STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

FILED
April 9, 2018
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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

***In re* C.W.-1, C.W.-2, and N.W.**

No. 17-0976 (Cabell County 16-JA-339, 340, and 341)

MEMORANDUM DECISION

Petitioner Mother S.W., by counsel Richard L. Vital, appeals the Circuit Court of Cabell County's October 4, 2017, order terminating her parental rights to C.W.-1, C.W.-2, and N.W.[1] The West Virginia Department of Health and Human Resources ("DHHR"), by counsel S.L. Evans, filed a response in support of the circuit court's order and a supplemental appendix. The guardian ad litem ("guardian"), Allison Huson, filed a response on behalf of the children in support of the circuit court's order. On appeal, petitioner argues that the circuit court abused its discretion in terminating her parental rights and in not continuing her improvement period.

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 affirming the circuit court's order is appropriate under Rule 21 of the Rules of Appellate Procedure.

In November of 2016, the DHHR filed a petition alleging that petitioner took illegal drugs within three hours of N.W.'s birth and used heroin throughout her pregnancy. The DHHR further alleged that petitioner and the father of the children abused substances and that their substance abuse impaired their ability to parent. Petitioner waived her preliminary hearing and was granted supervised visitation pending clean drug screenings.

At the adjudicatory hearing in February of 2017, petitioner did not appear but was represented by counsel. At the conclusion of testimony, the circuit court found that petitioner was an abusing parent as a consequence of her substance abuse. The circuit court further ordered that visitation would be discontinued until petitioner appeared in court. Thereafter, petitioner

[1]Consistent with our long-standing practice in cases with sensitive facts, we use initials where necessary to protect the identities of those involved in this case. *See In re K.H.*, 235 W.Va. 254, 773 S.E.2d 20 (2015); *Melinda H. v. William R. II*, 230 W.Va. 731, 742 S.E.2d 419 (2013); *State v. Brandon B.*, 218 W.Va. 324, 624 S.E.2d 761 (2005); *State v. Edward Charles L.*, 183 W.Va. 641, 398 S.E.2d 123 (1990). Additionally, because two of the children share the same initials, we refer to them as C.W.-1 and C.W.-2 throughout this memorandum decision.

filed a motion for a post-adjudicatory improvement period and the circuit court granted that motion.

The circuit court held a review hearing and petitioner appeared. The circuit court ordered petitioner to submit to an immediate drug screen and participate in the terms of the family case plan. Petitioner asserted that she had not used heroin in a week and a half and now had a Suboxone prescription. Later, a multidisciplinary team meeting convened and it was determined that petitioner needed to drug screen regularly, participate in intensive out-patient therapy, and participate in parenting and adult life skills classes. Supervised visitation remained suspended until petitioner started taking drug screens.

In May of 2017, the circuit court held a second review hearing. Petitioner did not appear but was represented by counsel. The DHHR reported that petitioner had moved and refused to give her new address to the DHHR. The circuit court terminated petitioner's improvement period.

At the first dispositional hearing in July of 2017, petitioner moved for a continuance and represented that she had "seen the light." Additionally, petitioner requested an opportunity to call a witness that was unavailable on that day. The circuit court granted the motion and continued the dispositional hearing. At the continued dispositional hearing in August of 2017, petitioner's positive drug screen administered earlier that day was introduced into evidence. A DHHR worker testified that this was the first drug screen petitioner had taken since her improvement period began. Additionally, petitioner failed to begin her drug treatment program, but had participated in a few parenting classes. Petitioner testified that she used methamphetamines one week before the hearing, but ceased her heroin use in March of 2017. Petitioner testified that she attempted to drug screen in May of 2017, but the facility did not have an order to allow her to screen. Further, petitioner testified that she attempted to start her substance abuse treatment in May of 2017, but there was a wait list and she could not be admitted.

Ultimately, the circuit court found that petitioner's substance abuse problem continued and that she made no significant efforts to rectify that problem. Further, the circuit court found there was no reasonable likelihood that the conditions of neglect or abuse would change in the near future and that it was in the best interest of the children to terminate petitioner's parental rights. Accordingly, the circuit court terminated petitioner's rights in its October 4, 2017 order.[2] Petitioner now appeals that order.

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

[2]The father's parental rights to the children were also terminated. According to respondents, the children are currently placed in a foster home with a permanency plan of adoption in that home.

> 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). Upon our review, this Court finds no error in the proceedings below.

