STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In Re: L.D. and M.D.

No. 11-0652 (Mineral County 10-JA-18 & 19)

FILED
November 15, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

This appeal arises from the Circuit Court of Mineral County, wherein the Petitioner Father's parental rights to his children, L.D. and M.D., were terminated. The appeal was timely perfected by counsel, with petitioner's appendix from the circuit court accompanying the petition. The West Virginia Department of Health and Human Resources ("DHHR") has filed its response. The guardian ad litem has filed her response on behalf of the children.

Having reviewed the record and the relevant decision of the circuit court, the Court is of the opinion that the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review and the record presented, the Court determines that there is no prejudicial error. This case does not present a new or significant question of law. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

"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 the Interest of: Tiffany Marie S.*, 196 W.Va. 223, 470 S.E.2d 177 (1996).

Petitioner challenges the circuit court's termination of his parental rights, arguing that it erred in finding that the conditions of abuse and neglect could not be substantially corrected in the near future and in terminating his parental rights. However, a review of the record below shows that petitioner did not successfully complete the terms of his improvement period, which fully supports the circuit court's finding and subsequent termination.

This matter was initiated shortly after the birth of the two infant children at issue due to aggravated circumstances regarding Respondent Mother, and petitioner stipulated to neglect at adjudication based on his substance abuse and unstable housing situation. Following adjudication, petitioner was provided a post-adjudicatory improvement period, and was ordered to complete the following goals: obtain transportation and get his driver's license; enroll in classes and obtain a high school equivalency degree; obtain substance abuse counseling; continue to be drug tested three times weekly; and, maintain stable housing. Petitioner argues that the circuit court erred in finding that the conditions of abuse and neglect could not be substantially corrected in the near future because he made progress during his improvement period. Most notably, petitioner points to the fact that he maintained employment throughout his post-adjudicatory improvement period, provided several negative drug screens, and participated in the services ordered. He also points out that subsequent to his moving to Romney, West Virginia, he was unable to continue services and also had difficulties in attending drug screens because of the travel required. As for his efforts to obtain stable housing, petitioner argues that he moved out of the residence he shared with Respondent Mother at the suggestion of the Multidisciplinary Team, and moved in with his mother. For these reasons, petitioner argues that it was error to terminate his parental rights upon the finding that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future.

A review of the record shows that petitioner made almost no progress during his improvement period. The circuit court was presented with evidence that petitioner missed numerous drug screens, and tested positive for several different substances on many occasions. Additionally, the circuit court was presented with testimony from several service providers concerning petitioner's lack of progress in relation to his goals of obtaining substance abuse counseling, a high school equivalency degree, and even a driver's license. Lastly, the circuit court found that petitioner had not remedied his housing stability issues to the point that the children could reside with him. In its order terminating petitioner's parental rights, the circuit court found that, aside from maintaining employment, petitioner "did not fulfill any of the other goals set out in the Treatment plan."

Pursuant to West Virginia Code § 49-6-5(a)(6), a circuit court may terminate the parental rights of an individual upon a finding that there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future. The code goes on to provide examples of when there is no reasonable likelihood that conditions can be substantially corrected, and these examples include situations in which the abusing parent is addicted to controlled substances, and when the abusing parent has not followed through with a reasonable family case plan. W.Va. Code § 49-6-5(b)(1)(3). Based upon the circuit court's findings below, it is clear that petitioner has substance abuse issues that have not been

remedied, as evidenced by his failure to complete substance abuse treatment. More importantly, petitioner clearly failed to follow through with the family case plan. In further support of the circuit court's decision to terminate petitioner's parental rights, this Court has held that "courts are not required to exhaust every speculative possibility of parental improvement before terminating parental rights 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). For these reasons, the circuit court's termination of petitioner's parental rights was not clearly erroneous.

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

Affirmed.

ISSUED: November 15, 2011

CONCURRED IN BY:

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