

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re S.R., J.R., and K.R.

No. 22-0462 · No. No. 22-0462 · Decided February 7, 2023

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the termination of a mother's parental rights to three children. The court held that the circuit court did not abuse its discretion by denying a continuance and that the mother failed to comply with the terms of her post-adjudicatory improvement period. The court also rejected her claims that the DHHR failed to make reasonable reunification efforts and that termination was improper.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Elizabeth D. Walker; Justice Tim Armstead; Justice John A. Hutchison; Justice William R. Wooton; Justice C. Haley Bunn
JURISDICTION	West Virginia
DECIDED	February 7, 2023
DOCKET	No. 22-0462
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner Mother appealed the Circuit Court of Preston County's order terminating her parental rights in an abuse and neglect proceeding.
STANDARD OF REVIEW	Findings of fact in an abuse and neglect proceeding are reviewed for clear error; conclusions of law are reviewed de novo. A ruling on a motion for continuance is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Memorandum decision; nonprecedential
PARTIES	S.J., Petitioner Mother v. West Virginia Department of Health and Human Resources

TOPICS

- termination of parental rights
- parental rights
- family law procedure
- appellate procedure
- standard of review

PRACTICE AREAS

- Juvenile abuse and neglect
- Termination of parental rights
- Appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court abused its discretion by denying the mother's motion to continue the final dispositional hearing so that she could appear.
2. Whether the DHHR failed to make reasonable reunification efforts by failing to file a family case plan after the mother was granted an improvement period.
3. Whether the circuit court erred by terminating the mother's parental rights after finding that the conditions of abuse and neglect could not be substantially corrected in the near future.

HOLDINGS

1. The circuit court did not abuse its discretion in denying the mother's motion to continue the final dispositional hearing because she had adequate notice and ample time to arrange transportation, had a history of missing hearings and appointments, and notified counsel of the transportation issue only ten minutes before the hearing.
2. Although the DHHR was required to prepare a family case plan after the mother was granted an improvement period, the mother's failure to participate in developing the plan and to complete the required improvement-period conditions did not establish reversible error.
3. The circuit court properly terminated the mother's parental rights because she failed to complete the terms of her improvement period, there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future, and termination was necessary for the children's welfare.

KEY QUOTATIONS

“Considering that petitioner had ample notice of the final dispositional hearing and resources available to her for transportation via the DHHR but did not alert counsel until ten minutes before the hearing began, we do not find that the circuit court abused its discretion in denying petitioner’s motion for a continuance.” (2)

“Upon reviewing the record, the Court finds no error in the circuit court’s termination of petitioner’s parental rights.” (3)

FACTUAL BACKGROUND

The DHHR alleged that ten-year-old S.R. nearly overdosed on methamphetamine and amphetamine while in the mother's care and that the children were exposed to substance abuse, unsafe and filthy living conditions, and extreme hygienic and medical neglect. The mother stipulated to the allegations and received an improvement period requiring, among other things, supervised visitation, random drug screening, a psychological evaluation, and participation in multidisciplinary treatment-team meetings. She repeatedly failed to attend required screenings, evaluations, hearings, meetings, and visits, did not maintain contact with the DHHR, and did not obtain stable housing. The circuit court found no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future and terminated her parental rights.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition after one child nearly overdosed on controlled substances while in the mother's care and alleged additional substance-abuse, supervision, housing, and hygiene-related neglect. The mother stipulated to the allegations, was adjudicated an abusing parent, and received a post-adjudicatory improvement period. After she repeatedly failed to attend required drug screens, evaluations, hearings, meetings, and visits, the circuit court denied her request to continue the final dispositional hearing and terminated her parental rights. The Supreme Court of Appeals of West Virginia affirmed.

DISPOSITION

affirmed

CASES CITED

- In re Cecil T., 228 W. Va. 89, 717 S.E.2d 873 (2011)
- State v. Bush, 163 W. Va. 168, 255 S.E.2d 539 (1979)
- State v. Myers, 229 W. Va. 238, 728 S.E.2d 112 (2012)
- State ex rel. W.Va. Dep't of Hum. Servs. v. Cheryl M., 177 W. Va. 688, 356 S.E.2d 181 (1987)
- In re Kristin Y., 227 W. Va. 558, 712 S.E.2d 55 (2011)

OPINION

PER CURIAM.

