STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In Re: L.A.

No. 11-0447 (Marion County 10-JA-87)

FILED
June 27, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

This appeal arises from the Circuit Court of Marion County, wherein the Petitioner Father's parental rights to his child, L.A., 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 her response on behalf of the child, L.A. 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). Petitioner challenges the circuit court's order terminating his parental rights, arguing that it was error for the circuit court to find that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future. Petitioner argues that he complied with services in his prior abuse and neglect cases, and would have done the same in this matter upon his release from jail on charges of third offense driving on suspended license for

driving under the influence. The Court notes that the record clearly shows that petitioner has a history of non-compliance with DHHR services and an inability to apply what he has been taught. Petitioner has been involved in at least two prior abuse and neglect proceedings, during which he was provided services in parenting skills, life skills, random drug and alcohol screens, and supervised visitations. After undergoing these services, designed to educate him on child development and a child's needs, petitioner allowed two of his other children to fall behind on their immunizations. Petitioner also endangered one of the children by fleeing from police while intoxicated with the infant in a stroller, requiring rescue by police to prevent serious injury when the child nearly fell over a wall. Petitioner subsequently relinquished his parental rights to these children voluntarily prior to disposition in the previous abuse and neglect proceeding. However, prior to relinquishment, petitioner was ordered to address his alcohol abuse through Alcoholics Anonymous meetings and random drug and alcohol screens, which he failed to do. Lastly, pursuant to his prior services, petitioner was subject to a ninety day observation period with which, by his own admission, he failed to cooperate or comply. Petitioner's failure to properly have his children immunized, his inability to address his substance abuse, his endangerment of his other children, and his past failure to comply with services shows that he clearly failed to benefit from such services.

West Virginia Code § 49-6-5(b)(3) states that "no reasonable likelihood that conditions of neglect or abuse can be substantially corrected" means that "the abusing adult... [has] demonstrated an inadequate capacity to solve the problems of abuse or neglect on their own or with help" and goes on to state that "[s]uch conditions shall be considered to exist" when "[t]he abusing parent... [has] not responded to or followed through with a reasonable family case plan or other rehabilitative efforts of social, medical, mental health or other rehabilitative agencies designed to reduce or prevent the abuse or neglect of the child, as evidenced by the continuation or insubstantial diminution of conditions which threatened the health, welfare or life of the child." In such an instance, West Virginia Code § 49-6-5(a)(6) grants circuit courts the authority to terminate the parental rights of the abusing parent. Further, this Court has previously 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, and this is particularly applicable to children under the age of three years who are more susceptible to illness, need consistent close interaction with fully committed adults, and are likely to have their emotional and physical development retarded by numerous placements." Syl. Pt. 1, in part, *In re: R. J. M.*, 164 W. Va. 496, 266 S.E.2d 114 (1980). The child at issue in this matter is still less than one year old. At disposition, the circuit court found that petitioner "has not benefitted from the services provided to him in prior cases, and fails to understand how his actions put his child in danger," and further that he had not attempted to seek out services available to him at the Northern Regional Jail. Additionally, petitioner failed to inquire both about visits with his son and as to his son's well being. Based upon the totality of the evidence, the circuit court found that "[t]here is no reasonable likelihood that the conditions

of abuse and neglect can be substantially corrected because [petitioner] has demonstrated an inadequate capacity to solve the problems of neglect on his own or with help," and as a result, terminated the petitioner's parental rights.

For the foregoing reasons, we find no error in the decision of the circuit court and the termination of petitioner's parental rights 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