STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In Re: A.W.:

No. 11-1087 (Doddridge County 10-JA-12)

FILED
January 18, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Father appeals the termination of his parental rights to A.W. The appeal was timely perfected by counsel, with petitioner's appendix 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 child.

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.' 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).

After A.W.'s biological mother died, the instant petition was filed alleging that Petitioner Father was in arrears on his child support and had only seen the child one time in her life, when she was eighteen months old. The child has lived with her maternal grandparents for most of her life. She was five years old at the time the petition was filed. Petitioner Father stipulated to the allegations in the petition, although he failed to appear for

the preliminary hearing. He was granted an improvement period, although prior to the improvement period he had failed a drug screen, refused to take additional drug screens, failed to stay in contact with the DHHR, and failed to complete necessary forms and releases for the DHHR. After his post-adjudicatory improvement period was granted, Petitioner Father was arrested on unrelated charges. He also refused to take additional drug screens, indicating that he would fail them. He failed to appear at the hearing wherein the circuit court granted his request for an improvement period, and failed to appear at multi-disciplinary team meetings. Moreover, he never asked for visitation and had still not seen the child. He failed to complete the proper paperwork so that the DHHR could determine if he had completed the required drug treatment program, and failed to maintain contact with the DHHR.

The DHHR then moved to terminate his improvement period, and Petitioner Father did not appear at the hearing regarding the termination of the improvement period. The improvement period was revoked, and Petitioner Father's parental rights were terminated. At the dispositional hearing, counsel for the petitioner objected to the DHHR's failure to file a new case plan, as the prior case plan, filed months before, did not recommend termination. The circuit court found that petitioner had been given proper notice that the DHHR was seeking termination, and therefore the petitioner was not prejudiced by the failure of the DHHR to update the case plan. The circuit court found that Petitioner Father had unsuccessfully attempted an improvement period, and that "there is no reasonable likelihood that correction of the conditions of neglect present at the time of the filing of the petition can be corrected in the near future." Petitioner's counsel moved for a post-dispositional improvement period, as Petitioner Father had recently completed a twenty-eight day inpatient drug treatment program, but the court refused this request. The court noted that throughout the proceedings, Petitioner Father had missed several hearings and MDT meetings, but had adequate transportation to travel to visit relatives; that he has tested positive for drugs and refused other drug screens, stating that they would be positive; that he has failed to maintain contact with the child, although this case was filed due to abandonment; that Petitioner Father failed to sign a release to prove to the circuit court that he indeed completed the twenty-eight day drug program; that he has failed to pay child support; and that he has shown that he is unlikely to comply in an improvement period.

On appeal, Petitioner Father first argues that the circuit court erred in terminating his parental rights when the DHHR never submitted a child case plan prior to the dispositional hearing. In this matter, a case plan was submitted in January 2011. However, that case plan was never specifically updated to reflect that the DHHR was now seeking termination. It is clear that the petitioner had adequate notice of the DHHR's decision to move for termination of parental rights based upon the DHHR's filing of a specific motion to terminate Petitioner

Father's parental rights. Although we are concerned about the allegations that the DHHR failed to follow procedures such as the proper preparation of the child case plan, we conclude that such alleged omissions do not warrant reversal in light of all the circumstances in this case.

Petitioner Father next argues that the circuit court erred in revoking his post-adjudicatory improvement period after he enrolled in the drug treatment program ordered by the circuit court. This Court has stated that "[i]t is within the court's discretion to grant an improvement period within the applicable statutory requirements; it is also within the court's discretion to terminate the improvement period before the twelve-month time frame has expired if the court is not satisfied that the defendant is making the necessary progress." Syl. Pt. 2, in part, *In re Lacey P.*, 189 W.Va. 580, 433 S.E.2d 518 (1993). In this matter, Petitioner Father failed to fully participate in the improvement period in many ways, including missing at least four hearings, missing an MDT meeting, failing to request visitation, failing to maintain contact with the DHHR, and repeatedly failing to fill out the proper paperwork. Although he eventually attended drug treatment, he failed to comply in almost every other aspect of the improvement period. Thus, this Court finds no error in the revocation of Petitioner Father's improvement period.

Finally, Petitioner Father argues that the circuit court erred in not granting a dispositional improvement period, reconsidering the disposition, or granting an alternative disposition. Regarding the termination in this matter, this Court has stated that "when a parent cannot demonstrate that he/she will be able to correct the conditions of abuse and/or neglect with which he/she has been charged, an improvement period need not be awarded before the circuit court may terminate the offending parent's parental rights." *In re Emily*, 208 W.Va. 325, 336, 540 S.E.2d 542, 553 (2000). Moreover, termination is proper when "there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future, and when necessary for the welfare of the child . . . ." W.Va. Code § 49-6-5(a)(6). This Court finds no error in termination of Petitioner Father's parental rights without a dispositional improvement period. Petitioner Father failed to correct the conditions of neglect in this matter, as the petition was filed based on his failure to contact his child more than once in her five years. Throughout the proceedings, Petitioner Father failed to appear for hearings, failed to cooperate with the DHHR, and never requested visitation in an attempt to establish a relationship with his child.

This Court reminds the circuit court of its duty to establish permanency for A.W. 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 Rules of Procedure for Child Abuse and Neglect Proceedings to find permanent placement for A.W. 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 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 of West Virginia 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 parental rights is hereby affirmed.

Affirmed.

ISSUED: January 18, 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