

COURT OF APPEALS OF VIRGINIA

Present: Judges Beales, Huff and Senior Judge Annunziata

NICOLE M. JOHNSON

v. Record Nos. 0567-20-2

HOPEWELL DEPARTMENT
OF SOCIAL SERVICES

MEMORANDUM OPINION*
PER CURIAM
NOVEMBER 4, 2020

FROM THE CIRCUIT COURT OF THE CITY OF HOPEWELL
Carson E. Saunders, Jr., Judge

(Terry Driskill, on brief), for appellant. Appellant submitting on brief.

(Joan M. O'Donnell; Jessica V. Bailey, Guardian *ad litem* for the minor children; Old Towne Lawyer, LLC, on brief), for appellee. Appellee and Guardian *ad litem* submitting on brief.

Nicole M. Johnson (mother) appeals the circuit court's orders terminating her parental rights to her three children. Mother argues that the circuit court erred by terminating her parental rights and finding that termination was in the children's best interests. Upon reviewing the record and briefs of the parties, we conclude that the circuit court did not err. Accordingly, we affirm the decision of the circuit court.

* Pursuant to Code § 17.1-413, this opinion is not designated for publication.

BACKGROUND¹

“On appeal from the termination of parental rights, this Court is required to review the evidence in the light most favorable to the party prevailing in the circuit court.” Yafi v. Stafford Dep’t of Soc. Servs., 69 Va. App. 539, 550-51 (2018) (quoting Thach v. Arlington Cnty. Dep’t of Hum. Servs., 63 Va. App. 157, 168 (2014)).

Mother and Robert Macias (father) are the biological parents to the three children who are the subject of this appeal.² On March 13, 2018, the Hopewell Department of Social Services (the Department) received a report that mother had overdosed on heroin in the home while the children were present. The Department entered into a safety plan with father stating that mother had to be supervised around the children. On March 26, 2018, mother was arrested for assaulting father, and the Hopewell Juvenile and Domestic Relations District Court (the JDR court) issued an emergency protective order.³ On April 3, 2018, the Department received another report that mother had overdosed in the home with the children present. The Department tested father for drugs, and he tested positive for opiates and benzodiazepines.

On April 4, 2018, the Department removed the children from their parents’ care and placed them in foster care because mother and father could not identify any possible relative placements. The children were two, seven, and eight years old. The JDR court entered an

¹ The record in this case was sealed. Nevertheless, the appeal necessitates unsealing relevant portions of the record to resolve the issues appellant has raised. Evidence and factual findings below that are necessary to address the assignments of error are included in this opinion. Consequently, “[t]o the extent that this opinion mentions facts found in the sealed record, we unseal only those specific facts, finding them relevant to the decision in this case. The remainder of the previously sealed record remains sealed.” Levick v. MacDougall, 294 Va. 283, 288 n.1 (2017).

² The circuit court terminated father’s parental rights, and he appealed the circuit court’s rulings. See Macias v. Hopewell Dep’t of Soc. Servs., Record Nos. 0392-20-2, 0394-20-2, and 0395-20-2.

³ The domestic assault and battery charge was dismissed ultimately.

emergency removal order and a preliminary removal order. The JDR court subsequently adjudicated that the children were abused or neglected and entered a dispositional order.

The Department was concerned about mother's and father's unstable housing, domestic violence, and drug abuse. The Department required mother to participate in a psychological and parental capacity evaluation, individual counseling, couple's counseling, parenting classes, and substance abuse treatment. The Department also required mother to submit to random drug testing and to maintain safe and stable housing. Mother was inconsistent in complying with the required services.

The parents had a history of domestic violence. Beginning in August 2010 and continuing until March 2018, mother had been arrested for assault and battery against father on three occasions, with all charges being *nolle prosequied* or dismissed. During the same time period, father had been arrested for assault and battery against mother on five occasions, with all charges ultimately being *nolle prosequied* or dismissed.⁴ The Department required mother and father to participate in counseling for domestic violence, so they went to an assessment for domestic violence. Mother and father enrolled in a domestic violence program, but they stopped participating in the program because of its cost. Two or three weeks before the circuit court hearing, mother and father told the Department that they had completed a domestic violence program, but the Department was unable to confirm their participation.

