STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In Re: B.H.:

No. 11-0916 (Hardy County 09-JA-4)

FILED
December 2, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Father appeals the circuit court's order terminating his parental rights to B.H. 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 child. 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. The case is mature for consideration. 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.' 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 petition in this matter was filed after three children were found in deplorable conditions and were removed from the home they shared with their mother. Petitioner Father was not originally named as a respondent, but was later found to be the father of B.H., one of the children. Although he testified that he believed that his extramarital affair with the mother in this case resulted in a child, he had no interaction with the child until DNA testing

showed that he was B.H.'s father, when she was over a year and a half old. B.H. has been diagnosed with mild mental retardation and has severe developmental delays. Autism is suspected. Despite the fact that Petitioner Father has had four prior involuntary terminations of parental rights, the circuit court granted him an improvement period in this case. Petitioner Father participated in various services, including parenting classes, visitation, and a drug and alcohol program. However, once the report from his psychological evaluation was obtained, it became clear that Petitioner Father failed to take any responsibility whatsoever for the prior removal of his other four children, and instead blames DHHR, the judge and the guardian ad litem for his terminations in that matter. The psychological examination took place after Petitioner Father had been given an improvement period, and after he assured the court that the prior conditions of abuse and neglect had been rectified. The circuit court then terminated his parental rights, finding that while Petitioner Father has made progress and has improved, the improvement is not enough to make it possible to place B.H. with him considering her required high level of care due to her special needs.. Further, petitioner's wife is not considered a safe placement, and aggravated circumstances exist regarding the involuntary termination of four prior children. The circuit court found that it is not in the child's best interest to be placed with her father.

On appeal, Petitioner Father argues that he complied with the treatment plan and the improvement period, and therefore, his parental rights should not have been terminated. Further, he argues that the DHHR caused delay in not obtaining the results of his psychological examination in a timely manner, therefore rendering him unable to obtain the recommended therapy to rectify the conditions of abuse and neglect. In the present case, it is problematic that the psychological examination results were not obtained for several months into Petitioner Father's improvement period. Further, it is undisputed that Petitioner Father did comply with the DHHR's services and showed some improvement. However, the psychological examination results, as well as Petitioner Father's actions throughout this matter, show that he failed to take any responsibility for the four prior terminations of his parental rights. This Court has stated 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 and in making an improvement period an exercise in futility at the child's expense." *W. Va. Dept. of Health and Human Res. ex rel. Wright v. Doris S.*, 197 W.Va. 489, 498, 475 S.E.2d. 865, 874 (1996). Moreover, " '[i]n a contest involving the custody of an infant the welfare of the child is the polar star by which the discretion of the court will be guided. Syl. pt. 1, *State ex rel. Cash v. Lively*, 155 W.Va. 801, 187 S.E.2d 601 (1972).' Syllabus Point 4, *State ex rel. David Allen B. v. Sommerville*, 194 W.Va. 86, 459 S.E.2d 363 (1995)." Syl. Pt. 2, *In re Kaitlyn P.* 225 W.Va. 123, 690 S.E.2d 131 (2010). In the present case, the circuit court concluded that termination of Petitioner Father's parental rights was proper, given the

inappropriateness of Petitioner Father's wife as a caretaker for B.H., petitioner father's lack of involvement for the first year and a half of B.H.'s life, the bond between the child and her half sibling, and most importantly, Petitioner Father's failure to take responsibility for his prior actions which led to the removal and termination of his parental rights to four other children. This Court therefore finds no error in the circuit court's termination of Petitioner Father's parental rights.

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

Affirmed.

ISSUED: December 2, 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