STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

FILED
November 4, 2020
EDYTHE NASH GAISER, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

***In re* A.S., D.G.-1, D.G.-2, S.G. Jr., and D.B.**

No. 20-0306 (Randolph County 19-JA-63, 19-JA-64, 19-JA-65, 19-JA-66, and 19-JA-75)

MEMORANDUM DECISION

Petitioner Mother L.S., by counsel Morris C. Davis, appeals the Circuit Court of Randolph County's February 25, 2020, order terminating her parental rights to A.S., D.G.-1, D.G.-2, S.G. Jr., and D.B.[1] The West Virginia Department of Health and Human Resources ("DHHR"), by counsel Lee Niezgoda, filed a response in support of the circuit court's order. The guardian ad litem, Heather M. Weese, 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 denying her an improvement period.[2]

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 July of 2019, the DHHR filed an abuse and neglect petition alleging that petitioner abused and neglected the children. According to the petition, the DHHR received a referral concerning the conditions in the home, petitioner's substance abuse, and domestic violence. Upon arriving at the home, the DHHR found it to be in "deplorable condition" and extremely cluttered, full of trash, soiled diapers, and other unsanitary material. The DHHR also observed prescription pills littering the floor within reach of one-year-old A.S. According to petitioner, she and the father

[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, they will be referred to as D.G.-1 and D.G.-2 throughout this memorandum decision.

[2]On appeal, petitioner does not assign error to the circuit court's termination of her parental rights to the children.

had an altercation that same day that resulted in her filing a petition for a domestic violence protective order. During the DHHR's investigation, it discovered that the parents had a history of domestic violence, some of which occurred in the children's presence. The DHHR further believed that the parents were under the influence of methamphetamine, which petitioner confirmed. Petitioner later waived her preliminary hearing.

In September of 2019, the circuit court held an adjudicatory hearing. Petitioner failed to attend, but was represented by counsel. Based on the evidence presented, the circuit court found that the DHHR established that petitioner's substance abuse was substantial. The circuit court also noted its prior involvement with the family, as D.G.-1 "participated in the juvenile drug court program and residential treatment" under a prior court order. As the circuit court noted, the child "spent an additional six months in residential treatment because [petitioner and the father] would not submit to drug screens to ensure the safety of their home." The circuit court further found that the evidence established that the conditions in the home were horrible and unsafe, given the "clutter, dirt, spoiled food and pills laying [sic] on the floor." Finally, the circuit court found that petitioner confirmed to the DHHR that the father engaged in domestic violence with her. Accordingly, the circuit court found that petitioner was an abusing parent.

Thereafter, the DHHR filed a motion to terminate petitioner's parental rights, which it later amended. According to these filings, petitioner not only failed to appear for adjudication, but continued to refuse to accept responsibility for the abuse and neglect at issue. According to the DHHR, petitioner also failed to appear for drug screens or otherwise participate in the proceedings.

In February of 2020, the circuit court held a dispositional hearing, during which the circuit court denied petitioner's motion for an improvement period, finding that petitioner previously demonstrated defiance of the court's directives during D.G.-1's juvenile proceeding and that her "defiance with the [c]ourt's directives has continued." This included petitioner's refusal to submit to drug screens as required, her total lack of effort to contact the DHHR in order to seek treatment or visit the children, and her continued substance abuse. Despite petitioner's testimony that she would participate in an improvement period, the court found that she "demonstrated no actions that indicate a likelihood that [she] would actually participate." Because there was no reasonable likelihood that petitioner could substantially correct the conditions of abuse and neglect, and because it was necessary for the children's welfare, the circuit court terminated petitioner's parental rights to the children.[3] It is from the dispositional order that petitioner appeals.