Mother participated in a psychological evaluation, and it was recommended that she complete substance abuse counseling, attend narcotics anonymous meetings, and participate in psychotherapy. The Department was unable to verify mother's participation in counseling. In July 2018, mother enrolled in substance abuse treatment with District 19 but did not attend

⁴ On August 21, 2012, the JDR court found that the facts were sufficient to find guilt for father but deferred the disposition of an assault and battery charge; the JDR court dismissed the matter in 2014.

regularly. In November and December 2018, mother submitted to several drug tests, and during that time period, she tested positive for benzodiazepines, cocaine, amphetamine, and methamphetamines.⁵ In December 2018, mother enrolled in a methadone treatment program and continued treatment with District 19. On April 23, 2019, she was discharged from the District 19 program due to “unsuccessful participation.”

In addition to its other referrals and services, the Department arranged for mother to visit with and call the children. Initially, the visitations were arranged with the foster parents directly, but subsequently stopped because “the relationship between the foster parents and parents became strained.” The foster mother testified that during several visits, the parents argued with each other in front of the children, which upset the children. Thereafter, the Department supervised the visitations and telephone calls. Mother regularly attended the visits, but she was not always available for the phone calls.

By October 2018, the parents had moved out of Hopewell, which limited the Department’s ability to provide services to them. Father had moved to an apartment in Newport News to be closer to his job. Mother had moved to Ohio, but subsequently returned to Virginia. In April 2019, mother and father moved to a three-bedroom mobile home in Newport News.

On May 3, 2019, the Department filed a petition for a permanency planning hearing and recommended a foster care goal of adoption. On June 24, 2019, the JDR court approved the foster care goal of adoption, and mother appealed the JDR court’s ruling. On July 31, 2019, the JDR court terminated mother’s parental rights, and she appealed the rulings to the circuit court.

On January 31, 2020, the parties appeared before the circuit court. The social worker testified that the parents had not made “significant progress” toward achieving the Department’s goals. The social worker explained that when the Department asked mother to do something,

⁵ Mother had a prescription for Oxycodone.

there was “a lot of conniving, scheming, . . . [and] no services [had] been completed or proved to be completed.” The Department had been unable to verify mother’s participation and completion of substance abuse treatment, domestic violence program, and counseling. Mother was still unemployed at the time of the circuit court hearing.

The Department presented evidence that when the children entered foster care, they “basically did or [said] what they wanted.” The foster mother testified that the older two children were “violent toward each other” and would physically fight one another. All three children needed “extensive dental care” and had to be treated for worms. While in foster care, the Department offered the children individual therapy and in-home counseling. The social worker described the children as “more stable with their behaviors”; however, the foster mother testified that the older child still needed to work on controlling her behavior.

Mother did not present any evidence. Father, however, testified that he and mother had been involved in substance abuse treatment at Pinnacle Treatment Center, where they received methadone daily and participated in individual and group counseling. He also stated that mother was under psychiatric care in Hopewell and prescribed medication. Father also claimed that he and mother completed a thirty-six-hour parenting class.

After hearing the evidence and argument, the circuit court terminated mother’s parental rights under Code § 16.1-283(B) and (C)(2) and approved the foster care goal of adoption. On January 31, 2020, the circuit court entered orders memorializing its rulings. This appeal followed.

