STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

FILED
November 19, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

In Re: H.R.

No. 12-0714 (Mercer County 10-JA-150)

MEMORANDUM DECISION

Petitioner Mother files this appeal, by counsel William Huffman, from the Circuit Court of Mercer County, which terminated petitioner's parental rights to the subject child by order entered on May 18, 2012. The guardian ad litem for the child, Julie Lynch, has filed a response supporting the circuit court's order. The Department of Health and Human Resources ("DHHR"), by its attorney Lee Niezgoda, also filed a response in support of termination.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented in the parties' written briefs and the record 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 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.

DHHR filed the petition in the instant case in late 2010 after it learned of H.R.'s parents' issues with drug abuse. An amended petition was filed in January of 2011 to include the parents' issues with domestic violence. The circuit court found that H.R.'s parents had neglected him and throughout the course of the proceedings, Petitioner Mother was granted two improvement periods, including a dispositional improvement period in November of 2011. After Petitioner Mother failed to fully comply with the terms of her improvement periods, the circuit court terminated her parental rights to H.R. in May of 2012. Petitioner Mother appeals.

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 argues that the circuit court erred in finding that she habitually abused and was addicted to drugs and that she failed to make little, if any, progress during her improvement period. She further argues that the circuit court erred in finding that there was no reasonable likelihood that the conditions of neglect could be substantially corrected in the near future. Petitioner Mother argues that she entered a twenty-eight-day program at Amity Treatment Center and exited just four days short of completion. She argues that there was no evidence to support allegations that her parenting skills were seriously impaired by her issues with alcohol or controlled substances and there is no evidence that she used any substances after she entered Amity. With regard to domestic violence, Petitioner Mother argues that she was the victim of this violence at the hands of her husband, the child's father. She asserts that while services were offered to the abuser, Petitioner Mother was only called once by a service provider.

In response, the guardian ad litem and DHHR argue that the circuit court did not err in terminating Petitioner Mother's parental rights or in any of its findings in doing so. Both highlight that Petitioner Mother failed to comply with the terms of her improvement period, such as failing to complete a long-term inpatient substance abuse program or participate in counseling for domestic violence victims, without even fully admitting that domestic violence occurred between her and the father. They assert that Petitioner Mother's assertion that she almost completed a detoxification program is not favorable to her; she left against medical advice and never completed the program. Moreover, Petitioner Mother did not fully participate in visitation with H.R., continued to test positive on her drug screens, and did not keep DHHR updated on her whereabouts. They argue that the case had been open for over a year and a half without accomplishment of the goals toward reunification and termination was in the child's best interests.

We find no error in the circuit court's decision to terminate Petitioner Mother's parental rights. Under West Virginia Code § 49-6-12, a circuit court has the discretion to grant an improvement period and, likewise, has the discretion to grant or deny an extension to it. "'[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 part, *In re Cecil T.*, 228 W.Va. 89, 717 S.E.2d 873 (2011). Moreover, we have held as follows:

> "Termination of parental rights, the most drastic remedy under the statutory provision covering the disposition of neglected children, *W.Va.Code* [§] 49-6-5 [1977] may be employed without the use of intervening less restrictive alternatives when it is found that there is no reasonable likelihood under *W.Va.Code* [§] 49-6-5(b) [1977] that conditions of neglect or abuse can be substantially corrected." Syllabus Point 2, *In re R.J.M.*, 164 W.Va. 496, 266 S.E.2d 114 (1980).

Syl. Pt. 7, *In re Katie S.*, 198 W.Va. 79, 479 S.E.2d 589 (1996) (internal citations omitted). Further, "the primary goal in cases involving abuse and neglect, as in all family law matters, must be the health and welfare of the children." Syl. Pt. 3, in part, *In re Katie S.*, 198 W.Va. 79, 479 S.E.2d 589 (1996). Based on our review of the record and given the circumstances of the case, we find no error by the circuit court.

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 affirm the circuit court's order terminating Petitioner Mother's parental rights.

Affirmed.

ISSUED: November 19, 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