FILED
August 31, 2022
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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

***In re* B.R., M.R., C.R.-1, C.R.-2, and K.R.**

No. 22-0110 (Cabell County 20-JA-63, 20-JA-64, 20-JA-65, 20-JA-66, and 21-JA-113)

MEMORANDUM DECISION

Petitioner Mother A.L., by counsel Jason Goad, appeals the Circuit Court of Cabell County's January 31, 2022, order terminating her parental rights to B.R., M.R., C.R.-1, C.R.-2, and K.R.[1] The West Virginia Department of Health and Human Resources ("DHHR"), by counsel Patrick Morrisey and Andrew Waight, filed a response in support of the circuit court's order. The guardian ad litem, Sarah E. Dixon, filed a response on behalf of the children in support of the circuit court's order. On appeal, petitioner argues that the circuit court erred in terminating her parental rights to the children.

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 April of 2020, the DHHR filed a petition alleging that petitioner exposed the children to extensive domestic violence in the home and emotionally abused the children by exposing them to the father, who was extremely violent, abused alcohol, and would routinely drive while intoxicated with the children in the car. The petition also alleged that petitioner abused medication without a prescription. According to the DHHR, petitioner initially attempted to leave the father, including obtaining a domestic violence protective order against him, yet she later lied to 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). Additionally, because two of the children share the same initials, they will be referred to as C.R.-1 and C.R.-2, respectively, throughout this memorandum decision. Finally, petitioner's counsel filed petitioner's appellate brief in accordance with Rule 10(c)(10)(b) of the West Virginia Rules of Appellate Procedure.

Protective Services ("CPS") about remaining in a relationship with him. The DHHR later filed amended petitions relating to the birth of at least one additional child.

Thereafter, petitioner failed to appear for several hearings, although she was represented by counsel. Further, petitioner was later adjudicated of neglecting the children and was granted an improvement period.

In June of 2021, the court held a hearing, during which the guardian indicated that petitioner had not been compliant with services. Specifically, petitioner refused to comply with drug screens, as ordered, including several instances in which petitioner refused to provide a sample because she did not believe she could produce urine. It was also alleged that petitioner on at least one occasion refused to attend a visit with one of the children. Further, the guardian asserted that petitioner failed to execute a release for her records so that it could be confirmed she was attending substance abuse treatment as she alleged. It was later discovered that petitioner was not undergoing substance abuse treatment and was, instead, obtaining Suboxone and Neurontin illegally. According to the guardian, the DHHR went to great lengths to assist petitioner with completing the terms and conditions of her improvement period, yet petitioner failed to do so.

Thereafter, petitioner demonstrated some compliance with her required services. However, at a hearing in November of 2021, the DHHR presented evidence that petitioner and the father were involved in two domestic violence incidents in the weeks leading up to the hearing. Petitioner identified the father as the aggressor, but admitted that she "fought back" during one incident and did not seek a domestic violence protective order as a result of either incident. The DHHR also introduced evidence that petitioner lied to a service provider about receiving a black eye during an altercation with the father, instead claiming that she received it when she was "jumped" outside a convenience store. Petitioner was also questioned about a recent drug screen that was positive for cocaine, explaining that she retrieved her boyfriend's cocaine for him and that it must have "seep[ed] through her pores." During the hearing, a CPS worker testified that she did not believe there were any additional services the DHHR could offer petitioner to assist in her reunification with the children. According to the provider, petitioner failed to remain in contact with the DHHR and tested positive for multiple substances on the occasions when she did submit to screens. Ultimately, the court terminated petitioner's improvement period.

In January of 2022, the court held a dispositional hearing, during which the DHHR introduced evidence of petitioner's noncompliance. This included her continued failure to attend visits with the children, submit to drug screens, or sign a release so that the DHHR could obtain records regarding her substance abuse treatment. Based on the evidence, the court found that petitioner failed to complete any aspect of her family case plan, failed to complete substance abuse treatment, and had not remedied any of the conditions at issue. The court also found that there was no reasonable likelihood that the conditions of neglect could be substantially corrected in the near future and that the children's welfare required termination of petitioner's parental rights. As such, the court terminated those rights.[2] It is from the dispositional order that petitioner appeals.

[2]The father's rights were also terminated below. The permanency plan for the children is adoption in their current placements.

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 to this Court, petitioner's brief is woefully inadequate. According to petitioner, the circuit court erred in terminating her improvement period because she substantially complied with the terms thereof. Despite asserting error in this regard, petitioner's brief does not contain any relevant information upon which this Court could find error in the ruling below. Shockingly, petitioner's brief does not contain any of the terms and conditions of her improvement period or citation to any evidence that she complied with these terms and conditions. It is difficult to understand how petitioner believes this Court could find reversible error exists in the absence of this basic necessary information. Further, petitioner's "Argument" section contains only two sentences, in which she asserts that West Virginia Code § 49-4-610(6) allows for an extension to an improvement period and that she should have been entitled to such an extension. Simply put, petitioner has failed to even *attempt* to satisfy her burden on appeal to this Court and, therefore, cannot be entitled to relief. *See State ex rel. Corbin v. Haines*, 218 W. Va. 315, 319-20, 624 S.E.2d 752, 756-57 (2005) ("On an appeal to this Court the appellant bears the burden of showing that there was error in the proceedings below resulting in the judgment of which he complains, all presumptions being in favor of the correctness of the proceedings and judgment in and of the trial court.") (citation omitted).

Based upon this Court's review, we conclude that the lower court did not err in terminating petitioner's parental rights. First, petitioner ignores the fact that, in order to obtain an extension to her improvement period, the court was required to find that petitioner substantially complied with her improvement period. W. Va. Code § 49-4-610(6). The record, however, overwhelmingly shows that petitioner failed to substantially comply with her improvement period. Second, the court found that there was no reasonable likelihood that petitioner could substantially correct the conditions of neglect in the near future and that termination of her rights was necessary for the children's welfare, findings petitioner does not challenge on appeal. Pursuant to West Virginia Code § 49-4-604(c)(6), a circuit court may terminate a parent's parental rights upon these findings. We have also explained as follows:

> "Termination of parental rights, the most drastic remedy under the statutory provision covering the disposition of neglected children, [West Virginia Code § 49-4-604] . . . may be employed without the use of intervening less restrictive alternatives when it is found that there is no reasonable likelihood under [West Virginia Code § 49-4-604(d)] . . . that conditions of neglect or abuse can be substantially corrected." Syllabus point 2, *In re R.J.M.*, 164 W.Va. 496, 266 S.E.2d 114 (1980).

Syl. Pt. 5, *In re Kristin Y.*, 227 W. Va. 558, 712 S.E.2d 55 (2011). As such, we find no error in the termination of petitioner's parental and custodial rights.

For the foregoing reasons, we find no error in the decision of the circuit court, and its January 31, 2022, order is hereby affirmed.

Affirmed.

ISSUED: August 31, 2022

CONCURRED IN BY:

Chief Justice John A. Hutchison
Justice Elizabeth D. Walker
Justice Tim Armstead
Justice William R. Wooton
Justice C. Haley Bunn