STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re **A.B.-1**

No. 20-0184 (Brooke County 19-JA-8)

FILED
November 4, 2020
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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Mother A.B.-2, by counsel Ann Marie Morelli, appeals the Circuit Court of Brooke County's January 21, 2020, order terminating her parental rights to A.B.-1.[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, Shannon N. Price, filed a response on behalf of the child in support of the circuit court's order. On appeal, petitioner argues that the circuit court erred in terminating her improvement period and terminating her parental rights without imposing a less-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.

The DHHR filed an abuse and neglect petition alleging that petitioner's substance abuse and engagement in domestic violence impacted her ability to parent A.B. At the time of the filing of the petition, petitioner was incarcerated on charges of child neglect creating risk of death or injury, after she nearly fatally overdosed while A.B.-1 was in her care. Thereafter, petitioner waived her preliminary hearing. By June of 2019, as a condition of her release on bond, petitioner enrolled into an inpatient substance abuse treatment program. In mid-August of 2019, petitioner completed the inpatient program and was to enroll in outpatient drug treatment and Narcotics Anonymous ("NA") meetings.

[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). Additionally, because the child and petitioner share the same initials, we will refer to them as A.B.-1 and A.B.-2 respectively, throughout this memorandum decision.

At the adjudicatory hearing in August of 2019, petitioner stipulated that her ongoing substance abuse negatively impacted her ability to parent, and the circuit court adjudicated petitioner as an abusing parent. Subsequently, the circuit court granted petitioner a post-adjudicatory improvement period, the terms of which included completing a psychological evaluation, submitting to regular drug screenings, attending parenting and adult life skills classes, attending supervised visitations, and completing outpatient drug treatment. However, shortly after the granting of her improvement period, "petitioner began to struggle" by "failing to stay in touch with her counsel" and the DHHR and failing to submit to drug screens or attend supervised visits.

Thereafter, petitioner failed to appear at a status hearing in September of 2019, but counsel represented her. The DHHR presented evidence that petitioner exercised only one supervised visit with the child and had submitted only two random drug screens out of twenty-four. The DHHR also showed that petitioner failed to attend parenting and adult life skills classes, her psychological evaluation, or follow through with outpatient substance abuse treatment. The circuit court then terminated petitioner's improvement period and set the matter for disposition. A few days after the status hearing, law enforcement responded to a call regarding a domestic violence incident between petitioner and her boyfriend, in which petitioner appeared to be under the influence of drugs and methamphetamine was found in the home. Subsequently, in October of 2019, petitioner assaulted A.B.-1's foster parent and, upon arrest, was also charged with possession of methamphetamine.

In November of 2019, the circuit court held the final dispositional hearing. Petitioner did not appear, but counsel represented her. The DHHR argued that petitioner failed to complete the terms of her improvement period and moved to terminate petitioner's parental rights. The DHHR presented evidence that petitioner's complete absence from the proceedings and noncompliance with services had continued since the adjudicatory hearing in August of 2019. Based upon the evidence presented, the circuit court found that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future and that terminating petitioner's parental rights was necessary for the child's welfare. Ultimately, the circuit court terminated petitioner's parental rights by order entered on January 21, 2020. It is from the dispositional order that petitioner appeals.[2]

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

[2]The father is deceased, and the permanency plan for the child is adoption in her foster home.

> 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).

On appeal, petitioner alleges that the circuit court erred in terminating her improvement period. Petitioner contends that she should have been allotted the entire statutory length of time for her improvement period to correct the conditions of abuse because "[a]ddiction is not cured quickly." We disagree.

Pursuant to West Virginia Code § 49-4-610(7), "[u]pon the motion by any party, the court shall terminate any improvement period granted pursuant to this section when the court finds that [the parent] has failed to fully participate in the terms of the improvement period." Here, the record overwhelmingly supports the circuit court's findings related to petitioner's failure to fully participate in her improvement period and her ultimate failure to successfully complete the same. Additionally, this Court has held that

> [a]t the conclusion of the improvement period, the court shall review the performance of the parents in attempting to attain the goals of the improvement period and shall, in the court's discretion, determine whether the conditions of the improvement period have been satisfied and whether sufficient improvement has been made in the context of all the circumstances of the case to justify the return of the child.

Syl. Pt. 6, *In Interest of Carlita B.*, 185 W. Va. 613, 408 S.E.2d 365 (1991).

