

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

In Re: B.K..

No. 12-0510 (Monongalia County 10-JA-09)

FILED

November 19, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Father, by counsel Edmund J. Rollo, appeals the Circuit Court of Monongalia County's order entered on March 19, 2012, terminating his parental rights to B.K. Petitioner's counsel has filed his brief pursuant to *Anders v. Cal.*, 386 U.S. 738 (1967) and *Rhodes v. Leverette*, 160 W.Va. 781, 239 S.E.2d 136 (1977). The guardian ad litem, Deanna L. Pennington, has filed her 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.

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 abuse and neglect petition in this matter alleged physical abuse by the mother, domestic violence between Petitioner Father and the mother, severe psychiatric issues of the mother which were ignored by Petitioner Father, and drug abuse by Petitioner Father. Both parents were granted post-adjudicatory improvement periods, and both parents were substantially compliant, although Petitioner Father did have several positive drug screens. Both parents were then granted three-month post-dispositional improvement periods after the circuit court found at disposition that it did not have enough information to render a decision regarding the termination of parental rights. Although Petitioner Father was only minimally compliant, he was given another extension of three months to his dispositional improvement period. During that time, Petitioner Father and the mother married, but within a month, the mother had filed a restraining order against Petitioner Father.

The circuit court then terminated Petitioner Father's parental rights. The court found that Petitioner Father had not maintained employment or housing, due in part to his untreated anger management issues and had continued to abuse illegal drugs. The circuit court further found that the child had been in foster care for twenty-three months, and that Petitioner Father had failed to participate in rehabilitative efforts to solve the problems that led to the child's removal.

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 argues that the circuit court erred in terminating his parental rights because it failed to consider the fact that B.K.’s medical tests showed no abuse or neglect, and B.K.’s mother began taking her psychiatric medication properly. Petitioner also argues that he was not present when the mother physically abused B.K. Moreover, petitioner argues that the child was placed in a foster home that had too many children in it. Finally, petitioner points out that the circuit court at first refused to proceed with disposition because there was not enough evidence.

In response, the guardian argues in favor of the termination of parental rights, and notes that Petitioner Father stipulated to the fact that he failed to protect B.K. The guardian adds that petitioner failed to provide a stable home for the child and failed to show significant improvement during his extended improvement periods. The DHHR also concurs in the termination of parental rights and notes how unstable petitioner’s life was throughout the proceedings. Petitioner was continuously looking for appropriate housing and had severe anger management issues that resulted in evictions, threats toward service providers, and angry outbursts during Multidisciplinary Treatment Team meetings and visitations. Further, he failed to successfully complete his improvement period despite being granted multiple extensions.

This Court has found as follows:

“[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, 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 part, *In re R.J.M.*, 164 W.Va. 496, 266 S.E.2d 114 (1980).

Syl. Pt. 4, *In re Cecil T.*, 228 W.Va. 89, 717 S.E.2d 873 (2011). In the present matter, petitioner

was granted almost two years of improvement periods yet he failed to successfully correct the conditions which led to the filing of the petition. Therefore, we find no error in the termination of 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: November 19, 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