

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

In Re: K.C. & S.G.

No. 12-0661 (Wood County 11-JA-103 & 11-JA-104)

FILED

November 19, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Mother, by counsel Courtney L. Ahlborn, appeals the Circuit Court of Wood County's order entered on May 9, 2012, terminating her parental rights to her children. The guardian ad litem, Nancy McGhee, has filed her response on behalf of the children. The West Virginia Department of Health and Human Resources ("DHHR"), by Lee A. Niezgodna, its attorney, has filed its response. Petitioner has filed a reply.

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 is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

The abuse and neglect petition in this matter was filed after S.G. disclosed that Petitioner Mother's boyfriend F.C. raped her while she was sleeping. The petition also noted previous reports that this same boyfriend molested S.G. in 2004, and the reports were substantiated by the DHHR at that time. However, Petitioner Mother did not believe that S.G. was molested because there was no physical evidence, and continued contact between herself and F.C. Petitioner Mother also took S.G. to visit F.C. in prison in Maryland until the DHHR told her to stop. The record shows that F.C. had charges brought against him in another state for child sexual abuse, and Petitioner Mother was aware of these charges. Petitioner Mother did not believe S.G.'s recent disclosure regarding the rape, and was later adjudicated as an abusing parent for failing to protect S.G. She requested an improvement period, but the circuit court found that an improvement period was not warranted in this matter based on petitioner's denial of the sexual abuse. At the disposition hearing, petitioner stated for the first time that she now believed S.G. regarding the allegations of rape and sexual abuse. Petitioner's parental rights were terminated after the circuit court found that she had placed her own needs and wants ahead of those of her child.

The Court has previously established the following standard of review:

"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).

Petitioner argues that the petition did not include any specific allegations as to how she failed to protect S.G. While the adjudicatory order stated that petitioner allowed S.G. to be around F.C. after the prior allegations, this allegation does not appear in the petition. Petitioner argues that the lack of specificity in the petition deprives her of due process of law.

The DHHR argues that the petition was specific and gave petitioner a full understanding of the allegations against her. The DHHR notes that petitioner knew that there were prior allegations of abuse against F.C., and that because Petitioner Mother did not believe the allegations she continued to allow F.C. around S.G. The DHHR argues that petitioner's defense was that she did not believe S.G. and gave many reasons for disbelieving her child; thus, it is clear that she knew the allegations against her. The DHHR argues that the petition was sufficient and the termination was proper. The guardian also argues in favor of the circuit court's decision, and agrees with the DHHR that petitioner had clear notice of the accusations against her. Upon a review of the record, this Court finds that the petition did give petitioner notice of the allegations against her, and petitioner had every opportunity to defend herself against those allegations.

Petitioner next argues that she had a son with F.C., and therefore had to maintain contact with him. She also argues that there was no physical evidence of the prior allegations of sexual abuse, no criminal charges brought, and no abuse and neglect petition brought. Petitioner argues that the circuit court erred in using the prior allegations to make a finding of abuse and neglect in this matter.

The DHHR responds that petitioner's distorted logic was that she had to continue to expose S.G. to F.C., because she was more interested in restoring her family with F.C. and their son to the exclusion of S.G. Petitioner argues that there was no evidence of the abuse, but at disposition, petitioner made an “eleventh hour” proclamation that she believed her daughter was sexually abused. Moreover, the DHHR indicates that the only reason a petition was not filed in 2004 was because F.C. was incarcerated in Maryland due to unrelated child sexual abuse charges. The DHHR further argues that it is clear Petitioner Mother knew her daughter had signs of sexual abuse, as she took S.G. to get counseling because she was acting out sexually. The guardian concurs with the DHHR's arguments, and notes that S.G. was the victim of her mother's lack of protection more than once.

Petitioner argues that the circuit court erred in not granting her an improvement period, as

she showed she was willing to engage in services by repeatedly requesting family therapy with her daughter. However, no services were provided to her, even after she stated that she now believed S.G. was abused. She argues that she met her burden in proving that she would fully participate in an improvement period.

The DHHR argues that petitioner's actions belie her words, as she says she wants nothing to do with F.C., yet she maintains contact with him, visits his family, and uses his last name as a text message signature. The DHHR argues that petitioner's request for family therapy was not granted as S.G.'s therapist indicated that it would be harmful to her because petitioner denied the abuse and blamed S.G. for these proceedings. The DHHR argues that the circuit court properly denied the request for an improvement period. The guardian also argues that the circuit court was correct in denying the request for an improvement period, noting that only at the last hearing did Petitioner Mother state that she believed her daughter after years of denying the sexual abuse.

The Court has held as follows:

“[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” Syl. Pt. 1, in part, *In re R.J.M.*, 164 W.Va. 496, 266 S.E.2d 114 (1980).

Syl. Pt. 4, in part, *In re Cecil T.*, 228 W.Va. 89, 717 S.E.2d 873 (2011). Moreover, in this matter Petitioner Mother continuously denied that S.G. was sexually abused for many years. This Court has held:

[I]n order to remedy the abuse and/or neglect problem, the problem must first be acknowledged. Failure to acknowledge the existence of the problem, i.e., the truth of the basic allegation pertaining to the alleged abuse and neglect or the perpetrator of said abuse and neglect, results in making the problem untreatable and in making an improvement period an exercise in futility at the child's expense.

W.Va. Dept. of Health and Human Res. ex rel. Wright v. Doris S., 197 W.Va. 489, 498, 475 S.E.2d 865, 874 (1996). In the present case, petitioner denied the abuse to her daughter for over seven years before acknowledging the abuse during the final hearing. This Court therefore finds no error in the circuit court's denial of an improvement period.

For the foregoing reasons, we find no error in the decision of the circuit court and the termination of parental rights is hereby affirmed.

Affirmed.

ISSUED: November 19, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Thomas E. McHugh