STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

FILED
October 22, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

***In Re*: T.W.**

No. 12-0700 (Kanawha County 12-JA-11)

MEMORANDUM DECISION

Petitioner Mother, by counsel Jason Lord, appeals the Circuit Court of Kanawha County's order entered on May 11, 2012, terminating her parental rights to T.W. The guardian ad litem, Jennifer Victor, has filed her response on behalf of the child. The West Virginia Department of Health and Human Services ("DHHR"), by counsel Lee A. Niezgoda, has filed its response.

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 abuse and neglect petition in this matter was filed after the birth of T.W., based on Petitioner Mother's prior termination of parental rights to an older child approximately four months before T.W.'s birth. The petition alleged that petitioner has a history of substance abuse and threatening DHHR employees, including threatening to kill Child Protective Services workers on more than one occasion.

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 argues that the circuit court erred in terminating her parental rights without granting her an improvement period. Petitioner argues that she has "continually expressed her desire to cooperate with the DHHR" and should have been granted an improvement period in this matter. The guardian responds that petitioner was not entitled to an improvement period as she had failed to comply in services in her prior abuse and neglect case which ended only months before the present petition was filed. The guardian notes that a myriad of services were provided to petitioner in the prior case, to no avail. The guardian concludes that termination of parental rights was the only reasonable alternative in this matter. The DHHR also argues that termination without an improvement period was proper given her failure to show that she would fully participate in an improvement period.

In order to receive an improvement period, a parent must show that she "is likely to fully participate in the improvement period." W.Va. Code § 49-6-12(b)(2). Petitioner Mother showed throughout the prior case, which concluded a mere four months before the instant petition was filed, that she would not comply in services. Thus, this Court finds no error in the denial of an improvement period. Moreover, as to the termination of parental rights in this matter, this Court has held as follows:

> "Where there has been a prior involuntary termination of parental rights to a sibling, the issue of whether the parent has remedied the problems which led to the prior involuntary termination sufficient to parent a subsequently-born child must, at minimum, be reviewed by a court, and such review should be initiated on a petition pursuant to the provisions governing the procedure in cases of child neglect or abuse set forth in West Virginia Code §§ 49–6–1 to –12 (1998). Although the requirement that such a petition be filed does not mandate termination in all circumstances, the legislature has reduced the minimum threshold of evidence necessary for termination where one of the factors outlined in West Virginia Code § 49–6–5b(a) (1998) is present." Syllabus Point 2, *In re George Glen B., Jr.*, 205 W.Va. 435, 518 S.E.2d 863 (1999).

Syl. Pt. 3, *In re George Glen B.*, 207 W.Va. 346, 532 S.E.2d 64 (2000). Petitioner showed no change in the circumstances that led to the prior termination; therefore, this Court finds no error.

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: October 22, 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