ANALYSIS

“On review, ‘[a] trial court is presumed to have thoroughly weighed all the evidence, considered the statutory requirements, and made its determination based on the child’s best interests.’” Castillo v. Loudoun Cnty. Dep’t of Fam. Servs., 68 Va. App. 547, 558 (2018)

(quoting Logan v. Fairfax Cnty. Dep't of Hum. Dev., 13 Va. App. 123, 128 (1991)). “Where, as here, the court hears the evidence *ore tenus*, its finding is entitled to great weight and will not be disturbed on appeal unless plainly wrong or without evidence to support it.” Fauquier Cnty. Dep't of Soc. Servs. v. Ridgeway, 59 Va. App. 185, 190 (2011) (quoting Martin v. Pittsylvania Cnty. Dep't of Soc. Servs., 3 Va. App. 15, 20 (1986)).

Mother argues that the circuit court erred in finding that there was sufficient evidence to terminate her parental rights and that termination was in the children’s best interests. Mother acknowledges that “evidence from 2018 indicated difficulties in the environment [she] provided for the children.” Mother, however, asserts that the circuit court had very little information about her current situation, except father had testified that he and mother “were receiving medications for their prior addictions.”

The circuit court terminated mother’s parental rights under Code § 16.1-283(C)(2), which states that a court may terminate parental rights if:

The parent or parents, without good cause, have been unwilling or unable within a reasonable period of time not to exceed 12 months from the date the child was placed in foster care to remedy substantially the conditions which led to or required continuation of the child’s foster care placement, notwithstanding the reasonable and appropriate efforts of social, medical, mental health or other rehabilitative agencies to such end.

“[S]ubsection C termination decisions hinge not so much on the magnitude of the problem that created the original danger to the child, but on the demonstrated failure of the parent to make reasonable changes.” Yafi, 69 Va. App. at 552 (quoting Toms v. Hanover Dep't of Soc. Servs., 46 Va. App. 257, 271 (2005)).

The Department had presented evidence that it could not verify mother’s participation and completion of substance abuse treatment, domestic violence program, and counseling. The circuit court found that the Department had “asked and asked and asked and asked for

verification on the compliance of the requirements that [it] set out early on in order for [father] and [mother] to substantially remedy the conditions that brought the children to foster care.” The circuit court held that mother had “not taken . . . steps to remedy” the conditions leading to the children’s placement in foster care. Mother did not present any evidence. The circuit court noted that it was being asked “to accept testimony from [father] on behalf of [mother] that they have in fact remedied substantially, corrected or eliminated the issues that caused the children to have to be removed.” The circuit court, however, would not accept father’s testimony because there had been “multiple, multiple unsuccessful completions previously which were documented by the Department”

The children had been in foster care since April 2018. The Department had been unable to verify that mother had completed the required services since the children entered foster care. “It is clearly not in the best interests of a child to spend a lengthy period of time waiting to find out when, or even if, a parent will be capable of resuming his [or her] responsibilities.” Tackett v. Arlington Cnty. Dep’t of Hum. Servs., 62 Va. App. 296, 322 (2013) (quoting Kaywood v. Halifax Cnty. Dep’t of Soc. Servs., 10 Va. App. 535, 540 (1990)). Considering the totality of the evidence, the circuit court did not err in terminating mother’s parental rights under Code § 16.1-283(C)(2).

“When a trial court’s judgment is made on alternative grounds, we need only consider whether any one of the alternatives is sufficient to sustain the judgment of the trial court, and if so, we need not address the other grounds.” Kilby v. Culpeper Cnty. Dep’t of Soc. Servs., 55 Va. App. 106, 108 n.1 (2009); see also Fields v. Dinwiddie Cnty. Dep’t of Soc. Servs., 46 Va. App. 1, 8 (2005) (the Court affirmed termination of parental rights under one subsection of Code § 16.1-283 and did not need to address termination of parental rights pursuant to another subsection). Because we find that the circuit court did not err in terminating mother’s parental

rights under Code § 16.1-283(C)(2), we, therefore, do not need to reach the question of whether mother's parental rights should also have been terminated under Code § 16.1-283(B).

CONCLUSION

For the foregoing reasons, the circuit court's ruling is affirmed.

Affirmed.