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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

November 3, 2010

Att: Vickie Shafer
W.Va. Supreme Court of Appeals
by fax transmission: 304-558-6045

RE: Docket Number: 101228
Mingo County Case Numbers: 09JN-34, 35, 36, 37
In Re: Noah A., Ian A., Carson P., and Micah P.

TO WHOM IT MAY CONCERN:

I am writing in response to the appeals filed in the above-referenced matters. I was appointed by Judge Thornsbury as guardian ad litem for the children in this matter. I agree with the judge's decision to terminate the parental rights of the respondent mother, Tara P. I also agree with the judge's decision to terminate the parental and/or custodial rights of Marcus A. and Joshua G. The respondent father, Marcus A., failed to participate in this matter and indicated that he was unable to care for his children. He agreed with the allegations that he had had very little contact with the children. He maintained throughout the case that he had little means to support or even visit with the children. He did not participate in the offered services.

Respondent, Joshua G., proved not to be the biological father of any of the children, though he resided with the respondent mother prior to the filing of the petition, herein. The respondent mother continued to reside with him throughout most of the case, although, Joshua G. failed to participate in services. Many of the drug screens he did take were positive and he did appear to be under the influence of substances at many times during the pendency of the matter.

The Respondent, Tara P., participated with services to some degree during the first portion of the case. However, she, and the respondent grandparents had difficulty following the Court's orders with regard to supervision of visitation, etc. Within the first week of the preliminary hearing, the respondent mother had contact with the children at the grandparents home, contrary to the Court's order. When the members of the MDT attempted to address the issue with the mother and the grandfather, they became hostile. The respondent mother and the respondent grandfather acted very hostile and volatile towards CPS workers, service providers,

and other members of the MDT throughout the course of the proceedings. Towards the end of the case, MDT meetings seemed fruitless and had to be held at the courthouse where security was present at all times.

The respondent mother could not identify a residence of her own until the eve of the dispositional hearing, at which time did identify a residence, but could identify no source of income for support or the source of her rent payment. Her drug screens were negative at the beginning of the case, but closer to the dispositional hearing, they were often positive. There were reports that she was living with Joshua G. or that he or his family was providing her housing. At the time of the dispositional hearing, the Court terminated the respondent mother's rights and ordered that she should have not contact with the children while in the care of the grandparents.

Meanwhile, also during the pendency of the case and prior to disposition, the children were removed from the care of the grandparents because they continued to allow the respondent mother to have contact with the children contrary to the Court's orders. When the children came into the State's physical custody, information came to light that caused great concern. Foster parents immediately began to report that the two older children, Noah and Ian, suffered from enuresis. This news was particularly troubling based upon the fact that the children had a younger sibling who died under suspicious circumstances in October of 2007. That child was purportedly wedged between a bed and a wall and suffocated. The only two adults in the home at the time were the respondent mother and the respondent grandfather. They insist that the baby fell between the bed and the wall and suffocated. His injuries were bruises and abrasions to the head and face as well as a bruised and bloody rectum. A deputy medical examiner later testified in this case that the baby's injuries were not consistent with the manner of death described by the respondent mother and grandfather. Although the Court made a finding that the grandmother was also at home when the child died, I believe the testimony was that she had left the residence due to the stress of the circumstances there and only the grandfather, the mother, and the children were in the home.

The grandfather previously had cancer and he suffered a recurrence during this case. Therefore, he was unable to participate with most services. He did have a psychological evaluation, however, that evaluation was not completed until after the dispositional hearing. The record is replete with instances indicating the grandfather's lack of self control and his problems with anger, i.e. he and the respondent mother argued in front of her in-home services provider, he has at least one prior conviction for battery, he was arrested for obstructing during the pendency of the case, he has numerous instances of conflict and threatening behavior with service providers and members of the MDT. However, he never had any anger management therapy or counseling. The respondent grandmother also underwent a psychological evaluation after the dispositional hearing in this matter. She did not participate in any other services either. She also has numerous health problems which worsened during the pendency of this matter.

The home study of the respondent grandparents failed due to the issues previously stated and the fact that they were not cooperative with the home finder. She gave them multiple opportunities to cooperate with the home study process, but they would not comply. Additionally, on at least several occasions, DHHR personnel went to the home and found the respondent mother there after the Court ordered her not to be present. Both respondent grandparents are of very poor health. The grandfather has cancer and the grandmother has multiple health problems which make it difficult for her to care for the children. Upon information and belief, the grandparents depend heavily upon the respondent mother, or any other individual who is available, to assist them with the care of the children.

