STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In Re: S.A. and W.A.:

No. 11-0738 (Nicholas County 10-JA-34 & 35)

FILED
October 25, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Father appeals the termination of his parental rights to his children S.A. and W.A. The appeal was timely perfected by counsel, with petitioner's appendix accompanying the petition. The guardian ad litem has filed her response on behalf of the children. The West Virginia Department of Health and Human Resources ("DHHR") has filed its response.

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).

The petition in this matter was filed after several different referrals due to the children acting out sexually in school, in cars, and in front of numerous others. The parents were instructed to take W.A. to play therapy, but refused to comply. The record shows that the DHHR has been involved with this family due to the allegations of acting out sexually since 2006, when the children were six and nine. Both children have below average intelligence, with IQs that have been measured from the forties to the sixties. The petition was eventually filed because the parents refused to allow the children to be placed in residential treatment.

After the petition was filed, the parents agreed to allow residential placement, and the parents were adjudicated as abusing and neglectful. They refused to testify at the adjudicatory hearing. An amended petition was filed after the children were removed to two different treatment facilities and separately disclosed details of their sexual abuse by both parents. The circuit court terminated both parents' parental rights, finding that neither parent was willing or able to provide adequately for the children's needs, and that continuation in the home was contrary to the children's welfare, because of the sexual abuse perpetrated by each parent. A psychologist testified that the parents failed to recognize the problem and recommended termination. The court noted that services have been provided to this family for five to six years, and that there is no reasonable likelihood that the conditions of abuse and neglect can be substantially corrected in the near future.

Petitioner Father first argues that the circuit court erred in finding that he was unwilling or unable to provide for the children's needs, as he took the children to counseling and cooperated with the DHHR. However, a review of the record shows that while Petitioner Father did take the children to counseling, he frequently changed counselors, arguably in an effort to prevent the children from disclosing the alleged sexual abuse. Moreover, Petitioner Father would not agree to residential treatment for the children, as he did not feel their behaviors were a serious problem, until he was forced to do so by the filing of the instant petition. Most importantly, there were numerous credible reports that both parents were sexually abusing the children. This Court finds no error in the circuit court's finding that the parents were unwilling or unable to provide for the children's needs.

Petitioner Father also argues on appeal that the circuit court erred in finding sexual abuse, as those findings were due only to the repeated interviews and many therapists the children encountered in the years this case has progressed. The record reflects that these children began acting out sexually in public at the ages of six and nine, and that the family has received services from the DHHR for years. Moreover, the children separately disclosed details of sexual abuse once placed away from the parents in residential facilities, and these disclosures were found to be consistent and credible by several experts. This Court finds no error in the finding of sexual abuse in this matter.

With regard to the termination of Petitioner Father'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). There is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected when a parent has sexually abused the child and the degree of family stress and the potential for further abuse precludes reunification. W. Va. Code §49-6-5(b)(5). This Court finds no error in the termination of Petitioner Father's parental rights.

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

Affirmed.

ISSUED: October 25, 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