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. 11-1150 (Clay County 10-JA-98 through 104)

FILED
March 12, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Father, by counsel A.Wayne King, appeals the termination of his 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"), by counsel William Bands, has filed its response. The guardian ad litem, Barbara A. Harmon-Schamberger, 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 appendix 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 of 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 of the petition based upon numerous reports by school bus drivers and a Department of Natural Resources employee of the children being in the road. The instant petition was filed when the 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 the children were living in was a two-bedroom trailer for seven children and two adults. The outside of the home was problematic, as there were several dangerous items in the yard, such as broken toys, refrigerators, and bed springs.

This family has been involved with the DHHR since 2005, and has received numerous services. An earlier petition was filed in 2009, resulting in the removal of the children based on their 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 other 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 and/or neglect given the time frame of continued issues in this home. Both the guardian ad litem and the DHHR have filed responses to this appeal in favor of termination.

On appeal, Petitioner Father first argues that the circuit court erred in finding that Petitioner Father had a history of drug use, failed to maintain employment and failed to properly supervise the infants. Petitioner notes that he only had one positive drug screen during the pendency of these proceedings, and that he only lost his job because he continuously had to leave early to go get drug tested. He argues that this should not have resulted in the loss of his parental rights.

The guardian ad litem responds that although petitioner was not working, he still failed to properly supervise the children. Further, both the guardian and the DHHR note that petitioner was not employed prior to the filing of this petition, and only briefly maintained employment during the case. Further, the failure to supervise the children was an ongoing problem which led to the filing of not one, but two, abuse and neglect petitions.

Petitioner also argues that the circuit court erred in finding that he failed to accept responsibility for his actions; failed to correct the conditions which led to the filing of the petition; and that the health, safety and welfare of the infants would be threatened if they were returned to his custody. Petitioner argues that there is no evidence that he has blamed others for the children being removed. Further, he has attempted to improve his property to the best of his ability, but the lack of resources has prevented further improvements. Petitioner argues that he is being punished for being poor and undereducated.

The guardian ad litem responds, arguing that during much of the pending case, and prior to

the instant case, petitioner and his wife were not working, leaving ample time to clean up the home and property, yet it was never completed. There were also no utilities in the home. The DHHR concurs, noting the children's fear of returning to the filthy home, and noting that the petitioner had failed to correct the conditions that led to the prior petition, and thus a new petition had to be filed.

Finally, Petitioner Father argues that the circuit court erred in determining from the testimony of the counselor that the parenting skills of the father led to a chaotic situation after a session lasting only one hour. Petitioner Father points out that he and his wife previously successfully completed an improvement period in the prior abuse and neglect case, and achieved reunification. However, he argues that this time, he received no meaningful services. Further, he argues that visitation with his seven children was never held in adequate accommodations, thus creating the chaotic situation described.

The guardian ad litem responds that visitation was often chaotic because Petitioner Father refused to supervise the children when the oldest child, T.C., was around, forcing T.C. to act as a parent. Further, at one point, Petitioner Father advanced on T.C. with clenched fists, at which time the service provider had to intervene before a physical altercation could ensue, and petitioner chose to leave visitation early. The DHHR concurs, and notes that all of the evidence, not just the testimony of the counselor, led to the termination in this matter.

As all of the assignments of error deal with specific findings of the circuit court, this Court will deal simultaneously with petitioner's claimed errors. 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 as raised in the current petition. Numerous services have occurred in the home. It is clear that despite petitioner's arguments, the services provided were to no avail. The children continued to be unsupervised, and petitioner continued to be unemployed, and living in an unsuitable home for his seven children. The children expressed fear in having to return 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 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.[1] 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: March 12, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Thomas E. McHugh

NOT PARTICIPATING:

Justice Margaret L. Workman

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[1] 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.