Petitioner first argues that the circuit court abused its discretion by terminating her parental rights instead of imposing a less-restrictive dispositional alternative. We disagree. West Virginia Code § 49-4-604(b)(6) provides that the circuit court may terminate parental rights when "there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future and, when necessary for the welfare of the child." Further, West Virginia Code § 49-4-604(c)(1) provides that there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected when the parent has "habitually abused or [is] addicted to . . . controlled substances or drugs, to the extent that proper parenting skills have been seriously impaired and the person . . . [has] not responded to or followed through with the recommended and appropriate treatment." Upon these findings, the circuit court may terminate a parent's parental rights without the use of less-restrictive alternatives. Syl. Pt. 5, *In re Kristin Y.*, 227 W.Va. 558, 712 S.E.2d 55 (2011).

The circuit court correctly found that there was no reasonable likelihood that the conditions of neglect or abuse could be substantially corrected and that termination of petitioner's parental rights was necessary for the welfare of the children. Petitioner admitted to substance abuse that negatively affected her ability to parent and then made no substantial changes in the conditions of neglect or abuse. Even after petitioner asserted she had "seen the light" in July of 2017, she did not renew her effort to participate in drug screening or therapy; instead, she admittedly used methamphetamine. Petitioner asserted that she quit using heroin, but could not show that she would stop abusing other illicit substances. Petitioner alleged that she could not participate in drug screens because, the one and only time that she went to the facility to take a drug screen, the facility did not have a referral from the DHHR to drug screen her. However, West Virginia Code § 49-4-610(4)(A) clearly provides that "[w]hen any improvement period is granted to a respondent . . . [she] shall be responsible for the initiation and completion of all terms of the improvement period." Further, petitioner testified that this first attempt at drug screening occurred in May of 2017, three months into her improvement period. Similarly, petitioner testified that she made a single attempt in May of 2017 to gain admission into substance abuse therapy, but was unable to do so due to the waitlist. Based on this evidence, it is clear that petitioner did not participate in the required services designed to remedy the conditions of abuse or neglect and, therefore, cannot establish that she actually corrected any such conditions, as she alleges on appeal. Finally, the controlling standard that governs any

dispositional decision is the best interests of the children. Syl. Pt. 4, *In re B.H.*, 233 W.Va. 57, 754 S.E.2d 743 (2014). Petitioner's ongoing substance abuse constituted a danger to her children such that removal was necessary. Petitioner never remedied her substance abuse issue and, thus, that same danger to her children was ongoing. Accordingly, we find that the circuit court did not abuse its discretion in terminating petitioner's parental rights instead of imposing a less-restrictive alternative.

Second, petitioner argues that the circuit court abused its discretion by "not granting [petitioner's] continuing improvement period in her ongoing effort to improve herself and be a fit and proper parent." This assignment of error is somewhat unclear. Petitioner's improvement period was terminated in May of 2017 and, according to the record, that termination was unopposed. Petitioner never moved for a second improvement period, orally or in writing, as required by West Virginia Code § 49-4-610. West Virginia Code § 49-4-610 also requires a respondent to "demonstrate that since the initial improvement period, the respondent has experienced substantial change in circumstances[,]" which petitioner could not do. Further, this Court has previously 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, and this is particularly applicable to children under the age of three years who are more susceptible to illness, need consistent close interaction with fully committed adults, and are likely to have their emotional and physical development retarded by numerous placements." Syl. Pt. 1, in part, *In re R.J.M.*, 164 W.Va. 496, 266 S.E.2d 114 (1980).

Cecil T., 228 W.Va. at 91, 717 S.E.2d at 875, Syl. Pt. 4 (2011). Petitioner was given the opportunity to improve under the direction of the circuit court, but she put forth minimal effort. The circuit court even granted petitioner a continuance after her assertion that she had "seen the light," but her effort level did not change. Petitioner then failed her only drug screen and purportedly made a single attempt to enter substance abuse treatment. Accordingly, we find the circuit court did not abuse its discretion by not granting petitioner a continued improvement period.

For the foregoing reasons, we find no error in the decision of the circuit court, and its October 4, 2017, order is hereby affirmed.

Affirmed.

ISSUED: April 9, 2018

CONCURRED IN BY:

Chief Justice Margaret L. Workman
Justice Robin Jean Davis
Justice Menis E. Ketchum
Justice Allen H. Loughry II
Justice Elizabeth D. Walker