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: K.M. and J.L.

No. 12-0780 (Kanawha County 07-JA-160 & 08-JA-135)

MEMORANDUM DECISION

Petitioner Father files this appeal, by counsel Jeffrey Blaydes, from the Circuit Court of Kanawha County, which denied Petitioner Father's motion for post-termination visitation by order entered on June 4, 2012. The guardian ad litem for the children, Sandra Bullman, has filed a response on behalf of the children supporting the circuit court's order. The Department of Health and Human Resources ("DHHR"), by its attorney William Bands, also filed a response in support of denying post-termination visitation. Petitioner Father has filed a reply to these responses.

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.

The circuit court terminated Petitioner Father's parental rights to K.M. and J.L. in October of 2011. This Court affirmed this termination in April of 2012 in Case Number 11-1510. At that time, the circuit court had not determined whether Petitioner Father would receive post-termination visitation with his daughters and thus, that issue was not raised in Petitioner Father's earlier appeal. Subsequent to Petitioner Father's appeal of his termination of parental rights, the circuit court ruled on Petitioner Father's motion for post-termination visitation and denied visitation by order entered on June 4, 2012. Petitioner Father now appeals this issue.

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 Father argues that the circuit court was clearly wrong when it failed to award him post-termination visitation. He argues that he should receive post-termination visitation because he and his daughters share a strong bond, no evidence in the record shows that visitation would be harmful to the children, and visitation would serve the children's best interests. In response, the guardian ad litem and DHHR contend that the circuit court did not err in denying post-termination visitation. The guardian points out that both daughters have achieved permanency through the adoption by their foster parents and over the years, they have become attached to them and consider their adoptive parents' older daughter as their own sister. DHHR highlights that the children's psychologist opined that visitation would be detrimental to the children. In a letter to the circuit court, the psychologist further discussed the lack of bond between the children and Petitioner Father and the children's great attachment to their adoptive parents and sister. Petitioner Father submitted a reply to these responses, arguing that the circuit court once commented that he had a "lot of plus marks . . . a lot of folks that come in here don't have." He adds that both his commitment and visitation record are strong and if necessary, he would be willing to have supervised visitation.

We find no error by the circuit court in denying Petitioner Father post-termination visitation. We have 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. 2, *In re Billy Joe M.*, 206 W.Va. 1, 521 S.E.2d 173 (1999). 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, we find no error by the circuit court.

For the foregoing reasons, we affirm the circuit court's order denying petitioner post-termination visitation with K.M. and J.L.

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