STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

FILED
March 12, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

In the Interest of: M.M. Jr., S.M., E.M., A.M., and B.M.:

No. 11-0952 (Mercer County 09-JA-123 through 126, and 11-JA-36)

MEMORANDUM DECISION

This appeal arises from the Circuit Court of Mercer County, wherein Petitioner Mother's parental rights were terminated. This appeal of the order terminating Petitioner Mother's parental rights was timely perfected by Petitioner Mother's counsel Michael Cooke, with Petitioner Mother's appendix accompanying the petition. The children's guardian ad litem, Julie M. Lynch, filed her response on behalf of the children. The Department of Health and Human Resources ("DHHR"), by its attorney Thomas Berry, filed a response joining in the guardian ad litem's summary response.

This Court has considered the parties' briefs and the appendix on appeal. The facts and legal arguments are adequately presented in the parties' written briefs and the appendix on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the appendix presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

"'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.' Syllabus Point 1, *In the Interest of: Tiffany Marie S.*, 196 W.Va. 223, 470 S.E.2d 177 (1996)." Syl. Pt. 1, *In re Faith C.*, 226 W.Va. 188, 699 S.E.2d 730 (2010).

The instant petition was filed against the subject children's parents after Petitioner Mother gave birth child A.M. At A.M.'s birth, Petitioner Mother tested positive for methadone and A.M. had health problems and was considered a "high risk infant." At adjudication, the subject children's parents both stipulated to neglect based on substance abuse and the circuit court granted them post-adjudicatory improvement periods. Subsequently, the circuit court granted a number of extensions to the parents' improvement periods, during which time Petitioner Mother gave birth to another child, B.M. The parents waived a preliminary hearing for B.M. and upon adjudication for B.M.,

B.M.'s case joined those of Petitioner Mother's other children. At several review hearings, the circuit court received reports that the Petitioner Mother and her husband were uncooperative with DHHR, failing to report to appointments several times and failing to submit to drug screens. Nevertheless, the circuit court gave Petitioner Mother more time to see if she would enter into a long-term in-patient substance abuse treatment program. She refused to report for one program, eventually became enrolled at another one, but was discharged before its completion because she was tested positive for Neurontin. At the dispositional hearing regarding all the children, the circuit court considered testimony from the Petitioner Mother herself and from several witnesses who testified to working with the Petitioner Mother as caseworkers. In terminating Petitioner Mother's parental rights, the circuit court found that since the case was opened, Petitioner Mother and her husband continued to use drugs throughout the proceedings, have made minimal progress, have been noncompliant with services, and have had relapses during treatment. Consequently, the circuit court concluded that there was no reasonable likelihood that Petitioner Mother's neglectful circumstances would improve and that termination was necessary for the welfare of the subject children. It is from this order that Petitioner Mother appeals.

On appeal, Petitioner Mother argues that the circuit court improperly terminated her parental rights without extending her dispositional improvement period. She argues that the goal of an improvement period is to develop a program to assist parents in dealing with issues that interfere with the ability to parent and to foster an improved relationship with the hope of restoring full parental rights. *In the Interest of Renae Ebony W.*, 192 W.Va. 421, 427, 452 S.E.2d 737, 743 (1994) (citing *In the Interest of Carlita B.*, 185 W.Va. 613, 625, 408 S.E.2d 365, 377 (1991)). Petitioner Mother argues that during her improvement period, she was enrolled at the Prestera Renaissance Mattie V. Lee facility to battle her drug dependency. She was doing well in the program until was discharged for using Neurontin with other women at the facility. After her discharge, Petitioner Mother attempted to secure a bed at other treatment facilities, Amity and Southern Highlands. Petitioner Mother asserts that had she been able to complete her treatment in the program, it is reasonable to believe that she would be rehabilitated today. She argues that the circuit court erroneously considered her discharge and her failure to secure a position for treatment elsewhere as an indication that there would be no reasonable likelihood for the conditions of neglect to improve. Petitioner Mother asserts that with the proper assistance from DHHR and an extension to her dispositional improvement period, Petitioner Mother could enter and complete a long-term substance abuse program to the point where her children can return home.

