

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re C.C.-1, L.C.-1, T.C., and C.C.-2

No. 20-0211 (W. Va. Sept. 23, 2020) · No. No. 20-0211 · Decided September 23, 2020

OPINION

PER CURIAM.

STATE OF WEST VIRGINIA SUPREME COURT OF APPEALS FILED September 23, 2020
EDYTHE NASH GAISER, CLERK SUPREME COURT OF APPEALS In re C.C.-1, L.C.-1,
T.C., and C.C.-2 OF WEST VIRGINIA No. 20-0211 (Kanawha County 19-JA-269, 19-JA-270,
19-JA-271, and 19-JA-272) MEMORANDUM DECISION Petitioner Father L.C.-2, by counsel
Michael M. Cary, appeals the Circuit Court of Kanawha County’s February 6, 2020, order
terminating his parental rights to C.C.-1, L.C.-1, T.C., and C.C.-2.1 The West Virginia Department
of Health and Human Resources (“DHHR”), by counsel Mindy M. Parsley, filed a response in
support of the circuit court’s order.

The guardian ad litem (“guardian”), Elizabeth G. Kavitz, filed a response on behalf of the children
also in support of the circuit court’s order. On appeal, petitioner argues that the circuit court erred
in not affording him a meaningful improvement period. 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. The DHHR filed a child abuse and neglect petition
against the parents in April of 2019. Specifically, the DHHR alleged that one year prior to the
filing of the petition, C.C.-1 reported that a family friend sexually abused her.

At that time, the child was interviewed at a Child Advocacy Center wherein she disclosed the
nature of the abuse. Child Protective Services (“CPS”) did not open a case against the parents at
that time because the parents were protective of the child and kept the family friend away from
her.

The DHHR alleged that, since that time, however, the parents permitted the family friend to be in
the home with the children, despite C.C.-1’s prior disclosure. 1 Consistent 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).

Additionally, because two of the children share the same initials, we will refer to them as C.C.-1 and C.C.-2, respectively, throughout this memorandum decision. Because one of the children and petitioner share the same initials, we will refer to them as L.C.-1 and L.C.-2, respectively, throughout this memorandum decision. 1 of abuse. Consequently, the DHHR alleged that the parents failed to protect the children and also failed to provide them with financial support.

At an adjudicatory hearing held in May of 2019, the parents stipulated to the allegations contained in the petition. The circuit court accepted their stipulations, adjudicated them as abusing parents, and ordered that they participate in services. Specifically, the parents were ordered to participate in parenting and adult life skills classes, submit to random drug screens, participate in supervised visits, and submit to psychological and parental fitness evaluations.

Petitioner underwent a psychological evaluation in June of 2019. The evaluator concluded that petitioner's prognosis for attaining minimally adequate parenting was poor given his history of pathological attachment, impaired judgment, and defensive responding during the evaluation.

The evaluator recommended that petitioner attend psychotherapy, submit to medication management and random drug screenings, demonstrate the ability to maintain stable relationships and employment, and demonstrate an attachment to his children by complying with CPS intervention and services.

In July of 2019, the guardian filed a report on behalf of the children wherein she recommended termination of the parents' parental rights. The guardian reported that the parents failed to accept responsibility for their actions and believed that they had not done anything wrong with regard to the children, despite their stipulations of abuse and neglect. Nevertheless, the circuit court granted the parents' motions for post-dispositional improvement periods at a dispositional hearing held later that month.

At a review hearing held in October of 2019, the circuit court continued the improvement periods and ordered that the parents participate in family therapy. The guardian authored another report following a multidisciplinary team meeting held in December of 2019. According to the guardian, the DHHR reported that the parents were "not complying with the therapeutic conditions of their improvement periods," failed to obtain and maintain employment, had marital issues that were "obstructing therapeutic progress with the children," and were generally not in compliance with the terms of their improvement periods.

The circuit court held a final dispositional hearing in January of 2020. The DHHR presented the testimony of the CPS worker, who recommended termination of the petitioner's parental rights due to "[his] inability to progress through [his] improvement period and ongoing fundamental

issues impeding [his] ability to safely parent the minor children.” The DHHR also presented the testimony of a therapist, who had provided counseling to the parents.

The therapist testified that she was hesitant to integrate C.C.-1 into the counseling sessions because petitioner failed to “attain a baseline of safety, communication, and honesty in the counseling environment.” On the two occasions the therapist incorporated C.C.-1 into the sessions, the petitioner’s behaviors did not contribute to an appropriate therapeutic environment.

The therapist opined that petitioner had not made any progress whatsoever since beginning counseling in August of 2019. Lastly, the DHHR presented the testimony of a service provider. The service provider stated that the petitioner’s home environment was “unsafe to bring the children into due to the ongoing destructive conflict between the [r]espondent [p]arents.” Following the close of evidence, the circuit court found that petitioner failed to remedy the conditions of abuse and neglect and that his 2 failure to demonstrate the capacity to improve prevented him from being an appropriate parent.

Accordingly, the circuit court terminated petitioner’s parental rights upon finding that there was no reasonable likelihood that he could correct the conditions of abuse and neglect in the foreseeable future and that termination was in the children’s best interests. Petitioner appeals the February 6, 2020, dispositional order terminating his parental rights.² The Court has previously established the following standard of review in cases such as this: “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).

On appeal, petitioner argues that the circuit court erred in not affording him a meaningful improvement period. Petitioner contends that he was willing to participate in and should have been granted services such as marriage counseling and couple’s therapy prior to the termination of his parental rights. Petitioner argues that he could have benefited from marriage counseling before trying to implement family counseling.

