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. 12-0675 (Mercer County 10-JA-135through 10-JA-144)

MEMORANDUM DECISION

Petitioner Father, by counsel Thomas H. Evans III, appeals the Circuit Court of Mercer County's order entered on May 1, 2012, terminating his parental and custodial rights to his children.[1] Guardian ad litem Ryan Flanigan has filed his response on behalf of A.T. and C.B. 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 his improvement period, Petitioner Father was incarcerated. The circuit court terminated the parental rights of both parents, finding that the children could not be placed together based on two of the children perpetrating sexual abuse on the others, and found

[1] Petitioner Father is the biological father of eight of the children in this action; however, the circuit court terminated his parental rights to 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.

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.

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 Father argues that the circuit court erred in terminating his parental rights by failing to make a plausible accounting of the evidence in the case. Petitioner Father argues that it is understandable that he and the mother would have been oblivious to the sexual abuse in the home based on the number of children in the home. Petitioner also argues that he was not the abuser in this matter.

Guardian Julie Lynch responds in support of the termination of parental rights, noting that Petitioner Father did not comply in his case plan and improvement period even when not incarcerated, given that he was fired from his job, missed many of his parenting classes, was evicted, and failed to appear for his psychological examination. Guardian William Huffman concurs, noting that petitioner's utter disregard for the welfare and safety of his children allowed rampant sexual abuse to occur in the home. Guardian Ryan Flanigan also concurs and notes that petitioner had ignored the abuse in the home and was incarcerated during the improvement period, making it impossible for him to complete the case plan. 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 somehow failed to notice that seven 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. Petitioner Father failed to complete his improvement period or the case plan, based on his own inactions and his incarceration. 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