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 R*e:* L.S., B.S., E.J., and L.J.

No. 12-0600 (Marion County 11-JA-24 through 11-JA-27)

MEMORANDUM DECISION

Petitioner Mother files this appeal, by counsel Katica Ribel, from the Circuit Court of Marion County, which terminated petitioner's parental rights to the subject children by order entered on April 23, 2012. The guardian ad litem for the children, Frances Whiteman, 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 Lee Niezgoda, 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.

DHHR filed the petition in the instant case in May of 2011, based on allegations that Petitioner Mother abandoned her children and on inappropriate care and conditions in the home. DHHR learned that in the autumn of 2010, Petitioner Mother left her five children, M.S.,[1] L.S., B.S., E.J., and L.S., with her husband, G.J. and then flew to Arizona without providing a date of return. DHHR further learned of inappropriate sexual behavior in the home between G.J. and Petitioner Mother's oldest child M.S., and of G.J. forcing M.S. to miss many days of school so that she could stay home and watch the other children. Locks were found on the kitchen cabinets and refrigerator as G.J. regulated when the children ate food. At adjudication and at the dispositional hearing, DHHR informed the circuit court that Petitioner Mother still had not returned to West Virginia or communicated with DHHR but that Petitioner Mother was given notice, and had knowledge, of the ongoing child abuse and neglect proceedings. The circuit court adjudicated Petitioner Mother as abusive and neglectful through her abandonment and later terminated Petitioner Mother's parental rights by order entered in April of 2012. Petitioner Mother appeals this termination order.

The Court has previously established the following standard of review:

[1] During the course of the abuse and neglect proceedings, M.S. turned eighteen years old and expressed her desire that Petitioner Mother's parental rights to her not be terminated. Accordingly, M.S. is not a subject child in this appeal.

> "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 argues three assignments of error. First, she argues that the circuit court erred when it denied Petitioner Mother a hearing after she objected to the proposed findings of fact and conclusions of law for termination. Petitioner Mother returned to West Virginia in the spring of 2012 and attempted to meet with the Multi-Disciplinary Treatment Team ("MDT") in April of 2012. The MDT informed Petitioner Mother that the circuit court would be entering an order terminating her parental rights. Petitioner Mother argues that she was denied the opportunity to testify on her own behalf or enter any evidence in this case pursuant to West Virginia Code § 49-6-2(c). In response, the guardian and DHHR argue that Petitioner Mother was given opportunities to present evidence throughout the case, but failed to do so. They argue that Petitioner Mother's abandonment of her children under West Virginia Code § 49-6-5 is clear in this case. Our review of the record reflects that the circuit court made findings that Petitioner Mother was properly notified, and had knowledge, of this ongoing abuse and neglect case, yet failed to take any action until the spring of 2012. Accordingly, we find no error by the circuit court in regard to Petitioner Mother's first assignment of error.

Petitioner Mother next argues that the circuit court erred in denying her motion for an improvement period because there was clear and convincing evidence that she would have fully participated in an improvement period. She asserts that her move back to Fairmont in April of 2012 with the intent to remain there permanently was clear and convincing evidence for an improvement period. In response, the guardian and DHHR argue that Petitioner Mother's assertions of obtaining a job and housing in Fairmont were included in her pleadings to participate in an improvement period, but not supported by evidence. Moreover, during Petitioner Mother's time in Arizona, she did not support her children financially or emotionally while they were being neglected and abused by G.J. Our review of the record supports the circuit court's denial of an improvement period. Pursuant to West Virginia Code § 49-6-12, the circuit court has discretion in deciding whether to grant an improvement period. Based on circumstances of this case, we find no error in this regard.

Petitioner Mother lastly argues that the circuit court erred in terminating her parental rights as there were less restrictive alternatives available, there was a reasonable likelihood that

Petitioner Mother could correct the conditions that led to the filing of the petition, and termination was not in the children's best interests. Petitioner Mother argues that she admitted her wrongdoings to the circuit court and demonstrated her willingness to correct the issues that led to the petition by obtaining employment and housing. She asserts that she was not allowed to address the circuit court concerning the petition's allegations. In response, the guardian and DHHR argue that Petitioner Mother's motion for an improvement period did not come until after the dispositional hearing in this case. Petitioner Mother has also failed to prove how continuing this case would promote the children's best interests, as an ongoing case would keep them from obtaining permanency or stability. According to the guardian and DHHR, Petitioner Mother provides no supporting evidence that any circumstances have changed or that she would likely participate in an improvement period.

We find no error in the circuit court's order terminating Petitioner Mother's parental rights. "'[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). 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.

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 the children.

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