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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* H.A.**

No. 23-47 (Mercer County CC-28-2020-JA-75)

MEMORANDUM DECISION

Petitioner Mother A.A.[1] appeals the Circuit Court of Mercer County's January 5, 2023, order terminating her parental rights to H.A.[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 July 2020, the DHS filed a petition alleging that petitioner neglected and abused the child by leaving the child with two unrelated caregivers for extended periods of time. Upon questioning by a Child Protective Services ("CPS") worker, one of the caregivers stated that the child had been left in her custody in February 2020 and petitioner had not been in contact with the caregiver since that time. The child's grandmother also spoke with the same CPS worker and stated that petitioner abused drugs and previously abandoned the child.

In August 2021, petitioner participated in a psychological evaluation that resulted in an "extremely poor to nonexistent" prognosis for improved parenting. Petitioner stated numerous times throughout the evaluation that she never harmed the child and that her leaving the child with unrelated caregivers was so that she could get herself back on her feet. The psychologist wrote that

[1]Petitioner appears by counsel Thomas M. Janutolo. Counsel Michael P. Magann appears as the petitioner's guardian ad litem. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrisey and Deputy Attorney General Steven R. Compton. Counsel Evelyn Raeann Osborne appears as the child's guardian ad litem.

Additionally, pursuant to West Virginia Code § 5F-1-2, the agency formerly known as the West Virginia Department of Health and Human Resources was terminated, effective January 1, 2024, and is now three separate agencies—the Department of Health Facilities, the Department of Health, and the Department of Human Services. For purposes of abuse and neglect appeals, the agency is now the Department of Human Services ("DHS").

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

"given her failure to accept responsibility for the . . . neglect experienced by [the child]. . .[t]he examiner strongly believes that children in the sole care of [petitioner] are at significant risk of abuse or neglect" and that "there are no services or interventions that the examiner is aware of that could be expected to improve her parenting within a reasonable amount of time, if at all." The psychologist diagnosed petitioner with a moderate intellectual disability and recommended that petitioner be appointed a guardian ad litem to protect her interests. The court appointed a guardian ad litem to do so.

In February 2022, the circuit court held an adjudicatory hearing. Ultimately, the court found that the DHS proved, by clear and convincing evidence, that petitioner neglected the child by leaving the child with inappropriate caregivers and being unable to parent the child overall. In April 2022, the circuit court granted petitioner a post-adjudicatory improvement period. At a July 2022 review hearing, the court determined that the petitioner was only partially complying with services and had positive drug screens. After the review hearing, petitioner did not participate in any of her assigned parenting classes.

In November 2022, the circuit court held a dispositional hearing, during which it noted petitioner's "sporadic involvement" in the child's life. Further, the court noted that petitioner's psychological evaluation indicated that her inability to recognize problems with her parenting approach "prevents her from properly parenting her child." During the hearing, the DHS presented evidence that petitioner had not been in contact with the DHS for six months and failed to cooperate with her family case plan. Additionally, petitioner left the state of West Virginia during the pendency of the proceedings below, reported to the DHS that she wanted to return to participate in her family case plan, but then failed to use the bus ticket purchased for her by the DHS. Based upon the evidence, the court concluded that there was no reasonable likelihood that petitioner could correct the conditions of abuse and neglect and that termination of her rights was necessary to protect the child. Accordingly, the court terminated petitioner's parental, custodial, and guardianship rights to the child.[3] 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). Before this Court, petitioner argues that the circuit court erred by not granting her more time to complete her post-adjudicatory improvement period considering her diagnosis of incompetency.[4] We find, however, that more time was unnecessary, given petitioner's failure to comply with services offered and evidence that no services could remedy the conditions of abuse and neglect at issue.

As we have explained, in cases where a parent is unable to properly parent due to intellectual incapacity, "termination of rights should occur only after the social services system makes a thorough effort to determine whether the parent(s) can adequately care for the children

[3]The father's parental, custodial, and guardianship rights were also terminated. The permanency plan for the child is adoption in the current placement.

[4]Petitioner's psychological evaluation diagnosed her with "moderate intellectual disability." Petitioner has not provided any other information relating to her condition.

with intensive long-term assistance." Syl. Pt. 4, in part, *In re Maranda T.*, 223 W. Va. 512, 678 S.E.2d 18 (2009). However, we also explained that this determination "should be made as soon as possible in order to maximize the child(ren)'s chances for a permanent placement." *Id*. at 513, 678 S.E.2d at 19, Syl. Pt. 4, in part. Here, the court ensured compliance with this holding by citing to the psychological examiner's conclusion that no services, including long-term assistance, could address petitioner's issues and that any child in her care would be at risk of abuse and/or neglect. Further, it is disingenuous for petitioner to argue that six months was not an adequate amount of time to complete court-ordered services when the record shows that she failed to remain in contact with the DHS during that period, thereby abdicating her responsibility to participate. It is also important to note that, throughout the proceedings, petitioner was adamant that she has done nothing wrong, thereby rendering any additional time for improvement unnecessary. *See In re Timber M.*, 231 W. Va. 44, 55, 743 S.E.2d 352, 363 (2013) ("Failure to acknowledge the existence of the problem, i.e., the truth of the basic allegation pertaining to the alleged abuse and neglect . . ., results in making the problem untreatable and in making an improvement period an exercise in futility at the child's expense." (citation omitted)). Further, we have explained that a circuit court has discretion to deny an improvement period when no improvement is likely. *In re Tonjia M.*, 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002). Accordingly, we find no error in the circuit court's decision to proceed to disposition without affording petitioner more time under her improvement period.

Finally, petitioner argues that the circuit court erred in terminating her parental rights because the court did not apply the least restrictive alternative. However, petitioner makes no substantive argument as to what the least restrictive alternative should have been, but simply states that this case "cries out for such an alternative." Petitioner clearly did not consider our previous holding 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(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). The record contains ample evidence to support the circuit court's findings that there was no reasonable likelihood that the conditions of neglect could be substantially corrected in the near future, and it was necessary for the child's welfare to terminate petitioner's rights. *See* W. Va. Code § 49-4-604(c)(6) (permitting circuit court to terminate parental rights upon finding no reasonable likelihood conditions of neglect can be substantially corrected in the near future and when necessary for the child's welfare). Thus, petitioner's argument that the court erred is without merit.

For the foregoing reasons, we find no error in the decision of the circuit court, and its January 5, 2023, order is hereby affirmed.

Affirmed.

ISSUED: February 7, 2024

CONCURRED IN BY:

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