STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In Re: C.L., K.L., P.L., & C.S.

No. 14-0326 (Grant County 13-JA-14 through 13-JA-17)

FILED
August 29, 2014
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Mother, by counsel Agnieszka Collins, appeals the Circuit Court of Grant County's February 2, 2014, order terminating her parental rights to C.L., K.L., P.L., and C.S. The West Virginia Department of Health and Human Resources ("DHHR"), by counsel Lee Niezgoda, filed its response in support of the circuit court's order. The guardian ad litem ("GAL"), Marla Harman, filed a response on behalf of the children that also supports the circuit court's order. On appeal, Petitioner Mother alleges that the circuit court erred in denying her an improvement period prior to terminating her parental 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 decision is appropriate under Rule 21 of the Rules of Appellate Procedure.

In October of 2013, the DHHR received a referral that C.S. was allegedly raped by her stepfather, Raymond L.[1] The referral further stated that Petitioner Mother failed to protect C.S. from the alleged rape after C.S. told Petitioner Mother that Raymond L. touched her inappropriately during the summer of 2013.[2] Based upon this referral, the DHHR filed a petition seeking immediate custody of the children alleging Petitioner Mother failed to protect the children from Raymond L.'s abuse.

On December 9, 2013, the circuit court held an adjudicatory hearing. After considering all of the testimony, the circuit court adjudicated Petitioner Mother as an abusive and neglectful parent for failing to protect C.S.[3] By order entered on February 4, 2014, the circuit court terminated Petitioner Mother's parental rights to C.L., K.L., P.L., and C.S. The circuit court found that Petitioner Mother failed to acknowledge the problems that led to the filing of the

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[1]Raymond L. was arrested and charged with one count of incest and one count of sexual abuse by a guardian or custodian.

[2]The family has a history of Child Protective Services ("CPS") involvement that began in 1998. Petitioner Mother received services during several of the CPS investigations.

[3]Petitioner Mother bailed Raymond L. out of jail pending his criminal trial.

petition and failed to benefit from prior services. It is from this dispositional order that Petitioner Mother now appeals. Petitioner Mother argues that she should have been granted an improvement period.

The Court has previously established the following standard of review in such cases:

> "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's denial of Petitioner Mother's request for an improvement period. West Virginia Code § 49-6-12 grants circuit courts discretion in granting an improvement period upon a written motion and a showing, by clear and convincing evidence, that the parent will fully participate in the same. The record in this matter supports the circuit court's denial. First, the record is devoid of any evidence that Petitioner Mother filed a written motion requesting either an adjudicatory improvement period or dispositional improvement period. Additionally, Petitioner Mother failed to show, by clear and convincing evidence, that she would have fully complied with the terms of an improvement period if one had been granted. Petitioner Mother has a lengthy history of CPS involvement dating back to 1998, during which she received services during several of the CPS investigations. However, it is clear that Petitioner Mother failed to benefit from these prior services. Importantly, Petitioner Mother bailed Raymond L. out of jail pending his criminal trial for alleged sexual assault against C.S., and continues to maintain a relationship with Raymond L.[4] Thus, it was not error for the circuit court to deny Petitioner Mother an improvement period.

For the foregoing reasons, we find no error in the decision of the circuit court and its February 2, 2014, order is hereby affirmed.[5]

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[4]Raymond L. admitted to Trooper 1st Class C.S. Hartman of the West Virginia State Police to having sexual intercourse with C.S.

[5]Even though the Court decided this appeal on the merits, we caution counsel that we could have dismissed Petitioner Mother's appeal for failure to comply with Rule 10(c)(7) of the West Virginia Rules of Appellate Procedure. Rule 10(c)(7) requires that petitioner's brief contain an argument exhibiting clearly the points of fact and law presented. That Rule also requires that

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

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such argument "contain appropriate and specific citations to the record on appeal, including citations that pinpoint when and how the issues in the assignments of error were presented to the lower tribunal." In an Administrative Order entered on December 10, 2012, *Re: Filings That Do Not Comply With the Rules of Appellate Procedure,* then-Chief Justice Ketchum specifically noted in paragraph 7 that "[b]riefs with arguments that do not contain a citation to legal authority to support the argument presented and do not 'contain appropriate and specific citations to the record on appeal, including citations that pinpoint when and how the issues in the assignments of error were presented to the lower tribunal' as required by rule 10(c)(7)" are not in compliance with this Court's rules.