STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In Re: L.E.

No. 14-0436 (Kanawha County 13-JA-243)

FILED
October 20, 2014
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Mother, by counsel W. Jesse Forbes, appeals the Circuit Court of Kanawha County's April 11, 2014, order terminating her parental rights to L.E. 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, Paul K. Reese, filed a response on behalf of the child supporting the circuit court's order. Petitioner filed a reply. On appeal, petitioner alleges that the circuit court lacked jurisdiction to preside over the matter, failed to properly spread the facts and circumstances regarding the prior involuntary termination of her parental rights upon the record, erred in finding that she did not substantially correct the problems that led to the prior involuntary termination of parental rights or the present petition's filing, and erred in concluding that termination of parental rights was the least restrictive dispositional alternative.

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 October of 2013, the DHHR filed an abuse and neglect petition alleging that petitioner previously had her parental rights to older children involuntary terminated. The petition further alleged that the child tested positive for methadone at birth. The DHHR filed an amended petition on December 30, 2013, to include additional information about the domestic violence in which petitioner participated that directly led to the prior termination. This included the fact that one of petitioner's older children was injured during the incident when struck in the head.

In November of 2013, petitioner waived her right to a preliminary hearing and was ordered to report immediately for drug screening. The circuit court granted petitioner supervised visitation with the child contingent upon compliance with these court-ordered drug screens. In February of 2014, the circuit court held an adjudicatory hearing. Jennifer Pickens, a Child Protective Services ("CPS") case manager, testified on the DHHR's behalf regarding petitioner's failure to submit to the drug screens as ordered. The circuit court thereafter adjudicated the child as neglected due to a failure to provide her with necessary food, clothing, shelter, supervision, medical care or education. That same month, the DHHR filed a second amended petition adding more information about the domestic violence incident from the prior abuse and neglect

proceeding and also alleging that both parents had substance abuse issues, as evidenced by their failure to submit to mandatory drug screens.

In April of 2014, the circuit court held a dispositional hearing and found that petitioner failed to meaningfully participate in services and further failed to remedy the conditions of abuse and neglect that led to the prior involuntary termination of her parental rights to her older children. Ultimately, the circuit court terminated petitioner's parental rights. It is from this 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's termination of petitioner's parental rights.

To begin, it is clear that the circuit court had jurisdiction to hear this matter. While petitioner disputes her residency in Kanawha County, the record is clear that the child's father resided there. West Virginia Code § 49-6-1(a) states, in pertinent part, that "[i]f the [DHHR] . . . believes that a child is neglected or abused, the [DHHR] . . . may present a petition setting forth the facts to the circuit court in the county in which the custodial respondent or other named party abuser resides . . . ." The petition clearly listed the child's father as a named abusing parent, and the evidence below is undisputed that the father was a resident of Kanawha County. Therefore, the circuit court correctly exercised jurisdiction over this matter.

Further, the Court finds no merit in petitioner's allegation that the circuit court failed to properly spread the facts and circumstances regarding her prior involuntary termination of parental rights upon the record. We have previously held as follows:

> [w]here there has been a prior involuntary termination of parental rights to a sibling, the issue of whether the parent has remedied the problems which led to the prior involuntary termination sufficient to parent a subsequently-born child must, at minimum, be reviewed by a court, and such review should be initiated on a petition pursuant to the provisions governing the procedure in cases of child

> neglect or abuse set forth in West Virginia Code §§ 49–6–1 to –12 (1998). Although the requirement that such a petition be filed does not mandate termination in all circumstances, the legislature has reduced the minimum threshold of evidence necessary for termination where one of the factors outlined in West Virginia Code § 49–6–5b(a) (1998) is present.

In re Kyiah P., 213 W.Va. 424, 427, 582 S.E.2d 871, 874 (2003) (quoting Syl. Pt. 2, *In the Matter of George Glen B.*, 205 W.Va. 435, 518 S.E.2d 863 (1999)). In this matter, the circuit court clearly met the above requirement to review the issue of whether or not petitioner had remedied the problems that led to the prior involuntary termination of her parental rights.

The record shows that petitioner's prior involuntary termination of parental rights, and the underlying issues that led to the same, were discussed at multiple hearings in the proceedings below. Moreover, the parties all presented evidence and witnesses in regard to whether petitioner had remedied those issues of abuse and neglect. This included petitioner testifying to her prior drug abuse issues and her assertion that she was drug-free and attending Narcotics Anonymous and Alcoholics Anonymous meetings, among other treatment, as well as the DHHR's evidence that petitioner failed to comply with the mandatory drug screening ordered in the instant matter. As such, it is clear that the circuit court properly held a review of whether petitioner remedied the issues of abuse and neglect that led to her prior involuntary termination of parental rights.

