STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In Re: S.L., S.R. and K.R.:

No. 11-0383 (Greenbrier County No. 10-JA-27, 28 and 29)

FILED
June 27, 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 S.L., S.R., and K.R. 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. 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 petition in this matter was filed due to ongoing domestic violence between Petitioner Father's girlfriend and his children. Petitioner Father was to file a domestic violence petition against his girlfriend, but failed to do so. Petitioner Father stipulated to the allegations in the petition, and was adjudicated as neglectful. He was granted a post adjudicatory improvement period, requiring him to participate fully in services, including

visitation, MDT meetings and domestic violence counseling. Throughout the proceedings, the record reflects that Petitioner Father failed to separate from his girlfriend, even telling his children that he was choosing the girlfriend over them, and repeatedly indicating that he wished to "give up" the children. The circuit court terminated Petitioner Father's parental rights. The circuit court found Petitioner Father was unwilling or unable to provide for the children's needs, and that DHHR has made reasonable efforts to reunify the family. The circuit court found that there is no reasonable likelihood that the conditions of abuse and neglect can be substantially corrected in the near future. Petitioner Father failed to comply with the requirements to rectify the conditions that led to the children's removal; specifically, he failed to fully participate in parenting classes and domestic violence counseling, failed to end his abusive relationship with his girlfriend, and ignored the circumstances of domestic abuse which led to the filing of the petition.

On appeal, Petitioner Father argues that the circuit court erred in not granting him an alternative dispositional improvement period, as he asserts he was making progress. The guardian ad litem and the DHHR both argue in support of the termination of Petitioner Father's parental rights. This Court has held that "courts are not required to exhaust every speculative possibility of parental improvement before terminating parental rights where it appears that the welfare of the child will be seriously threatened..." Syl. Pt. 1, in part, *In Re: R.J.M.*, 164 W.Va. 496, 266 S.E.2d 114 (1980). Moreover, this Court has directed that "[a]t the conclusion of the improvement period, the court shall review the performance of the parents in attempting to attain the goals of the improvement period and shall, in the court's discretion, determine whether the conditions of the improvement period have been satisfied and whether sufficient improvement has been made in the context of all the circumstances of the case to justify the return of the child[ren]." Syl. Pt. 6, *In the Interest of Carlita B.*, 185 W. Va. 613, 408 S.E.2d 365 (1991). In the present case, Petitioner Father repeatedly stated that he wished to relinquish his rights, failed to engage in services, failed to end his relationship with his girlfriend who had abused his children, and failed to attend visitation due to his frustration with the visitation being supervised. This Court finds no error in the circuit court's failure to grant Petitioner Father another improvement period.

This Court reminds the circuit court of its duty to establish permanency for Z.W. and E.W. pursuant to Rules 36a, 39, 41 and 42 of the West Virginia Rules of Procedure for Child Abuse and Neglect. Further, this Court reminds the circuit court of its duty pursuant to Rule 43 to find permanent placement for Z.W. and E.W. within eighteen months of the date of the disposition order. As this Court has stated, "[t]he eighteen-month period provided in Rule 43 of the West Virginia Rules of Procedures for Child Abuse and Neglect Proceedings for permanent placement of an abused and neglected child following the final dispositional order must be strictly followed except in the most extraordinary circumstances which are fully substantiated in the record." Syl. Pt. 6, *In re Cecil T.*, 2011 WL 864950 (W.Va.2011). Moreover, this Court has stated that "[i]n determining the appropriate permanent out-of-home placement of a child under *W.Va.Code* § 49-6-5(a)(6) [1996], the circuit court shall

give priority to securing a suitable adoptive home for the child and shall consider other placement alternatives, including permanent foster care, only where the court finds that adoption would not provide custody, care, commitment, nurturing and discipline consistent with the child's best interests or where a suitable adoptive home can not be found." Syl. Pt. 3, *State of West Virginia v. Michael M.*, 202 W.Va. 350, 504 S.E.2d 177 (1998).

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 27, 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