

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

FILED

In Re: C.M. III

October 20, 2014

No. 14-0469 (Kanawha County 13-JA-239)

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

MEMORANDUM DECISION

Petitioner Mother, by counsel Jennifer R. Victor, appeals the April 17, 2014, order of the Circuit Court of Kanawha County that terminated her parental rights to one-year-old C.M. III. The child's guardian ad litem, Sharon K. Childers, filed a response in support of the circuit court's order. The Department of Health and Human Resources ("DHHR"), by its counsel S.L. Evans, also filed a response in support of the circuit court's order. On appeal, petitioner argues that the circuit court erred in denying her motion for a dispositional improvement period, in terminating her parental rights, and in denying her motion for post-termination visitation.

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 2008, petitioner's parental rights to her five older children were terminated. In July of 2013, the circuit court terminated the parental rights of petitioner and her husband, C.M. III's father, to two other children after finding that petitioner and her husband failed to fully comply with services and the terms of their improvement period. For instance, the circuit court found that the family's home remained heavily infested with cockroaches and trash and that the father failed to take his mental health medication. After C.M. III's birth in October of 2013, the DHHR filed an abuse and neglect petition against petitioner and her husband, alleging that they had their parental rights previously terminated to other children, that they failed to maintain a clean home, that they neglected to provide C.M. III with necessary food, clothing, supervision, and housing.

At the adjudicatory hearing in November of 2013, the circuit court found that the allegations of abuse and neglect in the prior cases were similar to the allegations in the present case. The circuit court granted the parents' motions for supervised visits, individualized parenting, and adult life skills education, and directed that the parents provide proof that they were complying with their mental health treatment.

In March of 2014, several witnesses, including both parents, testified at the dispositional hearing. The family's caseworkers testified that the home remained uninhabitable due to the cockroach infestation and the piles of garbage throughout the home, that the parents had stopped their mental health treatment contrary to the circuit court's orders, and that the parents did little to remedy the circumstances that led to the filing of the abuse and neglect petition or to make

changes in the home since their prior termination. Neither parent accepted responsibility for the home's unsanitary and unsafe conditions.

In April of 2014, the circuit court terminated both parents' parental rights to C.M. III after finding that they continued a pattern of neglectful, unhealthy living in their home and therefore failed to remedy the abuse and neglect conditions that led to their prior termination. The circuit court then denied the parents' motions for a dispositional improvement period and post-termination visitation. Petitioner now brings this appeal.

This 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 argues that the circuit court erred in denying her motion for a dispositional improvement period, terminating her parental rights, and denying her motion for post-termination visitation. Petitioner asserts that she met the statutory requirements for a dispositional improvement period, that termination of her parental rights was premature because less drastic alternatives were available, and that there was no evidence that post-termination visits would be detrimental to the child.

Upon our review of the record, we find no error by the circuit court. Pursuant to West Virginia Code § 49-6-12(c), a circuit court may grant an improvement period at disposition when the subject parent has demonstrated by clear and convincing evidence that he or she is likely to fully participate in the improvement period. We also bear in mind the following:

“[C]ourts are not required to exhaust every speculative possibility of parental improvement . . . where it appears that the welfare of the child will be seriously threatened, and this is particularly applicable to children under the age of three years who are more susceptible to illness, need consistent close interaction with fully committed adults, and are likely to have their emotional and physical development retarded by numerous placements.” Syl. Pt. 1, in part, *In Re: R.J.M.*, 164 W. Va. 496, 266 S.E.2d 114 (1980).

Syl. Pt. 4, *In re Cecil T.*, 228 W.Va. 89, 717 S.E.2d 873 (2011). In addition, we have held that

[w]here there has been a prior involuntary termination of parental rights to a sibling, the issue of whether the parent has remedied the problems which led to the prior involuntary termination sufficient to parent a subsequently-born child must, at minimum, be reviewed by a court, and such review should be initiated on a petition pursuant to the provisions governing the procedure in cases of child neglect or abuse set forth in West Virginia Code §§ 49-6-1 to -12 (1998). Although the requirement that such a petition be filed does not mandate termination in all circumstances, the legislature has reduced the minimum threshold of evidence necessary for termination where one of the factors outlined in West Virginia Code § 49-6-5b(a) (1998) is present.

Syl. Pt. 2, *In re George Glen B. Jr.*, 205 W.Va. 435, 518 S.E.2d 863 (1999).

Our review of the record shows no error by the circuit court in denying petitioner's motion for a dispositional improvement period or in terminating her parental rights to C.M. III. As discussed, the family's caseworkers testified at the dispositional hearing that, as of a week prior to the hearing, the home remained uninhabitable and that the parents had stopped taking their mental health medication. One of the family's caseworkers also testified that the parents completed only the first chapter of the parenting manual, despite the fact that they had received services for over three months. Petitioner testified and blamed the home's poor conditions on issues they had with their water. Further, as previously discussed, the circuit court found that the parents failed to remedy the conditions that led to their prior termination of parental rights. This evidence supports the circuit court's denial of petitioner's motion for an improvement period under West Virginia Code § 49-6-12(c). It also supports the circuit court's findings and conclusions that there was no reasonable likelihood that the conditions of neglect or abuse could be substantially corrected and that termination was necessary for one-year-old C.M. III's welfare. Pursuant to West Virginia Code § 49-6-5(a)(6), circuit courts are directed to terminate parental, custodial, and guardianship rights upon such findings.

With regard to the circuit court's decision to deny petitioner post-termination visitation with C.M. III, we find no error. 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). As our review of the record

indicates, one-year-old C.M. III has not established a bond with petitioner. Therefore, the lack of visitation or continued contact with petitioner would not be detrimental to his well-being or would be in his best interests. Accordingly, we find no reason to disturb the circuit court's decision denying post-termination visitation.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: October 20, 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