STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

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

In Re: E.E., T.A., J.A. II, & C.E.

No. 14-0514 (Jackson County 14-JA-7, 14-JA-21 through 23)

MEMORANDUM DECISION

Petitioner Mother, by counsel Ryan Ruth, appeals the Circuit Court of Jackson County's May 15, 2014, order terminating her parental rights to her eight-year-old daughter, E.E., her twelve-year-old son, T.A., her fourteen-year-old son J.A., II, and her seven-year-old daughter, C.E. The West Virginia Department of Health and Human Resources ("DHHR"), by counsel Michael Jackson, filed its response in support of the circuit court's order. The guardian ad litem ("GAL"), Erica Brannon Gunn, filed a response on behalf of the children that also supports the circuit court's order. On appeal, Petitioner Mother alleges that the circuit court erred in denying her an 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 decision is appropriate under Rule 21 of the Rules of Appellate Procedure.

In February of 2014, the DHHR filed an abuse and neglect petition against Petitioner Mother, alleging that she failed to provide the children with proper supervision. Specifically, the DHHR alleged that Petitioner Mother had a history of severe substance abuse and domestic violence in the presence of E.E., including at least one overdose. In March of 2014, the circuit court held an adjudicatory hearing, during which Petitioner Mother admitted that her substance abuse problems affected her ability to properly care for her children. Petitioner Mother also admitted that domestic violence occurred in the presence of E.E.

On April 17, 2014, the circuit court held a hearing on Petitioner Mother's motion for an improvement period, during which the circuit court heard testimony concerning whether Petitioner Mother was likely to fully participate in the improvement period. The circuit court continued the hearing until May 1, 2014, to give Petitioner Mother proper notice that the DHHR was seeking to terminate her parental rights. Ultimately, the circuit court denied Petitioner Mother an improvement period and terminated her parental rights to all of her children. It is from the dispositional order that Petitioner Mother 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).

Upon our review, this Court finds no error in the circuit court's order terminating Petitioner Mother's parental rights without granting her an improvement period. West Virginia Code § 49-6-12 grants circuit courts discretion to grant an improvement period upon a written motion and a showing, by clear and convincing evidence, that the parent will fully participate in the same. The record in this matter supports the circuit court's denial.

Petitioner Mother argues that she should have been granted an improvement period because she admitted that she was "willing to do anything to be able to get my child back. [A]nd have all my kids back." However, this assertion alone is insufficient to show that Petitioner Mother would fully comply with the terms of an improvement period. The circuit court heard testimony that Petitioner Mother had an extensive history of substance abuse and that the DHHR offered her services in 2008 to address her substance abuse issues, but that she refused to participate in these services. The circuit court also heard testimony that Petitioner Mother was still involved in a relationship with the person who committed domestic violence against her. Importantly, Petitioner Mother's sister testified that Petitioner Mother was receiving illegal drugs from a family member while she was in a detoxification program. Finally, the circuit court heard testimony that E.E. was present on at least one occasion when Petitioner Mother overdosed on illegal drugs. Based upon this evidence, the circuit court found that Petitioner Mother did not present "sufficient evidence to prove that she [was] likely to fully participate in an improvement period." As such, the circuit court did not err in denying the same.

Finally, the Court finds no error in the circuit court's termination of Petitioner Mother's parental rights. While Petitioner Mother argues that the circuit court failed to employ the least restrictive alternative pursuant to West Virginia Code § 49-6-5(a), Petitioner Mother's argument ignores our further directions regarding termination upon findings that there is no reasonable likelihood that the conditions of abuse and neglect can be substantially corrected in the near future.

This Court held that

> "Termination of parental rights, the most drastic remedy under the statutory provision covering the disposition of neglected children, *W.Va.Code,* 49–6–5 [1977] may be employed without the use of intervening less restrictive alternatives when it is found that there is no reasonable likelihood under *W.Va.Code,* 49–6–5(b) [1977] that conditions of neglect or abuse can be substantially corrected." Syl. pt. 2, *In Re: R.J.M.*, 164 W.Va. 496, 266 S.E.2d 114 (1980).

Syl. Pt. 2, *In re Dejah P.*, 216 W.Va. 514, 607 S.E.2d 843 (2004). In this case, the circuit court found that "there was no reasonable likelihood that the conditions of abuse or neglect can be substantially corrected in the near future." This finding was based upon substantial evidence as set forth herein.

The circuit court did not err in proceeding to termination of Petitioner Mother's parental rights because this same evidence established that Petitioner Mother "repeatedly or seriously injured the child physically or emotionally, . . . and the degree of family stress and the potential for further abuse and neglect are so great as to preclude the use of resources to mitigate or resolve family problems." Additionally, the circuit court heard testimony that E.E. feels responsible for Petitioner Mother's drug abuse. This constitutes a situation in which there is no reasonable likelihood that the conditions of abuse or neglect can be corrected. Further, the circuit court found that terminating Petitioner Mother's parental rights was in the best interest of the children. Pursuant to West Virginia Code § 49-6-5(a)(6) directs circuit courts to terminate parental rights upon these findings.

For the foregoing reasons, we find no error in the decision of the circuit court and its May 15, 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