

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re S.C.

No. 12-1146 (W. Va. Mar. 12, 2013) (memorandum decision) · No. 12-1146 · Decided March 12, 2013

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the termination of the petitioner mother's parental rights in an abuse and neglect proceeding. The Court held that the circuit court had sufficient evidence to find that the conditions of abuse and neglect could not be substantially corrected in the near future and that termination was necessary for the child's welfare.

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 Allen H. Loughry II; Justice Menis E. Ketchum
JURISDICTION	West Virginia
DECIDED	March 12, 2013
DOCKET	12-1146
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner Mother appealed the Kanawha County Circuit Court's order terminating her parental rights.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo. In an abuse and neglect case tried without a jury, factual findings are reviewed for clear error and will not be overturned merely because the reviewing court might have decided the case differently.
PRECEDENTIAL VALUE	Unpublished memorandum decision; precedential value not established from the opinion text.
PARTIES	Petitioner Mother v. West Virginia Department of Health and Human Resources, Guardian ad litem for S.C.

TOPICS

termination of parental rights

parental rights

family law procedure

standard of review

appellate procedure

PRACTICE AREAS

family law

termination of parental rights

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court clearly erred in finding that the conditions of abuse and neglect could not be substantially corrected in the near future.
2. Whether the circuit court erred in terminating Petitioner Mother's parental rights based on those findings.

HOLDINGS

1. The circuit court did not clearly err in finding that there were no reasonable grounds to believe the conditions of abuse and neglect could be substantially corrected in the near future.
2. Termination of Petitioner Mother's parental rights was proper because the circuit court found that the conditions of abuse and neglect could not be substantially corrected in the near future and that termination was necessary for the child's welfare.

KEY QUOTATIONS

“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.” (at 1)

“The Court finds that the circuit court was presented with sufficient evidence upon which it based findings that there were no reasonable grounds to believe that conditions of abuse and neglect could be substantially corrected in the near future and that termination was necessary for the child’s welfare.” (at 2)

FACTUAL BACKGROUND

The DHHR alleged that Petitioner Mother had chronic drug abuse problems and exposed the child to a violent relationship with her boyfriend. The child was allegedly left with an inappropriate caregiver and was burned by chemicals from a methamphetamine lab while in that caregiver's care. Mother did not fully comply with her six-month post-adjudicatory improvement period, and the circuit court found that the conditions of abuse and neglect could not 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 April 2010. The circuit court granted Petitioner Mother a six-month post-adjudicatory improvement period, which she did not fully complete, and terminated the improvement period before six months had elapsed. The circuit court later terminated her parental rights by order entered August 29, 2012, and the Supreme Court of Appeals 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)

OPINION

In Re: S.C.

PER CURIAM.

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

In Re: S.C. FILED March 12, 2013 No. 12-1146 (Kanawha County 10-JA-65) RORY L. PERRY II, CLERK

SUPREME COURT OF APPEALS

OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Mother filed this appeal, by counsel Travis A. Griffith, from the Circuit Court of Kanawha County which terminated her parental rights by order entered on August 29, 2012. The guardian ad litem for the child, Michael Payne, 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 initiated this case in April of 2010 when it filed its petition with allegations that Petitioner Mother battled chronic drug abuse and had exposed her child to a violent relationship petitioner had with her boyfriend. The petition alleged an occasion when the child was left with an inappropriate caregiver and, during this care, was burned by chemicals from a methamphetamine lab. The circuit court granted Petitioner Mother a six-month post-adjudicatory improvement period, with which she did not fully comply. The circuit court terminated the improvement period before the six months passed. Ultimately, the circuit court terminated Petitioner Mother's parental rights by order entered in August of 2012. Petitioner Mother appeals this termination order. Petitioner Mother argues that the circuit court erred in finding that the conditions of abuse and neglect could not be substantially corrected in the near future and argues that, consequently, the circuit court erred in terminating her parental rights. Petitioner Mother argues that she has freely admitted to having a substance abuse problem and has

acknowledged her failure to comply with DHHR services, but also asserts that she showed improvement at the dispositional hearing. In response, the child's guardian ad litem and the DHHR both argue that the circuit court did not err in terminating petitioner's parental rights. They argue that petitioner failed to make substantial progress during her six-month post-adjudicatory improvement period and that the circuit court outlined its findings in its dispositional order and throughout the record for terminating petitioner's parental rights. The Court has previously established the following standard of review: 1 "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 Mother's parental rights. The Court finds that the circuit court was presented with sufficient evidence upon which it based findings that there were no reasonable grounds to believe that conditions of abuse and neglect could be substantially corrected in the near future and that termination was necessary for the child'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. ISSUED: March 12, 2013 CONCURRED IN BY: Chief Justice Brent D. Benjamin Justice Robin Jean Davis Justice Margaret L. Workman Justice Allen H. Loughry II DISSENTING: Justice Menis E. Ketchum 2