STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED
April 19, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

In Re: R.W., B.W., J.F. and J.F. :

No. 11-0184
(Grant County 10-JA-11-14)

MEMORANDUM DECISION

Petitioner Mother appeals the termination of her parental rights to R.W., B.W., J.F. and J.F. 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 children, R.W., B.W., J.F. and J.F. The 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. Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, the Court is of the opinion that this case 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.

Prior to the current proceeding, Petitioner Mother was involved in a prior abuse and neglect proceeding in Mineral County, wherein she stipulated to the same types of abuse and neglect as in the present cases, and completed an improvement period before the children were returned to her in late 2009. A condition of the return of the children was that Respondent Father of J.F. and J.F. was not to have contact with the children. The current abuse and neglect action in this matter was brought because of allegations that Petitioner Mother violated the court order forbidding contact with Respondent Father, as well as domestic violence in the home and a lack of supervision.

Petitioner Mother argues that the circuit court erred in ruling that the conditions of abuse and neglect cannot be corrected, and in not granting an improvement period. In order to receive an improvement period, the parent must demonstrate, by clear and convincing evidence, that he or she is likely to fully participate in the improvement period. *See* W.Va. Code 49-6-12. Judge Jordan denied the request for an improvement period in the present case, because Petitioner Mother had already undergone an improvement period in the prior case, at which time she received "virtually every service available" but failed to benefit, demonstrated by the fact that in less than a year the children were again removed. The circuit court found that "promises to change are hollow," noting that Petitioner Mother and Respondent Father have married and divorced 3 times, exposed the children to domestic and sexual violence, neglected the children and failed to provide proper care and psychological support. Judge Jordan terminated Petitioner Mother's parental rights, finding that termination is in the best interests of the children, as there is no reasonable likelihood that the conditions of abuse and neglect can be substantially corrected in the near future.

Petitioner Mother also argues that the circuit court erred in not permitting evidence that Petitioner Mother was a battered spouse. West Virginia Code §49-1-3(c) states that a battered parent is "a parent...who has been judicially determined not to have condoned the abuse or neglect and has not been able to stop the abuse or neglect of the child or other children due to being the victim of domestic violence...which domestic violence was perpetrated by the person or persons determined to have abused or neglected the child or children." Both DHHR and the guardian ad litem indicate that Petitioner Mother made no attempt to introduce evidence regarding her battered parent defense.

Petitioner Mother also argues that the circuit court erred in denying her post-termination visitation. In regard to post-termination visitation, the evidence must indicate that such visitation or continued contact would not be detrimental to the child's well being and would be in the child's best interest. *See In Re Christina L.,* 194 W.Va. 446, 460 S.E.2d 692 (1995). Both DHHR and the guardian ad litem have filed responses in support of the circuit court's termination, in the denial of an improvement period and in the denial of post-termination visitation, arguing that all of these decisions were in the best interests 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: April 19, 2011

CONCURRED IN BY:

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

DISSENTING:

Justice Menis E. Ketchum