

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re V.B. and J.B.

No. 18-0098 (W. Va. June 15, 2018) · No. No. 18-0098 · Decided June 15, 2018

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the termination of the mother's parental rights to V.B. and J.B. The court held that the mother failed to follow through with required improvement-period services, including inpatient substance-abuse treatment, and that termination was supported because there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Margaret L. Workman; Justice Robin Jean Davis; Justice Menis E. Ketchum; Justice Elizabeth D. Walker
JURISDICTION	West Virginia
DECIDED	June 15, 2018
DOCKET	No. 18-0098
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner Mother appealed the Circuit Court of Webster County's order terminating her parental rights following abuse and neglect proceedings.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo. In an abuse and neglect case tried upon the facts without a jury, factual findings are reviewed for clear error and will not be set aside unless the reviewing court is left with a definite and firm conviction that a mistake has been made.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	D.B., Petitioner Mother v. West Virginia Department of Health and Human Resources, V.B. and J.B., by guardian ad litem

TOPICS

termination of parental rights

parental rights

family law procedure

appellate procedure

standard of review

PRACTICE AREAS

family law

juvenile abuse and neglect

termination of parental rights

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court erred by terminating petitioner's parental rights without first imposing a less-restrictive dispositional alternative.
2. Whether the evidence supported the findings that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected and that termination was necessary for the welfare of the children.
3. Whether the DHHR failed to provide petitioner with adequate support and services during the improvement period.

HOLDINGS

1. The circuit court correctly found that there was no reasonable likelihood that the conditions of abuse or neglect could be substantially corrected because petitioner failed to follow through with a reasonable family case plan and required rehabilitative services.
2. The circuit court correctly found that termination of petitioner's parental rights was necessary for the welfare of the children.
3. Termination of parental rights may be ordered without the use of intervening less-restrictive alternatives when there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected; the circuit court therefore did not err in terminating petitioner's parental rights without such alternatives.

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 2)

“Termination of parental rights, the most drastic remedy under the statutory provision covering the disposition of neglected children, W. Va.Code [§] 49-6-5 [now 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 W. Va.Code [§] 49-6-5(b) [now West Virginia Code § 49-4-604(c)] . . . that conditions of neglect or abuse can be substantially corrected.” (at 3)

FACTUAL BACKGROUND

Petitioner had previously completed an improvement period in an abuse and neglect case, but concerns later arose regarding the children's education and custody. In the subsequent proceeding, the children experienced unexcused absences and educational problems while in their father's custody, and petitioner refused to drug screen when considered as a possible placement. During her post-adjudicatory improvement period, petitioner

failed to complete required services, tested positive for controlled substances, left a long-term inpatient treatment program shortly after arriving, and admitted recent methamphetamine use. The circuit court found no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected and terminated petitioner's parental rights.

PROCEDURAL HISTORY

After a prior abuse and neglect proceeding and improvement period, the DHHR filed a new petition alleging educational neglect, parental substance abuse, and related safety concerns. The circuit court adjudicated petitioner as an abusing parent, granted a post-adjudicatory improvement period, and later terminated that improvement period and petitioner's parental rights after finding that she failed to comply with required services and that the conditions of abuse and neglect could not be substantially corrected. Petitioner appealed the January 11, 2018 termination order, and the Supreme Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- 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)
- 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 R.J.M., 164 W. Va. 496, 266 S.E.2d 114 (1980)
- In re Kristin Y., 227 W. Va. 558, 712 S.E.2d 55 (2011)

OPINION

PER CURIAM.

STATE OF WEST VIRGINIA SUPREME COURT OF APPEALS FILED In re V.B. and J.B. June 15, 2018 EDYTHE NASH GAISER, CLERK No. 18-0098 (Webster County 17-JA-57 and 58) SUPREME COURT OF APPEALS OF WEST VIRGINIA MEMORANDUM DECISION Petitioner Mother D.B., by counsel Christopher Moffatt, appeals the Circuit Court of Webster County's January 11, 2018, order terminating her parental rights to V.B. and J.B.1 The West Virginia Department of Health and Human Resources ("DHHR"), by counsel Brandolyn N. Felton-Ernest, filed a response in support of the circuit court's order and a supplemental appendix.

The guardian ad litem ("guardian"), Mary E. Sneed, filed a response on behalf of the children in support of the circuit court's order. On appeal, petitioner argues that the circuit court erred in

terminating her parental rights without the imposition of a less-restrictive dispositional alternative. 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. Petitioner was a respondent in a prior abuse and neglect case filed in May of 2016.² Petitioner completed an improvement period in January of 2017; however, the circuit court expressed concerns regarding the ongoing educational needs of the children and ordered the DHHR to monitor the children through the remainder of the school year.

In June of 2017, the DHHR filed a petition alleging that both children were absent multiple days without excuse, that J.B. was failing several classes and missing assignments, and that V.B. was not returning documentation regarding home reading assignments.

The children 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). 2 G.B., petitioner's partner and the father of the children, was also named as a respondent in that case. 1 were found in the custody of the father, who recently fled an encounter with the police and later admitted to using controlled substances.³ The DHHR determined that the children needed to be removed from his custody.

The DHHR alleged that, when petitioner was questioned on whether the children could be placed with her, she refused to drug screen. The circuit court held a preliminary hearing and found that the children would be in imminent danger if were returned to their parents' custody.