For the reasons stated above, I agree with the Court's decision to terminate the parental and/or custodial rights of the respondents, Tara P., Marcus A., and Joshua G. However, for those same reasons, I disagree with the Court's decision not to terminate the rights of the respondent grandparents. Further, the psychological evaluations conducted on the respondent grandparents were unfavorable. The psychologist did not recommend placement with the grandparents and listed concerns regarding their ability to parent. Since the children have been placed with the grandparents, they have not been to counseling as ordered by the Court. Although there has been an evidentiary hearing in which the grandfather has given an excuse as to why he has failed to keep counseling appointments, I do not believe he intends to take the children to counseling where they may disclose any details of their home life. The children have disclosed that, prior to being transferred back to the grandparents' custody, but while they were having overnight visits with them, they have had contact with their biological mother, Tara P. Such contact was, and is, in violation of the Court's order. Additionally, the grandparents have permitted the three of the children to spend over half the time since they were moved back to their custody with the former foster parents.

At the original dispositional hearing, the grandmother testified that the children, particularly the child, Noah, does suffer from enuresis. She says she has known of this problem for years. She admitted that the grandfather does spank the children, particularly Noah, and that he spanks Noah for the enuresis. She testified that the youngest child sleeps with the grandfather. And, she testified that it is difficult for her to care for the children, but that she would do so and wanted to do so.

Incidentally, the former foster parent testified at the most recent evidentiary hearing at the request of the grandparents. The grandparents specifically requested his testimony regarding the failure of the respondent father, Jimmy G., to exercise his visitation as permitted. Upon questioning by the guardian ad litem, the former foster parent did testify that at least one of the children previously disclosed sexual abuse. However, he further testified that he questioned the children extensively prior to the disclosure. He testified that he did this questioning while assisting the children in cleaning up and changing clothes following incidents of enuresis. He also testified that someone from the DHHR had instructed him to do that questioning. However,

there was a meeting just after he obtained custody of the children in which he reported the enuresis. At that meeting, he was specifically instructed **not** to question the children about such things and he was told that a forensic evaluation would be scheduled for the children. He was further instructed that any questioning by him could damage the results of the forensic evaluation.

The biological father of the child, Micah, is Jimmy G. He has failed to fully exercise the visitation awarded to him since the dispositional hearing. At the time of the dispositional hearing, I agreed with the Court's decision not to terminate his parental rights to the child, Micah, but at the present time, I believe that he has not intention of exercising those rights. Therefore, I believe it would be in the child's best interest to terminate those rights so the child may be adopted with his brothers.

For all of the reasons stated above, I do not believe that the children should be remain in the custody of the grandparents. I believe the grandfather has serious anger control issues which have not been addressed. From the outset of the case, he has supported the position of the respondent mother and characterized her as a "good mother." I do not believe he will make any effort to keep the children from her. I do not believe he has any intention of seeing that the children keep their counseling appointments. Nor do I believe that the grandmother is able to care for these children. Her health has significantly deteriorated since the beginning of this case. At the last hearing, she could barely make it from her chair to the witness stand. Additionally, I have serious concerns regarding the unexplained death of the youngest sibling. Those concerns extend to that child's care-takers at the time of death: the respondent mother and the respondent grandfather.

Regardless of the decision in this matter, I have grave concerns about the future of these children. If they are not left in the custody of the grandparents, where would they go? They dearly love their grandparents, particularly the older children. The older two children have always asked to go back to the grandparents when they were in foster care. However, they really did seem to enjoy their time in foster care. They were able to do a lot of things they do not often get to do at home, such as extracurricular activities, etc. The older one and the youngest siblings visit the foster home a lot now. The child, Ian, refuses to visit. I believe he is the child the foster father questioned to extensively regarding sexual abuse. This type of questioning also raises concerns. I know this foster home would love to have these children on a permanent basis, but I have concerns about the foster father's behavior under these circumstances.

In conclusion, I agree with the Court's decision to terminate the parental/custodial rights of the respondents Tara P., Marcus A., and Joshua. At the time of the dispositional hearing, I agreed with the Court's decision not to terminate the parental rights of the respondent Jimmy G. However, since the dispositional hearing, respondent Jimmy G. has failed to exercise those rights and, in a sense, has abandoned his child. Therfore, I believe that his parental rights should be terminated so the child Micah could be adopted with his brothers.

I have never agreed with the Court's decision to place the children in the physical custody of the maternal grandparents, the respondents, Verner and Dorothy Poe. While I believe the children might benefit from continued, supervised contact with the Poes, I do not believe it is in the children's best interest for the grandparents to maintain their custodial rights.

If you have any questions, please feel free to contact me.

Sincerely,

Diana Carter Wiedel

cc: Teresa D. Maynard
Kathryn Cisco Sturgell
Lauren Thompson
Charles West
Vicki Fields