STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

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

***In Re*: O.M.**

No. 12-0591(Clay County 11-JA-126)

MEMORANDUM DECISION

Petitioner Father, by counsel William M. Lester, appeals the Circuit Court of Clay County's order entered on April 18, 2012, terminating his parental rights to O.M. The guardian ad litem, Michael W. Asbury, Jr., has filed his response on behalf of the child. The West Virginia Department of Health and Human Services ("DHHR"), by counsel William L. Bands, 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 petition in this matter was filed based on the fact that Petitioner Father, mother, and then-one-year-old O.M. were living in a vehicle, and that the parents were both addicted to drugs. Both parents were adjudicated as abusive and neglectful, and were ordered to attend drug rehabilitation and regular drug screens. Both parents were given an improvement period. The record provided by petitioner in this matter is scant; however, it appears that petitioner was not compliant in his improvement period. The State alleged that petitioner had failed to attend some of his drug testing and had attempted to submit a diluted specimen at drug testing. Further, the State asserted that the parents had failed to establish a suitable home for the child and failed to correct the conditions that led to the filing of the petition. After a hearing, the circuit court terminated Petitioner Father's parental rights, finding that he was addicted to drugs and had failed to comply with a reasonable family case plan.

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 based on its finding that the conditions that led to the filing of the petition were unlikely to be corrected, and that petitioner failed to benefit from the services offered. Petitioner argues that the DHHR did little to nothing to determine whether petitioner could adequately care for his child with intensive long-term assistance. Petitioner argues that termination in this matter is premature.

In response, the guardian argues in favor of termination, stating that throughout this case, Petitioner Father refused to maintain contact with the DHHR and failed to comply in services, drug testing, and the case plan. Further, despite his admissions during the adjudicatory hearing, Petitioner Father denied his drug addiction. The DHHR has also responded in favor of the termination of Petitioner Father's parental rights, arguing that petitioner had ample time to comply in the case plan and services, but failed in every regard.

This Court finds no error in the circuit court's order and finds that petitioner has produced no evidence showing that he complied in the family case plan. Moreover, this Court finds no error in the circuit court's finding that petitioner is addicted to drugs, and petitioner again has produced no evidence to the contrary. Pursuant to West Virginia Code §§ 49-6-5 (b)(1), (2), and (3), there is "no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected" when a parent is addicted to drugs, inhibiting his or her ability to parent; has refused to cooperate in the development of a family case plan; or has not responded to a case plan. Therefore, termination was proper under the facts of this case.

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