

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

In Re: C.P.

No. 12-0231 (Jackson County 11-JA-49)

FILED
September 7, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Mother, by counsel Erica Brannon Gunn, appeals the Circuit Court of Jackson County's January 31, 2012, order terminating her parental rights to C.P. The guardian ad litem, Laurence Hancock, has filed his response on behalf of the child. The West Virginia Department of Health and Human Resources ("DHHR"), by Lee A. Niezgoda, its attorney, has filed its response. Petitioner Mother filed a reply.

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.

Prior to the birth of the child in this case, Petitioner Mother's parental rights to four older children were involuntarily terminated. The triggering event for such terminations was the serious injury sustained by the third child, then ten weeks old, at the hands of C.P. Sr., who is also the father of the child in the current case. The infant's injuries included "severe brain trauma, two skull fractures, a subdural hematoma, and rib fractures to the right and left sides." He also had "fingertip bruising to the forehead and top of the head, [with] bruising to the back." The father pled guilty to charges stemming from the injuries and served time in prison as a result.

When he was released from prison, the father and Petitioner Mother reunited, despite the injuries to their child, and Petitioner Mother testified that they decided to have another baby together. Petitioner Mother became pregnant with the child in the current case. There was a domestic violence incident in which father injured Petitioner Mother in February of 2011. Petitioner Mother was admitted to Sharpe Hospital following the incident due to mental health problems. Despite the domestic violence incident, Petitioner Mother continued to have a relationship with C.P. Sr. until after the child was born and the DHHR filed the petition in the present matter.

Petitioner Mother filed a verified answer admitting her prior terminations. Petitioner Mother moved for an improvement period. The circuit court denied the motion for improvement period and ultimately terminated her parental rights. The circuit court found that Petitioner

Mother, despite improvements in her lifestyle such as employment and housing, still had the continuing main problems of poor decision-making and inappropriate choices of male companions.

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).

Petitioner Mother argues that the circuit court erred in determining that she had not accepted responsibility for her actions and in determining that she had “played the system” when she ended her relationship with C.P. Sr. Petitioner Mother argues that her testimony establishes that she had accepted responsibility and acknowledged that C.P. Sr. had injured her older child and that she only resumed their relationship because she desired contact with their older child who is in the custody of paternal relatives. In response, the DHHR, joined by the guardian ad litem, notes that Petitioner Mother was given the opportunity to present evidence and testimony to prove that the issues which motivated the prior terminations of parental rights had been remedied but failed to do so. The circuit court properly based its conclusions upon such factors as her statements to the DHHR worker that C.P. Sr. had been “railroaded” in regard to the prior case. Petitioner Mother continued to display poor judgment in reconciling with C.P. Sr. and planning another baby with him following the serious injuries that he had inflicted on their older child. The Court does not find any error in the circuit court’s findings.

Petitioner Mother also argues that the circuit court clearly erred in determining that she had not taken the necessary steps to correct or counter significant risks to her child. Mother argues that she has begun to attend counseling that will help her to correct problems associated with her relationships with men. Mother also has obtained housing and steady employment. Petitioner Mother argues that the circuit court ignored such positive steps.

The DHHR responds that “the only reforms petitioner ha[s] since the initial termination were in her personal maintenance. She ha[s] improved her ability to support herself and maintain an appropriate home. While these strides are certainly commendable, they do nothing to reassure

the court that an after-born child would be safe in her care.” The DHHR cites the most significant problem as “her deplorable choices in male partners” noting that she reunited with C.P. Sr. when he was released from prison where he had been serving time for the “horrific abuse he perpetrated upon their first child.” Instead of avoiding C.P. Sr., Petitioner Mother planned another pregnancy with him per her testimony. DHHR points out that “her last separation from [C.P. Sr.] was essentially concurrent with the filing of the instant petition.” The Court concludes from review of the available record and the arguments of the parties, that the circuit court did not err in its findings nor in terminating Petitioner Mother’s parental rights to C.P.

Petitioner Mother finally argues that the circuit court clearly erred in not granting her an improvement period. Mother argues that there was no compelling reason to deny an improvement period because C.P. was removed from her at the hospital and she was never given a chance to remedy the circumstances that led to the prior terminations. The DHHR argues that Petitioner Mother is incorrectly asserting that a parent with prior terminations must be afforded an improvement period as a matter of right. The DHHR cites the governing statute, West Virginia Code § 49-6-12, as making it clear that such decision lies within the discretion of the circuit court. Specifically with regard to a post-adjudicatory improvement period, the statute provides that a court may grant a respondent an improvement period not to exceed six months when the respondent demonstrates by clear and convincing evidence that the respondent is likely to fully participate in the improvement period. Applying this standard to the present case, the DHHR asserts that there was no error by the circuit court in denying an improvement period. This Court agrees.

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: September 7, 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