

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

In Re: K.L., D.L., T.C., A.L, B.L., K.L., and R.L.

No. 12-0724 (Lewis County 11-JA-8 through 11-JA-14)

FILED

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

MEMORANDUM DECISION

Petitioner Father files this appeal, by counsel Hunter D. Simmons, from the Circuit Court of Lewis County, which terminated Petitioner Father’s parental rights by order entered on May 14, 2012. The guardian ad litem for the children, Kourtney A. Ryan, has filed a response on behalf of the children supporting the circuit court’s order. The Department of Health and Human Resources (“DHHR”), by its attorney Lee Niezgoda, also filed a response in support of termination.

This Court has considered the parties’ briefs and the record on appeal. The facts and legal arguments are adequately presented in the parties’ written briefs and the record on appeal, 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.

In September of 2011, one of the children, A.L., was reported missing. DHHR subsequently filed the abuse and neglect petition in October of 2011, alleging imminent danger to the remaining children in their parents’ care. Neither parent was able to provide an explanation of A.L.’s disappearance, only explaining that she had been in her bed the evening before and had been ill and throwing up. When her mother checked on her in the morning, she was no longer in her bed and could not be found. DHHR also stated in its petition that the mother previously reported that Petitioner Father attempted to cut her throat, yet she and the children continued to live with him. Petitioner Father waived his preliminary hearing. At adjudication, the children’s dentist testified that some of the children had tooth decay. At disposition in May of 2012, A.L. was still missing. The circuit court found that the parents had more knowledge about A.L.’s whereabouts than they had revealed but refused to provide that information to the court. By its order entered on May 14, 2012, the circuit court terminated both parents’ parental rights. Petitioner Father appeals.

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).

On appeal, Petitioner Father argues that the circuit court committed plain error in terminating his parental rights to his children because one child disappeared without a trace. He argues that DHHR's position that it could not place Petitioner Father on an improvement period because it did not know what had happened to A.L. precluded him from an improvement period. Petitioner Father further argues that for an improvement period to be granted, the parent must show that he or she can substantially comply with its terms. Because A.L.'s disappearance has been unexplained, Petitioner Father is unable to know how to prove that he would comply with an improvement period for his other children. In response, both the guardian ad litem and DHHR contend that the circuit court did not err in terminating Petitioner Father's parental rights. Both highlight that the children's mother gave conflicting statements about the last time she checked on A.L. in the early morning hours of the day she went missing. Moreover, although neither parent has been able to provide an explanation, both have vaguely accused the other for A.L.'s disappearance. Without correction of whatever issues created the situation that led to A.L.'s disappearance, there can be no assurance that the other children in the home can be safe in their parents' care. The circuit court found that both parents had refused to cooperate and were not being truthful. Further, Petitioner Father arrived at the DHHR building on various occasions while under the influence of substances and the circuit court found that the children's tooth decay constituted neglect.

We find no error by the circuit court in terminating Petitioner Father's parental rights. "[I]n the context of abuse and neglect proceedings, the circuit court is the entity charged with weighing the credibility of witnesses and rendering findings of fact." Syl. pt. 1, in part, *In re Travis W.*, 206 W.Va. 478, 525 S.E.2d 669." *In re Emily*, 208 W.Va. 325, 339, 540 S.E.2d 542, 556 (2000). "[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). "[T]he primary goal in cases involving abuse and neglect, as in all family law matters, must be the health and welfare of the children." Syl. Pt. 3, in part, *In re Katie S.*, 198 W.Va. 79, 479 S.E.2d 589 (1996). Our review of the record supports the circuit court's decision.

This Court reminds the circuit court of its duty to establish permanency for the child. Rule 39(b) of the Rules of Procedure for Child Abuse and Neglect Proceedings requires:

At least once every three months until permanent placement is achieved as defined in Rule 6, the court shall conduct a permanent placement review conference, requiring the multidisciplinary treatment team to attend and report as to progress and development in the case, for the purpose of reviewing the progress in the permanent placement of the child.

Further, this Court reminds the circuit court of its duty pursuant to Rule 43 of the Rules of Procedure for Child Abuse and Neglect Proceedings to find permanent placement for the child within twelve months of the date of the disposition order. As this Court has stated,

[t]he [twelve]-month period provided in Rule 43 of the West Virginia Rules of Procedures for Child Abuse and Neglect Proceedings for permanent placement of an abused and neglected child following the final dispositional order must be strictly followed except in the most extraordinary circumstances which are fully substantiated in the record.

Syl. Pt. 6, *In re Cecil T.*, 228 W.Va. 89, 717 S.E.2d 873 (2011). Moreover, this Court has stated that

[i]n determining the appropriate permanent out-of-home placement of a child under *W.Va.Code* § 49-6-5(a)(6) [1996], the circuit court shall give priority to securing a suitable adoptive home for the child and shall consider other placement alternatives, including permanent foster care, only where the court finds that adoption would not provide custody, care, commitment, nurturing and discipline consistent with the child's best interests or where a suitable adoptive home can not be found.

Syl. Pt. 3, *State v. Michael M.*, 202 W.Va. 350, 504 S.E.2d 177 (1998). Finally, “[t]he guardian ad litem's role in abuse and neglect proceedings does not actually cease until such time as the child is placed in a permanent home.” Syl. Pt. 5, *James M. v. Maynard*, 185 W.Va. 648, 408 S.E.2d 400 (1991).

For the foregoing reasons, we affirm the circuit court’s order terminating Petitioner Father’s parental rights to the subject children.

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