STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED
March 14, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

In Re: M.B.:

No. 11-0082
(Kanawha Co. 10-JA-126)

MEMORANDUM DECISION

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

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. 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. 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 there was inadequate evidence of conditions of abuse or neglect at the time the petition was filed, that Child Protective Services admits some of the allegations were known to be untrue at the time of the petition being filed, and that the hospital toxicology report should not have been admitted into evidence without authentication and absent allegations related thereto in the petition. Aggravated circumstances as to the Petitioner Mother exist, as she has previously had her parental rights to three 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 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).

In the present case, the Petitioner Mother offered no evidence as to any improvement. The circuit court found that the Petitioner Mother had made no improvement in her ability to care for a child. The Petitioner Mother raises an additional argument that the hospital toxicology report showing alcohol and canniboid in the baby's system at birth was not authenticated prior to its admission; however, the circuit court found that there was sufficient indicia of reliability to support the admission of the report, and the report was never contradicted by other evidence. The circuit court terminated the Petitioner Mother's parental rights, after finding that she failed to acknowledge any parenting deficiencies and failed to articulate reasons for the three prior terminations. The circuit court also found that the Petitioner Mother was untruthful, failed or refused to obtain mental health treatment, and failed to benefit from services given in the prior cases. Furthermore, the circuit court found that DHHR was not required to make reasonable efforts to preserve the family in this instance because of aggravated circumstances, namely, the Petitioner Mother's prior involuntary terminations of parental rights. Both the guardian ad litem and DHHR indicate that the termination of parental rights was in the best interest of the child.

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 14, 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