STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In Re: **C.W.**

No. 12-0088 (Raleigh County 10-JA-103)

FILED
October 22, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Mother, by counsel R. Stephen Davis, appeals the Circuit Court of Raleigh County's order entered on November 29, 2011, terminating her parental rights to C.W. The guardian ad litem, Stacey Lynn Fragile, has filed her response on behalf of the child. The West Virginia Department of Health and Human Resources ("DHHR"), by William Bands, its attorney, has filed its response joining in and concurring with the guardian's response.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

The instant petition was filed after Petitioner Mother was involved in a vehicle accident with C.W. in the vehicle. All of the adults in the vehicle were found to be under the influence, and therefore the hospital refused to release the child to them. As no other adult would assume responsibility for C.W. at the time, she was placed in foster care. Petitioner Mother stipulated to the allegations in the petition, including an admission that she smoked marijuana just prior to the accident, and that she had engaged in domestic violence in front of the child. She requested an improvement period, which was granted. However, visitation was ended after the child's counselor diagnosed the child with post-traumatic stress disorder due to the abuse perpetrated on her and witnessed by her. Within two months of being granted an improvement period, petitioner ceased all participation. The DHHR then moved to terminate her improvement period. After a hearing on the matter, petitioner's improvement period was terminated. The circuit court then terminated her parental rights.

The Court has previously established the following standard of review:

> "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 Interest of Tiffany Marie S.*, 196 W.Va. 223, 470 S.E.2d 177 (1996).

Syl. Pt. 1, *In re Cecil T.* 228 W.Va. 89, 717 S.E.2d 873 (2011).

On appeal, petitioner argues that the circuit court erred in terminating her parental rights because the bond between her and her child was broken due to the DHHR ceasing visitation for no reason. Petitioner argues that the damage done based on the cancellation of visitation irreparably damaged her. In response, the guardian argues that petitioner failed to cooperate with her case plan, was incarcerated twice during her improvement period, failed to seek help for her drug problem until the case had been open for eleven months, and repeatedly lied to the DHHR. Moreover, the guardian notes that petitioner failed to present any evidence at disposition as to why her parental rights should not be terminated. The DHHR concurs with the guardian's arguments.

This Court has held that "'[c]ourts are not required to exhaust every speculative possibility of parental improvement . . . 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)." Syl. Pt. 4, in part, *In re Cecil T.*, 228 W.Va. 89, 717 S.E.2d 873 (2011). In the present case, Petitioner Mother was granted an improvement period, during which time she was arrested twice and wholly failed to participate in services from May of 2011 through disposition in November of 2011. Therefore, we find no error in the termination of her parental rights.

This Court reminds the circuit court of its duty to establish permanency for the child. Rule 39(b) of the Rules of Procedure for Child Abuse and Neglect Proceedings requires:

> At least once every three months until permanent placement is achieved as defined in Rule 6, the court shall conduct a permanent placement review conference, requiring the multidisciplinary treatment team to attend and report as to progress and development in the case, for the purpose of reviewing the progress in the permanent placement of the child.

Further, this Court reminds the circuit court of its duty pursuant to Rule 43 of the Rules of Procedure for Child Abuse and Neglect Proceedings to find permanent placement for the child within twelve months of the date of the disposition order. As this Court has stated,

> [t]he [twelve]-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.*, 228 W.Va. 89, 717 S.E.2d 873 (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 v. Michael M.*, 202 W.Va. 350, 504 S.E.2d 177 (1998). Finally, "[t]he guardian ad litem's role in abuse and neglect proceedings does not actually cease until such time as the child is placed in a permanent home." Syl. Pt. 5, *James M. v. Maynard* , 185 W.Va. 648, 408 S.E.2d 400 (1991).

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: October 22, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Thomas E. McHugh