STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

FILED

August 29, 2014

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

In Re: C.H., K.H., S.H., & B.H.

No. 14-0101 (Jackson County 12-JA-37 through 12-JA-40)

MEMORANDUM DECISION

Petitioner Mother, by counsel Drannon L. Adkins, appeals the Circuit Court of Jackson County's January 22, 2014, order terminating her parental rights to S.H., K.H., and B.H., and her custodial rights to C.H. The West Virginia Department of Health and Human Resources ("DHHR"), by counsel Michael L. Jackson, filed its response in support of the circuit court's order. The guardian ad litem, Erica Brannon Gunn, filed a response on behalf of the children supporting the circuit court's order. On appeal, petitioner alleges that the circuit court erred in denying her motion for a second post-adjudicatory improvement period and in terminating her parental and custodial rights.

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 affirming the circuit court's order is appropriate under Rule 21 of the Rules of Appellate Procedure.

In September of 2012, the Jackson County Board of Education filed an abuse and neglect petition alleging that the children had been habitually absent from school without just cause. At an adjudicatory hearing in October of 2012, both parents admitted to the allegations, and the circuit court found them to be abusing parents. Thereafter, in December of 2012, the circuit court granted both parents post-adjudicatory improvement periods.

In July of 2013, the DHHR filed an amended petition that included additional allegations of the parents' inadequate supervision and deplorable conditions in the home. Prior to filing the amended petition, the DHHR also moved to terminate the parents' improvement periods for non-compliance because the children remained truant throughout the improvement period, among other issues. In August of 2013, the circuit court held a hearing on the motion to terminate the improvement periods and ultimately granted the same. Additionally, petitioner later admitted to the allegations in the amended petition at a second adjudicatory hearing.

In September of 2013, the circuit court held a dispositional hearing, prior to which petitioner moved for a second post-adjudicatory improvement period. After hearing testimony, including that of then fifteen-year-old C.H. regarding her desire for the parents' parental rights to remain intact, the circuit court terminated petitioner's parental rights to S.H., K.H., and B.H., and

also terminated her custodial rights to C.H. It is from the dispositional order that petitioner 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). Upon our review, the Court finds no error in the circuit court denying petitioner's motion for a second post-adjudicatory improvement period or in terminating her parental rights to S.H., K.H., and B.H., and her custodial rights to C.H.

Pursuant to West Virginia Code § 49-6-12(b)(4), a circuit court may grant a parent a post-adjudicatory improvement period after having previously granted an improvement period if the parent "demonstrates that since the initial improvement period, the [parent] has experienced a substantial change in circumstances." Additionally, that code section requires the parent to "demonstrate that due to that change in circumstances the [parent] is likely to fully participate in a further improvement period." In support of her first assignment of error, petitioner alleges that the circuit court erred in finding that she had failed to establish a substantial change in circumstances since her prior improvement period was terminated. However, the Court does not agree.

In the dispositional order, the circuit court addressed the facts upon which petitioner now relies to argue that she substantially changed the circumstances such that she was likely to fully participate in a second post-adjudicatory improvement period. Specifically, the circuit court found that, while petitioner had made changes, they did not amount to a substantial change of circumstances. This includes the fact that, despite having filed for divorce from the father, petitioner was still living with him. Most importantly, however, is petitioner's psychological evaluation found that her "level of functioning was such that [petitioner] does not possess the cognitive skills necessary to maintain a home without assistance."

Further, the record shows that not only did petitioner fail to alleviate the conditions of abuse and neglect during her initial improvement period, the conditions in the home actually deteriorated substantially. The initial petition in this matter alleged educational neglect, while the

amended petition, filed approximately ten months later, alleged deplorable conditions in the home, including a bed bug infestation so severe the children could not occupy the bedroom and dog feces throughout the home. While it may be true that petitioner made certain changes, it is clear that petitioner was unable to establish a substantial change in circumstances in regard to her psychological evaluation and the fact that she was simply unable to remedy the problems in the home.

