STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

FILED
March 15, 2019
EDYTHE NASH GAISER, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

***In re* N.S., E.S., and A.J.**

No. 18-0985 (Randolph County 2018-JA-057, 2018-JA-058, and 2018-JA-059)

MEMORANDUM DECISION

Petitioner Mother A.N., by counsel J. Brent Easton, appeals the Circuit Court of Randolph County's October 4, 2018, order terminating her parental rights to N.S., E.S., and A.J.[1] The West Virginia Department of Health and Human Resources ("DHHR"), by counsel Lee Niezgoda, filed a response in support of the circuit court's order. The guardian ad litem ("guardian"), Heather M. Weese, filed a response on behalf of the children in support of the circuit court's order. On appeal, petitioner argues that the circuit court erred in denying her motion for a post-adjudicatory 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.

On May 15, 2018, the DHHR filed an abuse and neglect petition alleging that petitioner failed to protect the children from being sexually abused by petitioner's boyfriend, A.J.'s father. According to the DHHR, petitioner disclosed to her mother that she suspected her boyfriend sexually abused her two older children. The children also disclosed the sexual abuse to petitioner's mother. According to the report from petitioner's mother, petitioner questioned E.S. about the boyfriend touching her and the child began crying and stated that the boyfriend "touches her down there." The DHHR also alleged that the two older children disclosed to a relative that the boyfriend touched them. The DHHR further alleged that petitioner reported that on one occasion, the boyfriend offered her money in exchange for sex and additional money in exchange for sex with E.S.

According to the DHHR, eight-year-old N.S. participated in a forensic interview on May 10, 2018. She disclosed that on a school night after she and her sister showered, the boyfriend

[1]Consistent with our long-standing practice in cases with sensitive facts, we use initials where necessary to protect the identities of those involved in this case. *See In re K.H.*, 235 W. Va. 254, 773 S.E.2d 20 (2015); *Melinda H. v. William R. II*, 230 W. Va. 731, 742 S.E.2d 419 (2013); *State v. Brandon B.*, 218 W. Va. 324, 624 S.E.2d 761 (2005); *State v. Edward Charles L.*, 183 W. Va. 641, 398 S.E.2d 123 (1990).

went into N.S.'s room with her and secured the door closed with a chair and a box. The child reported that the boyfriend pushed her pants and underwear down to her knees and "got his thing out of his pants and he started playing with me." When asked to clarify, the child stated that he "put his private part on her private, while she was sitting on his lap." The child recalled that the boyfriend was wearing shorts and a camouflage shirt during the incident. The child told her mother what happened after the incident, but did not tell anyone else until later. The child reported that the boyfriend did not touch her again, but she feared that he was abusing her sister because the boyfriend was always in her sister's room. Six-year-old E.S. also participated in a forensic interview and disclosed that she was taken to the hospital because "they thought some boys touched her privates." However, she did not disclose any specific instances of sexual abuse.

On July 2, 2018, the circuit court held an adjudicatory hearing during which petitioner stipulated to the allegations of abuse and neglect in the petition and requested a post-adjudicatory improvement period. Also in July of 2018, the circuit court held the boyfriend's contested adjudicatory hearing. At this hearing, petitioner testified that she did not believe that the boyfriend sexually abused the children. However, the circuit court noted that petitioner's testimony was inconsistent with other evidence that substantiated petitioner's knowledge of the sexual abuse of the two older children. During the hearing, evidence was admitted regarding the allegations set forth in the petition as it related to the boyfriend, and he was also adjudicated as an abusing parent.

On September 18, 2018, the circuit court held a dispositional hearing during which petitioner testified that, despite her prior stipulations that she failed to protect her children from sexual abuse by her boyfriend, she had "very strong doubts" that he sexually abused them. Petitioner suggested that the children might have been sexually abused while in the care of her mother, because petitioner herself was sexually abused in that home. However, petitioner admitted on cross-examination that she allowed the children to visit that home regularly, despite having been sexually abused there herself. At the conclusion of the hearing, the circuit court denied petitioner's motion for a post-adjudicatory improvement period finding that petitioner's lack of acknowledgement of the sexual abuse of her children rendered her incapable of addressing and remediating the issue. The circuit court also found no reasonable likelihood that petitioner could substantially correct the conditions of abuse and neglect in the near future and that the termination of her parental rights was in the children's best interests. Ultimately, the circuit court terminated her parental rights in its October 4, 2018, dispositional order.[2] It is from this order that petitioner appeals.

The Court has previously established the following standard of review:

[2]The parental rights of petitioner's boyfriend, the father of A.J., were also terminated. According to respondents, the permanency plan for that child is adoption in her current foster home. The father of N.S. and E.S. successfully completed his post-adjudicatory improvement period and the abuse and neglect proceedings against him were dismissed. According to respondents, N.S. and E.S. were placed in his custody upon his completion of his post-adjudicatory improvement period.