The Court has previously established the following standard of review:

[3]All parents' parental rights were terminated below. The permanency plans for the children are as follows: A.S. will be adopted in the current foster home; S.G. Jr. will remain in the legal guardianship of his paternal grandparents, which was granted prior to the underlying proceedings; D.B. will remain in the custody of her paternal grandmother, who will obtain a legal guardianship; D.G.-2 will be adopted in his foster home; and D.G.-1 will be adopted in the same foster home as D.G.-2, pending his completion of a treatment program for certain behavioral issues. Should D.G.-2's treatment prove unsuccessful, the concurrent permanency plan for the sixteen-year-old is a transitional living arrangement.

> "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 denying her motion for an improvement period. According to petitioner, she exhibited a "deep understanding of her parenting issues and an acceptance of responsibility" at the dispositional hearing when she testified that she had a substance abuse problem and was willing to attend treatment, the conditions in the home were deplorable but that she had taken steps to remedy them by moving to a new residence, and she would submit to a psychological evaluation and any recommended counseling if granted an improvement period. While recognizing that petitioner provided such testimony, we nonetheless find no error in the circuit court's denial of her motion for an improvement period.

This Court has long held that a parent's "entitlement to an improvement period is conditioned upon the ability of the [parent] to demonstrate 'by clear and convincing evidence that the respondent is likely to fully participate in the improvement period.'" *In re Charity H.*, 215 W. Va. 208, 215, 599 S.E.2d 631, 638 (2004). Moreover, the decision to grant or deny an improvement period rests in the sound discretion of the circuit court. *See In re M.M.*, 236 W. Va. 108, 115, 778 S.E.2d 338, 345 (2015) ("West Virginia law allows the circuit court discretion in deciding whether to grant a parent an improvement period."); Syl. Pt. 6, in part, *In re Katie S.*, 198 W. Va. 79, 479 S.E.2d 589 (1996) ("It is within the court's discretion to grant an improvement period within the applicable statutory requirements . . . ."). Here, petitioner cites only to her self-serving testimony to assert that she satisfied the applicable burden for obtaining an improvement period, while ignoring the circuit court's detailed findings about her willful defiance of the court's orders. Not only did petitioner prolong D.G.-1's placement outside the home in an unrelated juvenile drug court proceeding by her refusal to take the meager step of submitting to drug screens to ensure that the child would be safe upon his return to petitioner's care, she demonstrated a continued refusal to comply with simple orders during the instant proceedings. As the record shows, petitioner failed to attend the adjudicatory hearing, failed to submit to drug screens as required, and refused to contact the DHHR in order to secure the substance abuse treatment she later testified she would be willing to undergo. It is disingenuous for petitioner to refuse to participate in two separate proceedings and then argue that she satisfied a burden of establishing a likelihood that she would fully participate in an improvement period simply by testifying that she would participate. Accordingly, we find no error in the circuit court's denial of petitioner's request for an improvement period.

On appeal, petitioner argues that she acknowledged the conditions of abuse in the neglect in the home, which evidenced her willingness to correct the issues. Petitioner is correct that the Court has previously held that a failure to acknowledge the conditions of abuse and neglect at issue results in making the problem untreatable and renders an improvement period futile. *In re Timber M.*, 231 W. Va. 44, 55, 743 S.E.2d 352, 363 (2013). However, while failure to acknowledge an issue can serve as the basis for denying an improvement period, acknowledging the problems alone is insufficient to satisfy the burden for obtaining an improvement period. Even if the circuit court found that petitioner's testimony in this regard was credible, the fact remains that the record is replete with evidence of petitioner's refusal to follow the circuit court's direction across two separate proceedings. Given petitioner's lengthy history of noncompliance, we find no error in the circuit court's denial of her motion regardless of her testimony concerning her acknowledgement of the underlying issues.

For the foregoing reasons, we find no error in the decision of the circuit court, and its February 25, 2020, order is hereby affirmed.

Affirmed.

ISSUED: November 4, 2020

CONCURRED IN BY:

Chief Justice Tim Armstead
Justice Margaret L. Workman
Justice Elizabeth D. Walker
Justice Evan H. Jenkins
Justice John A. Hutchison