STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

***In Re*: N.C. and B.B.**

No. 12-0250 (Cabell County 09-JA-67 & 68)

FILED
September 24, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

CORRECTED MEMORANDUM DECISION

Petitioner Father, by counsel A. Courtenay Craig[1], appeals the Circuit Court of Cabell County's order entered on February 8, 2012, terminating his parental rights to B.B.[2] The guardian ad litem, Cathy L. Greiner, has filed her response on behalf of the child. The West Virginia Department of Health and Human Resources ("DHHR") has filed a response out of time.

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 Father stabbed and killed the mother of B.B. and N.C. while B.B. slept in the next room. Petitioner Father was adjudicated as a neglectful parent. Initially, the children were both placed with petitioner's mother, who is B.B.'s paternal grandmother, and no relation to N.C. However, after reports of poor and disparate treatment to N.C., the children were moved to foster care, and then eventually placed together with their maternal grandmother. Throughout the proceedings, the children's counselor, the guardian, the DHHR, and the circuit court agreed that the children should remain together. The paternal grandmother was granted intervenor status, and made numerous attempts to regain custody of only B.B. These requests were denied based on the circuit court's order that the children remain placed together, and based on the DHHR's finding that the maternal grandmother was a proper placement for both children. The paternal grandmother indicated that she was not interested in obtaining custody of N.C. After several continuances, Petitioner Father was convicted of voluntary manslaughter and concealing a dead body relating to the stabbing death of the mother of B.B. and N.C. The circuit court found that based on this conviction, this case represented aggravated circumstances, and terminated Petitioner Father's parental rights. The children were to continue

[1] The Court notes that Mr. Craig represented petitioner's mother, the paternal grandmother, in the abuse and neglect proceedings below. Mr. Craig also represented the petitioner in his criminal action.

[2] Petitioner Father is the father of B.B. and has no rights regarding N.C. Thus, this appeal only deals with B.B.

their placement with the maternal grandmother, with whom they had both lived for approximately two years at the time of disposition. Paternal grandmother received visitation.

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 first argues that the circuit court abused its discretion in failing to hold a disposition hearing regarding placement of B.B. where the DHHR could not provide clear and convincing evidence that placement with the maternal grandmother was in the child's best interests. Petitioner Father argues that he never received a disposition hearing prior to the termination of his parental rights. He also asserts that his wish was for his son to be placed with the child's paternal grandmother, and that he was never given the opportunity to be heard on his preference for the child's placement.

The guardian argues in response that the placement of the children is proper, as only the maternal grandmother would take both children, thereby satisfying the circuit court's directive that the children not be separated, and satisfying the sibling preference. The guardian also concurs in the termination of parental rights in this matter, stating that petitioner was convicted of voluntary manslaughter in the mother's death, and that he was sentenced to sixteen to twenty years in the penitentiary. The DHHR's response makes the same arguments, and the DHHR concurs in termination.

Upon a thorough review of the record, this Court finds that petitioner's position is without merit. First, petitioner has no standing to argue placement of B.B., as his parental rights have been terminated to the child. As this Court has previously stated,

> [a] final order terminating a person's parental rights, as the result of either an involuntary termination or a voluntary relinquishment of parental rights, completely severs the parent-child relationship, and, as a consequence of such order of termination, the law no longer recognizes such person as a "parent" with regard to the child(ren) involved in the particular termination proceeding.

Syl. Pt. 4, *In re Cesar L.*, 221 W.Va. 249, 654 S.E.2d 373 (2007). The paternal grandmother has failed to appeal the placement. As petitioner has no standing on this issue, this Court declines to comment on the placement of the child.

As to petitioner's allegations that no disposition hearing was held, this Court also finds petitioner's allegation baseless. The DHHR filed a notice that it was moving for the termination of Petitioner Father's parental rights, and a specific hearing was held on the same. In fact, this hearing was continued at least once, based on the continuances in the criminal action. This action continued for more than two years, and it is clear from the record that petitioner had numerous opportunities to be heard, and was in fact heard.

Petitioner also argues that his rights should not have been terminated simply because he was convicted of voluntary manslaughter. He argues that the killing was self-defense, and argues extensively that he was not guilty of voluntary manslaughter. Again, we find petitioner's arguments without merit and find that termination was proper in this matter. Pursuant to West Virginia Code § 49-6-5 (a)(7)(B)(ii), the DHHR was not required to make reasonable efforts to preserve the family, based on the fact that petitioner stabbed and killed B.B.'s mother. Further, this Court has found that a conviction and subsequent incarceration after one parent kills the other are significant factors in determining whether a parent's rights should be terminated. *See*, *Nancy Viola R. v. Randolph W.*, 177 W.Va. 710, 356 S.E.2d 464 (1987). The order terminating petitioner's parental rights is affirmed.

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 24, 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