> "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 proceedings below.

First, petitioner argues that the circuit court erred in denying her motion for a post-adjudicatory improvement period. In support, she asserts that she testified that she would fully participate in an improvement period if she were granted one. Additionally, she contends that her stipulation to adjudication demonstrated that she accepted responsibility for failing to protect the children, "if they were in fact abused." Petitioner's argument is without merit.

West Virginia Code § 49-4-610(2)(B) provides that a parent may be granted a post-adjudicatory improvement period if the parent "demonstrates, by clear and convincing evidence, that the [parent] is likely to fully participate in the improvement period." Additionally, we have stated that "West Virginia law allows the circuit court discretion in deciding whether to grant a parent an improvement period." *In re M.M.*, 236 W. Va. 108, 115, 778 S.E.2d 338, 345 (2015). Further, we have held

> [i]n 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 Timber M., 231 W. Va. 44, 55, 743 S.E.2d 352, 363 (2013) (quoting *In re: Charity H.*, 215 W. Va. 208, 217, 599 S.E.2d 631, 640 (2004)). While petitioner stipulated to adjudication, she later claimed that she had "very strong doubts" that the children were sexually abused by the boyfriend, despite evidence that substantiated her knowledge of the abuse. Her argument on appeal demonstrates that she continues to doubt the sexual abuse occurred, despite the evidence presented below. Additionally, during the dispositional hearing, petitioner also attempted to shift the blame to her mother, claiming that she herself was sexually abused in that home. Yet, petitioner admitted that she still frequently allowed the children to visit her mother's home. It is clear that petitioner failed to acknowledge the sexual abuse of the children. Petitioner's argument

that she should have been granted an improvement period because the father of N.S. and E.S. was granted an improvement period is also without merit because, according to the record, the father acknowledged the abuse of the children and accepted responsibility for failing to protect them. He subsequently successfully completed his post-adjudicatory improvement period. Based upon this evidence, it is clear that the circuit court did not err in denying petitioner's motion for a post-adjudicatory improvement period.

Next, petitioner argues that the circuit court erred in terminating her parental rights instead of granting her an improvement period.[3] We do not find this argument compelling.

West Virginia Code § 49-4-604(b)(6) provides that circuit courts are to terminate parental rights upon findings that there is "no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future" and that termination is necessary for the children's welfare. West Virginia Code § 49-4-604(c) clearly indicates that a situation where there is no reasonable likelihood that the conditions of abuse and neglect can be substantially corrected includes one in which the abusing parent "demonstrated an inadequate capacity to solve the problems of abuse or neglect on their own or with help." The evidence discussed above also supports the termination of petitioner's parental rights. The record shows that petitioner failed to protect the children from sexual abuse by the boyfriend. Petitioner stipulated to the allegations of abuse and neglect, but later claimed to have doubts that the boyfriend sexually abused the children and attempted to shift the blame to her mother. Following the evidence presented at the dispositional hearing, the circuit court found that petitioner's failure to acknowledge the sexual abuse of her children rendered her incapable of addressing the issue. Therefore, it is clear that there was no reasonable likelihood that petitioner could substantially correct the conditions of abuse and neglect in the near future and that the termination of her parental rights was in the children's best interests.

Further, we have held that

> "[t]ermination of parental rights, the most drastic remedy under the statutory provision covering the disposition of neglected children, [West Virginia Code § 49-4-604] . . . may be employed without the use of intervening less restrictive alternatives when it is found that there is no reasonable likelihood under [West Virginia Code § 49-4-604(c)] . . . that conditions of neglect or abuse can be substantially corrected." Syllabus point 2, *In re R.J.M.*, 164 W.Va. 496, 266 S.E.2d 114 (1980).

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[3]Petitioner provides no authority, citations to the record, or legal analysis in support of this argument in violation of Rule 10(c)(7) of the West Virginia Rules of Appellate Procedure which states:

> The brief must contain an argument exhibiting clearly the points of fact and law presented, the standard of review applicable, and citing the authorities relied on, under headings that correspond with the assignments of error. The argument must contain appropriate and specific citations to the record on appeal, including citations that pinpoint when and how the issues in the assignments of error were presented to the lower tribunal.

Syl. Pt. 5, *In re Kristin Y.*, 227 W. Va. 558, 712 S.E.2d 55 (2011). Therefore, we find no error in the circuit court's termination of petitioner's parental rights.

For the foregoing reasons, we find no error in the decision of the circuit court, and its October 4, 2018, dispositional order is hereby affirmed.

Affirmed.

ISSUED: March 15, 2019

CONCURRED IN BY:

Chief Justice Elizabeth D. Walker
Justice Margaret L. Workman
Justice Tim Armstead
Justice Evan H. Jenkins
Justice John A. Hutchison