

FILED
August 31, 2022

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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re K.E.

No. 22-0054 (Kanawha County 21-JA-161)

MEMORANDUM DECISION

Petitioner Mother S.E., by counsel Sandra K. Bullman, appeals the Circuit Court of Kanawha County’s January 28, 2022, order terminating her parental rights to K.E.¹ The West Virginia Department of Health and Human Resources (“DHHR”), by counsel Patrick Morrissey and Mindy M. Parsley, filed a response in support of the circuit court’s order. The guardian ad litem (“guardian”), Jennifer Anderson, filed a response on the child’s behalf in support of the circuit court’s order. On appeal, petitioner argues that the circuit court erred in terminating her parental rights.

The 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. This case satisfies the “limited circumstances” requirement of Rule 21(d) of the Rules of Appellate Procedure and is appropriate for a memorandum decision rather than an opinion. For the reasons expressed below, the decision of the circuit court is vacated because the court failed to set forth sufficient findings of fact and conclusions of law by written order or on the record to support termination of petitioner’s parental rights.

In April of 2021, the DHHR filed a child abuse and neglect petition against petitioner on the basis of her drug and alcohol abuse. Specifically, the DHHR alleged that petitioner crashed her car into a pole while driving under the influence with her then-nine-year-old child in the vehicle. The DHHR alleged that petitioner denied heroin abuse but admitted to snorting Zanaflex fifteen minutes prior to entering the vehicle. The DHHR further alleged that petitioner had been convicted of driving under the influence on two prior occasions. Based on the forgoing, the DHHR concluded that petitioner had a substance abuse problem that prohibited her from properly parenting the child.

¹Consistent with our long-standing practice in cases with sensitive facts, we use initials where necessary to protect the identities of those involved in this case. *See In re K.H.*, 235 W. Va. 254, 773 S.E.2d 20 (2015); *Melinda H. v. William R. II*, 230 W. Va. 731, 742 S.E.2d 419 (2013); *State v. Brandon B.*, 218 W. Va. 324, 624 S.E.2d 761 (2005); *State v. Edward Charles L.*, 183 W. Va. 641, 398 S.E.2d 123 (1990).

The circuit court held an adjudicatory hearing in May of 2021. Petitioner did not appear for the hearing, but her counsel was present and represented her. A CPS worker testified that she was called on “emergency response” due to petitioner having wrecked her car while under the influence. The CPS worker stated that the child was in the vehicle and sustained minimal injuries from the automobile accident. According to the CPS worker, petitioner admitted to snorting Zanaflex shortly before driving the vehicle. The worker testified that she interviewed several people who reported that petitioner had a substance abuse problem. Next, a police officer testified that he responded to the accident wherein petitioner had wrecked her car. The officer testified that he performed a basic field sobriety test on petitioner and observed that she was under the influence. The officer discovered that the child was not properly secured in the vehicle and that a witness had helped remove the child from the vehicle and laid him in the grass as the vehicle appeared to be unsafe. After hearing this testimony, the circuit court adjudicated petitioner as an abusing parent.

On January 28, 2022, the circuit court held a dispositional hearing. A DHHR case manager testified and recommended that petitioner’s parental rights be terminated. According to the case manager, petitioner failed to attend scheduled drug screens except to provide a screen at her hearings. The case manager stated that petitioner’s most recent drug screen, provided on January 11, 2022, was positive for fentanyl. The case manager further stated that she had arranged inpatient drug treatment for petitioner, but that petitioner failed to attend. Petitioner was permitted to participate at the dispositional hearing via telephone. Petitioner requested an improvement period and testified that she would participate in services. Petitioner also testified that she had enrolled in outpatient drug treatment in December of 2021. However, petitioner denied having a drug abuse problem and stated she did not know why she tested positive for fentanyl. She also acknowledged that she had not sought treatment between the filing of the petition and enrolling in outpatient treatment in December.

