STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

FILED
October 20, 2014
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

In Re: G.B., C.S., & J.S.

No. 14-0476 (Calhoun County 13-JA-32, 13-JA-33, & 13-JA-45)

MEMORANDUM DECISION

Petitioner Mother, by counsel Teresa Monk, appeals the Circuit Court of Calhoun County's April 18, 2014, order terminating her parental rights to G.B., C.S., and J.S., ages ten, three, and one, respectively. The guardian ad litem for the children, Tony Morgan, filed a response supporting the circuit court's order. The Department of Health and Human Resources ("DHHR"), by its attorney Lee Niezgoda, filed a summary response in support of the circuit court order. The biological father of G.B., by counsel Lesli Maze, filed a response in support of the circuit court order. On appeal, Petitioner Mother argues that the circuit court erred in terminating her parental rights because the DHHR failed to file an updated family case plan and that she received ineffective assistance of counsel.

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 May of 2013, the DHHR filed an abuse and neglect petition alleging that Petitioner Mother used illegal drugs and failed to provide G.B. and C.S. with a safe, clean, and stable home. Further, the petition alleged that Petitioner Mother was charged with one count each of operating or attempting to operate a clandestine drug lab, purchase/possession of substances to manufacture methamphetamine, exposure of a First Responder to methamphetamine manufacturing, and exposure of methamphetamine manufacturing to a child. Two months later, the DHHR filed an amended petition after Petitioner Mother gave birth to J.S. The amended petition also alleged that Petitioner Mother tested positive for methamphetamine and failed to correct the issues that led to the filing of the initial petition.

In August of 2013, the circuit court held an adjudicatory hearing during which Petitioner Mother admitted that methamphetamine was consumed in the home where the children lived; that methamphetamine may have been consumed around her children; and that her substance abuse may have negatively affected her children's health, as well as her ability to parent her children. As a result, the circuit court granted Petitioner Mother a six-month post-adjudicatory improvement period. The terms and conditions of Petitioner Mother's improvement period directed her to

participate in (1) individualized parenting and adult life skills classes, (2) substance abuse treatment, (3) a psychological/parental fitness evaluation, and (4) supervised visitations.

Thereafter, the DHHR moved to revoke Petitioner Mother's improvement period, alleging that she failed to comply with the terms and conditions of her improvement period. At the hearing, Petitioner Mother admitted that she failed to comply with the terms of her improvement period. Further, Petitioner Mother admitted that she lost her job and was still in a relationship with J.S. and C.S.'s father, who voluntarily relinquished his parental rights in November of 2013. Ultimately, the circuit court terminated Petitioner Mother's parental rights on February 24, 2014, because she did not comply with her improvement period and failed to accept responsibility for the conditions of abuse and neglect. It is from this dispositional order that Petitioner Mother now appeals.

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).

First, Petitioner Mother argues that the circuit court violated her due process rights because the DHHR failed to file an updated family case plan detailing the terms of her revised improvement period pursuant to West Virginia Code § 49-6-5(a). We find no merit in this argument. West Virginia Code § 49-6-5(a) states that, "[c]opies of the child's case plan shall be sent to the child's attorney and parent, guardian or custodian or their counsel at least five days prior to the dispositional hearing." A review of the record clearly reveals that the DHHR timely filed a family case plan on August 8, 2013, which fell well more than five days before the February 24, 2014, dispositional hearing. Further, Petitioner Mother failed to cite to any additional terms that the circuit court ordered as part of a revised improvement period. We have previously held that

> "[w]here it appears from the record that the process established by the Rules of Procedure for Child Abuse and Neglect Proceedings and related statutes for the disposition of cases involving children adjudicated to be abused or

> neglected has been substantially disregarded or frustrated, the resulting order of disposition will be vacated and the case remanded for compliance with that process and entry of an appropriate dispositional order." Syl. Pt. 5, *In re Edward B.*, 210 W.Va. 621, 558 S.E.2d 620 (2001).

Syl. Pt. 6, *In re Elizabeth A.*, 217 W.Va. 197, 617 S.E.2d 547 (2005). Upon our review, we find that the DHHR timely filed case plan did not "substantially disregard" the rules.

As to termination of Petitioner Mother's parental rights, this Court finds that the circuit court was presented with sufficient evidence upon which to base its findings that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future and that termination was necessary for the children's welfare. West Virginia Code § 49-6-5(b)(3) states that a circumstance in which there is no reasonable likelihood that the conditions of abuse and neglect can be substantially corrected includes situations where "[t]he abusing parent . . . [has] not responded to or followed through with a reasonable family case plan or other rehabilitative efforts . . . to reduce or prevent the abuse or neglect of the child . . . ." On December 9, 2013, Petitioner Mother testified that she failed to comply with the terms of her improvement period. Further, she admitted that she lost her job and was still in a relationship with J.S. and C.S.'s father, who voluntarily relinquished his parental rights. Pursuant to West Virginia Code § 49-6-5(a)(6), circuit courts are directed to terminate parental rights upon such findings.

Finally, Petitioner Mother argues that she received ineffective assistance of counsel during the underlying proceedings. Specifically, Petitioner Mother states that her counsel was ineffective because her attorney failed to attend at least two hearings[1] and because her appointed counsel advised her to admit to violating the terms of her improvement period. To begin, this Court has never recognized a claim for ineffective assistance of counsel in the context of abuse and neglect matters, and declines to do so in the instant matter. However, even if such a claim were recognized, it is clear from a review of the record below that Petitioner Mother received effective assistance throughout the proceedings below. The record clearly shows that prior to Petitioner Mother's first preliminary hearing, appointed counsel made prior arrangements with the circuit court for stand-in counsel to represent her. Further, the record shows that stand-in counsel discussed the implications of waiving her right to a preliminary hearing. Likewise, after the DHHR filed an amended petition following the birth of J.S., the circuit court held another preliminary hearing. Again, the record reveals that due to a scheduling conflict, appointed counsel arranged for stand-in counsel to represent Petitioner Mother at her second preliminary hearing. Petitioner Mother failed to argue how the use of stand-in counsel affected her substantive rights or resulted in prejudice. While Petitioner Mother admitted to violating the terms of her improvement period, appointed counsel successfully advocated for additional time to remedy the conditions of abuse and neglect. However, despite this additional time, the circuit court terminated Petitioner Mother's parental rights for failing to comply with a reasonable family case plan. For these reasons, the Court declines to find that petitioner received ineffective assistance of counsel.

[1]Petitioner Mother admits that she was represented by alternative counsel during these two hearings.

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