The circuit court held an adjudicatory hearing in August of 2017 and took judicial notice of petitioner's prior abuse and neglect proceeding. From the evidence presented, the circuit court found that petitioner refused to drug screen in order to take custody of the children and failed to provide a fit and suitable home for them.

Accordingly, the circuit court adjudicated petitioner as an abusing parent. Petitioner moved for a post-adjudicatory improvement period and the circuit court granted that motion in October of 2017. The terms of the improvement period required petitioner to remain drug free, participate in random drug screens, complete a long-term drug rehabilitation treatment program, complete an

anger management class, and participate in outpatient drug treatment while waiting for admission to inpatient treatment.

In November of 2017, the circuit court held a review hearing, suspended petitioner's supervised visitation, and indicated that the DHHR should file a motion to terminate petitioner's parental rights within seven days if it intended to do so.

Accordingly, the DHHR filed a motion alleging that petitioner tested positive for controlled substances in October of 2017. Additionally, the DHHR alleged that petitioner agreed to enter into the LEAD academy, a long term substance abuse program, but left only a few hours after arriving. According to the DHHR, shortly thereafter petitioner was arrested for petit larceny and two syringes were found on her person; petitioner indicated she last used methamphetamine four days prior to her arrest.

The circuit court held an evidentiary hearing on the DHHR's motion to terminate petitioner's improvement period and parental rights in December of 2017. Following the hearing, the circuit court found that petitioner admitted to abusing controlled substances and that she would test positive for drugs if tested on the day of the evidentiary hearing. Further, the circuit court found that petitioner agreed to attend inpatient substance abuse treatment, but left the facility shortly after she arrived.

Ultimately, the circuit court found that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected and that it was necessary for the welfare of the children to terminate petitioner's parental rights.

Accordingly, the circuit court terminated petitioner's parental rights by its January 11, 2018, order.⁴ Petitioner now appeals that order. ³ The specifics of the parents' custody arrangement is unclear from the record.

However, the father had custody of V.B. when he fled from the police and as a result V.B. was immediately removed from his custody. ⁴ The father's parental rights were also terminated by that order. According to the parties, the permanency plan for V.B. is adoption in her current foster placement. J.B. will be placed in the same foster home as his sister with a permanency plan of adoption or legal guardianship in that home.

² 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, this Court finds no error in the proceedings below. On appeal, petitioner argues that the circuit court erred in terminating her parental rights without the imposition of a less-restrictive alternative. Specifically, petitioner asserts that the DHHR did not provide her with the support necessary to remedy the conditions of neglect or abuse.

She further argues that the DHHR did not present sufficient evidence to support the termination of her parental rights. We disagree. West Virginia Code § 49-4-604(b)(6) provides that the circuit court may terminate parental rights when "there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future and, when necessary for the welfare of the child." Further, West Virginia Code § 49-4-604(c)(3) provides that there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected when the parent has "not responded 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[.]" The circuit court correctly found that there was no reasonable likelihood that the conditions of neglect or abuse could be substantially corrected because petitioner was not following through with a reasonable family case plan.

The record is devoid of any mention that petitioner participated in anger management or parenting classes, as required by the terms of her improvement period. Most importantly, petitioner refused to participate in inpatient drug treatment as required.

On appeal, petitioner argues that the DHHR did not provide the support and services she needed to remedy the conditions of neglect and abuse nor did the DHHR contact her during the improvement period. However, West Virginia Code § 49-4-610(4) provides that the parent "shall be responsible for the initiation and completion of all terms of the improvement period." Nevertheless, the DHHR did provide a recommendation and transportation to an inpatient substance abuse treatment facility to petitioner, which petitioner left after less than twenty-four hours.

Moreover, petitioner admitted that she did not attempt to contact the DHHR 3 during the improvement period. Additionally, petitioner participated in a prior abuse and neglect case and completed an improvement period just months before the initiation of these proceedings.

In the time between these two cases, the children's education suffered and petitioner began using controlled substances. It is unclear from the record what services petitioner was provided previously. However, it is clear that, even after her previous improvement period and those services that were provided, the circuit court found that petitioner continued to abuse the children in May of 2017.

Accordingly, the circuit court did not err in finding there was no reasonable likelihood that the conditions of neglect or abuse would be substantially corrected. Moreover, the circuit court did not err in finding that termination of petitioner's parental rights was necessary for the welfare of the children. While in petitioner's custody, the children were exposed to drug use and educational neglect and petitioner was unwilling to participate in services that would improve the conditions for the children.

We have also 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 [now 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 W. Va.Code [§] 49-6-5(b) [now West Virginia Code § 49-4-604(c)]... 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). The circuit court correctly found that there was no reasonable likelihood that the conditions of neglect or abuse could be substantially corrected and that it was necessary for the welfare of the children to terminate petitioner's parental rights.

Accordingly, we find no error in the circuit court's order terminating petitioner's parental rights without the use of less-restrictive alternatives. For the foregoing reasons, we find no error in the decision of the circuit court, and its January 11, 2018, order is hereby affirmed. Affirmed. ISSUED: June 15, 2018 CONCURRED IN BY: Chief Justice Margaret L. Workman Justice Robin Jean Davis Justice Menis E. Ketchum Justice Elizabeth D. Walker Justice Allen H. Loughry II, suspended and therefore not participating 4