STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

***In re* Z.B.**

No. 18-0530 (Mingo County 17-JA-94)

FILED
November 19, 2018
EDYTHE NASH GAISER, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Mother M.B., by counsel Diana Carter Weidel, appeals the Circuit Court of Mingo County's May 10, 2018, order terminating her parental rights to Z.B.[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. The guardian ad litem ("guardian"), Cullen C. Younger, filed a response on behalf of the child also in support of the circuit court's order.[2] On appeal, petitioner argues that the circuit court erred in terminating her parental rights based upon her alleged failure to comply with services and in denying her post-termination visitation.

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 September of 2017, the DHHR filed a child abuse and neglect petition against petitioner and the father alleging that petitioner tested positive for drugs when giving birth to the child, who suffered from withdrawals. Petitioner admitted to abusing non-prescribed Xanax, Neurotonin, and Subutex, and tested positive for THC and benzodiazepines. Further, the DHHR alleged that petitioner had a significant history of Child Protective Services ("CPS") involvement, including prior proceedings wherein she voluntarily relinquished her parental rights to two children around 2012 and her parental rights were involuntarily terminated to a third child

[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).

[2]The guardian's response to this Court failed to cite to any authority in support of his argument. We refer the guardian to Rules 10(d) and 10(e) of the Rules of Appellate Procedure, which require all respondents' briefs and summary responses to contain responses to each assignment of error and appropriate citations to relevant authority. We caution the guardian that Rule 10(j) provides for the imposition of sanctions where a party's brief does not comport with the Rules.

in 2015. As such, the DHHR concluded that aggravated circumstances existed due to petitioner's prior termination of parental rights.

Later in September of 2017, the circuit court held a preliminary hearing. A CPS worker testified regarding petitioner's disclosures of drug abuse at the hospital and her prior termination of parental rights. The worker also reported that the child tested positive for six substances at his birth. The circuit court found that there was probable cause to file the petition.

The circuit court held an adjudicatory hearing in November of 2017. The DHHR moved the circuit court to take judicial notice of all prior testimony, findings of fact, and conclusions of law, which the circuit court granted without objection. No witnesses were presented. Ultimately, the circuit court adjudicated petitioner as an abusing parent and granted her a post-adjudicatory improvement period.

In December of 2017, the circuit court held a review hearing regarding petitioner's post-adjudicatory improvement period. Petitioner failed to attend but was represented by counsel. The guardian recommended that petitioner's post-adjudicatory improvement period be revoked due to her failure to seek readmission to a detoxification facility. The guardian noted that petitioner had entered a detoxification facility but had to leave due to a severe tooth infection. Petitioner thereafter agreed to go back, but the guardian advised that petitioner failed to do so. Instead, petitioner "ran and we [the guardian and DHHR] haven't heard from her since."

The circuit court held a dispositional hearing in January of 2018 in which it took judicial notice of the prior orders, findings of fact, and testimony in the matter. Petitioner failed to attend but was represented by counsel. A DHHR caseworker testified that she recommended termination of parental rights due to petitioner's failure to participate in the proceedings. Based upon petitioner's complete lack of effort and failure to participate in her improvement period, the circuit court found that there was no reasonable likelihood that she could correct the conditions of abuse in the near future and that the child's best interest necessitated termination of petitioner's parental rights. It is from the May 10, 2018, dispositional order terminating her parental rights and denying her post-termination visitation that petitioner appeals.[3]

The Court has previously established the following standard of review in cases such as this:

> "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

[3]Both parents' parental rights were terminated below. The child was placed in a foster home with a permanency plan of adoption therein.

> 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 argues that the circuit court erred in terminating her parental rights when she attempted to comply with services. According to petitioner, she was living in McDowell County, West Virginia, and her services were scheduled in Mingo County, West Virginia, and that because she is indigent, she lacked the resources to travel to her services. Petitioner avers that her attempt to seek admission into a detox facility demonstrates that she was trying to comply with her improvement period and the circuit court erred in terminating her parental rights based upon these factors. We disagree.

