STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

FILED
February 13, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

In Re: A.M., S.M., and B.B.

No. 11-0860 (Nicholas County 09-JA-63, 09-JA-64, 10-JA-24)

MEMORANDUM DECISION

This appeal arises from the Circuit Court of Nicholas County, wherein the Petitioner Mother's parental and custodial rights to her children, A.M., S.M. and B.B.[1], were terminated. The appeal was timely perfected by counsel, with petitioner's appendices 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.

This Court has considered the parties' briefs and the appendices on appeal. The facts and legal arguments are adequately presented in the parties' written briefs and the appendices on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the appendices presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules.

On appeal, petitioner argues that the circuit court erred in terminating her parental rights by failing to consider less restrictive alternatives. Petitioner argues that she demonstrated that she had substantially complied with the terms and conditions of her improvement period and that there was a reasonable likelihood that the conditions of abuse and neglect were substantially corrected or could have been substantially corrected in the near future. She argues that there were no specific allegations of abuse or neglect against her, aside from that she was present when Z.B.'s father, J.T.B., inflicted excessive corporal punishment upon him. According to petitioner, she attended counseling, parenting classes, and supervised visitation, maintained a safe and suitable home for her children, and remained drug free. Further, petitioner separated from J.T.B., who she had married during the pendency of the proceedings below, prior to his incarceration on criminal charges stemming from the abuse inflicted upon Z.B. Petitioner argues that termination of her parental rights

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[1]The underlying abuse and neglect proceeding in circuit court involved several other children of other adult respondents. However, petitioner only appeals termination of her parental rights as to her biological children. As these remaining children are not petitioner's biological children, they are not the subject of petitioner's appeal.

was based entirely on speculation from a Child Protective Services ("CPS") employee that petitioner would reunite with J.T.B. upon his release. Because J.T.B. was to be incarcerated for a term of one to five years, petitioner argues that the least restrictive alternative to termination would have been to return custody of the children to her, subject to reasonable services and monitoring by the DHHR.

In response, the State argues that petitioner failed to address the issues of violence that occurred in her home, including several instances of domestic violence perpetrated against her in front of children, and failed to ever fully acknowledge J.T.B.'s actions and her responsibility in light of those actions. Further, petitioner even went so far as to marry the father, J.T.B., in July 2010, in spite of the terms of the improvement period prohibiting contact with him and the safety plans for her children requiring petitioner to make sure they have no contact with J.T.B. In short, despite an extended improvement period, petitioner continued to make poor decisions and failed to effectuate any meaningful changes. Additionally, the guardian ad litem argues that termination was appropriate because petitioner has continued to refuse to admit the severity of the abuse inflicted upon Z.B., and also the history of physical abuse in the home by Father J.T.B. against both petitioner and another child. While she did participate in parenting services, petitioner failed to implement what she learned during her visitations, married the abuser during the pendency of the case below, and concealed an additional pregnancy. As such, the circumstances of the abuse and neglect could not be remedied.

"'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.' Syllabus Point 1, *In the Interest of: Tiffany Marie S.*, 196 W.Va. 223, 470 S.E.2d 177 (1996)." Syl. Pt. 1, *In re Faith C.*, 226 W.Va. 188, 699 S.E.2d 730 (2010). The circuit court below found that petitioner had an inability to understand and admit to the severity of the injury inflicted upon Z.B. by his father. It is undisputed that petitioner was present when the father struck the child with a belt with such severity that it left bruises and caused the child to suffer post traumatic stress disorder. The circuit court found that the abuse caused the child to be "severely emotionally and physically damaged" after having been exposed to this trauma. Contrary to petitioner's assertion that she substantially complied with the terms of her improvement period, the circuit court found that petitioner did not "take[] the [DHHR] or

the Court seriously and . . . merely [went] through the motions of the Improvement Period." The circuit court also characterized petitioner's actions as "bizarre," in that she appeared for the dispositional hearing two hours late, married Father J.T.B. "after knowing that he could never have children reside with him," testified that she bathed the child the day after the abuse and saw no marks despite a teacher identifying bruises so concerning that she contacted CPS, and refused to sign one safety plan or comply with a second.

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.' Syllabus point 1, [in part], *In re R.J.M.*, 164 W. Va. 496, 266 S.E.2d 114 (1980)." Syl. Pt. 4, in part, *In re Kristin Y.*, 227 W.Va. 558, 712 S.E.2d 55 (2011). In the instant matter, the circuit court had already granted petitioner a post-adjudicatory improvement period and she failed to comply with the terms thereof. This Court has held that "in order to remedy the abuse and/or neglect problem, the problem must first be acknowledged. Failure to acknowledge the existence of the problem, i.e., the truth of the basic allegation pertaining to the alleged abuse and neglect or the perpetrator of said abuse and neglect, results in making the problem untreatable . . . ." *W. Va. Dep't of Health and Human Res. ex rel. Wright v. Doris S.*, 197 W.Va. 489, 498, 475 S.E.2d. 865, 874 (1996). As such, the circuit court properly found that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future because of petitioner's refusal to admit to the severity of the problem or accept responsibility for her role in the same. "'Termination of parental rights, the most drastic remedy under the statutory provision covering the disposition of neglected children, W. Va. Code, 49-6-5 (1977) may be employed without the use of intervening less restrictive alternatives when it is found that there is no reasonable likelihood under W. Va. Code [§] 49-6-5(b) (1977) 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). Therefore, the circuit court's decision to terminate petitioner's parental rights was not an abuse of discretion.

This Court reminds the circuit court of its duty to establish permanency for the children. Rule 39(b) of the Rules of Procedure for Child Abuse and Neglect Proceedings requires:

> At least once every three months until permanent placement is achieved as defined in Rule 6, the court shall conduct a permanent placement review conference, requiring the multidisciplinary treatment team to attend and report as to progress and development in the case, for the purpose of reviewing the progress in the permanent placement of the child.

Further, this Court reminds the circuit court of its duty pursuant to Rule 43 of the Rules of Procedure for Child Abuse and Neglect Proceedings to find permanent placement for the children within eighteen months of the date of the disposition order. As this Court has stated, "[t]he eighteen-month period provided in Rule 43 of the West Virginia Rules of Procedures for Child Abuse and Neglect Proceedings[2] for permanent placement of an abused and neglected child following the final dispositional order must be strictly followed except in the most extraordinary circumstances which are fully substantiated in the record." Syl. Pt. 6, *In re Cecil T.*, 228 W.Va. 89, 717 S.E.2d 873 (2011). Moreover, this Court has stated that "[i]n determining the appropriate permanent out-of-home placement of a child under *W.Va.Code* § 49-6-5(a)(6) [1996], the circuit court shall give priority to securing a suitable adoptive home for the child and shall consider other placement alternatives, including permanent foster care, only where the court finds that adoption would not provide custody, care, commitment, nurturing and discipline consistent with the child's best interests or where a suitable adoptive home can not be found." Syl. Pt. 3, *State v. Michael M.*, 202 W.Va. 350, 504 S.E.2d 177 (1998). Finally, "[t]he guardian ad litem's role in abuse and neglect proceedings does not actually cease until such time as the child is placed in a permanent home." Syl. Pt. 5, *James M. v. Maynard* , 185 W.Va. 648, 408 S.E.2d 400 (1991).

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

Affirmed.

ISSUED: February 13, 2012

CONCURRED IN BY:

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

[2]Rule 43 was amended effective January 3, 2012. The amended rule reducing the eighteen-month period for permanent placement to twelve months only applies to final dispositional orders entered after January 3, 2012.