STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

FILED
June 17, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

In Re: D.K., J.K., T.M., and T.K.:

No. 11-0181 (Roane County Nos. 09-JA-12, 13, 14 and 15)

MEMORANDUM DECISION

This appeal arises from the Circuit Court of Roane County, wherein the Petitioner Father's parental rights to J.K. and T.K. were terminated.[1] The appeal was timely perfected by counsel, with the 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, J.K. and T.K. 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 the Interest of: Tiffany Marie S.*, 196 W.Va. 223, 470 S.E.2d 177 (1996). The petitioner challenges the termination of his parental rights, arguing that the circuit court erred in denying an improvement period, and in finding that there had been no change in the

[1]The other children, while residing with petitioner and their natural mother, are not petitioner's biological children.

circumstances that led to the filing of his prior abuse and neglect proceeding. Aggravated circumstances as to the Petitioner Father exist, as he previously had his parental rights to two other children terminated following his conviction of involuntary manslaughter for the shooting death of the children's mother. "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 the Matter of George Glen B., Jr.*, 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 part, *In the Matter of George Glen B.*, 205 W.Va. 435, 518 S.E.2d 863 (1999).

In this matter, the circuit court found that petitioner has continued to have a substance abuse problem which has seriously impaired his parenting skills, and failed to seek treatment for the same. The circuit court further found that petitioner had failed to acknowledge the facts which caused his prior termination, and moved back into the home of Respondent Tia M. despite knowing this action could cause her to risk losing custody of the children. The circuit court further noted that petitioner was homeless, despite having gainful employment and the means necessary to obtain suitable housing. For these reasons, petitioner was not entitled to an improvement period, as he exhibited a lack of capacity to correct the problems that led to the filing of the petition. As for termination, the circuit court relied on these same factors in ruling that termination of petitioner's parental rights was in the children's best interests. 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 to terminate petitioner's parental rights and the circuit court's order is hereby affirmed.

Affirmed.

ISSUED: June 17, 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