Pursuant to West Virginia Code § 49-4-604(b)(6), circuit courts are directed to terminate parental rights upon findings that there is no reasonable likelihood the conditions of abuse and neglect can be substantially corrected in the near future and when necessary for the children's welfare. West Virginia Code § 49-4-604(c)(3) sets forth that a situation in which there is no reasonable likelihood that the conditions of abuse or neglect can be substantially corrected includes one in which "[t]he abusing parent . . . ha[s] not responded to or followed through with a reasonable family case plan or other rehabilitative efforts[.]"

In her brief, petitioner fails to cite to any portion of the record demonstrating that she lived in McDowell County, West Virginia, during the course of the proceedings. She further fails to demonstrate that her indigent status resulted in her inability to participate in services. Rather, the record establishes that, while petitioner initially attempted to comply with services, she thereafter disappeared and ceased participating in the underlying proceedings. At the status hearing held in December of 2017, from which petitioner absented herself, the guardian recommended that petitioner's improvement period be revoked due to her failure to reenter into a drug detoxification facility after she was forced to leave her first program due to an unforeseen medical issue. Petitioner was instructed to reenter the detoxification facility multiple times, but failed to complete that or any program. The guardian reported that "she went back . . . but then she left - she ran and we haven't heard from her since. She's gone so we have no idea where she is. . . ." Thereafter, petitioner failed to attend her dispositional hearing, at which a caseworker testified that petitioner failed to participate in services and maintain contact with the DHHR. As such, it is clear that petitioner failed to comply with services throughout the proceedings below.

Further, petitioner failed to demonstrate that she contacted the DHHR to alert them to her alleged inability to comply with services based upon her lack of transportation. Instead, petitioner disappeared, ceased appearing for hearings, and failed to maintain contact with the DHHR. West Virginia Code § 49-4-610(4) provides that the parent "shall be responsible for the initiation and completion of all terms of the improvement period." In light of petitioner's failure to present any evidence demonstrating that she participated in the proceedings below, we find that the circuit court correctly terminated her parental rights upon findings that there was no

reasonable likelihood that petitioner could correct the conditions of abuse in the near future and that termination was necessary for the child's welfare.

Petitioner next argues that the circuit court erred in denying her post-termination visitation. However, in her brief three-sentence argument, petitioner fails to cite to any authority or the record in support. Rule 10(c)(7) of the West Virginia Rules of Appellate Procedure requires that

> [t]he brief must contain an argument exhibiting clearly the points of fact and law presented, the standard of review applicable, and citing the authorities relied on, under headings that correspond with the assignments of error. The argument must contain appropriate and specific citations to the record on appeal, including citations that pinpoint when and how the issues in the assignments of error were presented to the lower tribunal. The Court may disregard errors that are not adequately supported by specific references to the record on appeal.

Additionally, in an Administrative Order entered December 10, 2012, Re: Filings That Do Not Comply With the Rules of Appellate Procedure, the Court specifically noted in paragraph two that "[b]riefs that lack citation of authority [or] fail to structure an argument applying applicable law" are not in compliance with this Court's rules. Further, "[b]riefs with arguments that do not contain a citation to legal authority to support the argument presented and do not 'contain appropriate and specific citations to the record on appeal . . .' as required by rule 10(c)(7)" are not in compliance with this Court's rules. Here, petitioner's brief in regard to this assignment of error is inadequate as it fails to comply with West Virginia Rule of Appellate Procedure 10(c)(7) and our December 10, 2012, administrative order and, therefore, will not be addressed.

For the foregoing reasons, we find no error in the decision of the circuit court, and its May 10, 2018, order is hereby affirmed.

Affirmed.

ISSUED: November 19, 2018

CONCURRED IN BY:

Chief Justice Margaret L. Workman
Justice Elizabeth D. Walker
Justice Tim Armstead
Justice Evan H. Jenkins
Justice Paul T. Farrell sitting by temporary assignment