STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

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

***In re* A.S., D.G.-1, D.G.-2, S.G. Jr., and D.B.**

No. 20-0371 (Randolph County 19-JA-63, 19-JA-64, 19-JA-65, 19-JA-66, and 19-JA-75)

MEMORANDUM DECISION

Petitioner Father T.S., by counsel Timothy H. Prentice, appeals the Circuit Court of Randolph County's February 25, 2020, order terminating his parental rights to A.S., D.G.-1, D.G.-2, S.G. Jr., and D.B.[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, 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 him an improvement period and terminating his 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 July of 2019, the DHHR filed an abuse and neglect petition alleging that petitioner abused and neglected the children. According to the petition, the DHHR received a referral concerning the conditions in the home, petitioner's substance abuse, and domestic violence. Upon arriving at the home, the DHHR found it to be in "deplorable condition" and extremely cluttered, full of trash, soiled diapers, and other unsanitary material. The DHHR also observed prescription pills littering the floor within reach of one-year-old A.S. According to the mother, she and petitioner had an altercation that same day that resulted in her filing a petition for a domestic violence protective order. During the DHHR's investigation, it discovered that the parents had a

[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 two of the children share the same initials, they will be referred to as D.G.-1 and D.G.-2 throughout this memorandum decision.

history of domestic violence, some of which occurred in the children's presence. The DHHR further believed that the parents were under the influence of methamphetamine, which the mother confirmed. Petitioner later waived his preliminary hearing.

In September of 2019, the circuit court held an adjudicatory hearing. Petitioner failed to attend, but was represented by counsel. Based on the evidence presented, the circuit court found that the DHHR established that petitioner's substance abuse was substantial. The circuit court also noted its prior involvement with the family, as D.G.-1 "participated in the juvenile drug court program and residential treatment" under the court's prior order. As the circuit court noted, the child "spent an additional six months in residential treatment because [petitioner and the mother] would not submit to drug screens to ensure the safety of their home." The circuit court further found that the evidence established that the conditions in the home were horrible and unsafe, given the "clutter, dirt, spoiled food and pills laying [sic] on the floor." Finally, the circuit court found that the mother confirmed to the DHHR that petitioner engaged in domestic violence with her. Accordingly, the circuit court found that petitioner was an abusing parent.

Thereafter, the DHHR filed a motion to terminate petitioner's parental rights, which it later amended. According to these filings, petitioner not only failed to appear for adjudication, but continued to refuse to accept responsibility for the abuse and neglect at issue. According to the DHHR, petitioner also failed to appear for drug screens or otherwise participate in the proceedings.

In February of 2020, the circuit court held a dispositional hearing, during which the circuit court denied petitioner's motion for an improvement period, finding that petitioner previously demonstrated defiance of the court's directives during D.G.-1's juvenile proceeding and that his "defiance with the [c]ourt's directives has continued." This included petitioner's refusal to submit to drug screens as required, his total lack of effort to contact the DHHR in order to seek treatment or visit the children, and his continued substance abuse. Despite petitioner's testimony that he would participate in an improvement period, the court found that he "demonstrated no actions that indicate a likelihood that [he] would actually participate." Because there was no reasonable likelihood that petitioner could substantially correct the conditions of abuse and neglect, and because it was necessary for the children's welfare, the circuit court terminated petitioner's parental rights to the children.[2] It is from the dispositional 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

[2]All parents' parental rights were terminated below. The permanency plans for the children are as follows: A.S. will be adopted in the current foster home; S.G. Jr. will remain in the legal guardianship of his paternal grandparents, which was granted prior to the underlying proceedings; D.B. will remain in the custody of her paternal grandmother, who will obtain a legal guardianship; D.G.-2 will be adopted in his foster home; and D.G.-1 will be adopted in the same foster home as D.G.-2, pending his completion of a treatment program for certain behavioral issues. Should D.G.-2's treatment prove unsuccessful, the concurrent permanency plan for the sixteen-year-old is a transitional living arrangement.

