

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re **K.G.**

No. 23-290 (Marion County CC-24-2022-JA-6)

MEMORANDUM DECISION

Petitioner Mother A.G.¹ appeals the Circuit Court of Marion County’s April 23, 2023, order terminating her parental rights to the child, K.G.,² arguing that the court erred in terminating her parental rights when she completed a substance abuse treatment program. 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 January 2022, the DHS filed an abuse and neglect petition following the birth of the child, asserting that petitioner “pervasive[ly]” abused substances and tested positive for methamphetamine and amphetamine at the time of the child’s birth. Petitioner conceded to the DHS that she used methamphetamine when she was five or six months pregnant but claimed that she did not know she was pregnant at that time. Petitioner stipulated to the allegations in the petition at an adjudicatory hearing in March 2022, admitting that she used methamphetamine during her pregnancy and that she continued to use methamphetamine. Therefore, the circuit court adjudicated petitioner abusive and neglectful and the child abused and neglected. Petitioner was then granted a six-month post-adjudicatory improvement period.

¹Petitioner appears by counsel M. Tyler Mason. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Katica Ribel. Counsel Frances C. Whiteman appears as the child’s guardian ad litem (“guardian”).

Additionally, pursuant to West Virginia Code § 5F-2-1a, the agency formerly known as the West Virginia Department of Health and Human Resources was terminated. It is now three separate agencies—the Department of Health Facilities, the Department of Health, and the Department of Human Services. *See* W. Va. Code § 5F-1-2. For purposes of abuse and neglect appeals, the agency is now the Department of Human Services (“DHS”).

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

The circuit court held a hearing at the conclusion of petitioner's improvement period in September 2022. Counsel for the DHS proffered that petitioner had not drug screened throughout the entirety of her improvement period and that services were closed for noncompliance in July 2022. Counsel for petitioner asserted that petitioner had transportation issues and was uncomfortable urinating in front of people due to past trauma. Furthermore, petitioner's counsel revealed that petitioner was currently in jail following her arrest for possession of methamphetamine and failure to appear for a hearing in the criminal matter.³ Regarding petitioner's visits with the child, the guardian advised that petitioner was often late and that the child broke out in a rash following a visit. Petitioner stopped going to drug screens, so the guardian stated that visits were suspended. Based on counsel's proffer, the court scheduled the matter for disposition.

The day before the March 2023 dispositional hearing, petitioner filed a motion for a post-dispositional improvement period. Petitioner argued that she had recently completed a twenty-eight-day drug recovery program. Attached to petitioner's motion was a letter from the recovery program coordinator which indicated petitioner completed the program and was discharged four days prior to the dispositional hearing. During the dispositional hearing, the DHS and guardian supported termination of petitioner's parental rights. Petitioner did not present any evidence, and the DHS's evidence revealed that petitioner had previously participated in a substance abuse treatment program in September 2022 but relapsed only a few days after her discharge in October 2022. According to a DHS worker's testimony, petitioner tested positive for methamphetamine and amphetamine once in October 2022, and again in November 2022 at "extremely high levels." She did not participate in any further drug screening although she was required to do so twice a week. The DHS worker further testified that petitioner did not fully participate in services throughout her improvement period and that they were closed for noncompliance. Because petitioner failed to participate in drug screening or services, visits with the child were cancelled, and petitioner had not seen the child since July of the previous year. Although petitioner completed a second treatment program a few days before the dispositional hearing, the circuit court found a pattern in petitioner's behavior and that she could not substantially correct the conditions of abuse and neglect in the near future. Further, finding it to be in the child's best interests, the court terminated petitioner's parental rights.⁴ It is from the dispositional order that 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). Petitioner argues that the circuit court erred in terminating her parental rights.⁵ In support, petitioner makes several meritless assertions.

³Petitioner's appellate brief indicates that she was in jail for twenty-two days.

⁴The parental rights of the child's father were also terminated. The permanency plan is adoption by the child's foster placement.

⁵Counsel for petitioner indicated in the appellate brief that this appeal was filed pursuant to Rule 10(c)(10)(b) of the West Virginia Rules of Appellate Procedure. Petitioner subsequently filed a self-represented supplemental brief following this Court's granting of leave for her to do so.

Specifically, petitioner argues that the child's umbilical cord test was a false positive for drugs, despite having admitted to testing positive for methamphetamine at adjudication; there was a conflict of interest with the Child Protective Services workers; and because she completed treatment programs, she should have received custody of her child. Moreover, petitioner detailed reasons for her failure to drug test, such as transportation issues, being in jail, and being unable to contact the DHS. She further minimized her previously admitted substance abuse, asserting that a drink she bought caused positive results. However, we decline to address these arguments on appeal as petitioner failed to raise these issues below, cite to any part of the record, or provide any legal authority in support. *See State v. Larry A.H.*, 230 W. Va. 709, 716, 742 S.E.2d 125, 132 (2013) ("The decisions of this Court are quite clear. 'Although we liberally construe briefs in determining issues presented for review, issues . . . mentioned only in passing but . . . not supported with pertinent authority, are not considered on appeal.'" (citation omitted)); *see also Noble v. W. Va. Dep't of Motor Vehicles*, 223 W. Va. 818, 821, 679 S.E.2d 650, 653 (2009) ("Our general rule is that nonjurisdictional questions . . . raised for the first time on appeal, will not be considered." (citation omitted)).

In any event, we find that termination was proper upon our review of the record. As we have held,

“[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(c)(6)] 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). Here, the court denied petitioner's motion for a post-dispositional improvement period and found that there was no reasonable likelihood that the conditions of neglect or abuse could be substantially corrected. This finding is supported by the DHS's evidence that petitioner failed to participate in services, failed to consistently drug screen, and tested positive for methamphetamine and amphetamine when she did screen. As a result, petitioner did not visit the child for approximately eight months. *See In re Katie S.*, 198 W. Va. 79, 90 n.14, 479 S.E.2d 589, 600 n.14 (1996) (“[T]he 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.” (citations omitted)). Although petitioner participated in substance abuse treatment programs, she tested positive for drugs only days after release from her first program. Completing a second treatment program on the eve of the dispositional hearing is not enough to show that she had corrected the conditions of abuse and neglect. In fact, the circuit court specifically found a pattern in her behavior in this regard, which demonstrated her failure to improve. *See Syl. Pt. 1, in part, In re R.J.M.*, 164 W. Va. 496, 266 S.E.2d 114 (1980) (“[C]ourts are not required to exhaust every speculative possibility of parental improvement . . . where it appears that the welfare of the child will be seriously threatened.”). Termination was clearly necessary for the welfare of the child for these same reasons.

Accordingly, we find no error in the decision of the circuit court, and its April 23, 2023, order is hereby affirmed.

Affirmed.

ISSUED: April 15, 2024

CONCURRED IN BY:

Chief Justice Tim Armstead
Justice Elizabeth D. Walker
Justice John A. Hutchison
Justice William R. Wooton
Justice C. Haley Bunn