STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In Re: J.S. & J.S.

No. 14-0617 (Wood County 13-JA-33 & 13-JA-34)

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

MEMORANDUM DECISION

Petitioner Mother, by counsel Joseph Troisi, appeals the May 28, 2014, order of the Circuit Court of Wood County that terminated her parental rights to ten-year-old J.S.-1 and fourteen-year-old J.S.-2.[1] The children's guardians ad litem, Rhonda Harsh and Angela Brunicardi-Doss, respectively, filed responses in support of the circuit court's order. The Department of Health and Human Resources ("DHHR"), by its counsel Lee A. Niezgoda, 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 post-termination visitation and contact with her children.

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 March of 2013, the DHHR filed an abuse and neglect petition against petitioner, alleging that she abused and neglected her children through (1) her medical neglect of daughter J.S.-1; (2) her failure to regularly take her children to school, partly due to their frequent movement to and from multiple schools since the 2009-2010 academic year; (3) her failure to provide stable housing; (4) her allowing her boyfriend to smoke marijuana in the children's presence on multiple occasions; and (5) her emotional abuse of the children by telling them that she would commit suicide if Child Protective Services ("CPS") removed them from her custody. In May of 2013, the DHHR filed an amended petition against petitioner, alleging that petitioner knew that J.S.-1 and J.S.-2 were sexually abused by others in the past and that J.S.-2 sexually abused J.S.-1.

At the adjudicatory hearing in June of 2013, petitioner stipulated that she failed to ensure adequate medical care for J.S.-1, who was nine years old at the time but weighed less than fifty pounds; failed to provide secure and stable housing for the children; and failed to take measures to protect J.S.-1 from being sexually abused by others. Petitioner also acknowledged that even though she knew her son had sexually acted out against her daughter, she still left them

[1]Because the children in this case have the same initials, we have distinguished each of them using numbers 1 and 2 after their initials in this Memorandum Decision. The circuit court case numbers also serve to distinguish each child.

unattended for periods of time. The circuit court granted petitioner a post-adjudicatory improvement period with directions to undergo a parental fitness and psychological evaluation, at which petitioner was to accept responsibility for the abuse of the children and to admit her failure to protect the children so as to develop a plan that the abuse would not happen again in the future. The terms of the improvement period also directed petitioner to maintain scheduled home visits, multi-disciplinary treatment meetings, supervised visitation, parenting classes, and adult life skills; obtain and maintain a suitable and safe residence for her and the children free from domestic violence, illegal drug usage, and inappropriate people; and follow all recommendations of the DHHR and her therapists.

Prior to the dispositional hearing in March of 2014, petitioner filed a motion for a dispositional improvement period. Petitioner argued that because she had acknowledged and accepted her role in her children's sexual abuse and neglect, she should receive a dispositional improvement period so that she could continue her efforts to overcome these conditions. However, the circuit court found that the evidence admitted at the dispositional hearing did not support petitioner's assertions and denied petitioner's motion.

The circuit court's final order, entered in May of 2014, found that petitioner failed to meet her burden for a dispositional improvement period under West Virginia Code § 49-6-12(c) due to her failure to establish a suitable home for herself and the children and her failure to appear for drug screens or produce clean drug screens. The circuit court also found that, based on the family's therapists and providers who testified at the dispositional hearing, it would be unreasonable to require the children to wait another six to twelve months to start the reunification process as petitioner had only just begun the process of correcting the issues and deficiencies listed in the abuse and neglect petition. After finding that there was no reasonable likelihood that the conditions of neglect could be substantially corrected in the near future and that continuation in the home would be contrary to the children's best interests, the circuit court terminated petitioner's parental rights without post-termination visitation. From this order, petitioner 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).

Upon our review of the record, we find no error by the circuit court in denying petitioner's motion for a dispositional improvement period. Under West Virginia Code § 49-6-12(c), a circuit court may grant an improvement period at disposition to a subject parent who has already received one if the subject parent demonstrates that, since the initial improvement period, she has experienced a substantial change in circumstances and that due to this change in circumstances, she is likely to fully participate in another improvement period. Our review of the record indicates that, at the dispositional hearing in this case, petitioner was still not fully and consistently acknowledging her role in J.S.-1's sexual abuse. For instance, petitioner's therapist testified that petitioner claimed that she was not aware of the abuse. Additionally, petitioner's parenting instructor testified that petitioner minimized the extent of her knowledge about J.S.-2's sexual abuse against J.S.-1. Although it appears that petitioner began to participate in some of the terms and services of her improvement period toward its end, petitioner continued to fail to accept full responsibility for her role in her children's abuse and, at the time of the dispositional hearing, had not yet obtained appropriate housing, yielded clean drugs screens, or completed her counseling and treatment programs. This evidence supports the circuit court's findings that petitioner had not met her burden for a dispositional improvement period.

We also find no error by the circuit court in terminating petitioner's parental rights or in doing so without post-termination visitation. Pursuant to West Virginia Code § 49-6-5(b), "'no reasonable likelihood that conditions of neglect or abuse can be substantially corrected' shall mean that, based upon the evidence before the [circuit] court, the abusing adult or adults have demonstrated an inadequate capacity to solve the problems of abuse or neglect on their own or with help." As discussed, our review of the evidence supports the circuit court's findings of fact that the children suffered great abuse through sexual abuse, petitioner's nomadic lifestyle, her failure to maintain a safe and secure home, and her addiction to drugs and alcohol. The evidence also showed that the children have expressed not wanting to return to their mother and that petitioner completed only minimal requirements of her improvement period. These findings support the circuit court's conclusions that there was no reasonable likelihood that the conditions of abuse and/or neglect could be substantially corrected in the near future and termination was in the children's best interests. 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 both children, we also 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). Here, the evidence does not show that visitation or continued contact would be in the children's best interests. Further, the children expressed a desire to have no contact with petitioner. 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