

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

In Re: A.H.

No. 11-0847 (Kanawha County No. 10-JA-89)

FILED

September 26, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Mother appeals the termination of her parental rights to A.H. 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 child. A.H.'s father has filed his 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).

This petition was initiated based on allegations that Petitioner Mother has mental health problems which render her unable to adequately care for her child. The mental health problems include delusions and erratic behaviors witnessed by several others, and at least one inpatient mental health hospitalization during the course of these proceedings, at which time Petitioner Mother claimed to be forty-eight weeks pregnant and in need of a cesarean section, but was in reality not pregnant at all. The record shows that Petitioner Mother failed to

engage in visitation often, and consistently cancelled, rescheduled or did not appear for court-ordered psychiatric evaluations. Although Petitioner Mother's treating psychiatrist contends that she suffers only from anxiety disorder, her courtroom demeanor and outbursts led the circuit court to request two separate mental health evaluations, and both psychiatrists felt that Petitioner Mother suffers from untreated schizoid disorder, or possibly schizophrenia. Petitioner Mother refused to be treated for any other mental health condition, and reported failed to take medications prescribed to her for her conditions. The circuit court terminated Petitioner Mother's parental rights, finding that there was no reasonable likelihood that the conditions of abuse and neglect can be substantially corrected in the near future, as Petitioner Mother "has shown not even minimal efforts to rectify the circumstances that led to the filing of the Petition." Post termination visitation was denied.

On appeal, Petitioner Mother argues that the circuit court erred in finding that A.H. was neglected. The West Virginia Code defines "neglected child" as a child [w]hose physical or mental health is harmed or threatened by a present refusal, failure or inability of the child's parent, guardian or custodian to supply the child with necessary food, clothing, shelter, supervision, medical care or education, when such refusal, failure or inability is not due primarily to a lack of financial means on the part of the parent, guardian or custodian." W.Va. Code §49-1-3(j)(1)(A). In the present case, Petitioner Mother's untreated mental illness caused her to have delusions, caused her to leave the child alone at times, and caused her to have unrealistic ideas regarding the child's development. Moreover, due to her mental illness, she could not properly care for the child. Thus, this Court finds no error in the circuit court's finding that the child was neglected.

Petitioner Mother also argues that the circuit court erred in terminating her parental rights without granting her an additional improvement period. The circuit court has the discretion to refuse to grant an improvement period, or an extension to the improvement period, when no improvement is likely. Pursuant to West Virginia Code § 49-6-12(g), before a circuit court can grant an extension of a post-adjudicatory improvement period, the court must first find that the parent has substantially complied with the terms of the improvement period; that the continuation of the improvement period would not substantially impair the ability of the DHHR to permanently place the child; and that such extension is otherwise consistent with the best interest of the child. See Syl. Pt. 2, *In the Interest of Jamie Nicole H.*, 205 W.Va. 176, 517 S.E. 2d 41 (1999). This Court has stated that "...in order to remedy the abuse and/or neglect problem, the problem must first be acknowledged. Failure to acknowledge the existence of the problem, i.e., the truth of the basic allegation pertaining to the alleged abuse and neglect or the perpetrator of said abuse and neglect, results in making the problem untreatable and in making an improvement period an exercise in futility at the child's expense." *W.Va. Dept. of Health and Human Res. ex rel. Wright v. Doris S.*, 197 W.Va. 489, 498, 475 S.E.2d. 865, 874 (1996). Petitioner Mother refused to accept treatment

for her mental health condition and refused to follow up with the two psychiatrists who performed her independent evaluations. She continued to exhibit erratic and unstable behavior throughout this case, while denying that she had any mental health condition other than anxiety. This Court finds no error in the circuit court's finding that Petitioner Mother was not likely to improve with an extended improvement period, and no error in the denial of an extension to the improvement period.

Likewise, this Court has held that, “[t]ermination 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.” Syl. Pt. 2, *In Re: R.J.M.*, 164 W.Va. 496, 266 S.E.2d 114 (1980). Furthermore, “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.J.M.*, 164 W.Va. 496, 266 S.E.2d 114 (1980). In the present case, the circuit court found that due to Petitioner Mother's mental illness, she is incapable of exercising proper parenting skills or improving her skills, and thus there is no likelihood that she can substantially correct the conditions of abuse or neglect. Thus, this Court finds no error in the circuit court's order terminating Petitioner Mother's parental rights.

Finally, Petitioner Mother argues that the circuit court erred in denying post-termination visitation. “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). In the present case, the child was too young to make the request for post-termination visitation. However, the evidence shows that Petitioner Mother did not exercise all of her visitation, and there were some complaints regarding A.H.'s behaviors after visiting with his mother. The circuit court considered all of this evidence. We find no error in the circuit court's decision to deny post-termination visitation.

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 26, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Thomas E. McHugh

Justice Menis E. Ketchum