

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

In Re: E.K., I.K., & K.K.

No. 14-0638 (Hampshire County 13-JA-23 through 13-JA-25)

FILED

October 20, 2014

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

MEMORANDUM DECISION

Petitioner Mother, by counsel John H. Treadway, appeals the May 30, 2014, order of the Circuit Court of Hampshire County that terminated her parental rights to four-year-old E.K., three-year-old I.K., and ten-month-old K.K. The children's guardian ad litem, Joyce E. Stewart, filed a response in support of the circuit court's order. The Department of Health and Human Resources ("DHHR"), by its counsel Lee A. Niezgoda, also filed a response in support of the circuit court's order. Petitioner's husband, who is the father of E.K., I.K., K.K., and another child, A.L., by counsel Karen L. Garrett, filed a response in support of petitioner's appeal. On appeal, petitioner argues that the circuit court erred in denying her motion for an extension of her improvement period and 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 order is appropriate under Rule 21 of the Rules of Appellate Procedure.

In August of 2013, the DHHR filed an abuse and neglect petition against petitioner and her husband that alleged that petitioner physically abused her husband's child, three-year-old A.L.; that petitioner's husband failed to protect his other children despite the substantiated allegations of her abuse and neglect; and that petitioner and her husband failed to provide adequate housing for the children due to the home's deplorable condition. In particular, the home was observed to have black mold, exposed insulation, areas of water damage that included water dripping from the ceiling, a damaged roof from a fallen tree, exposed wiring, and a collapsed floor in the bathroom. At the adjudicatory hearing in September of 2013, petitioner stipulated to inflicting bodily injury upon A.L. that left bruises on her arm, spine, abdomen, shin, and knee. Petitioner also stipulated to providing inadequate and dangerous housing for the children. The circuit court adjudicated the children as abused and neglected and granted petitioner a six-month post-adjudicatory improvement period with directions to participate in parenting classes, obtain employment, obtain and maintain stable and appropriate housing, participate in domestic violence classes, earn and utilize positive coping skills to reduce conflict in relationships, and learn and practice adequate skills for taking care of herself and her children.

When the case came on for a dispositional hearing in May of 2014, petitioner requested of extension to her improvement period. After hearing testimony from petitioner and her caseworkers, the circuit court found that petitioner had failed to improve during her improvement

period. The circuit court also found that she had not financially supported her children, secured safe and stable housing, or completed counseling as directed. Based on these findings, the circuit court concluded that there was no reasonable likelihood that the circumstances of abuse and neglect could be substantially corrected in the near future and that reunification would be contrary to the children's best interests. On May 30, 2014, the circuit court entered its order denying petitioner's motion for an extension of her improvement period and terminating her parental rights. From this order, petitioner 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).

Upon our review of the record, we find no error by the circuit court in denying petitioner's motion for an extension to her improvement period at the dispositional hearing. West Virginia Code § 49-6-12(g) directs as follows:

A court may extend any improvement period granted . . . for a period not to exceed three months when the court finds that the [parent] has substantially complied with the terms of the improvement period; that the continuation of the improvement period will not substantially impair the ability of the department to permanently place the child; and that such extension is otherwise consistent with the best interest of the child.

Our review of the evidence supports the circuit court's denial of petitioner's motion to extend her improvement period. The record shows that petitioner did not actively and consistently participate with her services until nearly six months after it began. One of the family's caseworkers testified that during her improvement period, petitioner made “very minimal progress with [] being able to do what [was] need[ed] to take care of the children.” Even after that point, the record shows that petitioner failed to secure a safe and suitable home for the children or complete her directed counseling services.

We also find no error by the circuit court in terminating petitioner's parental rights. "'Although parents have substantial rights that must be protected, the primary goal in cases involving abuse and neglect, as in all family law matters, must be the health and welfare of the children.' Syl. Pt. 3, *In re Katie S.*, 198 W.Va. 79, 479 S.E.2d 589 (1996)." Syl. Pt. 2, *In re Timber M.*, 231 W.Va. 44, 743 S.E.2d 352 (2013). West Virginia Code § 49-6-5(b)(3) also directs as follows:

"[N]o reasonable likelihood that conditions of neglect or abuse can be substantially corrected" shall mean that, based upon the evidence before the [circuit] court, the abusing adult or adults have demonstrated an inadequate capacity to solve the problems of abuse or neglect on their own or with help. Such conditions shall be considered to exist in the following circumstances, which shall not be exclusive . . . (3) The abusing parent or parents have 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, as evidenced by the continuation or insubstantial diminution of conditions which threatened the health, welfare or life of the child[.]

Our review of the evidence supports the circuit court's findings of fact and conclusions of law that petitioner demonstrated an inadequate capacity to resolve the problems of the abuse and neglect and an unwillingness to cooperate in the case plan that was designed to aid in the return of her children and, accordingly, there was no reasonable likelihood that the conditions of abuse and/or neglect could be substantially corrected in the near future and termination was in the children'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.

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