STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In Re: H.G. and D.G.

No. 12-0251 (Cabell County 10-JA-29-32)

FILED
June 25, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Mother, by counsel Richard Vital, appeals the Circuit Court of Cabell County's December 21, 2011, order terminating her parental rights to H.G. and D.G.[1] The guardian ad litem, Jacquelyn Stout Biddle, has filed her response on behalf of the children. The West Virginia Department of Health and Human Resources ("DHHR"), by Lee A. Niezgoda, its attorney, has filed its response.

Having reviewed the appendix 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 appendix 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.

A petition was filed against Petitioner Mother and Respondent Father first in 2009, alleging physical abuse by Respondent Father, failure to support the children, and failure to protect by Petitioner Mother. Both parents were offered extensive services after admitting to the allegations in the petition, and eventually reunification occurred, with two older children of Petitioner Mother's going to live with their father, upon their request. Approximately four months after the initial petition was dismissed, the DHHR received a new referral regarding this family after Respondent Father physically abused Petitioner Mother's child H.G. and was arrested for this incident in North Carolina. At the time, Respondent Father's blood alcohol content was .18. Petitioner Mother took the children back to West Virginia, but then returned to North Carolina to pick up Respondent Father and moved him back into the home. Another petition was filed after this incident and the children were removed.

[1]Four children were initially named in the petition; however, only H.G. and D.G. are Petitioner Mother's biological children, and she only appeals the termination of her parental rights regarding these two children.

Petitioner Mother and Respondent Father again admitted to the allegations contained in the petition, and Respondent Father was adjudicated as abusing, while Petitioner Mother was adjudicated as neglectful. Both were granted post-adjudicatory improvement periods. Although the circuit court noted that the parents had not substantially complied with their initial improvement period, an extension was granted to each. The parents were then each granted a dispositional improvement period. Throughout the improvement periods, the parents were only minimally complying with services. The circuit court then held three days of dispositional hearings in which numerous service providers and the parents testified. Moreover, the circuit court extensively interviewed the children in camera in their therapist's office.

After taking all of this evidence, the circuit court terminated the rights of Petitioner Mother and Respondent Father. The circuit court found that neither parent had substantially complied with the terms and conditions of the case plan. Respondent Father had failed to complete the following: anger management; marriage counseling; a batterer's intervention program; alcohol assessment; sex offender assessment; and, counseling. Petitioner Mother had failed to complete the following: marriage counseling; individual counseling; family counseling; and, failed to pay child support. Respondent Father has failed to admit to his many shortcomings such as alcohol abuse and physical abuse of others, while Petitioner Mother has a lifelong history of placing her own relationship needs over the needs of her children. The circuit court also noted that each of the four children have separately indicated a strong desire not to return to their parents' care. Moreover, the circuit court noted that the children have been out of the home for over fifteen months. The circuit court concluded that here is no reasonable likelihood that the conditions of neglect and abuse can be substantially corrected in the near future. The circuit court also denied any post-termination visitation, based partially upon the testimony of the children, and on the testimony of the children's therapist and their older sibling. The possibility of future visitation is left open should the children change their minds regarding 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." Syllabus Point 1, *In the Interest of: Tiffany Marie S.*, 196 W.Va. 223, 470 S.E.2d 177 (1996).

Syl. Pt. 1, *In re Faith C.*, 226 W.Va. 188, 699 S.E.2d 730 (2010).

On appeal, Petitioner Mother first argues that the circuit court erred in terminating her parental rights, as this was not the least restrictive alternative available, did not preserve the children's health and safety, and was not necessary to establish stability and permanency for the children. Petitioner Mother argues that termination in this matter served only to preclude the children from ever being reunited with their mother "whom they dearly loved."

The DHHR argues in favor of the termination of parental rights, noting that Respondent Father was Petitioner Mother's fifth husband, and there has been discord in every marriage. Moreover, Petitioner Mother's adult daughter testified as to the continuous discord in the home throughout her lifetime due to Petitioner Mother's dependence on males, and the DHHR argues that the record shows that most, if not all, of these men were abusive. Furthermore, the DHHR argues that the children testified in camera that they were fearful of living in the home and that their mother failed to protect them from abusive men. The DHHR notes that the children's counselor also recommended that the children not be reunited with Petitioner Mother. Additionally, petitioner did not pay child support, failed to complete marital counseling, failed to complete her therapy program, and failed to obtain housing that could accommodate her children.

