STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In Re: S.W.:

No. 11-1419 (Mingo County 11-JA-7)

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

MEMORANDUM DECISION

Petitioner Mother, by counsel Susan Van Zant, appeals the termination of her parental rights to her child S.W. The appeal was timely perfected by counsel, with petitioner's appendix accompanying the petition. The guardian ad litem, Diana Carter Wiedel, has filed her response on behalf of the child. The West Virginia Department of Health and Human Resources ("DHHR"), by counsel William Bands, has filed its response.

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 due to repeated incidents of domestic violence, as well as alcohol abuse. Further, there were suicide threats on behalf of both parents, and the police had been called to the home at least six times in the past six months. Petitioner Mother indicated that her husband, the child's father, had even battered her while she held the child. Petitioner Mother was adjudicated as neglectful and was given an improvement period. She separated from her husband and was doing well in the improvement period while living in a shelter. The circuit court therefore granted her an extension to the improvement period. However, once Petitioner Mother left the shelter after obtaining housing assistance, it became apparent that she had not left the father of the child and remained in a relationship with him. Another serious domestic violence incident ensued. Further, although Petitioner Mother had been granted lengthy visitation, she voluntarily reduced her

visitation, even though her brother offered to provide transportation and allowed the use of his home for visitation. The circuit court terminated Petitioner Mother's parental rights. Petitioner Mother testified that she did not file for divorce from her husband but has decided that she should not be with him, even prior to the latest domestic violence incident. The circuit court noted that Petitioner Mother continuously exposed the child to domestic violence and continued to engage in at-risk behaviors. Finally, the circuit court found no reasonable likelihood that the conditions of neglect would improve, and found that Petitioner Mother failed to benefit from services.

On appeal, Petitioner Mother argues that the circuit court erred in terminating her parental rights. Petitioner argues that she complied with her improvement period, taking all of the required classes and passing drug screens. Petitioner argues that the child should be returned to her care.

In response, the guardian ad litem argues in favor of termination, noting that Petitioner Mother is "dangerously immature and unwilling or unable to learn to parent due to that immaturity." The DHHR also responds in favor of termination. The DHHR notes that although petitioner received extensive services, she returned to her husband and further domestic violence ensued. Therefore, the child must be protected from future abuse.

This Court has stated that "'[t]ermination of parental rights, the most drastic remedy under the statutory provision covering the disposition of neglected children, W.Va. Code [§] 49-6-5 (1977) may be employed without the use of intervening less restrictive alternatives when it is found that there is no reasonable likelihood under W.Va. Code [§] 49-6-5(b) (1977) that conditions of neglect or abuse can be substantially corrected.' Syllabus point 2, *In re R.J.M.*, 164 W.Va. 496, 266 S.E.2d 114 (1980)." Syl. Pt. 5, *In re Kristin Y.*, 227 W.Va. 558, 712 S.E.2d 55 (2011). Furthermore, there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected when:

> The battered parent's parenting skills have been seriously impaired and said person has willfully refused or is presently unwilling or unable to cooperate in the development of a reasonable treatment plan or has not adequately responded to or followed through with the recommended and appropriate treatment plan.

W. Va. Code, § 49-6-5(b)(7). In the present matter, petitioner was given many services and initially complied. However, it is clear that the services were ineffective, as she returned to her husband. 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 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.