

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

In Re: J.H., C.H., and P.H.

No. 12-0568 (Mason County 10-JA-25, 26 & 27)

FILED

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

MEMORANDUM DECISION

Petitioner Mother's appeal, by counsel Robert W. Bright, arises from the Circuit Court of Mason County, wherein her parental rights to her children, J.H., C.H., and P.H., were terminated by order entered on April 4, 2012. The West Virginia Department of Health and Human Resources ("DHHR"), by counsel William L. Bands, has filed its response. The guardians ad litem for the children, Jason D. Holdren and Tanya Hunt Handley, have filed a joint response on behalf of the children.

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 proceedings below were initiated upon allegations of educational neglect after petitioner was arrested for the truancy of her children. According to the initial abuse and neglect petition, even after petitioner's arrest, the children continued to be absent from school. The parents admitted to the allegations in the petition concerning the children's over-abundance of absences from school at adjudication. Both parents were thereafter granted post-adjudicatory improvement periods. On May 9, 2011, the DHHR filed a motion to revoke petitioner's post-adjudicatory improvement period, citing a positive drug screen and continued issues with the children's school attendance. The following day, the DHHR filed an amended petition alleging drug use by the parents. On June 6, 2011, petitioner admitted to abusing illegal drugs and the circuit court revoked her post-adjudicatory improvement period. Shortly thereafter, petitioner was granted a second post-adjudicatory improvement period on the amended petition. Several months later, the circuit court revoked petitioner's post-adjudicatory improvement period and thereafter terminated her parental rights to the children.

On appeal, petitioner alleges that the circuit court erred in finding that there was no reasonable likelihood that the conditions of abuse or neglect could be substantially corrected in the near future and in terminating her parental rights. Specifically, she argues that she made substantial efforts to comply with the case plans and improvement periods, and that the findings are therefore clearly erroneous. Petitioner also argues that the circuit court did not order her to provide a doctor's excuse for every day the children missed school. Despite this fact, petitioner

argues that the DHHR still used the lack of a doctor's excuse as a basis to seek revocation of her improvement period, and that the circuit court relied upon this erroneous information. Petitioner further argues that one month of an improvement period was insufficient to learn anything from the services provided and modify her negative behaviors and habits. Further, petitioner argues that she evidenced a desire to be free of drug addiction by moving away from the drug culture that was prevalent near her home.

The DHHR responds and argues in favor of the circuit court's termination of petitioner's parental rights. According to the DHHR, there was a legitimate finding that the petitioner was an abusing parent and that the children were abused and/or neglected. Citing West Virginia Code §46-6-5(a), the DHHR argues that such a finding triggers the circuit court's analysis of its disposition options, and that termination was proper because of petitioner's continued drug abuse and her failure to comply with the terms of her improvement periods. The guardians ad litem for the children respond jointly and also argue in favor of the circuit court's termination of petitioner's parental rights. The guardians argue that the petitioner's admission to drug abuse and the fact that the children had not been attending school were sufficient to support revocation. Further, the guardians argue that petitioner was habitually addicted to drugs such that her proper parenting skills were impaired, and that she failed to follow through with the family case plan or other rehabilitative efforts.

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 Cecil T.* 228 W.Va. 89, 717 S.E.2d 873(2011). Pursuant to West Virginia Code §§ 49-6-5(b)(1) and (3), it is clear that the circuit court was presented with sufficient evidence to find there was no reasonable likelihood that petitioner could substantially correct the conditions of neglect or abuse. In its order terminating petitioner's second improvement period, the circuit court noted the following factors it relied upon: petitioner's failure to complete adult life skills and parenting classes; petitioner's failure to complete in-patient substance abuse treatment; petitioner's failure to enter a rehabilitation facility to do follow-up to secure placement in an in-patient substance abuse treatment facility; petitioner's failure to appear for her required psychological assessment; petitioner's failure to secure adequate housing for the children; and,

petitioner's failure of a drug screen without providing a written prescription for the substance for which she tested positive. These factors also support the circuit court's finding, and we find no error in this regard.

Further, the Court finds no merit in petitioner's argument that the circuit court erred in terminating her first improvement period after approximately one month. While petitioner argues that providing a doctor's excuse for the children's absence was not a requirement of her improvement period, the Court notes that this fact is irrelevant. Simply put, a term of petitioner's first improvement period was that "[t]he children must attend school on a regular basis." However, the record shows that all three children missed numerous days of school after the improvement period commenced. Further, the Court notes that petitioner's improvement period was terminated, in part, upon the DHHR's discovery that petitioner was abusing multiple controlled substances, including benzodiazepines, cocaine, methadone, opiates, and oxycodone. In light of the new evidence and allegations against petitioner, the circuit court was wholly correct in terminating petitioner's improvement period.

In regard to the circuit court's termination of petitioner's parental rights, the circuit court cited several factors that support a finding that there was no reasonable likelihood that the conditions of abuse or neglect could be substantially corrected in the near future. Further, the circuit court specifically found that termination of petitioner's parental rights was necessary for the welfare and best interests of the children. Based upon these findings, the circuit court appropriately terminated petitioner's parental rights pursuant to West Virginia Code § 49-6-5(a)(6).

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 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 petitioner’s 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