The guardian ad litem responds, arguing that Petitioner Mother's arguments are without merit and that the circuit court correctly terminated Petitioner Mother's parental rights based on the totality of the circumstances. Petitioner Mother admitted to her substance abuse problem, but waited over a year to enter treatment. Then, it was only months before she relapsed into her addiction. Petitioner Mother was uncooperative and noncompliant with the terms of her improvement period treatment plans throughout this case. The DHHR joins in the guardian ad litem's response.

A review of the appendix indicates that the circuit court afforded Petitioner Mother time to seek and complete treatment for her drug problems. "'[C]ourts are not required to exhaust every

speculative possibility of parental improvement before terminating parental rights where it appears that the welfare of the child will be seriously threatened . . . .' Syllabus point 1, *In re R.J.M.*, 164 W.Va. 496, 266 S.E.2d 114 (1980)." Syl. Pt. 4, in part, *In re Kristin Y.*, 227 W.Va. 558, 712 S.E.2d 55 (2011). Testimony from Child Protective Services ("CPS") workers and other caseworkers provided that Petitioner Mother failed to report to a number of appointments and services, including visitation; failed to seek treatment until a year after the case opened, which she failed to complete due to taking Neurontin; and overall, failed to make enough progress over time for the circuit court to return the subject children back to her home. The Court finds no error in the circuit court's decision to terminate Petitioner Mother's parental rights.

This Court reminds the circuit court of its duty to establish permanency for M.M. Jr., S.M., E.M., A.M., and B.M. Rule 39(b) of the Rules of Procedure for Child Abuse and Neglect Proceedings requires:

> At least once every three months until permanent placement is achieved as defined in Rule 6, the court shall conduct a permanent placement review conference, requiring the multidisciplinary treatment team to attend and report as to progress and development in the case, for the purpose of reviewing the progress in the permanent placement of the child.

Further, this Court reminds the circuit court of its duty pursuant to Rule 43 of the Rules of Procedure for Child Abuse and Neglect Proceedings to find permanent placement for M.M. Jr., S.M., E.M., A.M., and B.M. within eighteen months of the date of the disposition order.[1] As this Court has stated, "[t]he eighteen-month period provided in Rule 43 of the West Virginia Rules of Procedures for Child Abuse and Neglect Proceedings for permanent placement of an abused and neglected child following the final dispositional order must be strictly followed except in the most extraordinary circumstances which are fully substantiated in the record." Syl. Pt. 6, *In re Cecil T.*, 228 W.Va. 89, 717 S.E.2d 873 (2011). Moreover, this Court has stated that "[i]n determining the appropriate permanent out-of-home placement of a child under *W.Va.Code* § 49-6-5(a)(6) [1996], the circuit court shall give priority to securing a suitable adoptive home for the child and shall consider other placement alternatives, including permanent foster care, only where the court finds that adoption would not provide custody, care, commitment, nurturing and discipline consistent with the child's best interests or where a suitable adoptive home can not be found." Syl. Pt. 3, *State v. Michael M.*, 202 W.Va. 350, 504 S.E.2d 177 (1998). Finally, "[t]he guardian ad litem's role in abuse and neglect proceedings does not actually cease until such time as the child is placed in a permanent home." Syl. Pt. 5, *James M. v. Maynard* , 185 W.Va. 648, 408 S.E.2d 400 (1991).

[1] Rule 43 was amended effective January 3, 2012. The amended rule reducing the eighteen-month period for permanent placement to twelve months only applies to final dispositional orders entered after January 3, 2012.

For the foregoing reasons, we find no error in the decision of the circuit court and the termination of parental rights is hereby affirmed.

Affirmed.

ISSUED: March 12, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Thomas E. McHugh

NOT PARTICIPATING:

Justice Margaret L. Workman