STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

FILED
September 13, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

In Re: M.L. and J.L. Jr.:

No. 11-0602 (Harrison County No. 10-JA-22 and 23)

MEMORANDUM DECISION

Petitioner Father appeals the termination of his parental rights to M.L. and J.L., Jr. The appeal was timely perfected by counsel, with the 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 her response on behalf of the children. Respondent Mother has filed her response.

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." Syl. Pt. 1, *In the Interest of: Tiffany Marie S.*, 196 W.Va. 223, 470 S.E.2d 177 (1996).

The petition in this matter was filed after DHHR had already been involved with the family for several months due to unsanitary living conditions, domestic violence and drug abuse by Petitioner Father. Petitioner Father periodically left the children with others, noting that he wanted them in foster care until he could find appropriate housing. Petitioner Father was adjudicated as a neglectful father. Petitioner Father later moved for an improvement period, but this motion was never granted. The circuit court terminated Petitioner Father's

parental rights. The court found that Petitioner Father had limited contact with the children and none since June 10, 2010. He participated in no services, had limited drug screens and of the screens he attended, many were positive for marijuana. Therefore, the circuit court found that there is no reasonable likelihood that the conditions of neglect can be substantially corrected in the near future, as there has been no change in circumstances.

On appeal, Petitioner Father argues that the circuit court erred in terminating his parental rights and in finding that termination was necessary for the welfare of the children. Regarding the termination of parental rights, this Court has found that "[a]s a general rule the least restrictive alternative regarding parental rights to custody of a child under W.Va.Code, 49-6-5 (1977) will be employed; however, courts are not required to exhaust every speculative possibility of parental improvement before terminating parental rights where it appears that the welfare of the child will be seriously threatened..." Syl. Pt. 1, in part, *In re: R. .M*. 164 W.Va. 496, 266 S.E.2d 114 (1980). Moreover, pursuant to West Virginia Code §49-6-5(b), there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected when a parent has not responded to or followed through with a reasonable family case plan. In the present case, Petitioner Father has been completely noncompliant in services, failed to participate in most of his drug screens, and has not had contact with the children in over a year. The guardian ad litem, the DHHR and Respondent Mother all argue in favor of termination of Petitioner Father's parental rights. This Court finds no error in the circuit court's order.

For the foregoing reasons, we find no error in the decision of the circuit court to terminate petitioner's parental rights, and the circuit court's order is hereby affirmed.

Affirmed.

ISSUED: September 13, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Menis E. Ketchum
Justice Thomas E. McHugh