

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

In Re: C.C., C.W., and M.A.

No. 12-0483 (Nicholas County 11-JA-5, 6 & 7)

FILED

September 24, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

This appeal with accompanying record, filed by counsel Harley E. Stollings on behalf of Petitioner Mother, arises from the Circuit Court of Nicholas County, wherein Petitioner Mother's parental rights were terminated by order entered by the circuit court on March 19, 2012. The circuit court entered an amended dispositional order on March 27, 2012, and later held a hearing in May of 2012 on Petitioner Mother's motion to reconsider termination, which it denied. The children's guardian ad litem, Julia R. Callaghan, filed a response on behalf of the children in support of the circuit court's order, along with additional documents of the record below. The Department of Health and Human Resources ("DHHR"), by its attorney William L. Bands, also filed a response supporting the circuit court's termination order.

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 is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

Before DHHR filed the petition in the instant case, Petitioner Mother had been involved in a number of drug rehabilitation programs without success. In June of 2010 she was admitted to the detoxification program at Amity Detox and Treatment Center after she tested positive for oxyepam, alpha-hydroxyalprozam, THC, and oxycodone/oxymorphone. Petitioner Mother further admitted to using oxycontin the day before entering the program and admitted to abusing Xanax; Ativan; valium; crystal meth; and, since she was fourteen years old, marijuana. Petitioner Mother left Amity after three days against medical advice. Petitioner Mother later entered the program at John D. Goode Recovery Center and was discharged on October 1, 2010. The day after her discharge, she tested positive for cannabinoids, barbiturates, and benzodiazepines. Petitioner Mother entered the MOTHERS Program on January 10, 2011, but left on January 13, 2011. DHHR filed the petition in the instant case in late January of 2011, based on allegations that Petitioner Mother's parenting skills have been seriously impaired as a result of her addiction to drugs and/or controlled substances. The petition further alleged that Petitioner Mother has a history of noncompliance with Child Protective Services ("CPS"), has failed to maintain safe and suitable housing for the children, and has failed to maintain contact with DHHR.

At the adjudicatory hearing in March of 2011, Petitioner Mother stipulated to neglect of the subject children due to her drug use. The circuit court granted her an improvement period with directions to remain free of drugs and alcohol, submit to random drug screens, maintain contact with DHHR, make herself available for services, participate in inpatient substance abuse treatment including all after-care recommendations, and attend Alcoholics Anonymous (“AA”) and Narcotics Anonymous (“NA”) meetings at least once per week after release from inpatient treatment. Petitioner Mother successfully completed one rehabilitation program at Amity, was subsequently discharged from the next rehabilitation program at Rea of Hope, Inc. because she was smoking synthetic marijuana, and later completed treatment at Braxton Fellowship Home. The circuit court found that Petitioner Mother had complied with her improvement period and it scheduled the matter for disposition in January of 2012.

This dispositional hearing had to be continued, however, because allegations of sexual abuse arose. A February of 2012 report from SAAR Psychological Group indicated that child C.W. had sexually acted out toward her sister M.A., raising suspicions that C.W. had been inappropriately touched herself. The dispositional hearing was held in late February of 2012, which Petitioner Mother did not attend. The circuit court terminated Petitioner Mother’s parental rights and later denied Petitioner Mother’s motion for reconsideration. At the hearing on the reconsideration motion, Petitioner Mother admitted to smoking marijuana in February and relapsing into drug addiction. The circuit court also learned that Petitioner Mother had been absent at the dispositional hearing because she was in jail for her association with a clandestine drug laboratory. Petitioner Mother testified that her drug relapse was due to her learning of the sexual abuse allegations concerning her children. Petitioner Mother appeals the circuit court’s order terminating her parental rights to C.C., C.W., and M.A., arguing one assignment of error.

The 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 Mother argues that the circuit court erred in terminating her parental and custodial rights based on a finding that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future. Petitioner Mother argues that she was in inpatient rehabilitation treatment for seven months and she was able to establish a home, employment, and weekend visits with her children. Petitioner Mother argues that she only relapsed after she learned that her children may have been sexually abused, but that given her history, she has shown the capacity to improve.

