STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In Re: L.H., L.H., & H.J.

No. 14-0244 (Jackson County 13-JA-19, 13-JA-20, & 13-JA-21)

FILED
August 29, 2014
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Mother, by counsel Drannon L. Adkins, appeals the Circuit Court of Jackson County's March 14, 2014, order terminating her parental rights to L.H.-1, L.H.-2, and H.J.[1] The West Virginia Department of Health and Human Resources ("DHHR"), by counsel S.L. Evans, filed its response in support of the circuit court's order. The guardian ad litem, Laurence W. Hancock, filed a response on behalf of the children supporting the circuit court's order. On appeal, petitioner alleges that the circuit court erred in denying her motion for a post-adjudicatory improvement period and in terminating her parental rights.

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 affirming the circuit court's order is appropriate under Rule 21 of the Rules of Appellate Procedure.

In April of 2013, the circuit court held a preliminary hearing on the DHHR's abuse and neglect petition alleging that petitioner believed that N.H., father of L.H.-1 and L.H.-2, former in-laws, school personnel, and other people were habitually sexually abusing the children. This was in spite of the fact that DHHR investigations had not substantiated any sexual abuse. The petition further stated that petitioner acknowledged her past diagnoses of schizophrenia, obsessive-compulsive disorder, bipolar disorder, and attention deficit disorder and admitted that she was not taking her prescribed medications. Additionally, the DHHR alleged that a worker witnessed petitioner "interrogate" one child about abuse she "must have suffered," and that petitioner became "highly agitated and aggressive" with the child when she failed to corroborate petitioner's allegations of sexual abuse. At the preliminary hearing, the circuit court granted the DHHR custody of the children, after which the DHHR filed an amended petition to correct formatting errors.

The following month, the circuit court held an adjudicatory hearing. Petitioner previously attempted to stipulate to being an abusing parent, but the circuit court rejected the attempted stipulation because it did "not adequately address the allegations contained in the [p]etition filed in this matter." The circuit court then took testimony at the adjudicatory hearing and ultimately found petitioner to be an abusing parent due to her intentional infliction of mental and emotional

[1]Because two children in this matter share the same initials, they will be referred to throughout this memorandum decisions as L.H.-1 and L.H.-2.

injury upon the children. In February of 2014, the circuit court held a dispositional hearing. Prior to the hearing, the DHHR moved to terminate petitioner's parental rights, and petitioner moved for a post-adjudicatory improvement period. After taking testimony at the hearing, the circuit court denied the motion for an improvement period and ultimately terminated petitioner's parental rights. It is from the dispositional order that petitioner appeals.

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 denying petitioner's motion for a post-adjudicatory improvement period or in terminating her parental rights to the children.

Pursuant to West Virginia Code § 49-6-12(b)(2), a circuit court may grant a parent a post-adjudicatory improvement period if the parent "demonstrates, by clear and convincing evidence, that the [parent] is likely to fully participate in the improvement period . . . ." Contrary to petitioner's argument that a circuit court may only deny a parent an improvement period upon a showing of "compelling circumstances," this code section actually affords circuit courts discretion in awarding or denying improvement periods. Further, a review of the record shows that petitioner was unable to satisfy her burden of proof in regard to the motion for a post-adjudicatory improvement period.

In the dispositional order, the circuit court specifically found that petitioner failed to accept "responsibility for inflicting substantial emotional injury on her children." Despite a total lack of evidence to support her allegations that the children had been sexually abused, petitioner "testified at the disposition[al] hearing that she continues to believe her children have been sexually abused." Simply put, the Court agrees that petitioner failed to acknowledge the conditions of abuse that harmed her children, and petitioner's brief in support of this appeal only further supports this finding.

On appeal, petitioner argues that she "did, in fact, acknowledge that she went overboard with the children," and that the circuit court lacked a basis for finding that she failed to acknowledge the conditions that gave rise to the abuse and neglect petition. The Court notes that

this argument only further reinforces the fact that petitioner has failed to recognize that her actions constitute mental and emotional abuse in their own right, especially in light of the circuit court's findings that petitioner "has no insight, at all, into the harm and damage she is doing to her children. . . ."

We have previously held as follows:

> [I]n order to remedy the abuse and/or neglect problem, the problem must first be acknowledged. Failure to acknowledge the existence of the problem, i.e., the truth of the basic allegation pertaining to the alleged abuse and neglect or the perpetrator of said abuse and neglect, results in making the problem untreatable and in making an improvement period an exercise in futility at the child's expense.

