STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In Re: D.C. & J.C.:

No. 11-0992 (Wood County 09-JA-69 & 97)

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

MEMORANDUM DECISION

Petitioner Mother appeals the circuit court's order terminating her parental rights to D.C. and J.C. 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.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented in the parties' written briefs, and the record 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 record 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.

"'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).

This petition was initiated due to a prior termination of parental rights against the father, and due to Petitioner Mother's drug abuse. Both parents stipulated to neglect, and both were granted improvement periods. At the beginning of the adjudicatory improvement periods, both parents were noncompliant, but eventually both parents entered drug

rehabilitation. Both Petitioner Mother and the father were granted dispositional improvement periods. Although Petitioner Mother was participating in services, it does not appear that she was benefitting from services. She had some positive drug screens even after completing drug treatment, and was suspected of using someone else's urine to pass drug screens. Further, there were issues regarding proper discipline during visitation, favoritism toward one of the children, and the children not wanting to come to visitation. Petitioner Mother also continued to repeatedly fluctuate in and out of a relationship with the father, although this relationship had resulted in domestic violence petitions, police intervention, and even cancelled joint visitations with the children. Upon disposition, the circuit court found that Petitioner Mother was unsuccessful in learning appropriate parenting skills; left inpatient substance abuse treatment against the advice of professionals; was homeless at the time of this hearing due to being locked out by her landlord; and had lived without electricity for the prior two months. The circuit court terminated Petitioner Mother's parental rights.

On appeal, Petitioner Mother makes several arguments. She argues that the circuit court erred in finding that there was no reasonable likelihood that the conditions of abuse and neglect can be substantially corrected in the near future, because she was compliant in all services. "As we explained in *West Virginia Dept. of Human Serv. v. Peggy F.*, 184 W.Va. 60, 64, 399 S.E.2d 460, 464 (1990), it is possible for an individual to show 'compliance with specific aspects of the case plan' while failing 'to improve . . . [the] overall attitude and approach to parenting.'" *In Interest of Carlita B.,* 185 W.Va. 613, 626, 408 S.E.2d 365, 378 (1991). Thus, although Petitioner Mother participated in services, the record reflects that she did not substantially correct the unstable lifestyle that led to the filing of the petition. She still had positive drug screens, including one within four months of disposition. At disposition, she was homeless, and had continually been in and out of an unstable and sometimes violent relationship with the father of the children. This Court finds no error in the circuit court's finding.

Additionally, Petitioner Mother argues that the circuit court erred in failing to consider less restrictive alternatives. Specifically, she argues that the circuit court should have extended her dispositional improvement period. This Court has noted that "the trial court must accept the fact that the statutory limits on improvement periods (as well as our case law limiting the right to improvement periods) dictate that there comes a time for decision, because a child deserves resolution and permanency in his or her life, and because part of that permanency must include at minimum a right to rely on his or her caretakers to be there to provide the basic nurturance of life." *State ex rel. Amy M. v. Kaufman,* 196 W.Va. 251, 260, 470 S.E.2d 205, 214 (1996). Moreover,

> "As a general rule the least restrictive alternative regarding parental rights to custody of a child under W.Va.Code [§] 49–6–5 (1977) will be employed;

> however, 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, and this is particularly applicable to children under the age of three years who are more susceptible to illness, need consistent close interaction with fully committed adults, and are likely to have their emotional and physical development retarded by numerous placements." Syllabus Point 1, *In re R.J.M.*, 164 W.Va. 496, 266 S.E.2d 114 (1980).

Syl. Pt. 4, *In re Kristin Y.*, 227 W.Va. 558, 712 S.E.2d 55 (2011). In the present case, the parents were given nineteen months of services, but failed to show sufficient improvement. Although the parents participated in services, it is clear that they failed to benefit from said services. This Court finds no error in the disposition, and in the failure to grant an extension to the dispositional improvement period.

Finally, Petitioner Mother argues that she was denied effective assistance of counsel, because the counsel she had through the adjudication advised her to stipulate to the conditions of neglect, although the DHHR had not proven that the domestic violence and drug use Petitioner Mother stipulated to negatively affected her children. This Court has failed to recognize an ineffective assistance of counsel claim in an abuse and neglect proceeding. However, even if this Court were to recognize such a claim, we find that in the present matter, the conduct of counsel does not rise to the level of ineffective assistance.

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