

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

In Re: D.W.

No. 12-0819 (Berkeley County No. 10-JA-71)

FILED

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

MEMORANDUM DECISION

Petitioner Mother's appeal, by counsel Christopher J. Prezioso, arises from the Circuit Court of Berkeley County, wherein her parental rights to her child, D.W., were terminated by order entered on June 12, 2012. The West Virginia Department of Health and Human Resources ("DHHR"), by counsel Lee A. Niezgoda, has filed its response. The guardian ad litem, Tracy Weese, has filed a response on behalf of the child and a supplemental appendix. Petitioner has further filed a reply.

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 DHHR initiated the abuse and neglect proceedings below after receiving a referral that petitioner had been hospitalized for a mental disorder and failure to take her medication. According to the abuse and neglect petition, the child was left with a neighbor. At the adjudicatory hearing, petitioner admitted to certain allegations in the petition. The circuit court found the child to be neglected due to petitioner's failure to properly attend to her mental health which left her unable to properly parent, provide for, or supervise her child. Petitioner was thereafter granted a post-adjudicatory improvement period. The circuit court later found that petitioner failed to fully participate in the same. Following a series of dispositional hearings, the circuit court denied petitioner's motion for a dispositional improvement period and terminated her parental rights.

On appeal, petitioner alleges that the circuit court erred in terminating her parental rights upon a finding that there was no reasonable likelihood the conditions of neglect could be substantially corrected in the near future. Specifically, petitioner argues that she did not receive proper explanation of, or assistance in completing, the terms of her improvement period. Taking into consideration her mental health issues, petitioner argues that the termination should be considered erroneous. Further, petitioner argues that testimony from several individuals established that she complied with the services offered and that she readily admitted to the mental health issues central to the allegations of neglect. Petitioner argues that because the DHHR failed to accommodate her special needs, she cannot be considered to have failed in her improvement

period. Petitioner also rebuts the DHHR's argument that she assisted in the creation of the terms of her improvement period by arguing that such an assertion is unsupported by the record.

The DHHR responds in support of the circuit court's decision and argues that the record clearly establishes that petitioner failed to remedy the conditions of neglect below. Further, the DHHR argues that contrary to petitioner's argument that she did not understand the terms of her improvement period, she and her counsel assisted in establishing those terms and petitioner was even appointed her own guardian ad litem in light of her mental health issues. According to the DHHR, petitioner was offered the services of a psychiatrist and counselor, but failed to keep appointments with either. The DHHR lastly argues that petitioner testified at disposition that she did not require services for mental health issues.

The guardian also responds in support of the circuit court's decision and argues that petitioner was given more than enough support and opportunities to correct her circumstances. According to the guardian, despite this assistance, petitioner actually worsened the conditions of neglect throughout these proceedings by failing to comply with services and being arrested multiple times. The guardian notes that petitioner refused to even execute an advanced directive to ensure her child's welfare in the event of future mental health crises. According to the guardian, the circuit court was correct to deny petitioner a dispositional improvement period since she admitted that she failed to fully participate in the post-adjudicatory improvement period and did not show a change in circumstances warranting a second 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).

Upon our review, the Court finds no error in the circuit court's finding that there was no reasonable likelihood that the conditions of neglect could be substantially corrected in the near future or in its termination of petitioner's parental rights. The circuit court specifically found that petitioner habitually used alcohol or drugs to the extent that it seriously impaired her parenting skills and that she did not follow through with the recommended and appropriate treatment to improve her capacity for proper parenting. The circuit court also found that petitioner failed to

follow through with a reasonable family case plan or other rehabilitative efforts and that she incurred mental illness of such duration or nature as to render her incapable of exercising proper parenting skills. Pursuant to West Virginia Code §§ 49-6-5(b)(1), (3), and (6), these three sets of circumstances constitute situations in which there is no reasonable likelihood that the conditions of abuse or neglect can be substantially corrected in the near future. The circuit court also found that termination was necessary for the child's welfare.

The circuit court had ample evidence to support its findings, including the following: petitioner's arrest on multiple criminal charges, including a drug offense and driving under the influence, during the proceedings below; a deterioration in her relationship with the child to the point he no longer wished to attend visitation; petitioner's own refusal to accept responsibility for the neglect, as evidence by her testimony at disposition that she never abused or neglected her son; petitioner's admission that she did not comply with counseling requirements; and, petitioner's admission that she had not taken any substantive steps to address her on-going mental health issues, including substance abuse. Because the circuit court had ample evidence in support of these findings, we find no error in this regard. The Court further finds no merit in petitioner's argument that she did not understand the terms of the services offered below, as the record shows that she was represented by counsel and had a guardian ad litem appointed to represent her. Accordingly, pursuant to West Virginia Code § 49-6-5(a)(6), the circuit court properly terminated petitioner's parental rights upon these findings.

For the foregoing reasons, we find no error in the decision of the circuit court, and the termination of petitioner's 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