Further, the Court finds no merit in petitioner's argument that the circuit court erred in finding that petitioner did not substantially correct the problems that led to the prior involuntary termination of parental rights or the present petition's filing. As noted above, the prior involuntary termination of petitioner's parental rights was predicated, at least in part, upon petitioner's substance abuse issues. The instant matter was initiated when the child was born with methadone in her system due to petitioner's abuse of the same during pregnancy. Further, the circuit court offered petitioner services if she would comply with drug screens, despite the same not being required because of her prior involuntary termination of parental rights pursuant to West Virginia Code § 49-6-5(a)(7)(C).

Despite the circuit court's attempt to provide petitioner with services designed to preserve the family, she instead chose not to comply with this requirement. The record shows that petitioner was ordered to undergo a drug screen following the preliminary hearing and chose to leave the premises without completing the test. Thereafter, petitioner failed to call for drug screening during the pendency of the proceedings, which the circuit court indicated it would consider as testing positive for controlled substances. And while petitioner argued that she had been attending drug rehabilitation and submitting to drug screens at a treatment facility on her own, she failed to provide any evidence of negative drug screens. As such, it is clear that the circuit court did not err in finding that petitioner had not remedied the underlying conditions of abuse that led to her prior involuntary termination of parental rights, as her substance abuse issues persisted throughout the proceedings below.

Further, 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 that led to the filing of the instant petition. Again, this petition was predicated, in part, on petitioner's substance abuse.

As noted above, the circuit court attempted to provide petitioner with services designed to remedy these issues, but she willfully refused the same. Pursuant to West Virginia Code § 49-6-5(b)(3), a circumstance in which there is no reasonable likelihood that the conditions of abuse and neglect can be substantially corrected includes one in which "[t]he abusing parent . . . [has] not responded to or followed through with a reasonable family case plan or other rehabilitative efforts of social, medical, mental health or other rehabilitative agencies designed to reduce or prevent the abuse or neglect of the child . . . ." Because petitioner refused to respond to or follow through with the circuit court's minimal requirement that she submit to drug screens, the circuit court's finding in this regard was not error.

While petitioner argues that the circuit court's order was devoid of specific findings of fact related to her prior termination of parental rights in contradiction of Rule 36 of the West Virginia Rules of Procedure for Child Abuse and Neglect Proceedings, the Court finds no merit to this argument. We have previously held that

> "[w]here it appears from the record that the process established by the Rules of Procedure for Child Abuse and Neglect Proceedings and related statutes for the disposition of cases involving children [alleged] to be abused or neglected has been substantially disregarded or frustrated, the resulting order . . . will be vacated and the case remanded for compliance with that process and entry of an appropriate . . . order." Syllabus point 5, in part, *In re Edward B.*, 210 W.Va. 621, 558 S.E.2d 620 (2001).

Syl. Pt. 3, *In re Emily G.*, 224 W.Va. 390, 686 S.E.2d 41 (2009). Because the record contains ample evidence upon which the circuit court based its findings of fact and conclusions of law, the Court finds that the order on appeal does not warrant vacation.

Finally, the Court finds no error in the circuit court's termination of petitioner's parental rights. While petitioner argues that less restrictive dispositional alternatives existed, the Court disagrees. To begin, petitioner's argument in regard to this assignment of error is based primarily on the argument that the DHHR did not provide petitioner services designed to preserve the family. As noted above, petitioner was not entitled to such services. West Virginia Code § 49-6-5(a)(7)(C) clearly states that

> [f]or purposes of the court's consideration of the disposition custody of a child pursuant to the provisions of this subsection, the [DHHR] is not required to make reasonable efforts to preserve the family if the court determines . . . [t]he parental rights of the parent to another child have been terminated involuntarily . . . .

Despite this code section, the circuit court attempted to provide petitioner remedial services with which she refused to comply. As addressed above, the circuit court correctly found that there was no reasonable likelihood that petitioner could substantially correct the conditions of abuse and neglect, and further found that, as a result, termination of petitioner's parental rights was necessary for the child's welfare. Pursuant to West Virginia Code § 49-6-5(a)(6), circuit courts are directed to terminate parental rights upon such findings.

For the foregoing reasons, we find no error in the decision of the circuit court and its April 11, 2014, order is hereby affirmed.

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