

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re P.L.

No. 12-1372 (W. Va. Mar. 12, 2013) · No. No. 12-1372 · Decided March 12, 2013

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the termination of a father’s parental rights to P.L. based on his continued drug and alcohol abuse and failure to comply with improvement-period conditions. The Court held that the circuit court had sufficient evidence to terminate the rehabilitation period and find no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Brent D. Benjamin; Justice Robin Jean Davis; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	March 12, 2013
DOCKET	No. 12-1372
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner Father appealed the Webster County Circuit Court's order terminating his parental rights to P.L. after the court terminated his improvement period and conducted a dispositional hearing.
STANDARD OF REVIEW	Conclusions of law in an abuse and neglect case are reviewed de novo, while factual findings are reviewed for clear error. Findings are not set aside unless the reviewing court is left with a definite and firm conviction that a mistake has been made, and a finding must be affirmed if the circuit court's account of the evidence is plausible in light of the entire record.
PRECEDENTIAL VALUE	nonprecedential memorandum decision
PARTIES	Petitioner Father v. West Virginia Department of Health and Human Resources, Guardian ad litem for P.L.

TOPICS

termination of parental rights

parental rights

family law procedure

standard of review

appellate procedure

PRACTICE AREAS

family law

child welfare

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court abused its discretion by terminating Petitioner Father's improvement or rehabilitation period before its expiration.
2. Whether the circuit court erred in terminating Petitioner Father's parental rights despite the bond between father and child, the length of his rehabilitation period, and the mother's compliance with her improvement period.
3. Whether the circuit court's factual findings supporting termination were clearly erroneous.

HOLDINGS

1. A circuit court has discretion to terminate a subject parent's period of improvement before the period has expired.
2. Termination of Petitioner Father's parental rights was proper where the evidence supported 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.

KEY QUOTATIONS

“The circuit court has the discretion to terminate a subject parent’s period of improvement before it has expired.” (at 2)

“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.” (at 1)

FACTUAL BACKGROUND

The DHHR alleged that the parents abused drugs and alcohol. Although Petitioner Father received at least two improvement periods requiring him to remain free of drugs and alcohol, he appeared intoxicated in court and tested positive for alcohol and methamphetamine. The circuit court found that he had the ability to comply with rehabilitation but chose not to do so and denied his addiction problems, finding no reasonable likelihood that the conditions could be substantially corrected in the near future and that termination was necessary for the child's welfare.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition in July 2011 alleging parental drug and alcohol abuse. The circuit court granted Petitioner Father at least two improvement periods, but he repeatedly failed to comply with sobriety requirements, including appearing intoxicated and testing positive for alcohol and methamphetamine.

After a hearing, the circuit court terminated his rehabilitation period and parental rights, and the Supreme Court of Appeals of West Virginia affirmed.

DISPOSITION

affirmed

CASES CITED

- In Interest of Tiffany Marie S., 196 W. Va. 223, 470 S.E.2d 177 (1996)
- In re Cecil T., 228 W. Va. 89, 717 S.E.2d 873 (2011)
- In re Katie S., 198 W. Va. 79, 479 S.E.2d 589 (1996)

OPINION

PER CURIAM.

STATE OF WEST VIRGINIA SUPREME COURT OF APPEALS In Re: P.L. FILED March 12, 2013 RORY L. PERRY II, CLERK No. 12-1372 (Webster County 11-JA-39) SUPREME COURT OF APPEALS OF WEST VIRGINIA MEMORANDUM DECISION Petitioner Father filed this appeal, by counsel Christina C. Flanigan, from the Circuit Court of Webster County which terminated his parental rights to P.L. by order entered on October 24, 2012.¹ The guardian ad litem for the child, David Karickhoff, has filed a response supporting the circuit court's order.

The Department of Health and Human Resources ("DHHR"), by its attorney Lee Niezgoda, also filed a response in support of the circuit court's 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 Rules of Appellate Procedure. The DHHR filed the first petition of this case in July of 2011, alleging the parents' drug and alcohol abuse. Throughout the duration of these proceedings, the circuit court granted petitioner at least two improvement periods with terms and conditions to remain free of drugs and alcohol.² Nevertheless, Petitioner Father appeared to circuit court intoxicated on at least one occasion and, in other instances, tested positive for alcohol and other drugs such as methamphetamine.

The DHHR filed a motion to terminate petitioner's rehabilitation period and to terminate his parental rights to P.L. After a hearing on these motions, the circuit court found that petitioner has the ability to comply with rehabilitation, but that his choice not to do so and his denial of his addiction issues were not in the child's best interests. Consequently, the circuit ¹ Both the

transcript of the dispositional hearing and the circuit court's termination order reflect that petitioner's rights as a psychological parent were terminated to two other children involved in the underlying proceedings.

These children were half-siblings to P.L. and not biological children of Petitioner Father. On appeal, Petitioner Father only argues against the termination of his parental rights to P.L. 2 At one point, petitioner was dismissed from the case and made a nominal party. At this dismissal, the circuit court ordered that the DHHR conduct a walk-through of petitioner's residence in consideration of placing P.L. with him.

Upon this walk-through, however, the DHHR discovered three individuals entering and exiting petitioner's residence with bags of alcohol containers. The DHHR subsequently filed its second amended petition, re-including petitioner into the proceedings. 1 court terminated Petitioner Father's parental rights in October of 2012, from which Petitioner Father now appeals.

Petitioner Father appeals, arguing that the circuit court erred by terminating his parental rights because there was a significant bond between him and the child, he was granted a rehabilitation period of a year for his substance abuse, and the child's mother was compliant with her improvement period.

In response, the child's guardian ad litem and the DHHR both contend that the circuit court did not commit error. They argue that the circuit court correctly based its termination of petitioner's parental rights on his inability to care for himself, much less the subject child, due to his drug and alcohol abuse. They argue that, accordingly, the circuit court properly terminated petitioner's parental rights pursuant to West Virginia Code §§ 49-6-5(a)(6) and (b)(1).

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). Upon our review, the Court finds no error in the circuit court's termination of Petitioner Father's rehabilitation period or in its termination of Petitioner Father's parental rights. The circuit court has the discretion to terminate a subject parent's period of improvement before it has expired. See Syl. Pt. 6, *In re Katie S.*, 198 W.Va.

79, 479 S.E.2d 589 (1996). The Court finds that the circuit court was presented with sufficient evidence upon which it could have based findings that there was no reasonable likelihood to believe that the conditions of abuse and neglect could be substantially corrected in the near future and upon which it based findings that termination was necessary for the children's welfare.

Pursuant to West Virginia Code § 49-6 5(a)(6), circuit courts are directed to terminate parental rights upon such findings. For the foregoing reasons, we affirm the circuit court's order terminating petitioner's parental rights to the subject child. Affirmed. 2 ISSUED: March 12, 2013 CONCURRED IN BY: Chief Justice Brent D. Benjamin Justice Robin Jean Davis Justice Margaret L. Workman Justice Menis E. Ketchum Justice Allen H. Loughry II 3