STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In Re*:* A.J., P.J. Jr., and S.J.

No. 12-0640 (Gilmer County 09-JA-12, 13 and 14)

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

MEMORANDUM DECISION

Petitioners Mother and Father file this appeal, by counsel Daniel Grindo, from the Circuit Court of Gilmer County, which terminated petitioners' parental rights to A.J., P.J. Jr., and S.J. by order entered on April 23, 2012. The guardian ad litem for the children, Michael Asbury Jr., 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 on appeal, 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 August of 2010, DHHR filed the petition in the instant case, alleging unsanitary home conditions, petitioners' substance abuse, the presence of drug paraphernalia in the home, the presence of large knives in areas in the home accessible to the children, and domestic violence between petitioners. Petitioners were adjudicated as abusive and neglectful to their children, A.J., P.J. Jr., and S.J., and were granted improvement periods and visitation. After the children's removal, DHHR learned of the children's inappropriate sexual conduct. P.J. Jr., for instance, was displaying sexual acts with his sisters and animals. DHHR filed an amended petition alleging that petitioners had allowed their children access to pornographic material, causing this behavior. Although the circuit court did not grant the filing of this amended petition, it ordered the implementation of psychological services for the children and temporarily suspended visitation. The children were also separated in different placements. Disposition was held in January and February of 2012, at which the circuit court heard testimony from the children's counselor and another psychologist who evaluated their situation. Both testified that the children's home environment with petitioners was likely the root cause of their sexual behavior. Both psychologists also testified that reunification with petitioners would not serve the children's best interests. After finding that neither parent would be capable of coping with their children's problems, regardless of their compliance with their improvement periods, the circuit court terminated petitioners' parental rights to the subject children and denied post-termination visitation. Petitioners appeal.

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).

Petitioners argue two assignments of error. First, they argue that the circuit court erred in declining to find that DHHR failed to act in the children's best interests. Petitioners argue that the circuit court had ordered family counseling, yet over two years only one counseling session took place with the parents and children together. Petitioners argue that the circuit court allowed a rift to deepen in petitioners' relationship with their children by not keeping the children up to date on their parents' progress throughout their improvement periods. Moreover, they argue that the children's bizarre sexual behavior began after removal from the home and no direct connection was made between their behavior and petitioners' care. Petitioners assert in their second assignment of error that termination was improper because they fully corrected the conditions that gave rise to the petition in this case.

In response, the guardian ad litem and DHHR argue that the circuit court did not err in termination, nor did DHHR fail to act in the children's best interests. Both argue that throughout the case, neither parent succeeded in rectifying the situation. Although both completed terms of their improvement periods, neither of them succeeded in grasping the gravity of their children's situation or appreciating its impact on them. It was learned throughout the case that petitioners had knowledge of their children's exposure to pornographic material in the home and of their children's sexual abuse between each other. For instance, a babysitter had allegedly abused S.J., S.J. told her mother, but her mother did nothing and continued to allow this babysitter to supervise S.J. On another occasion, P.J. Jr. was caught having sexual intercourse with a chicken. DHHR provided services to the family in the children's best interests; the circuit court ordered that any family counseling was to be at the discretion of the children's counselor. At the dispositional hearing, this counselor testified that she did not implement family counseling because she did not find it appropriate. Further, any knowledge the children may have had about their parents' work in their improvement periods would not have changed the fact that petitioners did not understand and appreciate their children's trauma. The circuit court's order terminating petitioners' parental rights to their children serve the children's best interests and should be affirmed.

We find no error in the circuit court's order terminating petitioners' parental rights to A.J., P.J. Jr., and S.J. "'[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.

Syl. Pt. 2, *In Re: R.J.M.*, 164 W.Va. 496, 266 S.E.2d 114 (1980). 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 petitioners' parental rights to A.J., P.J. Jr., and S.J.

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