STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In Re: J.B. and D.B.

No. 11-0088
(Gilmer County 09-JA-15 & 16)

FILED
May 16, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Father appeals the termination of his parental rights to J.B. and D.B. The appeal was timely perfected by counsel, with the complete record from the circuit court accompanying the petition. The guardian ad litem has filed his response on behalf of the children, J.B. and D.B. The West Virginia Department of Health and Human Resources ("DHHR") 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. 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.

"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."
Syl. Pt. 1, *In re Tiffany Marie S.,* 196 W.Va. 223, 470 S.E.2d 177 (1996).

This case began when an abuse and neglect petition was filed against Petitioner Father and Respondent Mother, alleging that Respondent Mother had filed a Domestic Violence Protective Order ("DVP") against Petitioner Father, and Petitioner Father violated it within a week, sending Mother to the hospital, during which time D.B. was home. Respondent

Mother dropped the DVP a month after she was released from the hospital and allowed Petitioner Father to move back in, but was warned by DHHR that if domestic violence occurred again, a Petition would be filed. Another incident occurred within a week, another DVP was filed, and three days after that Respondent Mother overdosed on prescription pills while both children were home. Petitioner Father was given a post-adjudicatory improvement period after stipulating to the abuse and neglect, and did well enough to merit an extension. However, after the extension was granted, Petitioner Father began missing counseling appointments, and failed to fully comply with services and visitation. Petitioner Father also failed to obtain housing deemed suitable by DHHR. DHHR then moved for termination of Petitioner Father's parental rights.

Petitioner Father appeals the termination of his parental rights, arguing that the order terminating his rights fails to make sufficient findings of fact in support of termination, and that the evidence in support of termination was not clear and convincing. "Where a trial court order terminating parental rights merely declares that there is no reasonable likelihood that a parent can eliminate the conditions of neglect, without explicitly stating factual findings in the order or on the record supporting such conclusion, and fails to state statutory findings required by West Virginia Code §49-6-5(a)(6) on the record or in the order, the order is inadequate." Syl. Pt. 4, in part, *In re Edward B.*, 210 W.Va. 621, 558 S.E.2d 620 (2001). The circuit court specifically found on the record that there is no reasonable likelihood that the conditions of abuse and neglect can be substantially corrected in the near future, noting Petitioner Father's lack of adequate housing and failure to comply with services and visitation. The guardian ad litem and DHHR argue in favor of the circuit court's termination in this matter in the best interest of the children.

Based upon careful consideration of the record and arguments of counsel, we find no error in the decision of the circuit court and the termination of parental rights is hereby affirmed.

Affirmed.

ISSUED: May 16, 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