STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In Re: T.C., J.C., V.C., A.C., C.C., C.C. and E.C.:

No. 11-1137 (Clay County 10-JA-98 through 104)

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

MEMORANDUM DECISION

Petitioner Mother appeals the termination of her parental rights to T.C., J.C., V.C., A.C., C.C., C.C. and E.C. 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 children.

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).

The petition in this matter was filed in October 2010, alleging drug abuse and domestic violence in the home, lack of supervision, inappropriate clothing for the children, and a prior removal of the children from the home. Two different protection plans had been in place prior to the filing after numerous reports of the children being in the road by school

bus drivers and a Department of Natural Resources employee, but the petition was not filed until the older school-aged children came home from school and the parents were missing, with the non-school age children completely unsupervised. The children have also been seen outside unsupervised in inappropriate clothing or even nude. The home was found to be adequate, although it was a two bedroom trailer for seven children and two adults. However, the outside of the home was problematic, as there were several dangerous items in the yard, such as broken toys, refrigerators, bed springs and discarded clothing.

This family has been involved with the DHHR since 2005, and has received numerous services. An earlier petition was filed in 2009, resulting in removal based on failure to supervise and drug use, but the children were returned to the home after services and an improvement period. In the present case, the parents stipulated to some of the neglect, and although they were not officially granted an improvement period, the circuit court ordered specific services, including drug testing. Both parents had approximately six months of clean drug screens. However, psychiatric reports of both parents, as well as visitation, showed a propensity for the parents to rely on the oldest child to parent the children, and a propensity for the parents to blame the children for the situation, including claims that because the parents can no longer "whoop" the children, the children are out of control. Throughout this matter, the parents failed to have all of their utilities on, and they failed to properly clean up the home. The children disclosed varying abuse, including living in filth; being given drugs, alcohol and tobacco as young as nine years old; and being left alone for long periods of time. The circuit court terminated the petitioner's parental rights, noting the prior petition which was filed for much of the same conduct, and noting the parents' continued blame of the children for the situation. The circuit court also found that the parents had not maintained adequate employment, did not have electricity in the home, failed to supervise the children, and noted that the children were in fear of returning home and experiencing the same abuse given the time frame of continued issues in this home.

On appeal, Petitioner Mother argues that the circuit court erred in finding that the parents tested positive for drugs during the relevant time period for purposes of deciding whether to grant a post-adjudicatory improvement period. Petitioner Mother argues that she was not using drugs after she was ordered not to do so, but that due to her weight, the drugs remained in her system longer, and that each test showed lower amounts of drugs. However, a review of the record shows that this is not true. Petitioner Mother had three positive drug tests. The first showed marijuana in her system at 329 ng/mL. The next test showed 34 ng/mL, but a test a week later showed a rise in marijuana, at 89 ng/mL. This Court finds no error in the circuit court's statement that Petitioner Mother was using marijuana after the circuit court ordered her to remain drug free.

Petitioner Mother next argues that the circuit court erred in finding that the parents have failed to accept responsibility after they admitted certain conduct in the adjudicatory hearing. First, Petitioner Mother did not stipulate to all of the allegations contained in the petition. Second, a review of the visitation reports from visitation supervisors and the guardian ad litem, as well as a review of both parents' psychological evaluations, shows that the parents blame the children for their misbehavior, claiming that the children are out of control because the parents cannot "whoop" them any longer. The parents blame the eldest child for not controlling the other children. Further, the parents justify giving the children drugs, alcohol and tobacco as bribes. This Court finds no error in the circuit court's statement that the parents have failed to accept responsibility for the filing of this petition.

Finally, Petitioner Mother argues that the circuit court erred in denying a post-adjudicatory improvement period in light of its finding that the DHHR had not made reasonable efforts in the case, and erred in terminating the parents' parental rights. The DHHR notes that the finding that it had not made reasonable efforts is in regards to the DHHR's failure to revisit the home in a timely manner after the children's removal. Further, the DHHR indicates that Petitioner Mother, while not granted an official improvement period, was given a de facto improvement period, as the circuit court ordered specific services, including parenting classes, psychological evaluations, visitation, and drug screens. Although the procedure taken by the circuit court is uncommon, this Court finds no error given the facts of this matter.

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). In the present case, the DHHR has been involved with this family for over six years. The children were previously removed for some of the same reasons that another petition had to be filed. Numerous services have occurred in the home. This Court finds no error in the termination of parental rights.

This Court reminds the circuit court of its duty to establish permanency for T.C., J.C., V.C., A.C., C.C., C.C., and E.C. 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 T.C., J.C., V.C., A.C., C.C., C.C., and E.C. 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