FILED February 7, 2023 STATE OF WEST VIRGINIA EDYTHE NASH GAISER, CLERK
SUPREME COURT OF APPEALS SUPREME COURT OF APPEALS OF WEST VIRGINIA In
re S.R., J.R., and K.R., No. 22-0462 (Preston County 21-JA-50, 21-JA-51, and 21-JA-52)
MEMORANDUM DECISION Petitioner Mother S.J. 1 appeals the Circuit Court of Preston
County's April 27, 2022, order terminating her parental rights to S.R., J.R., and K.R.

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 of 2021, the DHHR filed a petition alleging that then-ten-year-old S.R. nearly overdosed on methamphetamine and amphetamine while in petitioner's care and that the petitioner failed to adequately supervise the children.

The DHHR further alleged that petitioner's abuse of controlled substances negatively impacted her ability to parent; that petitioner exposed the children to unsafe and filthy living conditions; and that the children exhibited extreme hygienic and medical neglect. Petitioner stipulated to the allegations in the petition at an adjudicatory hearing in October of 2021, and the circuit court adjudicated her as an abusing parent.

The court granted petitioner a post-adjudicatory improvement period over the objection of the guardian who noted that petitioner failed to appear for her hair follicle drug screen that same

month. 3 Petitioner also failed to appear for her rescheduled hair follicle drug screen, as well as her psychological evaluation, later scheduled in December of 2021. 1 Petitioner appears by counsel Michael D. Safcsak.

The West Virginia Department of Health and Human Resources (“DHHR”) appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Lee Niezgoda. Hilary M. Bright 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 The court’s October 26, 2021, adjudicatory order outlined the terms of petitioner’s improvement period to include supervised visitations, random drug screening, submitting to a psychological evaluation, and attending all multidisciplinary team (“MDT”) meetings.

1 On January 4, 2022, petitioner failed to appear for a status hearing for her post-adjudicatory improvement period. The circuit court noted in its January 13, 2022, order that petitioner contacted her counsel on December 31, 2021, and stated that she missed her previously-scheduled psychological evaluation due to lack of transportation. No explanation was noted for petitioner’s failure to appear for the January 4, 2022, status hearing.

Also on January 12, 2022, petitioner failed to appear at an adjudicatory hearing for one the children’s fathers, for which her testimony was required. Petitioner’s counsel stated that he had not communicated with petitioner since December of 2021.

In January of 2022, the DHHR and guardian moved to terminate petitioner’s improvement period based on her noncompliance with its terms. The circuit court held a final dispositional hearing in March of 2022, but petitioner failed to appear. Petitioner’s counsel appeared and moved to continue the hearing, stating that although his client had adequate notice of the hearing, she informed him ten minutes prior to the hearing that she lacked transportation.

The guardian objected to the continuance, arguing that petitioner had missed prior hearings. The circuit court denied petitioner’s motion for a continuance. The DHHR presented evidence that petitioner had not addressed the conditions of abuse that led to the filing of the instant petition, namely drug abuse and lack of stable housing.

The DHHR worker testified that petitioner had not complied with drug screening, participated in multidisciplinary team meetings, visited the children, financially supported the children, nor kept in contact with the DHHR worker or providers. Petitioner also had not provided the worker with her current address and missed her scheduled psychological evaluation.

Ultimately, the circuit court concluded that petitioner had not substantially complied with the terms and conditions of her improvement period. The court found that there was no reasonable likelihood that the conditions of neglect and abuse could be substantially corrected in the near future and that termination was necessary for the children’s welfare. Based upon these findings,

the court terminated petitioner's parental rights by its April 27, 2022, order, which petitioner now appeals.

4 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 first argues that the circuit court erred in denying her motion to continue the dispositional hearing to allow petitioner to appear.

