STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In Re: S.B. and D.B.:

No. 11-1347 (Preston County 11-JA-16 & 17)

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.B. and D.B.. 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 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 petition in this matter was filed alleging that petitioner failed to protect S.B., her then fifteen-year-old mentally challenged daughter from sexual abuse by petitioner's boyfriend. The child's most recent examination revealed an IQ of fifty-two. In 2008, a prior petition had been filed against Petitioner Mother, this time alleging failure to protect S.B., the same child, from sexual abuse by S.B.'s father. The 2008 petition resulted in the termination of S.B.'s father's parental rights. In the 2008 matter, petitioner was adjudicated

for failure to protect her children and was given almost a year of parenting and educational services, as well as adult life skills courses. Eventually, petitioner and her children were reunited, but the DHHR continued to be involved with the family due to ongoing referrals regarding the family's living conditions and the lack of supervision. The instant petition was filed after S.B. reported that her mother's boyfriend had attempted to sexually penetrate her on several occasions and had been successful at least once. S.B. indicated that she reported the sexual abuse to Petitioner Mother, but that Petitioner Mother failed to do anything about it. Petitioner Mother filed two restraining orders against the boyfriend, but dismissed one and failed to pursue the other. The DHHR had previously warned Petitioner Mother that petitioner's boyfriend was developing an inappropriate relationship with S.B. The circuit court terminated Petitioner Mother's parental rights, finding that there is no reasonable likelihood that the conditions of abuse or neglect can be corrected in the near future. Further, the circuit court found that Petitioner Mother is unable to protect S.B. from sexual offenders, and this also places her son, D.B., at risk.

On appeal, Petitioner Mother argues that the circuit court erred in terminating her parental rights because less restrictive alternative dispositions were available. Petitioner Mother argues that although she received services in the past, some parents need more help over a longer period of time. Petitioner argues for disposition under West Virginia Code § 49-6-5(a)(4) or (5) to allow her more time for improvement without permanently terminating her parental rights.

The DHHR responds, arguing that termination was proper in this matter as Petitioner Mother has shown there is no reasonable likelihood that the conditions of abuse or neglect can be substantially corrected. The DHHR points out that Petitioner Mother has already had almost a year of services to correct the issue of failure to protect previously, yet allowed her daughter to be preyed upon again by a different male living in the home.

The guardian ad litem responds in support of termination as well, arguing that petitioner has now received approximately seventeen months of services, including services after the first petition was filed and services after reunification occurred. The guardian ad litem argues that Petitioner Mother continued to be unable or unwilling to utilize the skills learned from the multitude of services provided to her, and S.B. once again became a victim.

This Court has found that "'[a]s 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 . . . . ' Syllabus point 1, in part, *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). 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, numerous services were provided after the first petition was filed based on Petitioner Mother's failure to protect after S.B. was sexually assaulted. Within months of reunification, the instant petition was filed, once again because Petitioner Mother had failed to protect S.B., this time from the sexual advances of petitioner's boyfriend. It is clear that nearly a year of services after the first petition was filed failed to remedy the neglect caused by Petitioner Mother's failure to protect her mentally challenged daughter from being victimized again, and Petitioner Mother has shown no ability to substantially correct the situation. In order to protect S.B. from further victimization, termination is necessary. This Court finds no error in the circuit court's 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

[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.

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: 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