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: V.R., D.R., S.R., M.C.R., J.R., and H.R.:

No. 11-0325 (Mercer County Nos. 09-JA-37-OA, 38, 39, 40, 41, 82)

MEMORANDUM DECISION

This appeal arises from the Circuit Court of Mercer County, wherein the Petitioner Father's parental rights to his six children, V.R., D.R., S.R., M.C.R., J.R., and H.R., 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 his response on behalf of all the children. The Court has carefully reviewed the record provided and the written arguments of the parties, and the case is mature for consideration.

This Court has considered the parties' briefs and the record on appeal. This matter has been treated and considered under the Revised Rules of Appellate Procedure pursuant to this Court's Order entered in this appeal on February 23, 2011. 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). Petitioner challenges the circuit court's order terminating his parental rights, arguing that the circuit court erred

in finding that the West Virginia Department of Health and Human Resources ("DHHR") had made reasonable efforts to achieve reunification, and further that it was error to find that there was no reasonable likelihood that petitioner could substantially correct the conditions which necessitated the petition's filing. The children in this matter were removed following the petitioner's arrest and Respondent Mother's concurrent incarceration. No appropriate caregivers existed, and the home was found to be unfit and unsanitary. Following petitioner's stipulation to neglect due to alcohol abuse and the condition of the home, he was granted a post-adjudicatory improvement period and provided services through the DHHR, including parenting education. Petitioner now alleges that the DHHR did not make reasonable efforts to achieve reunification due to a lapse in his services. This lapse, petitioner argues, was caused by the administrative process governing the DHHR's services wherein recipients are allotted certain credits that can cause a cessation in services when the individual uses his or her allotment. However, the record in this matter demonstrates that petitioner failed to comply with services during his initial post-adjudicatory improvement period, which lasted over six months, and that he further failed to comply with services when they were later reinstated. For these reasons, the circuit court did not err in finding that the DHHR made the necessary reasonable efforts in providing services to achieve reunification, despite any alleged lapse in the services provided.

Petitioner next argues that the circuit court erred in its finding that there was no reasonable likelihood that petitioner could substantially correct the conditions that led to the petition's filing. He argues that the circuit court did not comply with West Virginia Code § 49-6-5(b), in that it failed to specifically list which enumerated condition it relied upon, and further that the circuit court disregarded positive aspects of certain testimony. However, as noted above, the record clearly shows that petitioner was not compliant with services during this proceeding. Specifically, the record shows that one service provider resigned from working on petitioner's case for fear of personal safety, and that petitioner failed to remedy the issues of alcohol abuse in the home. Further, West Virginia Code § 49-6-5(b) specifically states that the enumerated circumstances which constitute "no reasonable likelihood that conditions of neglect or abuse can be substantially corrected" are not exclusive, thereby allowing a circuit court the ability to base its determination on any equally severe circumstances. In this matter, the circuit court found that, even when service providers were in the home attempting to achieve reunification, the petitioner had friends present who were consuming alcohol. For these reasons, the circuit court did not err in finding that there was no reasonable likelihood that petitioner could substantially correct the conditions of neglect or abuse at issue.

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: 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