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: **A.T., A.T., A.B., J.T., E.T., J.T., A.T., J.T., T.W., and C.B.**

No. 12-0601 (Mercer County 10-JA-135 through 10-JA-144)

MEMORANDUM DECISION

Petitioner Mother, by counsel Gerald R. Linkous, appeals the Circuit Court of Mercer County's order entered on May 1, 2012, terminating her parental rights to her ten children. Guardian ad litem Ryan Flanigan has filed his response on behalf of A.T. and C.B.[1] Guardian ad litem William O. Huffman has filed his response on behalf of J.T. and T.W. Guardian ad litem Julie Lynch has filed her response on behalf of A.T., A.T., A.B., J.T., E.T., and J.T.[2] The West Virginia Department of Health and Human Resources ("DHHR"), by William Bands, 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 action was filed based on reports of sexual abuse by two of the male children against seven of the other children. At least one of the children reported that he had repeatedly told his mother about the abuse, and she did nothing other than shout at the perpetrators. Further, one child reported that the parents actually walked in on the abuse at one point, and the father physically assaulted the child who was abusing his sibling at the time. Both parents admitted to failing to recognize that sexual abuse was occurring throughout the home, but both also maintained that they did not know about the abuse. Both parents were then granted an improvement period. During her improvement period, Petitioner Mother was incarcerated for a period of seven months on unrelated charges. The circuit court terminated the parental rights of both parents, finding that the children could not be placed together based on the fact that two of the siblings perpetrated abuse on the others, and found that the parents were oblivious to the abuse due to their own narcissistic behavior. Moreover, the court found that the parents did not abide by the terms of their improvement period throughout the entirety of the improvement period.

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[1] Petitioner Mother is the biological mother of all ten children.

[2] Based on the allegations of sexual abuse amongst the children, the ten children in this matter were given three different guardians. Some of the children have the same initials, but due to their status as minors, this Court will only identify the children by their first and last initials to maintain confidentiality.

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).

On appeal, Petitioner Mother first argues that the circuit court erred in terminating her parental rights based in part on improper findings of fact and conclusions of law. Petitioner Mother maintains that although the circuit court noted that she was "narcissistic," she has never been diagnosed as such. Moreover, petitioner argues that she never knew about the sexual abuse going on in her home, and that there was no evidence that she did not care for her children. She further argues that the circuit court had knowledge of her incarceration, which caused her improvement period to be interrupted, and relied on this information erroneously. Petitioner Mother next argues that the circuit court failed to employ the proper alternative in reaching disposition in this matter. She argues that a number of alternatives short of termination were available, including reunification with all or some of the nonoffending children, guardianship placements, or reunification with the offending children and visitation with the nonoffending children. Moreover, petitioner argues that because the children cannot currently be placed due to some of them being in treatment facilities, she should have been granted a dispositional improvement period as this would not have hampered permanency.

Guardian Julie Lynch responds in support of the termination of parental rights, noting that it "defies common sense" that Petitioner Mother could have been unaware of the serious sexual abuse regularly occurring in her home. Guardian William Huffman concurs, noting that two different siblings stated that the mother knew about the abuse and did nothing. Guardian Ryan Flanigan also concurs, noting that one of the perpetrators of the abuse even admitted that his mother was often home when he abused his siblings. The DHHR also argues in support of the termination of parental rights, stating that petitioner subjected the children to the sexual abuse in this matter which is proof that there is no reasonable likelihood that the conditions of abuse can be substantially corrected. The DHHR also asserts that petitioner was a stay-at-home mother who somehow failed to notice that seven of her children were being sexually abused in the home, and therefore any attempt at a further improvement period would be futile.

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 . . . ." 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,

> "'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). Syllabus point 4, *In re Jonathan P.,* 182 W.Va. 302, 387 S.E.2d 537 (1989)." Syllabus Point 1, *In re Jeffrey R.L.,* 190 W.Va. 24, 435 S.E.2d 162 (1993).

Syl. Pt. 7, *In re Katie S.*, 198 W.Va. 79, 479 S.E.2d 589 (1996). This Court finds no error in the circuit court's order. At least two of the children disclosed that Petitioner Mother knew of the abuse, and the evidence in the record shows that the sexual abuse was so pervasive that it is unreasonable to believe that petitioner did not know that any of the actions were occurring. All three guardians concur that termination of parental rights was proper, and this Court agrees.

This Court recognizes the unique situation of finding permanency for the children in this matter, but reminds the circuit court of its continuing duty to work toward permanency pursuant to Rule 43 of the Rules of Procedure for Child Abuse and Neglect Proceedings. Further, this Court reminds the guardians of their continuing duties, as we have previously noted that "[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