In re Timber M., 231 W.Va. 44, 55, 743 S.E.2d 352, 363 (2013)(quoting *In re: Charity H.*, 215 W.Va. 208, 217, 599 S.E.2d 631, 640 (2004)). Based upon the evidence outlined above, it is clear that the circuit court did not err in finding that petitioner failed to acknowledge the existence of the problem necessitating her children's removal or in denying her a post-adjudicatory improvement period.

As for termination of petitioner's parental rights, the Court finds that the circuit court was presented with sufficient evidence upon which to base this disposition. Specifically, the circuit court found that there was no reasonable likelihood the conditions of abuse and neglect could be substantially corrected. Citing West Virginia Code §§ 49-6-5(b)(5) and (6), the circuit court found as follows: that petitioner repeatedly injured the children; the potential for further abuse was so great as to preclude the use of resources to mitigate or resolve petitioner's responsibilities to the children; and that petitioner incurred emotional illness, mental illness, or mental deficiency of such duration or nature as to render her incapable of exercising proper parenting skills. Pursuant to those two code sections, these constitute circumstances in which there is no reasonable likelihood the conditions of abuse and neglect can be substantially corrected.

While petitioner argues that the circuit court's findings in this regard are against the weight of the evidence, the Court does not agree. In fact, the evidence shows that petitioner's injurious behavior continued during the duration of the proceedings below. In its dispositional order, the circuit court noted that "visitations [between petitioner and the children] had to be suspended due to [petitioner's] inability to refrain from interrogating her children [about alleged sexual abuse] during visitations . . . ." Based upon this evidence, it is clear that the circuit court did not err in finding that there was no reasonable likelihood that petitioner could substantially correct the conditions of abuse and neglect, especially in light of her refusal to acknowledge the harm that her actions inflicted upon the children. In addition to this finding, the circuit court also found that termination of petitioner's parental rights was necessary for the children's welfare based upon evidence that petitioner was likely to continue abusing the children in the same manner in the future.

Petitioner additionally alleges that the circuit court erred in terminating her parental rights because the DHHR failed to make a thorough effort to determine if petitioner could adequately care for the children with intensive long-term assistance. We have previously held that

> "[w]here allegations of neglect are made against parents based on intellectual incapacity of such parent(s) and their consequent inability to adequately care for their children, termination of rights should occur only after the social services system makes a thorough effort to determine whether the parent(s) can adequately care for the children with intensive long-term assistance. In such case, however, the determination of whether the parents can function with such assistance should be made as soon as possible in order to maximize the child(ren)'s chances for a permanent placement." Syllabus point 4, *In re Billy Joe M.*, 206 W.Va. 1, 521 S.E.2d 173 (1999).

Syl. Pt. 4, *In re Maranda T*, 223 W.Va. 512, 678 S.E.2d 18 (2009). We find no merit to petitioner's argument in this regard.

According to the record, petitioner underwent a forensic psychological evaluation as part of the services offered below. The evaluation found that petitioner "is satisfied with herself as she is . . . and . . . sees little need for changes in her behavior." Based upon this assessment the "examiner consider[ed] [petitioner's] current prognosis for minimally adequate parenting to be poor." Simply put, petitioner refused to acknowledge the conditions of abuse and neglect in the home, which therefore rendered her incapable of remedying the issues, even with intensive, long-term assistance. As such, the Court finds that the DHHR made the requisite thorough effort to determine petitioner's capacity for proper care by providing the forensic psychological evaluation, and did so as quickly as possible in compliance with the syllabus point above.

Finally, petitioner argues that the circuit court did not consider any less restrictive alternatives to termination of parental rights at disposition. However, the Court finds no merit to this argument. As addressed above, the circuit court had sufficient evidence upon which to find that the petitioner could not substantially correct the conditions of abuse and neglect and that termination of parental rights was necessary for the children's welfare. Pursuant to West Virginia Code § 49-6-5(a)(6), circuit courts are directed to terminate parental rights upon these findings.

For the foregoing reasons, we find no error in the decision of the circuit court and its March 14, 2014, order is hereby affirmed.

Affirmed.

ISSUED: August 29, 2014

CONCURRED IN BY:
Chief Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Menis E. Ketchum
Justice Allen H. Loughry II