STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED
April 18, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

In Re: C.W.:

No. 11-0054
(Wood County No. 10-JA-20)

MEMORANDUM DECISION

This appeal arises from the Circuit Court of Wood County, wherein the Petitioner Mother's parental rights to C.W. were terminated. The appeal was timely perfected by counsel, with the complete record from the circuit court accompanying the petition. The Department of Health and Human Resources ("DHHR") has filed its response. The guardian ad litem has filed her response on behalf of the child, C.W. The Court has carefully reviewed the record provided and the written arguments of the parties, and the case is mature for consideration.

Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this matter is appropriate for consideration under the Revised Rules. 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.

The Petitioner Mother challenges the circuit court's order terminating her parental rights to her child, arguing that the DHHR failed to satisfy the clear and convincing burden at adjudication that the subject child was abused or neglected. She further argues that it was error to deny her an improvement period. Aggravated circumstances as to the Petitioner Mother exist, as she has previously had her parental rights to another child 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 Re 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 Re George Glen B.*, 205 W.Va. 435, 518 S.E.2d 863 (1999). At the adjudicatory hearing, Petitioner Mother offered no evidence as to any improvement in her intellectual deficiencies or ability to care for her child. As such, the child was deemed neglected under the definition of West Virginia Code § 49-1-1(j)(1). According to that section, "[n]eglected child" means a child... [w]hose physical or mental health is harmed or threatened by a present refusal, failure or inability of the child's parent, guardian or custodian to supply the child with necessary food, clothing, shelter, supervision, medical care or education, when such refusal, failure or inability is not due primarily to a lack of financial means on the part of the parent, guardian or custodian." Further, a psychologist who evaluated the Petitioner Mother testified that, even with the extensive support that she was given during her first abuse and neglect proceeding, it was unlikely Petitioner Mother would be compliant and/or be able to parent her daughter effectively. Lastly, supervised visitations in this matter had to be suspended because Petitioner Mother failed to follow directions related to her daughter's care, resulting in the newborn becoming inconsolable. The circuit court found that the Mother had made no improvement in her ability to care for a child, and showed further non-compliance with DHHR services during the supervised visitations in this matter. The Court finds that this decision was within the circuit court's discretion and concludes that there was no error in relation to the termination of parental rights or the denial of an improvement period.

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: April 18, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Menis E. Ketchum
Justice Thomas E. McHugh