At the conclusion of the hearing, the circuit court made limited findings on the record regarding petitioner’s substance abuse. By order entered on January 28, 2022, the circuit court terminated petitioner’s parental rights. The order, which is a form document, contained no findings of fact in support of disposition. The form did, however, contain boxes which the court checked to note the court’s finding that there was no reasonable likelihood that petitioner could correct the conditions of abuse and neglect in the near future and that termination was necessary for the child’s welfare. Petitioner now appeals the dispositional order terminating her parental rights.²

The Court has previously held:

“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

²The father was determined to be a nonabusing parent. The permanency plan is for the child to remain in his nonabusing father’s care.

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).

On appeal, petitioner argues that the circuit court erred in terminating her parental rights. According to petitioner, she should have been granted an improvement period as she complied with some drug screens and some supervised visits. She further notes that the child has been placed with his father and, as such, permanency would not be disturbed if she were to be granted an improvement period. Petitioner also argues that the circuit court should have employed a less restrictive alternative disposition to the termination of her parental rights. Petitioner claims that termination of her parental rights was not justified under the circumstances of this case and that the issues of abuse and neglect could have been corrected within a reasonable amount of time.

Here, we find that the circuit court failed to make adequate findings of fact and conclusions of law in writing or on the record to support its decision to terminate petitioner's parental rights. Rule 36(a) of the West Virginia Rules of Procedure for Child Abuse and Neglect Proceedings requires that

[a]t the conclusion of the disposition hearing, the court shall make findings of fact and conclusions of law, in writing or on the record, as to the appropriate disposition in accordance with the provisions of W. Va. Code § 49-4-604. The court shall enter a disposition order, including findings of fact and conclusions of law, within ten (10) days of the conclusion of the hearing.

West Virginia Code § 49-4-604(c) sets forth the various dispositions to be imposed at the conclusion of abuse and neglect proceedings. Relevant to petitioner's disposition, in order to terminate a parent's parental rights, the circuit court must find that "there was no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future" and that termination is necessary for the welfare of the child. W. Va. Code § 49-4-604(c)(6). This Court has held that

[w]here a trial court order terminating parental rights merely declares that there is no reasonable likelihood that a parent can eliminate the conditions of neglect, without explicitly stating factual findings in the order or on the record supporting such conclusion, and fails to state statutory findings required by West Virginia Code § [49-4-604] on the record or in the order, the order is inadequate.

Syl. Pt. 4, in part, *In re Edward B.*, 210 W. Va. 621, 558 S.E.2d 620 (2001). Further,

[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.

Id. at 624, 558 S.E.2d at 623, Syl. Pt. 5. In *Edward B.*, we explained that “[c]lear and complete findings by the trial judge are essential to enable [the appellate court] properly to exercise and not exceed our powers of review.” *Id.* at 632, 558 S.E.2d at 631 (citation omitted).

While the circuit court’s dispositional order contained check marks noting that the court made the requisite findings as set forth in West Virginia Code § 49-4-604, the order lacks a single factual finding supporting a conclusion of termination. Moreover, the circuit court’s findings on the record are extremely limited, making appellate review impossible. Due to lack of factual findings, we find it necessary to vacate and remand the circuit court’s final dispositional order for the limited purpose of entry of an order that contains sufficient findings of fact and conclusions of law for appellate review. Given that we are vacating and remanding the circuit court’s order, we decline to address petitioner’s argument that the circuit court should have granted her an improvement period or imposed a less restrictive disposition than termination of her parental rights.

Accordingly, the circuit court’s January 28, 2022, order, is hereby vacated and remanded for the limited purpose of entry of a new order consistent with this decision, Chapter 49 of the West Virginia Code, and the Rules of Procedure for Child Abuse and Neglect Proceedings.³ The circuit court is directed to enter a new final order within the next thirty days. The Clerk is hereby directed to issue the mandate contemporaneously herewith.

Vacated and Remanded.

ISSUED: August 31, 2022

CONCURRED IN BY:

Chief Justice John A. Hutchison
Justice Elizabeth D. Walker
Justice Tim Armstead
Justice William R. Wooton
Justice C. Haley Bunn

³This Court vacates the circuit court’s dispositional order only as it relates to petitioner’s parental rights.