West Virginia Code § 49-6-12(b) grants circuit courts discretion in granting post-adjudicatory improvement periods upon the finding that the parent is likely to fully participate in the same. Further, we have previously held that "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. 4, in part, *In re Kristin Y.*, 227 W.Va. 558, 712 S.E.2d 55 (2011) (quoting Syl. Pt. 1, *In re R.J.M.*, 164 W.Va. 496, 266 S.E. 114 (1980)). Therefore, it is clear that the circuit court did not err in denying petitioner a second post-adjudicatory improvement period because the conditions in the home worsened and petitioner failed to satisfy the burden that she was likely to fully participate in the improvement period. For these reasons, we find no error in the circuit court's finding that petitioner failed to establish a substantial change in circumstances or in denying petitioner's motion for a second post-adjudicatory improvement period.

Furthermore, the Court finds no error in the circuit court's termination of petitioner's parental rights to S.H., K.H., and B.H., and termination of her custodial rights to C.H. We have previously held that

> "[w]here allegations of neglect are made against parents based on intellectual incapacity of such parent(s) and their consequent inability to adequately care for their children, termination of rights should occur only after the social services system makes a thorough effort to determine whether the parent(s) can adequately care for the children with intensive long-term assistance. In such case, however, the determination of whether the parents can function with such assistance should be made as soon as possible in order to maximize the child(ren)'s chances for a permanent placement." Syllabus point 4, *In re Billy Joe M.*, 206 W.Va. 1, 521 S.E.2d 173 (1999).

Syl. Pt. 4, *In re Maranda T.*, 223 W.Va. 512, 678 S.E.2d 18 (2009). While petitioner argues that the circuit court erred in terminating her parental rights without first requiring the DHHR to make a thorough effort to determine if she could adequately care for the children without long-term assistance, the record does not support this assertion.

The record is clear that petitioner was not only unable to comply with services, but that the conditions in the home actively deteriorated while she was receiving services. Further, petitioner's psychological evaluator stated that petitioner would need "significant outside intervention" in order for the children to meet certain expectations and that "[e]ven with appropriate services, [the] prognosis for [petitioner] meeting a level of minimally adequate parenting is guarded." While petitioner recognizes this prognosis, she argues that the psychological evaluation cannot constitute a thorough effort to determine whether she can

adequately care for the children with intensive long-term assistance because the evaluation was ordered as part of her initial improvement period. However, the Court finds no merit to this argument. As noted above, the determination as to whether the parent can function with assistance should be made as soon as possible, as was done in this case. Based upon petitioner's inability to comply with the services provided and the psychologist's prognosis as to petitioner's inability to properly parent the children with intensive long-term assistance, it is clear that the circuit court did not err in terminating petitioner's parental rights to S.H., K.H., and B.H., and and her custodial rights to C.H.

This is especially true in light of the circuit court's findings that there was no reasonable likelihood that petitioner could substantially correct the conditions of abuse and neglect in the near future and that termination was necessary for the children's welfare. Pursuant to West Virginia Code § 49-6-5(b)(3), a situation in which there is no reasonable likelihood that conditions of abuse and neglect can be substantially corrected includes one in which

> [t]he abusing parent or parents have not responded to or followed through with a reasonable family case plan or other rehabilitative efforts of social, medical, mental health or other rehabilitative agencies designed to reduce or prevent the abuse or neglect of the child, as evidenced by the continuation or insubstantial diminution of conditions which threatened the health, welfare or life of the child.

Based upon the evidence outlined above, including the fact that petitioner's non-compliance with the terms of her improvement period resulted in a substantial deterioration in the home, the circuit court was correct to find that there was no reasonable likelihood that petitioner could substantially correct the conditions of abuse and neglect and that termination was necessary for the children's welfare. Pursuant to West Virginia Code § 49-6-5(a)(6), circuit courts are directed to terminate parental rights upon these findings.

For the foregoing reasons, we find no error in the decision of the circuit court and its January 22, 2014, order is hereby affirmed.

Affirmed.

ISSUED: August 29, 2014

CONCURRED IN BY:

Chief Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Menis E. Ketchum
Justice Allen H. Loughry II