

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

In Re: R.P.:

No. 11-1210 (Webster County 09-JA-43)

FILED

January 18, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Psychological Father appeals the termination of his parental rights to R.P. The appeal was timely perfected by counsel, with petitioner's appendix accompanying the petition. The West Virginia Department of Health and Human Resources ("DHHR") has filed its response. The guardian ad litem has filed his response on behalf of the child.

Having reviewed the record and the relevant decision of the circuit court, the Court is of the opinion that the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review and the record presented, the Court determines that there is no prejudicial error. This case does not present a new or significant question of law. 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 petition in this matter was filed after the mother gave birth to another child who was born addicted to drugs. The main allegations against Petitioner Psychological Father are failure to protect, as he allowed the mother to repeatedly use drugs in his home while the child R.P. was present, and allowed R.P. contact with inappropriate individuals. Petitioner Father was given an improvement period, and had mostly negative drug screens. However, a search of his home later revealed a “detox” kit used to mask drug use on drug screens.

Further, there was testimony that petitioner was using prescription medications prescribed by his doctor, yet those medications were not showing on his drug screens. Even after the mother's parental rights were terminated, petitioner continued to defy court orders by allowing her to have contact with the child. At the disposition hearing, a therapist testified that although the child and petitioner have a strong bond and termination would be psychologically detrimental, the child could recover from termination through further therapy. The circuit court terminated petitioner's parental rights, noting that a "detox" kit was found in petitioner's bedroom and feels that his negative drug tests could be a result of this kit, since he testified that he was taking hydrocodone, yet it did not appear on most of his screens. Further, the circuit court believes that petitioner will not cease his relationship with the terminated mother, and has had her in his home within the last month. Thus, although there is a significant bond between petitioner and the child, termination is in the child's best interest.

On appeal, Petitioner Psychological Father argues that the circuit court erred by improperly addressing the impact of the termination to the child. In the present matter, testimony showed that there was a significant bond between the child and petitioner. The circuit court noted as much during the dispositional hearing and in the order. However, the circuit court also noted that the petitioner continued to allow the child to be around his mother, whose rights were terminated, and allowed her to use drugs in the presence of the child. Further, there was testimony that proper therapy could lessen any negative impact on the child. As the circuit court properly examined what was in the best interests of the child, this Court finds no error in the decision.

Regarding the termination in this matter, this Court has stated that "when a parent cannot demonstrate that he/she will be able to correct the conditions of abuse and/or neglect with which he/she has been charged, an improvement period need not be awarded before the circuit court may terminate the offending parent's parental rights." *In re Emily*, 208 W.Va. 325, 336, 540 S.E.2d 542, 553 (2000). Moreover, termination is proper when "there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future, and when necessary for the welfare of the child . . ." W.Va. Code § 49-6-5(a)(6). In the present case, the circuit court found that the petitioner continuously failed to protect the child by allowing the child to be exposed to numerous inappropriate individuals, including the mother whose rights were terminated. Further, even after the circuit court ordered no contact with certain individuals, the petitioner violated those orders, allowing the child to be exposed to harmful individuals.

This Court reminds the circuit court of its duty to establish permanency for R.P. 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 Rules of Procedure for Child Abuse and Neglect Proceedings to find permanent placement for R.P. within eighteen months of the date of the disposition order. 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 of West Virginia 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).

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: January 18, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Thomas E. McHugh