The guardian also argues in favor of the termination of parental rights, noting that Petitioner Mother was often very late to visitation and failed to make her children a priority. Moreover, she was granted visitation pending this appeal, yet has not seen her children since September of 2011. The guardian also indicates that Petitioner Mother has not seen her older children since 2009. The guardian argues that Petitioner Mother has continued in her pattern of prioritizing her own romantic relationships over her relationship with her children.

With regard to termination of parental rights, this Court has held as follows:

> "As 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 . . . ." Syllabus point 1, *In re R.J.M.*, 164 W.Va. 496, 266 S.E.2d 114 (1980).

Syl. Pt. 4, *In re Kristin Y.*,in part, 227 W.Va. 558, 712 S.E.2d 55 (2011). This Court notes that the instant petition is the second petition filed against Petitioner Mother; thus, she has had more than two years of services. Despite this fact, the circuit court, after hearing all of the evidence, determined that Petitioner Mother was not likely to ever improve. This Court finds no error in the circuit court's termination of parental rights.

Petitioner Mother next argues that the circuit court erred in finding that the conditions of abuse and neglect could not be substantially improved in the near future. She states that her attitudes and beliefs did change, and that she did not "merely go through the motions" but in fact divorced Respondent Father. She also states that she has nothing more to do with Respondent Father, which

was the main complaint throughout these proceedings. She also argues that she has learned independence and that she deserves to prove that she can parent these children.

The DHHR argues in response that Petitioner Mother had over fifteen months to improve her circumstances and complete the requirements of the case plan. However, she failed to do so. The guardian states that Petitioner Mother has not changed and still fails to admit her role in these abuse and neglect proceedings. Moreover, she has failed to make her children a priority and failed to benefit from services.

Petitioner Mother argues that she was compliant in services and had improved her life. "As we explained in *West Virginia Dept. of Human Serv. v. Peggy F.*, 184 W.Va. 60, 64, 399 S.E.2d 460, 464 (1990), it is possible for an individual to show 'compliance with specific aspects of the case plan' while failing 'to improve . . . [the] overall attitude and approach to parenting.'" *In the Interest of Carlita B.*, 185 W.Va. 613, 626, 408 S.E.2d 365, 378 (1991). Although Petitioner Mother participated in some services, the record reflects that she did not substantially correct the conditions that led to the filing of the petition, including continuously failing to protect her children, and failing to prioritize her children's needs over her own. This Court finds that the circuit court did not abuse its discretion.

Finally, Petitioner Mother argues that the circuit court placed too much weight and emphasis on the preference of the children due to their tender years, and that the circuit court must consider their health and welfare over the preferences of the children. The DHHR argues that the circuit court properly considered not only the children's testimony, but also the testimony of Petitioner Mother's adult daughter, the testimony of the children's counselor, and all of the other evidence in the case in making its ruling precluding visitation and reunification. The guardian argues that the children have been adamant about not returning to Petitioner Mother's home and that all of the evidence supports this termination of parental rights.

In the present case, the circuit court extensively interviewed all four of the children involved in this petition. In the circuit court's well-reasoned disposition order, the court credits the children's individual testimony and notes that none of the children wished to reunite with Petitioner Mother. Further, the children's therapist opined that visitation and reunification was not in the children's best interest. Based upon all of the foregoing, it is clear that the circuit court did not abuse its discretion, and the Court declines to disturb this decision on appeal.

This Court reminds the circuit court of its duty to establish permanency for the children. 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 children within eighteen months of the date of the disposition order.[2] As this Court has stated, "[t]he eighteen-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: June 25, 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

[2] Rule 43 was amended effective January 3, 2012. The amended rule reducing the eighteen-month period for permanent placement to twelve months only applies to final dispositional orders entered after January 3, 2012.