STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In Re: S.O.:

No. 11-1242 (Mingo County 11-JA-46)

FILED
February 13, 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 S.O. 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 appendix 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 instant petition was filed based on aggravated circumstances due to petitioner's prior two terminations of parental rights. The instant petition is actually the third abuse and neglect petition filed against petitioner, with both of the prior two regarding Petitioner Mother's two older children. After the first petition, Petitioner Mother's case was closed by

Child Protective Services, only to be reopened due to continuing allegations of drug abuse and contact with inappropriate individuals within a month. A second petition was filed, and eventually Petitioner Mother's parental rights to the two older children were terminated. At the time of the first two terminations, Petitioner Mother was already pregnant with S.O. Immediately after the birth of S.O., a third petition for abuse and neglect was filed. Petitioner Mother had two positive drug tests following the birth, and admitted after one of the positive tests that she did not have a prescription for the substance found in the positive screen. The circuit court eventually terminated Petitioner Mother's parental rights. The circuit court found that petitioner did not benefit from services offered to her during the prior abuse and neglect proceedings, as she has not changed the circumstances that led to the first two terminations of parental rights. She had positive drug screens and continues to affiliate and reside with inappropriate people. The circuit court also noted that Petitioner Mother has been arrested twice recently, and is living with the two older biological children's father, who relinquished his parental rights.

On appeal, Petitioner Mother argues that the circuit court erred in basing this termination of parental rights on the prior terminations of parental rights. Aggravated circumstances as to the Petitioner Mother exist, as she has previously had her parental rights to two other children terminated. When an abuse and neglect petition is brought based solely upon a previous involuntary termination of parental rights to a sibling pursuant to West Virginia Code § 49-6-5b(a)(3) (1998), prior to the lower court's making any disposition regarding the petition, it must allow the development of evidence surrounding the prior involuntary termination(s) and what actions, if any, the parent(s) have taken to remedy the circumstances which led to the prior termination(s). Syl. Pt. 4, *In the Matter of George Glen B.*, 205 W.Va. 435, 518 S.E.2d 863 (1999). Although the requirement that such a petition be filed does not mandate termination in all circumstances, the legislature has reduced the minimum threshold of evidence necessary for termination where one of the factors outlined in West Virginia Code § 49-6-5b(a) (1998) is present. Syl. Pt. 2, *In the Matter of George Glen B.*, 205 W.Va. 435, 518 S.E.2d 863 (1999). 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, and the instant petition is actually the third petition filed against Petitioner Mother. The two older children were removed, and Petitioner Mother eventually had her rights terminated, based on some of the same allegations in the instant petition; namely, drug use and Petitioner Mother's repeated association with inappropriate individuals. Numerous services have occurred in the home. This Court finds no error in the termination of parental rights.

In the present case, although an improvement period was never granted, Petitioner Mother was granted some services. It quickly became apparent that the circumstances which led to her prior terminations had not changed, as she had positive drug screens and continued to affiliate with known drug dealers. Further, she was fully reliant on her boyfriend, who has two prior relinquishments of parental rights and ties to drug use and trafficking. As Petitioner Mother failed to prove that her circumstances since the prior terminations had improved, 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 child. 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 child 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

[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.

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: February 13, 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