

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

In Re: C.L., T.S., and S.H.

No. 12-0309 (Wood County 10-JA-108, 109 & 110)

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

MEMORANDUM DECISION

Petitioner Mother, by counsel Rhonda L. Harsh, appeals the Circuit Court of Wood County's order entered on February 9, 2012, terminating visitation with the children. The guardian ad litem, Robin Bonovitch, has filed her response on behalf of the children. The West Virginia Department of Health and Human Resources ("DHHR"), by Lee A. Niezgoda, its attorney, has filed its response. Respondent T.S.'s Father has filed his response, by counsel Joseph Troisi.

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.

The petition in this matter was filed after one of the children, then four years old, went to a neighbor's home and informed the neighbor that Petitioner Mother would not wake up. Police arrived and had substantial difficulty in waking Petitioner Mother, and she was then arrested for child neglect creating a risk of injury. Petitioner Mother stipulated to the allegations in the petition and was granted an improvement period. Petitioner Mother was compliant with services at varying levels during her lengthy improvement period, but due to her extremely slow progress, her parental rights were eventually terminated. Petitioner Mother's visitation with T.S. and S.H. was terminated as the circuit court found that "it may be detrimental to [their] long term stability." Visitation was continued with C.L. pending the report of his therapist; however, the therapist's report indicated that C.L. has ended the visits early himself numerous times, and that the relationship between parent and child is unhealthy. Therefore, the therapist suggested terminating visitation between Petitioner Mother and C.L., and the circuit court agreed. Petitioner Mother now appeals only the termination of her visitation rights with her children.

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).

Petitioner Mother does not challenge the termination of her parental rights on appeal. However, she argues that the termination of her visitation with the children was error. Petitioner Mother argues that her visits with her children went well, and that she has a bond with the children. Petitioner Mother also argues that she always complied in supervised visitation and actively sought relationships with her children. Therefore, she argues that visitation should be reinstated.

The DHHR argues in response that the circuit court was not clearly wrong to terminate visitation, and that it left open the possibility of modification of the visitation order in the future. The DHHR notes that the circuit court clearly considered the bond between Petitioner Mother and her children, but found that, pursuant to the therapist’s opinion, visitation could be detrimental to the children. The guardian concurs, arguing that there was a lack of a parent/child bond, and that the children often reacted with confusion and fear following visitation. Specifically, both S.H. and T.S. live with their biological fathers and have not spent most of their lives with their mother. As for C.L., although there is a bond with his mother, the bond is considered unhealthy by his therapist because he worries about his mother to a degree that a five-year-old child should not have to endure. T.S.’s father responds in support of the termination of visitation, arguing that the record shows that during visitation, Petitioner Mother was often passive and failed to actively engage with her children. Additionally, T.S.’s father notes that T.S. has spent most of his young life with his father, and not with Petitioner Mother. T.S.’s father argues that the circuit court thoroughly reviewed the issue and was correct in terminating visitation.

This Court has held as follows:

“When parental rights are terminated due to neglect or abuse, the circuit court may nevertheless in appropriate cases consider whether continued visitation or other contact with the abusing parent is in the best interest of the child. Among other things, the circuit court should consider whether a close emotional bond has been established between parent and child and the child’s wishes, if he or she is of appropriate maturity to make such request. The evidence must indicate that such visitation or continued contact would not be detrimental to the child’s well being

and would be in the child's best interest." Syl. Pt. 5, *In re Christina L.*, 194 W.Va. 446, 460 S.E.2d 692 (1995).

Syl. Pt. 11, *In re Daniel D.*, 211 W.Va. 79, 562 S.E.2d 147 (2002). It is clear that the circuit court made a well-reasoned decision in this matter based upon the best interests of the children. The record reflects that Petitioner Mother never had a strong bond with the two youngest children, T.S. and S.H., and that both have spent the majority of their lives with other individuals. As to C.L., the record shows a bond between he and his mother; however, his therapist indicates that this relationship is detrimental to C.L.'s well-being due to Petitioner Mother's prior actions, and this Court notes that the circuit court left open the possibility of future visitation should it be in the child's best interests. Based upon the record in this matter, it is clear that the circuit court did not abuse its discretion in denying petitioner visitation, and the Court declines to disturb this decision on appeal.

This Court reminds the circuit court of its duty to establish permanency for the children. 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 children 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 visitation 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