STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In Re: **M.S., M.S., M.S., M.S., M.S., & M-A.S.**

No. 12-0806 (Raleigh County 10-JA-104 through 10-JA-109)

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

MEMORANDUM DECISION

Petitioner Father, by counsel Stephen P. New, appeals the Circuit Court of Raleigh County's order entered on February 1, 2012, terminating his parental rights to his children. The guardian ad litem, John F. Parkulo, has filed his response on behalf of the children. 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.

This petition was initiated after one of the children, then six years old, was taken to the emergency room, weighed less than twenty pounds, was severely dehydrated and malnourished, and had bruises on her body. An investigation revealed that the child was subjected to various abuse, including having her food restricted, being tied into a carseat on a regular basis, and being locked in a utility room at night with no bed or blankets to prevent her from eating in the middle of the night. The investigation revealed that this abuse had been ongoing for at least two to three years, dating back to when the child lived with both her mother and Petitioner Father in Tennessee. Several referrals were made to the state of Tennessee, but due to errors by those officials, law enforcement was never contacted. The mother had moved to West Virginia less than a year before the child's hospitalization, and petitioner saw the child in West Virginia approximately one month prior to her hospitalization. The mother and her girlfriend were arrested on various charges, and remain incarcerated. Petitioner was later arrested and incarcerated in Tennessee.

Petitioner Father stipulated to neglect, and admitted that he had restricted the child's food regularly upon instructions of the mother, and that he had allowed the child to be locked in a utility room and forced to sleep on the floor without a bed or blankets. The investigation revealed that this had been ongoing for a significant period of time while Petitioner Father and mother still lived together in Tennessee. Petitioner Father requested an improvement period, but the circuit court denied the motion. The circuit court found that there was "compelling evidence to demonstrate that the [petitioner] father shows a complete lack of responsibility to protect this child by failing to feed

the child or failed to place the child at night in a bed with blankets allegedly to protect the child which is clearly child abuse and neglect and occurred over a significant period of time." Petitioner Father appealed the denial of an improvement period, but this Court upheld the circuit court's denial. The circuit court then terminated Petitioner Father's parental rights.

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 argues that the circuit court erred in terminating his parental rights. Petitioner argues that there is no act under West Virginia law that requires automatic termination of parental rights. He argues that he did not abandon his children, does not have a substance abuse problem, and is willing to participate in a family case plan. Moreover, he argues that he acknowledged the abuse and neglect in this matter by entering into a stipulation regarding the same by willingly cooperating with authorities in this matter. Finally, petitioner argues that he was not the mastermind of the abuse against the child as evidenced by the fact that the abuse continued after his wife moved to West Virginia while he stayed in Tennessee.

In response, the DHHR argues that the circuit court properly moved to termination proceedings after this Court upheld the denial of an improvement period. The DHHR also argues that there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected when an abusing parent has repeatedly or seriously injured a child physically or emotionally pursuant to West Virginia Code § 49-6-5(b)(5). According to the DHHR, the chronic abuse of the child bordered on torture and justifies termination in this matter. The guardian also concurs in the termination of parental rights, arguing that petitioner knew of the continuing abuse that occurred for years, dating back to when petitioner lived with the children. Moreover, the guardian points out that after this Court's decision upholding the denial of an improvement period, no new evidence was presented by petitioner, who is incarcerated in Tennessee on charges relating to the abuse in this action.

The Court has held 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, there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected when an abusing parent has repeatedly or seriously injured a child physically or emotionally. W.Va. Code § 49-6-5(b)(5). Upon a review of the record, this Court finds no error in the circuit court's termination of parental rights. This Court has previously upheld the denial of an improvement period for Petitioner Father, and he failed to produce further evidence that his parental rights should not be terminated.

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