

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

In Re: N.V. & R.V. III

No. 14-0318 (Webster County 12-JA-40 & 12-JA-41)

FILED

August 29, 2014

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

MEMORANDUM DECISION

Petitioner Father, by counsel Steven Nanners, appeals the Circuit Court of Webster County's March 3, 2014, order denying him post-termination visitation with his children, N.V. and R.V. III. The West Virginia Department of Health and Human Resources ("DHHR"), by counsel Sandra Evans, filed its response in support of the circuit court's order. The guardian ad litem for N.V. ("GAL"), Daniel Grindo, filed a response on behalf of N.V. that supports Petitioner Father's petition for appeal. The GAL for R.V. III, Michael Ashbury, filed a response supporting the circuit court's order. On appeal, Petitioner Father alleges that the circuit court erred in denying him post-termination visitation.

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 decision is appropriate under Rule 21 of the Rules of Appellate Procedure.

In March of 2012, Child Protective Services ("CPS") initiated a case against Petitioner Father following allegations of domestic violence and alcohol abuse in the home. As a result, Petitioner Father began receiving services to address these issues. However, in August of 2012, the DHHR received a referral that one of Petitioner Father's children, N.V. allegedly had anal sex with a child in the neighborhood and possibly his brother, R.V. The referral further alleged that N.V. pulled R.V.'s pants down and touched his privates. Finally, the referral stated that Petitioner Father knew about the alleged sexual conduct involving his children but failed to report the incident to the proper authorities.

Based upon the referral noted above, the DHHR filed a petition for immediate custody of the children against Petitioner Father stating that his alcohol abuse affected his ability to provide for the health, safety, and welfare of his children. By order entered on November 7, 2012, Petitioner Father stipulated that he was aware of the aforementioned sexual conduct involving his children and failed to notify the proper authorities. Further, Petitioner Father admitted that CPS had an open case with the family for domestic violence and alcohol abuse for which he was receiving services. Petitioner Father also admitted that he was addicted to and/or abuses alcohol, which affects his ability to provide for the health, safety, and welfare of his children.

The circuit court held a dispositional hearing in December of 2012, during which it granted Petitioner Father a one-year rehabilitation period. As part of his rehabilitation program, Petitioner Father was ordered to remain free of drugs and alcohol and attend domestic violence counseling. By order entered on December 11, 2013, the circuit court terminated Petitioner Father's parental rights for violating the terms of his rehabilitation period. Specifically, Petitioner Father was observed drinking alcohol on August 22, 2013. Thereafter, Petitioner Father moved the circuit court for post-termination visitation.

On February 4, 2014, the circuit court held a hearing on Petitioner Father's motion for post-termination visitation. Petitioner Father testified that he continues to abuse alcohol two or three times per week. Further, the circuit court found that the children deserve permanency and that it was in the children's best interest to deny Petitioner Father post-termination visitation. Based on the evidence, the circuit court denied Petitioner Father's motion for post-termination visitation. It is from this order that Petitioner Father now appeals.

The Court has previously established the following standard of review in such cases:

“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 denying his motion for post-termination visitation. Specifically, Petitioner Father argues that he has a strong bond with the children and both children expressed a desire to visit with him. This Court has held the following:

When parental rights are terminated due to neglect or abuse, the circuit court may nevertheless in appropriate cases consider whether continued visitation or other contact with the abusing parent is in the best interest of the child. Among other things, the circuit court should consider whether a close emotional bond has been established between parent and child and the child's wishes, if he or she is of appropriate maturity to make such request. The evidence must indicate that such visitation or continued contact would not be detrimental to the child's well being and would be in the child's best interest.

Syl. Pt. 5, *In re Christine L.*, 194 W.Va. 446, 460 S.E.2d. 692 (1995). Our review of the record reveals that the circuit court found that the combination of Petitioner Father's continual abuse of alcohol and the children's need for permanency indicate that post-termination visitation would be contrary to the children's best interests. We find no error in the circuit court's findings and conclusions in this regard.

For the foregoing reasons, we find no error in the decision of the circuit court and its March 3, 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