STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

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

In Re: B.P. and K.P.

No. 12-0598 (Webster County 11-JA-35 & 11-JA-36)

MEMORANDUM DECISION

Petitioner Mother files this appeal, by counsel Daniel Grindo, from the Circuit Court of Webster County, which terminated petitioner's parental rights to B.P. and K.P. by order entered on April 20, 2012. The guardian ad litem for the children, Howard Blyler, has filed a response on behalf of the children supporting the circuit court's order. The Department of Health and Human Resources ("DHHR"), by its attorney William Bands, also filed a response in support of termination.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented in the parties' written briefs and the record, 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.

In July of 2011, DHHR filed the petition initiating this case against the children's parents. This petition alleged that they engaged in domestic violence in front of the children, B.P. and K.P., and also engaged in substance abuse. The circuit court granted the parents improvement periods. Petitioner Mother was given a six-month improvement period from September of 2011 until March of 2012. During this period, she failed to comply with its terms. Accordingly, the circuit court terminated Petitioner Mother's parental rights by its order entered in April of 2012 and later denied post-termination visitation. Petitioner Mother appeals.

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 Mother first argues that the circuit court erred in terminating her parental rights without properly considering her bond with the children because it did not have a full assessment by the psychologist when it considered termination. For instance, the psychologist testified that she did not observe the children interacting with the parents. Petitioner further contends that a bond exists between she and her children, even in the time she has been away from her children. Petitioner Mother also argues that the circuit court erred in terminating her parental rights on the finding that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected. Petitioner Mother asserts that given the progress she was able to make during her improvement period, the circuit court's decision to terminate her parental rights was premature.

In response, the guardian ad litem and DHHR both argue that the circuit court did not err in terminating Petitioner Mother's parental rights. The guardian points out that during her improvement period, Petitioner Mother became involved with the children's father again even after DHHR counseled her to disassociate herself from him. DHHR highlights that Petitioner Mother failed to attend parenting classes or visitation during her improvement period and at one point, she barricaded herself in her apartment and refused to answer the door when caseworkers came for a visit. Due to her addiction to drugs and/or alcohol and her failure to comply with services, Petitioner Mother demonstrated an inadequate capacity to solve the problems of abuse or neglect, warranting the circuit court's finding that there was no reasonable likelihood that these problems could be substantially corrected pursuant to West Virginia Code § 49-6-5(b).

We find no error in the circuit court's order terminating petitioners' parental rights to B.P. and K.P. "'[C]ourts are not required to exhaust every speculative possibility of parental improvement . . . where it appears that the welfare of the child[ren] will be seriously threatened . . . .' Syl. Pt. 1, in part, *In re R.J.M.*, 164 W.Va. 496, 266 S.E.2d 114 (1980)." Syl. Pt. 4, in part, *In re Cecil T.*, 228 W.Va. 89, 717 S.E.2d 873 (2011). Moreover, we have held as follows:

> "Termination of parental rights, the most drastic remedy under the statutory provision covering the disposition of neglected children, *W.Va.Code* [§] 49-6-5 [1977] may be employed without the use of intervening less restrictive alternatives when it is found that there is no reasonable likelihood under *W.Va.Code*, [§] 49-6-5(b) [1977] that conditions of neglect or abuse can be substantially corrected." Syllabus Point 2, *In re R.J.M.*, 164 W.Va. 496, 266 S.E.2d 114 (1980).

Syl. Pt. 7, *In re Katie S.*, 198 W.Va. 79, 479 S.E.2d 589 (1996) (internal citations omitted). A circuit court is justified to deny an improvement period if it finds compelling circumstances for denial. Syl. Pt. 2, *In re Joseph A.*, 199 W.Va. 438, 485 S.E.2d 176 (1997). Further, "the primary goal in cases involving abuse and neglect, as in all family law matters, must be the health and

welfare of the children." Syl. Pt. 3, in part, *In re Katie S.*, 198 W.Va. 79, 479 S.E.2d 589 (1996). Based on our review of the record and given the circumstances of the case, we find no error by the circuit court in this matter.

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 affirm the circuit court's order terminating petitioner's parental rights to B.P. and K.P.

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