The guardian ad litem and DHHR argue that the circuit court did not err in terminating Petitioner Mother's parental rights to the subject children. Both raise that Petitioner Mother was unsuccessful in completing all of her drug rehabilitation programs and that she failed to comply with her case plan by missing AA and NA meetings, missing drug screens, and failing to keep in touch with DHHR. Both argue that Petitioner Mother was given opportunities for rehabilitation before her relapse, yet she failed to fully take advantage of them.

The Court finds no error in the circuit court's termination order. There is no reasonable likelihood that conditions of abuse or neglect will be substantially corrected when (1) the abusing parent's addiction to drugs has seriously impaired her parenting skills, (2) the abusing parent has refused or is unwilling to cooperate in a reasonable family case plan, or (3) the abusing parent has not responded to or followed through with a case plan or other rehabilitative efforts. W.Va. Code § 49-6-5(b). The Court has held that "[i]n a contest involving the custody of an infant the welfare of the child is the polar star by which the discretion of the court will be guided." Point 2, Syllabus, *State ex rel. Lipscomb v. Joplin*, 131 W.Va. 302[, 47 S.E.2d 221 (1948)]." *Clifford K. v. Paul S.*, 217 W.Va. 625, 634, 619 S.E.2d 138, 147 (2005) (internal citation omitted). Moreover, "[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 . . ." Syl. Pt. 1, in part, *In re R.J.M.*, 164 W.Va. 496, 266 S.E.2d 114 (1980)." Syl. Pt. 4, in part, *In re Cecil T.*, 228 W.Va. 89, 717 S.E.2d 873 (2011). Moreover, we have held as follows:

Termination of parental rights, the most drastic remedy under the statutory provision covering the disposition of neglected children, *W. Va. Code*, [§] 49-6-5 [1977] may be employed without the use of intervening less restrictive alternatives when it is found that there is no reasonable likelihood under *W. Va. Code*, [§] 49-6-5(b) [1977] that conditions of neglect or abuse can be substantially corrected.

Syl. Pt. 2, *In re R.J.M.*, 164 W.Va. 496, 266 S.E.2d 114 (1980). Here, a review of the record on appeal supports the findings and conclusions the circuit court outlined in its termination order. We find no error.

This Court reminds the circuit court of its duty to establish permanency for the child C.C.¹ Rule 39(b) of the Rules of Procedure for Child Abuse and Neglect Proceedings requires:

¹ Permanency has been achieved for the other two children as they have been placed with their biological father. C.C.'s father voluntarily relinquished his parental rights.

At least once every three months until permanent placement is achieved as defined in Rule 6, the court shall conduct a permanent placement review conference, requiring the multidisciplinary treatment team to attend and report as to progress and development in the case, for the purpose of reviewing the progress in the permanent placement of the child.

Further, this Court reminds the circuit court of its duty pursuant to Rule 43 of the Rules of Procedure for Child Abuse and Neglect Proceedings to find permanent placement for C.C. within twelve months of the date of the disposition order. As this Court has stated,

[t]he [twelve]-month period provided in Rule 43 of the West Virginia Rules of Procedures for Child Abuse and Neglect Proceedings for permanent placement of an abused and neglected child following the final dispositional order must be strictly followed except in the most extraordinary circumstances which are fully substantiated in the record.

Syl. Pt. 6, *In re Cecil T.*, 228 W.Va. 89, 717 S.E.2d 873 (2011). Moreover, this Court has stated that

[i]n determining the appropriate permanent out-of-home placement of a child under *W.Va.Code* § 49-6-5(a)(6) [1996], the circuit court shall give priority to securing a suitable adoptive home for the child and shall consider other placement alternatives, including permanent foster care, only where the court finds that adoption would not provide custody, care, commitment, nurturing and discipline consistent with the child's best interests or where a suitable adoptive home can not be found.

Syl. Pt. 3, *State v. Michael M.*, 202 W.Va. 350, 504 S.E.2d 177 (1998). Finally, “[t]he guardian ad litem's role in abuse and neglect proceedings does not actually cease until such time as the child is placed in a permanent home.” Syl. Pt. 5, *James M. v. Maynard*, 185 W.Va. 648, 408 S.E.2d 400 (1991).

For the foregoing reasons, we find no error in the decision of the circuit court and the termination of parental rights is hereby affirmed.

Affirmed.

ISSUED: September 24, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Thomas E. McHugh