

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

FILED

September 7, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

In Re: R.C.

No. 12-0229 (Mercer County 10-JA-78-DS)

MEMORANDUM DECISION

This appeal with accompanying record, filed by counsel Thomas Fuda, arises from the Circuit Court of Mercer County, wherein Petitioner Mother's custodial rights were terminated by order entered on January 27, 2012. The child's guardian ad litem, John Earl Williams Jr., filed a response on behalf of the child in support of the circuit court's order. The Department of Health and Human Resources ("DHHR"), by its attorney William L. Bands, also filed a response in support of the circuit court's order.

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 is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

Child Protective Services ("CPS") became involved with the family in the instant matter in March of 2010. Petitioner Mother arrived with two unidentified men at DHHR to meet with her West Virginia Works worker. It came to light that both of these men were sexual offenders. DHHR explained to Petitioner Mother the inappropriateness of the men's involvement in her and her daughter's lives. Subsequently, Petitioner Mother signed a safety agreement to not allow these two men around her daughter R.C., who was eight years old at the time. Despite this safety agreement, however, Petitioner Mother continued to allow these two men in their lives, and even later allowed them to move into her home. Consequently, DHHR filed the instant petition in June of 2010 against Petitioner Mother, based on allegations that Petitioner Mother failed to provide necessary supervision to R.C., threatening her safety. DHHR filed an amended petition in October of 2010, adding that, in an interview, the child discussed sexual advances made toward her by these two men and of Petitioner Mother's awareness of these sexual advances.

Petitioner Mother stipulated to neglect at the adjudicatory hearing in November of 2010. The circuit court granted Petitioner Mother a post-adjudicatory improvement period with the requirement for her to end all contact with the two sexual offenders. At a review hearing in May of 2011, Petitioner Mother stated that she severed contact with these two men. However, it came to light that she had begun seeing another sexual offender who lived in her neighborhood. DHHR moved for disposition in order to terminate Petitioner Mother's parental rights; Petitioner Mother expressed her desire to voluntarily relinquish her parental rights to R.C. at the next hearing. At disposition in October of 2011, the circuit court heard testimony from Petitioner Mother's

service providers and from Petitioner Mother herself. At the close of evidence, DHHR moved to terminate Petitioner Mother's parental rights. Rather than terminate Petitioner Mother's parental rights to R.C., the circuit court terminated Petitioner Mother's custodial rights to R.C. and granted holiday visitation. Petitioner Mother appeals the circuit court's decision terminating her custodial rights to R.C, arguing one assignment of error.

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 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 Mother argues that the circuit court abused its discretion in failing to grant an extension of her post-adjudicatory improvement period and in terminating her custodial rights to R.C. She argues that pursuant to West Virginia Code § 49-6-12(g), a circuit court may extend an improvement period when it finds that the parent has substantially complied with the terms of the improvement period. She further argues that the Court has stated as follows:

“At 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 re Carlita B.*, 185 W.Va. 613, 408 S.E.2d 365 (1991).

Syl. Pt. 10, *In re Daniel D.*, 211 W.Va. 79, 562 S.E.2d 147 (2002). Petitioner Mother argues that here, DHHR did not meet its burden to show that Petitioner Mother failed to substantially comply with the terms of her improvement period, that continuation of her improvement period would substantially impair DHHR's ability to place R.C., or that an extension of her improvement period would have been inconsistent with the best interests of R.C. She asserts that with her mild mental retardation, more time in her improvement period was necessary to reach DHHR's goals and thus, an extension of her improvement period was warranted. Petitioner Mother asserts that at disposition, her DHHR caseworker testified that Petitioner Mother did all

she was required to do and the only issue was whether Petitioner Mother was retaining and applying these services. Petitioner Mother also notes that Melissa Kuren of Second Chances testified that Petitioner Mother was comprehending the information she learned, but was not applying it. Petitioner Mother argues that accordingly, more time was warranted on her improvement period to effectuate these services.

The guardian ad litem and DHHR respond, contending that the circuit court did not abuse its discretion in terminating Petitioner Mother's custodial rights. Both argue that from the beginning of this case, Petitioner Mother has continually displayed bad judgment by allowing certain men in her and R.C.'s lives, despite being repeatedly told that their presence was inappropriate. Both further assert that her psychological evaluations indicate that she is unable to recognize her responsibilities as a proactive parent and is incapable of providing adequate independent parenting. Given these circumstances, the guardian and DHHR argue that in terminating Petitioner Mother's custodial rights, the circuit court chose a less restrictive option than terminating Petitioner Mother's parental rights and did not err in its decision.

The Court finds that the circuit court did not err in terminating Petitioner Mother's custodial rights. The Court has held as follows: “[C]ourts are not required to exhaust every speculative possibility of parental improvement . . . where it appears that the welfare of the child will be seriously threatened . . .” Syl. Pt. 1, in part, *In re R.J.M.*, 164 W.Va. 496, 266 S.E.2d 114 (1980).” Syl. Pt. 4, *In re Cecil T.*, 228 W.Va. 89, 717 S.E.2d 873 (2011). Further, the Court has also held that “the welfare of the child is the polar star by which the discretion of the court will be guided.” Point 2, Syllabus, *State ex rel. Lipscomb v. Joplin*, 131 W.Va. 304[, 47 S.E.2d 221 (1948)].” *Clifford K. v. Paul S.*, 217 W.Va. 625, 634, 619 S.E.2d 138, 147 (2005) (internal citation omitted).

Here, a review of the record provides a copy of the transcript for the dispositional hearing, which took place over two days. Petitioner Mother's DHHR caseworker, Kerri Hedlund, and her worker from Second Chances, Melissa Kuren, who provided parenting services at Petitioner Mother's home, both testified to Petitioner Mother's poor parenting, including her actions in allowing inappropriate men around the child. Ms. Hedlund testified that not only was Petitioner Mother with the two prior inappropriate men, but she later began to date another man, who was convicted of failing to register as a sexual offender. Even though Ms. Hedlund advised her that this relationship was inappropriate because of the harm it could bring to the child, Petitioner Mother continued to see him and sometimes stayed with him in his home. Melissa Kuren testified at disposition that since her work with the family in 2008, she has tried to help Petitioner Mother with basic parenting and basic hygiene. She discussed times when the child would come home from school and be upset and crying because the other children had teased her for not being clean. Another time, the child had an oral infection because Petitioner Mother had refused to brush the child's teeth or to teach her to brush her teeth daily. Ms. Kuren testified that she would thereafter explain to Petitioner Mother more about basic hygiene but testified that Petitioner Mother did not make any progress in that area. Similar to Ms. Hedlund, Ms. Kuren also testified that she explained to Petitioner Mother that it was inappropriate to allow men who were sexual offenders to participate in the child's life. Both caseworkers testified that although Petitioner Mother had been given the information and tools needed for parenting, she had yet to

apply these skills. Based upon a review of the appendix provided and the circumstances of this case, the Court finds no error in the termination of Petitioner Mother's custodial rights.

This Court reminds the circuit court of its duty to establish permanency for the child. 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 the child within twelve months of the date of the disposition order. As this Court has stated,

[t]he [twelve]-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).

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

Affirmed.

ISSUED: September 7, 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