

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re C.O.

No. 13-0986 (W. Va. Feb. 18, 2014) · No. No. 13-0986 · Decided February 18, 2014

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the termination of petitioner mother N.J.'s parental rights to C.O. The court held that the circuit court did not err in denying a post-adjudicatory improvement period because the evidence supported findings that the conditions of abuse and neglect were unlikely to be corrected and that termination was necessary for the child's welfare.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; Chief Justice Robin Jean Davis; Justice Brent D. Benjamin; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	February 18, 2014
DOCKET	No. 13-0986
DISPOSITION	affirmed
PROCEDURAL POSTURE	Mother appealed the Circuit Court of Ohio County's order terminating her parental rights and denying her motion for a post-adjudicatory improvement period.
STANDARD OF REVIEW	Conclusions of law in an abuse and neglect case are reviewed de novo. 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. The decision whether to grant an improvement period is within the circuit court's discretion.
PRECEDENTIAL VALUE	The opinion is a memorandum decision under West Virginia Rule of Appellate Procedure 21; the source metadata identifies it as published, but the opinion does not provide a standard reporter citation.
PARTIES	N.J., Petitioner Mother v. West Virginia Department of Health and Human Resources, Guardian ad litem for C.O.

TOPICS

termination of parental rights

parental rights

domestic violence

family law procedure

appellate procedure

PRACTICE AREAS

juvenile abuse and neglect

termination of parental rights

improvement periods

appellate review

QUESTIONS PRESENTED

1. Whether the circuit court abused its discretion by denying N.J.'s motion for a post-adjudicatory improvement period.
2. Whether the evidence supported termination of N.J.'s parental rights based on the absence of a reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future and the child's best interests.

HOLDINGS

1. The circuit court properly denied N.J.'s motion for an improvement period because a parent seeking one bears the burden of proving by clear and convincing evidence that the parent would substantially comply with its terms, and the circuit court has discretion to grant or deny the motion.
2. The circuit court properly terminated N.J.'s parental rights because 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 C.O.'s welfare.

KEY QUOTATIONS

“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.” (1)

“Although parents have substantial rights that must be protected, the primary goal in cases involving abuse and neglect, as in all family law matters, must be the health and welfare of the children.” (2)

FACTUAL BACKGROUND

The DHHR alleged domestic violence and alcohol abuse in the home and that N.J. failed to protect C.O. from sexual abuse by J.O., the child's father and N.J.'s boyfriend. Witnesses testified about C.O.'s disclosures of sexual abuse and N.J.'s continued relationship with J.O. despite those disclosures and a history of domestic violence. At disposition, the circuit court found that N.J. remained in the relationship, failed to identify the areas in which she needed improvement, and was in disbelief or denial that J.O. had abused the child.

PROCEDURAL HISTORY

The Department of Health and Human Resources filed an abuse and neglect petition in August 2012 against N.J. and J.O. Following a February 2013 adjudicatory hearing, the circuit court adjudicated them abusive and neglectful parents and C.O. an abused and neglected child. After a dispositional hearing in August 2013, the court denied N.J.'s motion for an improvement period and terminated her parental rights by order entered September 4, 2013. 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)
- In re Timber M., 231 W. Va. 44, 743 S.E.2d 352 (2013)

OPINION

PER CURIAM.

STATE OF WEST VIRGINIA SUPREME COURT OF APPEALS In Re: C.O. FILED February 18, 2014 RORY L. PERRY II, CLERK No. 13-0986 (Ohio County 12-CJA-33) SUPREME COURT OF APPEALS OF WEST VIRGINIA MEMORANDUM DECISION Petitioner Mother, N.J., filed this appeal by her counsel, Peter P. Kurelac III. Her appeal arises from the Circuit Court of Ohio County, which terminated her parental rights to C.O., now age nine, by order entered on September 4, 2013.

The guardian ad litem for the child, Joseph J. Moses, filed a response in support of the circuit court's order. The Department of Health and Human Resources ("DHHR"), by its attorney Katherine M. Bond, also filed a response in support of the circuit court's order. Petitioner argues that the circuit court erred by denying her motion for a post-adjudicatory improvement period and by terminating her parental rights.

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. In August of 2012, the DHHR filed an abuse and neglect petition against petitioner and her boyfriend, J.O., who is the child's father.

The petition alleged domestic violence and alcohol abuse in the home and that petitioner failed to protect her child from sexual abuse by J.O. At the adjudicatory hearing in February of 2013, several witnesses testified about the child's disclosures concerning J.O.'s sexual abuse against her and about petitioner's continued relationship with J.O. despite these disclosures.

The circuit court adjudicated petitioner and her boyfriend as abusive and neglectful parents and adjudicated the child as an abused and neglected child. Several months later, petitioner filed a

motion for a post-adjudicatory improvement period. Following the dispositional hearing in August of 2013, the circuit court found that petitioner continued her relationship with the child's father, despite their history of abuse and violence.

The circuit court found that, because petitioner failed to identify the areas for which she needed improvement and because there was no reasonable likelihood to believe that the conditions could be corrected, termination of petitioner's parental rights was in the child's best interests. Petitioner's motion for an improvement period was denied. Petitioner now appeals.

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 1 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 abused its discretion by not granting her an improvement period and by terminating her parental rights. Petitioner asserts that evidence demonstrated her ability to substantially comply with any terms in an improvement period. Upon our review, we find no error by the circuit court in terminating petitioner's parental rights without an improvement period. "'Although parents have substantial rights that must be protected, the primary goal in cases involving abuse and neglect, as in all family law matters, must be the health and welfare of the children.' Syl.

Pt. 3, *In re Katie S.*, 198 W.Va. 79, 479 S.E.2d 589 (1996)." Syl. Pt. 2, *In re Timber M.*, 231 W.Va. 44, 743 S.E.2d 352 (2013). Pursuant to West Virginia Code § 49-6-12, a parent who moves for an improvement period bears the burden of proving by clear and convincing evidence that he or she would substantially comply with the terms of an improvement period.

The circuit court then has the discretion to grant or deny an improvement period. In the case sub judice, several witnesses testified with regard to the boyfriend's sexual abuse against the child. Although petitioner appears to have acknowledged that her boyfriend physically abused her child, and although there is a history of domestic violence in the home, petitioner continued her relationship with him.

Indeed, in its dispositional order, the circuit court included that petitioner was in disbelief and denial that J.O. abused her child despite evidence to the contrary. These findings were sufficient to support the circuit court's conclusions that there was no reasonable likelihood 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. Affirmed. ISSUED: February 18, 2014 CONCURRED IN BY: Chief Justice Robin Jean Davis Justice Brent D. Benjamin Justice Margaret L. Workman Justice Menis E. Ketchum Justice Allen H. Loughry II 2