STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In Re: L.M.:

No. 11-0481 (Marion County 09-JA-43)

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 L.M. 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 child. Petitioner Father has filed his reply. 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 case was filed based on mother's prior relinquishments of her parental rights to three other children. The petition also alleged marijuana use of Petitioner Father and mother. Petitioner Father was granted a pre-adjudicatory improvement period, but failed to attend several psychological appointments. He attended most multidisciplinary team ("MDT") meetings, but at one point became irate when questioned about his lack of

participation in the case. Three case plans were filed prior to Petitioner Father's adjudication as neglectful due to his marijuana use. Petitioner Father failed to attend the adjudicatory hearing. After disposition, Petitioner Father was granted a post-dispositional improvement period of ninety days. Another case plan was filed, indicating that Petitioner Father was still not complying with drug screens, and had only recently begun to comply with services. Petitioner Father was told at an MDT that he had failed a drug screen and had not been compliant with services, at which time he repeatedly threatened to kill himself. After another child's case plan was filed, the circuit court terminated Petitioner Father's parental rights. The circuit court found that Petitioner Father had missed multiple drug screens, that services for parenting and life skills had to be terminated due to noncompliance, and that he admitted to drug use but felt that drug counseling was unwarranted. The court found that the conditions of abuse and neglect which led to the child's removal had not been remedied, nor had Petitioner Father benefitted from the services provided.

On appeal, Petitioner Father argues that the circuit court erred in terminating Petitioner Father's parental rights because the family case plan failed to meet the statutory requirements of West Virginia Code §49-6D-3, and because the conditions of neglect have been significantly corrected. The guardian ad litem and the DHHR both argue in support of the termination and note that the case plans, along with the personal communications to Petitioner Father, were sufficient in this matter. "The purpose of the family case plan as set out in W.Va.Code, 49-6D-3(a) (1984), is to clearly set forth an organized, realistic method of identifying family problems and the logical steps to be used in resolving or lessening these problems." Syl. Pt. 5, *State ex rel. Department of Human Services v. Cheryl M.*, 177 W.Va. 688, 356 S.E.2d 181 (1987). In the present case, several family case plans were filed. While these case plans are not a perfect model of the relevant provisions of the West Virginia Code, the family problems are properly enumerated, as the case plan identifies Petitioner Father's substance abuse problem, and his repeated failure to appear for drug screens. The family case plans also detail Petitioner Father's failure to engage in services and note that services were discontinued due to noncompliance. Moreover, the family case plan notes "logical steps" to be used in resolving the problems, including compliance with drug screens and services. Although the case plan does not specify exactly how the problems are to be alleviated, the record is replete with instances in which DHHR, the guardian ad litem, service providers, and the MDT members explained that Petitioner Father needed to appear for drug screens, needed to engage in services, and needed drug counseling. The record also shows that Petitioner Father was told more than once to obtain a drug screen immediately following an MDT meeting, yet failed to do so, and that Petitioner Father repeatedly denied he had any type of drug problem and therefore did not need drug counseling. This Court finds that the case plans filed in this action, together with the orders of the circuit court and instructions by the MDT and service providers are sufficient to set forth an organized, realistic method of identifying the family problems and the logical steps to be used in resolving those problems.

Regarding the termination of Petitioner Father's parental rights, this Court has found

that "[a]s a general rule the least restrictive alternative regarding parental rights to custody of a child under W.Va.Code, 49-6-5 (1977) will be employed; however, 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 re: R. J. M.* 164 W.Va. 496, 266 S.E.2d 114 (1980). L.M. has just turned two years old in this matter, and has never resided with Petitioner Father. The record shows that after months of noncompliance, after the case plan indicated that the DHHR was seeking termination, Petitioner Father only then began complying with services. This Court finds that the circuit court did not err in terminating Petitioner Father's parental rights.

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