

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

In Re: H.S.

No. 14-0406 (Wyoming County 12-JA-17)

FILED

October 20, 2014

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

MEMORANDUM DECISION

Petitioner Mother, by counsel Sidney H. Bell, appeals the April 1, 2014, order of the Circuit Court of Wyoming County that terminated her parental rights to two-year-old H.S. The child's guardian ad litem, Timothy P. Lupardus, filed a response in support of the circuit court's order. The Department of Health and Human Resources ("DHHR"), by its counsel S.L. Evans, also filed a response in support of the circuit court's order. On appeal, petitioner argues that the circuit court erred in terminating her parental rights, in declaring her improvement period a failure, in denying her a meaningful improvement period, and in conducting hearings without any proof that notice had been served upon petitioner.

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.

Petitioner's involvement with the DHHR and Child Protective Services ("CPS") dates back to 2002 due to her termination of parental rights to other children and her ongoing drug abuse. When H.S. was born in March of 2012, she had multiple drugs in her system. Therefore, the DHHR filed the abuse and neglect petition that initiated the instant case. At the adjudicatory hearing in May of 2012, the circuit court granted petitioner a ninety-day post-adjudicatory improvement period with directions to submit to random drug and alcohol screens, to participate in substance abuse services and in-home parenting, to establish an appropriate home, to fully cooperate with the DHHR, and to enroll in long-term drug and alcohol rehabilitation treatment.

During the course of the abuse and neglect proceedings below, which spanned almost two years, petitioner was sporadically present at hearings. However, petitioner was always represented by counsel at each hearing. Also during the course of this matter, the circuit court granted petitioner improvement periods and extensions to improvement periods. The circuit court granted petitioner's final, "pass/fail, no tolerance" dispositional improvement period in June of 2013, during which petitioner was required to participate in long-term rehabilitation treatment, counseling, Narcotics Anonymous, drug and alcohol screens, and life skills and parenting classes. The circuit court also directed petitioner to not associate with individuals who had their own drug issues unless it was in a treatment setting. Petitioner agreed to these terms and conditions.

In February of 2014, the circuit court held petitioner's dispositional hearing. Petitioner's CPS worker, Keri Maynard, testified that petitioner failed to comply with her dispositional improvement period through her failure to complete rehabilitation, submit to random drug and alcohol screens, and to attend Narcotics Anonymous or addiction counseling. The circuit court terminated petitioner's parental rights by order entered in April of 2014. From this order, petitioner now appeals.

This 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 committed four errors in the proceedings below. First, petitioner argues that the circuit court erred in terminating her parental rights because it was likely that the child was to be placed with her biological father who did not live with, and was not married to, petitioner. Second, petitioner argues that the circuit court erred by failing to make findings of fact and conclusions of law that supported its finding that petitioner did not complete her improvement period and that termination of parental rights was necessary. Third, petitioner argues that she was clearly denied any meaningful improvement period. Petitioner asserts that the DHHR did not provide her with assistance in “good faith” or properly file family case plans. Lastly, petitioner argues that the circuit court erroneously conducted hearings without any proof that notice had been served upon petitioner. In conjunction with this argument, petitioner also asserts that it was erroneous for her initial attorney to represent her for over a year given that he had a disqualifying conflict of interest.

Upon our review of the record, we find no error by the circuit court in terminating petitioner's parental rights. Under West Virginia Code § 49-6-5(b)(3), a subject parent's failure to follow through with rehabilitative efforts to reduce or prevent the abuse and neglect of the child constitutes circumstances in which there is no reasonable likelihood that the conditions of abuse or neglect can be substantially corrected. Our review of the record reveals that the circuit court's findings and conclusions in the termination order were clearly supported by the record. For example, the dispositional hearing transcript reveals that petitioner failed to complete each requirement of her dispositional improvement period. Further, H.S.'s father was not guaranteed

reunification with the child and was still under an improvement period during petitioner's dispositional hearing. This evidence supports the circuit court's findings of fact and conclusions of law that, due to petitioner's failure to participate and comply with her improvement period, there was no reasonable likelihood that the conditions of abuse and/or neglect could be substantially corrected in the near future and that termination was in H.S.'s best interests. Pursuant to West Virginia Code § 49-6-5(a)(6), circuit courts are directed to terminate parental, custodial, and guardianship rights upon such findings.

We also find no error by the circuit court with regard to petitioner's improvement period. We bear in mind the following:

“[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, and this is particularly applicable to children under the age of three years who are more susceptible to illness, need consistent close interaction with fully committed adults, and are likely to have their emotional and physical development retarded by numerous placements.” Syl. Pt. 1, in part, *In Re: R.J.M.*, 164 W. Va. 496, 266 S.E.2d 114 (1980).

Syl. Pt. 4, *In re Cecil T.* Contrary to petitioner's assertions that she did not receive a meaningful improvement period, the record shows that petitioner received numerous improvement periods with clear directions over many months, but failed to make progress toward reunification. Nor does the record reveal that petitioner made any objections to the terms and conditions of her improvement periods.

Lastly, the Court finds that the circuit court did not err in holding hearings in petitioner's absence or in petitioner's appointment of new counsel. The record indicates that she was represented by counsel at each and every hearing in this case. Petitioner did not object to the circuit court's orders that reflected hearings she did not attend, nor did she object when the circuit court appointed new counsel for her due to her former counsel's conflict of interest. Moreover, after new counsel was appointed, the circuit court continued the subsequent hearing to give new counsel time to review petitioner's case file, to which petitioner also did not object.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: October 20, 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