> 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).

On appeal, petitioner argues that the circuit court erred in terminating his parental rights without first granting him an improvement period or considering other less-restrictive dispositional alternatives. Citing his testimony in which he indicated that he would participate in an improvement period by submitting to substance abuse treatment, petitioner argues that it was error to deny his motion. We do not agree.

This Court has long held that a parent's "entitlement to an improvement period is conditioned upon the ability of the [parent] to demonstrate 'by clear and convincing evidence that the respondent is likely to fully participate in the improvement period.'" *In re Charity H.*, 215 W. Va. 208, 215, 599 S.E.2d 631, 638 (2004). Moreover, the decision to grant or deny an improvement period rests in the sound discretion of the circuit court. *See In re M.M.*, 236 W. Va. 108, 115, 778 S.E.2d 338, 345 (2015) ("West Virginia law allows the circuit court discretion in deciding whether to grant a parent an improvement period."); Syl. Pt. 6, in part, *In re Katie S.*, 198 W. Va. 79, 479 S.E.2d 589 (1996) ("It is within the court's discretion to grant an improvement period within the applicable statutory requirements . . . ."). Here, petitioner cites only to his self-serving testimony to assert that he satisfied the applicable burden for obtaining an improvement period, while ignoring the circuit court's detailed findings about his willful defiance of the court's orders. Not only did petitioner prolong D.G.-1's placement outside the home in an unrelated juvenile drug court proceeding by his refusal to take the meager step of submitting to drug screens to ensure that the child would be safe upon his return to petitioner's care, he demonstrated a continued refusal to comply with simple orders during the instant proceedings. As the record shows, petitioner failed to attend the adjudicatory hearing, failed to submit to drug screens as required, and refused to contact the DHHR in order to secure the substance abuse treatment he later testified he would be willing to undergo. It is disingenuous for petitioner to refuse to participate in two separate proceedings and then argue that he satisfied a burden of establishing a likelihood that he would fully participate in an improvement period simply by testifying that he would participate. Accordingly, we find no error in the circuit court's denial of petitioner's request for an improvement period.

Further, we find no error in the circuit court's termination of petitioner's parental rights. According to petitioner, termination was in error because the circuit court could have imposed a less-restrictive dispositional alternative. We find, however, that termination was appropriate, given that the circuit court made the findings necessary for termination under West Virginia Code § 49-

4-604(c)(6). Specifically, the circuit court found that there was no reasonable likelihood petitioner could substantially correct the conditions of abuse and neglect in the near future because of his almost total failure to participate in the proceedings or otherwise correct the conditions of abuse and neglect. This is a situation in which there is no reasonable likelihood that a parent can correct such conditions. W. Va. Code § 49-4-604(d)(3) (Providing that no reasonable likelihood the conditions of abuse and neglect can be substantially corrected exists when the parent has "not responded to or followed through with a reasonable family case plan.").

Even more importantly, the circuit court found that petitioner did not visit the children during the entirety of the proceedings, which this Court has recognized is a strong indicator that the parent lacks the potential to improve. *In re Katie S.*, 198 W. Va. 79, 90 n.14, 479 S.E.2d 589, 600 n.14 (1996) ("[T]he 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.") (citations omitted). While petitioner is correct that West Virginia Code § 49-4-604(c) sets forth options other than termination of parental rights at disposition, he ignores this Court's direction 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). Further, petitioner offers no challenge to the circuit court's findings, other than to assert without any citation to the record that the children remain bonded to him. We find, however, that the record does not support this assertion and, more importantly, that petitioner's refusal to take the minimal step of contacting the DHHR to inquire about visiting the children evidences a disregard of any alleged bond on his part. Accordingly, it is clear that termination of petitioner's parental rights was based on substantial evidence, and we find no error.

For the foregoing reasons, we find no error in the decision of the circuit court, and its February 25, 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