STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

***In Re*: C.D.**

No. 12-0722(Logan County 10-JA-66)

FILED
October 22, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Father, by counsel Erica Barker Cook, appeals the Circuit Court of Logan County's order entered on May 14, 2012, terminating his parental rights to C.D. The guardian ad litem, David A. Wandling, has filed his response on behalf of the child. The West Virginia Department of Health and Human Services ("DHHR"), by counsel William L. Bands, 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 petition in this matter was filed based on allegations of sexual abuse by Petitioner Father and Respondent Mother's failure to protect the child. This family has been the subject of prior abuse and neglect proceedings based on the parents' ongoing mental health problems and neglect. C.D. was removed in the prior case and later reunited with her parents. The referral in this action came approximately a year prior to the petition being filed, and in that time, the child disclosed that Respondent Mother had actually witnessed and participated in the abuse by holding C.D. down at times, while Petitioner Father sexually abused her. Respondent Mother never took the child for mental health treatment, which was suggested, and did not separate from Petitioner Father. The parents admitted to having mental health issues, but neither admitted to the sexual abuse. The parents were adjudicated as abusing parents. Both parents moved for an improvement period, but the circuit court never granted one. Visitation was denied to Petitioner Father, due to the finding of sexual abuse, but Respondent Mother was granted visitation. However, she began missing visitation, missing multidisciplinary treatment team meetings, and missing hearings, including the hearing on her motion for an improvement period. Both parents' parental rights were terminated, based on their failure to admit the sexual abuse and on their untreated mental health conditions. Post-termination visitation was denied.

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 Father first argues that the circuit court erred in terminating his parental rights, as there was insufficient evidence presented to prove by clear and convincing evidence that he sexually abused his daughter. Petitioner argues that he passed a polygraph examination, and that the DHHR interviews with C.D. were not performed correctly. Moreover, he argues that when Respondent Mother is not taking her prescribed medication, she makes false accusations of sexual abuse against him. He also argues that C.D.'s inappropriate sexual knowledge resulted from watching inappropriate videos when she was supposed to be sleeping.

The guardian and the DHHR respond in favor of termination, arguing that there was clear and convincing evidence that both parents abused the child. Both the guardian and the DHHR note that the child spontaneously disclosed that Respondent Mother witnessed the abuse and at times held the child down, allowing Petitioner Father to sexually abuse her. C.D. showed inappropriate knowledge of sexual acts and was consistent in her statements. Both argue that termination was the only option, as there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected. This Court agrees, and affirms the termination of parental rights in this matter. Pursuant to West Virginia Code § 49-6-5(b)(5), there is no reasonable likelihood that the conditions of abuse and neglect can be substantially corrected when an abusing parent has sexually abused the child. This Court finds no error in the circuit court's determination that C.D. was sexually abused by Petitioner Father.

Petitioner Father next argues that the circuit court erred in denying supervised visitation between petitioner and C.D. He argues that no evidence was presented that it would not be in C.D.'s best interests to continue to see him. The guardian argues against visitation, arguing that after the finding that Petitioner Father sexually abused C.D., it was clearly not in her best interests to visit with her abuser and would have risked further harm to the child. This Court agrees, and finds no error in the denial of visitation.

Petitioner Father next argues that the circuit court erred in taking almost six months to enter the adjudicatory order following the adjudicatory hearing, and in taking nearly four months to enter the order granting the motion to terminate parental rights after the hearing. The DHHR argues that the circuit court's deviation from time standards was not reversible error, as the parents

still received the requisite due process and were not prejudiced by the delays. The guardian argues that the delays did not negatively impact the best interests of the child, nor did they prejudice Petitioner Father. While this Court is disturbed by the circuit court's failure to abide by the relevant statutes and rules concerning the applicable timelines for abuse and neglect proceedings, we do not find reversible error. There has been no showing of prejudice on behalf of the petitioner regarding the procedural delays.

This Court reminds the circuit court of its duty to establish permanency for the child. 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 child 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 find no error in the decision of the circuit court and the termination of parental rights is hereby affirmed.

Affirmed.

ISSUED: October 22, 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