We find petitioner's argument to be without merit. Petitioner does not argue that he did not receive an improvement period. In fact, the record is clear that petitioner was provided services throughout the proceedings and was granted a post-dispositional improvement period in July of 2019. Rather, petitioner contends that his improvement period was not "meaningful" because he was not provided services such as marriage counseling prior to his participation in family counseling.

We have previously held that [a]t the conclusion of the improvement period, the court shall review the performance of the parents in attempting to attain the goals of the improvement period and shall, in the court's discretion, determine whether the conditions of the improvement period have been satisfied and whether sufficient improvement has been made in the context of all the circumstances of the case to justify the return of the child.

2 The mother's parental rights were also terminated below. The permanency plan for L.C.- 1, T.C., and C.C.-2 is adoption by their respective foster families. C.C.-1 is currently receiving inpatient treatment and the guardian states she remains hopeful C.C.-1 can be placed in a foster home pending her successful treatment. 3 Syl. Pt. 6, In Interest of Carlita B., 185 W. Va. 613, 408 S.E.2d 365 (1991).

Petitioner's contention that he should have been granted an additional service is without merit. Petitioner was provided with several services, including parenting and adult life skills classes, supervised visitation, random drug screens, and individualized therapy in addition to family counseling. While petitioner states he should have been granted marriage counseling prior to family counseling, the record is clear that petitioner and the mother participated in counseling together several times before any of the children were incorporated into the sessions.

Despite these sessions with petitioner and the mother, the therapist testified at the dispositional hearing that she was hesitant to integrate C.C.-1 into counseling with the parents because of their inability to attain safe and honest communication.

The therapist only incorporated C.C.-1 into two sessions and, on both occasions, petitioner did not contribute to a therapeutic environment for the child. Therefore, any suggestion that petitioner was not afforded counseling prior to family counseling is disingenuous. Indeed, petitioner was provided this service but was unable to progress such that he was able to assist the child during therapy.

Based on the foregoing, it is clear that petitioner was provided with numerous meaningful opportunities and services throughout his improvement period but failed to remedy the conditions of abuse and neglect. Accordingly, we find that petitioner is entitled to no relief in this regard.

The above-mentioned evidence also supports the circuit court's termination of petitioner's parental rights. West Virginia Code § 49-4-604(c)(6) provides that circuit courts are to terminate parental

rights upon finding that there is “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 children’s welfare.

West Virginia Code § 49-4-604(d)(3) provides that a circuit court may find that there is no reasonable likelihood that the conditions of abuse and neglect can be substantially corrected when [t]he abusing parent or parents have not responded to or followed through with a reasonable family case plan or other rehabilitative efforts of social, medical, mental health, or other rehabilitative agencies designed to reduce or prevent the abuse or neglect of the child, as evidenced by the continuation or insubstantial diminution of conditions which threatened the health, welfare, or life of the child[.]

The record establishes that petitioner failed to follow through with rehabilitative efforts designed to prevent the abuse or neglect of the children. As noted above, petitioner failed to adequately participate in counseling services. Testimony established that petitioner simply used the sessions as an opportunity to fight with the mother over marital issues rather than work on improving their parenting skills or addressing their poor judgment.

Petitioner was unable to create a safe environment for C.C.-1 or contribute to her therapy. Petitioner also failed to maintain employment throughout the proceedings. Further, petitioner’s psychological evaluation report indicated that his judgment was impaired and that his prognosis for attaining minimally adequate parenting was poor. This conclusion was supported by the fact that petitioner failed to accept responsibility for his actions or acknowledge that he had done anything wrong.

In fact, petitioner minimized the abuse to C.C.-1 by stating that he allowed the perpetrator of her sexual abuse back in the home because the child allegedly retracted her statements. 4 To the extent petitioner contends that he should have been granted additional services in his improvement period prior to the termination of his parental rights, we have previously held that “[t]ermination of parental rights, the most drastic remedy under the statutory provision covering the disposition of neglected children, [West Virginia Code § 49-4-604] may be employed without the use of intervening less restrictive alternatives when it is found that there is no reasonable likelihood under [West Virginia Code § 49-4-604(d)] that conditions of neglect or abuse can be substantially corrected.” Syllabus point 2, *In re R.J.M.*, 164 W.Va.

496, 266 S.E.2d 114 (1980). Syl. Pt. 5, *In re Kristin Y.*, 227 W. Va. 558, 712 S.E.2d 55 (2011). Based on the foregoing, we find no error in the circuit court’s termination of petitioner’s parental rights as there was sufficient evidence to find that there was no reasonable likelihood that he could correct the conditions of abuse and/or neglect in the near future and that termination of his parental rights was in the children’s best interests.

Lastly, because C.C.-1 has not yet achieved permanency, this Court reminds the circuit court of its duty to establish permanency for the child. Rule 39(b) of the Rules of Procedure for Child Abuse and Neglect Proceedings requires: 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 children within twelve months of the date of the dispositional order.

As this Court has stated, [t]he [twelve]-month period provided in Rule 43 of the West Virginia Rules of Procedure[] 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.

Cecil T., 228 W. Va. at 91, 717 S.E.2d at 875, syl. pt. 6. Moreover, this Court has stated that [i]n determining the appropriate permanent out-of-home placement of a child under [West Virginia Code § 49-4-604(c)(6)], 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 [cannot] be found.

5 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 its February 6, 2020, order is hereby affirmed. Affirmed. ISSUED: September 23, 2020 CONCURRED IN BY: Chief Justice Tim Armstead Justice Margaret L. Workman Justice Elizabeth D. Walker Justice Evan H. Jenkins Justice John A. Hutchison 6