STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

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

No. 11-0757 (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 Mother appeals the termination of her parental rights to her 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. Both the DHHR and the guardian ad litem concur in the circuit court's termination of parental rights.

On appeal, Petitioner Mother argues that the circuit court erred in finding that she has inadequate capacity to solve the problems of abuse and neglect due to her sexual abuse of the children, stating that the evidence was insufficient to show sexual abuse. The record reflects that these children began acting out sexually in public at the ages of six and nine, and that there were numerous reports to the DHHR about this behavior. Moreover, Petitioner Mother refused to believe that the children were being sexually abused or needed serious help to cope with their inappropriate sexual behaviors. Most importantly, there were numerous credible reports that both parents were sexually abusing the children, and professionals found the children's stories credible, as did the circuit court. This Court finds no error in the circuit court's finding that Petitioner Mother has inadequate capacity to solve the problems of abuse and neglect due to her alleged sexual abuse of the children.

With regard to the termination of Petitioner Mother'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 Mother's parental rights.

Petitioner Mother also argues that the circuit court erred in not granting post-termination visitation. This Court has held that "[w]hen parental rights are terminated due to neglect or abuse, the circuit court may nevertheless in appropriate cases consider whether continued visitation or other contact with the abusing parent is in the best interest of the

child. Among other things, the circuit court should consider whether a close emotional bond has been established between parent and child and the child's wishes, if he or she is of appropriate maturity to make such request. The evidence must indicate that such visitation or continued contact would not be detrimental to the child's well being and would be in the child's best interest." Syl. Pt. 5, *In re Christina L.,* 194 W.Va. 446, 460 S.E.2d 692 (1995). In this case, the guardian ad litem and the DHHR oppose post-termination visitation. However, the circuit court in this matter did not preclude post-termination visitation entirely, and in the disposition order, noted that if the children's counselors determine that visitation is appropriate, then they shall forward a report to the DHHR and the guardian ad litem, who will then determine if visitation will be scheduled. This Court finds no error in the circuit court's order regarding post-termination visitation.

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