

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

FILED

August 29, 2014

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

In Re: R.B., A.B., A.B., & B.B.

No. 14-0387 (Kanawha County 12-JA-88, 12-JA-89, 12-JA-90, & 13-JA-01)

MEMORANDUM DECISION

Petitioner Father, by counsel Matthew Victor, appeals the Circuit Court of Kanawha County's April 19, 2014, order terminating his parental rights to A.B.-1 and A.B.-2.¹ 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 ("GAL"), W. Jesse Forbes, filed a response on behalf of the children that also supports the circuit court's order. On appeal, Petitioner Father alleges that the circuit court erred in terminating his 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 decision is appropriate under Rule 21 of the Rules of Appellate Procedure.

In March of 2012, the children's mother was arrested for public intoxication and admitted to snorting Lortab. As such, the DHHR filed its initial petition against the mother, R.B.'s father, and Petitioner Father alleging abuse and neglect as to R.B., A.B.-1, and A.B.-2. At the time, the mother and the children lived with R.B.'s father, and the petition alleged that the mother and R.B.'s father failed to provide the children with necessary food, clothing, supervision, and housing. As to Petitioner Father, the DHHR alleged that he had a history of domestic violence with the mother. The mother waived her right to a preliminary hearing. During the preliminary hearing, the circuit court ruled "that there were no allegations against [Petitioner] Father and GRANT[ED] leave to [him] to attend any and all future proceedings in this matter through his attorney, Kris Faerber."

Thereafter, the DHHR filed a court summary indicating that Petitioner Father "had little to no contact" with the DHHR and that he was aware that his children were living with the mother in a deplorable home but failed to take the necessary steps to protect them. By order

¹Because two of the children in this case have the same initials, we have distinguished each of them using numbers 1 and 2 after their initials. Further, R.B. and B.B. are not subject to this memorandum decision because Petitioner Father is not their father, and Petitioner Father only appealed the termination of his parental rights to A.B.-1 and A.B.-2.

entered on December 11, 2012, the circuit court denied Petitioner Father's motion to be dismissed from the underlying proceedings. In January of 2013, the mother gave birth to B.B., and the DHHR filed an amended petition adding B.B. Shortly thereafter, the DHHR filed another court summary indicating that Petitioner Father hit the mother and choked the children's maternal grandmother. Petitioner Father waived his right to a preliminary hearing, and was granted a pre-adjudicatory improvement period by order entered on May 10, 2013. As part of his improvement period, Petitioner Father was directed to participate in a domestic violence batterers' intervention course, adult life skills, visitation, and maintain telephone contact with his children.

Subsequently, the DHHR filed a third amended petition alleging that Petitioner Father threatened his service providers, failed to comply with the terms of his pre-adjudicatory improvement period, and was aware of the deplorable conditions in the mother's home prior to the filing of the first petition, but failed to remove A.B.-1 and A.B.-2 from the mother's home. Importantly, the DHHR alleged that Petitioner Father knowingly returned his children to the mother's care while she was intoxicated.

Prior to the June 11, 2013, adjudicatory hearing, the DHHR filed a court summary stating that Petitioner Father failed to participate in his pre-adjudicatory improvement period and continued to threaten service providers. During the adjudicatory hearing, the circuit court heard testimony consistent with the DHHR's summary. Further, DHHR worker Ann Stacklin testified that Petitioner Father admitted to leaving his children in the mother's care while she was intoxicated. Additionally, the circuit court heard testimony regarding the domestic violence perpetrated by Petitioner Father against the mother and his history of drug and alcohol abuse. In November of 2013, the circuit court held a dispositional hearing, after which it terminated Petitioner Father's parental rights. It is from this dispositional order that Petitioner Father 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).

Petitioner Father argues that there was insufficient evidence to support adjudicating him as an abusive and neglectful parent. Petitioner Father asserts that he did not engage in any abusive or neglectful conduct that necessitated the termination of his parental rights. This Court does not agree.

Upon our review, the Court finds no error in the circuit court's order terminating Petitioner Father's parental rights. As provided in West Virginia Code § 49-1-3, children who are abused include those children whose health and welfare have been threatened or harmed by "a parent . . . who . . . knowingly allows another person to inflict, physical injury or mental or emotion injury, upon the child" or domestic violence.

As noted above, the circuit court heard testimony that Petitioner Father committed domestic violence against the children's mother and knowingly left his children in her care while she was intoxicated. The circuit court also heard testimony regarding Petitioner Father's history of drug and alcohol abuse. For these reasons, this Court finds that the circuit court was presented with sufficient evidence to support the finding that Petitioner Father abused and neglected the children within the meaning of West Virginia Code § 49-1-3.

Finally, this Court finds that the circuit court was presented with sufficient evidence upon which it based findings that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future, and that termination was in the children's best interest.

We have previously held that

in 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 Kaitlyn P., 225 W.Va. 123, 126, 690 S.E.2d 131, 134 (2010) (quoting *W.Va. Dep't of Health and Human Res. v. Doris S.*, 197 W.Va. 489, 498, 475 S.E.2d 865, 874 (1996)). In the proceedings below, the circuit court found that Petitioner Father "failed to meaningfully acknowledge any problem that led to the filing of the petition." The record on appeal contains substantial evidence to support these findings and further establishes that petitioner failed to comply with the terms of his pre-adjudicatory improvement period. This is further supported by Petitioner Father's psychological evaluation. The psychologist stated that "throughout the interview[,] he denied the referral to domestic violence" Importantly, the psychologist testified that Petitioner Father is "not willing to acknowledge" his problems and "has not displayed any pattern of willingness to participate in services aimed at addressing those problems." This evidence constitutes a circumstance in which there is no reasonable likelihood that the conditions of abuse or neglect could be substantially corrected in the near future under West Virginia Code § 49-6-5(b)(2). 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 April 19, 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