According to the record, despite having counsel and previously attending the adjudicatory hearing, petitioner failed to appear at the status hearing in September of 2019 and the final dispositional hearing in November of 2019. Petitioner failed to communicate with the DHHR to effectuate services for her improvement period, yet, on appeal, claims that the DHHR failed to show what efforts it made to "help [petitioner] overcome the addictions she suffered from." However, "[w]hen any improvement period is granted to a respondent [parent] . . . the [parent] shall be responsible for the initiation and completion of all terms of the improvement period." W. Va. Code § 49-4-610(4)(A). Furthermore, regarding petitioner's argument that she was entitled to the full allotted time for her improvement period, we have held the following:

> Neither [W. Va. Code § 49-4-601] nor [W. Va. Code § 49-4-610] mandates that an improvement period must last for [six] months. It is within the court's discretion to grant an improvement period within the applicable statutory requirements; it is also within the court's discretion to terminate the improvement period before the [six-month] time frame has expired if the court is not satisfied that the [parent] is making the necessary progress.

Syl. Pt. 2, in part, *In re Lacey P.*, 189 W. Va. 580, 433 S.E.2d 518 (1993).

Here, petitioner failed to contact the DHHR to schedule her psychological evaluation and submitted only two drug screens out of twenty-four. Also, she attended only one supervised visit with the child during her improvement period. "We have previously pointed out that the level of interest demonstrated by a parent in visiting his or her children while they are out of the parent's custody is a significant factor in determining the parent's potential to improve sufficiently and achieve minimum standards to parent the child." *In re Katie S.*, 198 W. Va. 79, 90 n.14, 479 S.E.2d 589, 600 n.14 (1996) (citations omitted). Finally, petitioner completely failed to participate in parenting and adult life skills classes or enroll into a drug treatment program. As such, we find no abuse of discretion in the circuit court's determination that petitioner was completely noncompliant with the terms and conditions of her improvement period, which warranted the termination of the same.

Next, petitioner argues that the circuit court erred in terminating her parental rights instead of imposing a less-restrictive dispositional alternative. In support, petitioner argues that the child was placed in a kinship placement, and, therefore, termination of her parental rights was not the least-restrictive disposition. We disagree, and note that, on appeal, petitioner cannot establish that the circuit court's findings necessary for termination were in error.

West Virginia Code § 49-4-604(c)(6) permits a circuit court to terminate parental rights upon finding 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 welfare of the child. Further, pursuant to West Virginia Code § 49-4-604(d)(3), a situation 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 . . . designed to reduce or prevent the abuse or neglect of the child." Here, the record supports the circuit court's finding that there was no reasonable likelihood that petitioner could substantially correct the conditions of abuse and neglect, given her complete abandonment of, and noncompliance with, the proceedings below.

Despite stipulating to a drug addiction at the adjudicatory hearing, in the presence of her counsel and the DHHR worker, petitioner failed to contact either her counsel or the DHHR after the hearing to effectuate any services. Her compliance with drug testing was an abject failure as she completed only two of twenty-four drug screens. She failed to follow through with the outpatient drug rehabilitation program upon her discharge from inpatient treatment and failed to enroll into another inpatient rehabilitation, which was an agreed term of her improvement period. Without explanation, petitioner failed to appear at the status hearing regarding her improvement period and the final dispositional hearing. At disposition, the DHHR presented evidence that petitioner had not contacted the DHHR since the adjudicatory hearing and had completely failed to comply with any of the agreed terms of her improvement period. Clearly, petitioner failed to follow through with any rehabilitative efforts required by her improvement period and, in fact, makes no claim that she successfully completed the terms and conditions of said improvement period. Additionally, the record shows that the child's welfare required termination of petitioner's parental rights as petitioner exercised only one supervised visit with then-five-year-old A.B.-1 and assaulted the child's foster parent. Therefore, sufficient evidence was presented to find that there was no reasonable likelihood that petitioner could correct the conditions of abuse and/or neglect

in the near future and that termination of petitioner's parental rights was necessary for the child's welfare.

While petitioner claims that she should have been granted a less-restrictive disposition because the child was placed in a kinship placement, 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(d)] 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).

Syl. Pt. 5, *In re Kristin Y.*, 227 W. Va. 558, 712 S.E.2d 55 (2011). Because the circuit court properly found that there was no reasonable likelihood that the conditions of abuse and neglect could be corrected in the near future, a less-restrictive alternative disposition was not warranted. Therefore, we find no error.

Accordingly, the circuit court's January 21, 2020, order is hereby affirmed.

Affirmed.

ISSUED: November 4, 2020

CONCURRED IN BY:

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