t]he abusing parent or parents have not responded to or followed through with a reasonable family case plan or other rehabilitative efforts of social, medical, mental health, or other rehabilitative agencies designed to reduce or prevent the abuse or neglect of the child, as evidenced by the continuation or insubstantial diminution of conditions which threatened the health, welfare, or life of the child.

W. Va. Code § 49-4-604(d)(3). Here, the record shows that petitioner failed to follow through with rehabilitative efforts designed to reduce or prevent the abuse or neglect of the children. Although petitioner was compliant with some services, such as parenting and adult life skills classes and random drug screening, she failed to follow through with her substance abuse or mental health treatments. Additionally, petitioner continued to abuse controlled substances and to exhibit erratic behavior. In her brief on appeal, she readily admits that "several [DHHR] case workers testified that they had observed her exhibiting mental health issues." Yet, no evidence was presented to suggest that petitioner attempted to remedy these behaviors. Clearly, the conditions that threatened the health and welfare of the children continued unabated after eight months of DHHR intervention. Therefore, we find no error in the circuit court's finding that there was no reasonable likelihood that the conditions of neglect or abuse could be substantially corrected in the near future as it is fully supported by the record.

Regarding petitioner's motion to continue, this Court has held "[a] motion for continuance is addressed to the sound discretion of the trial court, and its ruling will not be disturbed on appeal unless there is a showing that there has been an abuse of discretion." Syl. Pt. 3, in part, *In re Mark M.*, 201 W. Va. 265, 496 S.E.2d 215 (1997) (quoting Syl. Pt. 2, *State v. Bush*, 163 W.Va. 168, 255 S.E.2d 539 (1979)). "Whether there has been an abuse of discretion in denying a continuance must be decided on a case-by-case basis in light of the factual circumstances presented, particularly the reasons for the continuance that were presented to the trial court at the time the request was denied." *Id.* at 266, 496 S.E.2d at 216, syl. pt. 4 (quoting Syl. Pt. 4, *State v. Bush*, 163 W.Va. 168, 255 S.E.2d 539 (1979)). As mentioned, petitioner requested a continuance of the dispositional hearing to undergo an additional psychological evaluation "that may have specified treatment." Thus, petitioner ignores that the completed psychological evaluation specified treatment, such as individualized psychotherapy and substance abuse treatment. It is clear from the record that the DHHR attempted to implement these recommended treatments, but petitioner failed to cooperate. Accordingly, we find no abuse of discretion in the circuit court's denial of this motion. Finally, we have held that

"[t]ermination of parental rights, the most drastic remedy under the statutory provision covering the disposition of neglected children, [West Virginia Code § 49-4-604] . . . 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(d)] . . . that conditions of neglect or abuse can be substantially corrected." Syllabus point 2, *In re R.J.M.*, 164 W.Va. 496, 266 S.E.2d 114 (1980).

Syl. Pt. 5, *In re Kristin Y.*, 227 W. Va. 558, 712 S.E.2d 55 (2011). Because the requisite findings are fully supported by the record, we find no error in the termination of petitioner’s parental rights.

For the foregoing reasons, we find no error in the decision of the circuit court, and its March 12, 2020, order is hereby affirmed.

Affirmed.

ISSUED: November 4, 2020

CONCURRED IN BY:

Chief Justice Tim Armstead
Justice Margaret L. Workman
Justice Elizabeth D. Walker
Justice Evan H. Jenkins
Justice John A. Hutchison