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.J. and J.J.:

No. 11-0240 (Marion County Nos. 10-JA-1, 10-JA-76)

MEMORANDUM DECISION

This appeal arises from the Circuit Court of Marion County, wherein the Petitioner Mother's parental rights to D.J. and J.J. were terminated. 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 his response on behalf of the children, D.J. and J.J. 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 circuit court's termination of her parental rights, alleging several assignments of error. She asserts that the circuit court erred in denying her motion to dismiss the underlying abuse and neglect petitions against her. Petitioner alleges that the DHHR failed to satisfy the requirements of Rule 18 of the Rules of Procedure for Child Abuse and Neglect Proceedings in that the petition contained information regarding her prior involvement with

the DHHR and noted only that petitioner had subsequently given birth to another child. In fact, petitioner alleges that the only pertinent information on her status at the time of the petition's filing was all positive. However, a review of the record clearly indicates that the petitions below appropriately alleged circumstances as to the petitioner's abuse and neglect of the children at issue. While it is true that the vast majority of the allegations in the initial petition concern the petitioner's prior abuse and neglect matter that resulted in voluntary relinquishment of her parental rights to another child, the prior matter involved issues such as petitioner's lack of basic parenting abilities, chronic instability by failing to maintain housing, failure to take prescribed medications for mental health issues, and routinely leaving her prior child with inappropriate caregivers. As such, the DHHR determined that an investigation was warranted, and the petition clearly meets the requirements of Rule 18 of the Rules of Procedure for Child Abuse and Neglect Proceedings, in that it contains a statement of facts justifying court intervention based on the underlying allegations in petitioner's prior abuse and neglect proceeding. For these reasons, the circuit court's decision to deny petitioner's motion to dismiss was not clear error.

Petitioner next alleges that the circuit court erred in determining that she failed to comply with the terms of her pre-adjudicatory improvement period. Specifically, she argues that her testimony demonstrated that she had difficulty in complying due to complications from her pregnancy and also due to her reliance on public transportation. The record, however, indicates that the circuit court cited several other factors in adjudicating petitioner as an abusive or neglectful parent, including taking D.J. on a long automobile trip against the DHHR's directions at a time that the child's medical condition was not good; this trip resulted in hospitalization for the already medically fragile child. Further, petitioner failed to cooperate with scheduled drug screens, failed to comply with the services offered to her, and also failed to have the requisite ability to adequately parent the children. As such, the circuit court's determination that petitioner committed abuse and/or neglect was not clear error.

Lastly, petitioner asserts that it was error to deny her motion for a post-adjudicatory improvement period, and that the denial constitutes a violation of both the state and federal Constitutions, and also West Virginia public policy. Petitioner asserts that she demonstrated that she would comply with the terms of a post-adjudicatory improvement period, and further that D.J.'s medical condition had improved significantly such that it should no longer have been a factor in denying her an additional improvement period. Petitioner argues that denial of her motion for an additional improvement period violated her constitutional guarantees of due process governing her substantial liberty interest in custody of her children, and that West Virginia public policy dictates that reunification should have been sought in this matter as it was in the children's best interests. However, this Court has held that "[t]ermination of parental rights, the most drastic remedy under the statutory provision covering the disposition of neglected children, W.Va. Code, 49-6-5 [1977] may be employed without the use of intervening less restrictive alternatives when it is found that there is no reasonable likelihood

under W.Va. Code, 49-6-5(b) [1977] that conditions of neglect or abuse can be substantially corrected." Syl. pt. 2, *In Re: R.J.M.*, 164 W.Va. 496, 266 S.E.2d 114 (1980).

In denying the petitioner's motion for a post-adjudicatory improvement period and ordering termination of her parental rights, the circuit court cited petitioner's cocaine use during the proceedings, the fact that she missed multiple drug screens, the fact that her parenting and adult life skills classes had been terminated for non-compliance, her failure to acknowledge her substance abuse problem, and also issues surrounding petitioner's unstable relationship with Respondent Father and the unsuitable nature of their home, including dogs residing in the home that posed a danger to the children. This Court has held that, "...in order to remedy the abuse and/or neglect problem, the problem must first be acknowledged. Failure to acknowledge the existence of the problem, i.e., the truth of the basic allegation pertaining to the alleged abuse and neglect or the perpetrator of said abuse and neglect, results in making the problem untreatable and in making an improvement period an exercise in futility at the child's expense." *West Virginia Department of Health and Human Resources ex rel. Wright v. Doris S.*, 197 W.Va. 489, 498, 475 S.E.2d. 865, 874 (1996). Because petitioner refused to acknowledge the circumstances of the abuse and neglect problem and failed to comply with the terms of her pre-adjudicatory improvement period, the circuit court was correct in its finding that there was no reasonable likelihood that petitioner could remedy these circumstances.

For the foregoing reasons, we find no error in the decision of the circuit court to terminate petitioner's parental rights to D.J. and J.J., 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