This Court has held that “[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. 2, *State v. Bush*, 163 W. Va. 168, 255 S.E.2d 539 (1979). Additionally, this Court has held that an “appellant must carry the burden of showing error in the judgment of which he complains” and that the Court “will not reverse the judgment of a trial court unless error affirmatively appears from the record.” Syl.

Pt. 4, *State v. Myers*, 229 W. Va. 238, 728 S.E.2d 112 (2012) (citations omitted). Further, “[e]rror will not be presumed, all presumptions being in favor of the correctness 4 J.R.’s and K.R.’s father’s parental rights were terminated, and he did not appeal that termination. Their permanency plan is adoption by their foster family. S.R.’s father voluntarily relinquished his parental rights, and S.R.’s permanency plan is adoption by her foster family.

2 of the judgment.” *Id.* Here, petitioner has failed to demonstrate any error in the proceedings below. She informed her counsel just ten minutes prior to the hearing that she allegedly lacked transportation. As the court found, and indeed petitioner concedes on appeal, petitioner had proper notice of the hearing and ample time to secure reliable transportation to the hearing.

Furthermore, petitioner had a pattern of missing hearings and appointments due to an alleged lack of transportation yet failed to stay in contact with the DHHR to address this need. Considering that petitioner had ample notice of the final dispositional hearing and resources available to her for transportation via the DHHR but did not alert counsel until ten minutes before the hearing began, we do not find that the circuit court abused its discretion in denying petitioner’s motion for a continuance.

Next, petitioner alleges that the DHHR failed to make reasonable efforts toward reunification because it failed to file a case plan. Petitioner is correct that the DHHR was required to file a case plan after she was granted an improvement period. See Syl. Pt. 4, in part, *State ex rel. W.Va. Dep’t of Hum. Servs. v. Cheryl M.*, 177 W. Va. 688, 356 S.E.2d 181 (1987) (“[W]hen an improvement period is authorized, then the court by order shall require the [DHHR] to prepare a family case plan[.]”).

However, petitioner ignores her lack of participation in developing her case plan, as she failed to attend any of the MDT meetings or otherwise participate in the development of the case plan. See

W. Va. Code § 49-4-408(b) (“The [DHHR] shall convene a multidisciplinary treatment team, which shall develop the case plan. Parents... shall participate fully in the development of the case plan.”).

The record also shows that petitioner failed to attend her psychological evaluation, which could have assisted in assessing her mental health and in providing treatment, as well as recommending drug addiction treatment.

Finally, petitioner was ordered to submit to drug screens and participate in supervised visitations yet failed to do so. Petitioner failed to stay in contact with the DHHR and did not provide her address. Although petitioner was granted an improvement period, she bore the burden of completing the above terms of the improvement period. See W. Va. Code § 49-4-610(4)(A), in part, (“[T]he respondent shall be responsible for the initiation and completion of all terms of the improvement period.”).

Accordingly, we find petitioner’s argument without merit. Finally, petitioner argues that the circuit court erred in terminating her parental rights. However, the circuit court’s finding that there was no reasonable likelihood that the conditions of neglect and abuse could be substantially corrected in the near future was based on petitioner’s failure to complete the terms of her improvement period.

See W. Va. Code § 49-4-604(d)(3) (providing that there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected when “[t]he abusing parent... [has] 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.”); see also Syl.

Pt. 5, *In re Kristin Y.*, 227 W. Va. 558, 712 S.E.2d 55 (2011) (holding that “[t]ermination of parental rights... may be employed without the use of intervening less restrictive alternatives when it is found that there is no reasonable likelihood... that the conditions of neglect or abuse can be substantially corrected”). Upon reviewing the record, the Court finds no error in the circuit court’s termination of petitioner’s parental rights.

For the foregoing reasons, we find no error in the decision of the circuit court, and its April 27, 2022, order is hereby affirmed. 3 Affirmed. ISSUED: February 7, 2023 CONCURRED IN BY: Chief Justice Elizabeth D. Walker Justice Tim Armstead Justice John A. Hutchison Justice William R. Wooton Justice C. Haley Bunn 4