

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

FILED

September 13, 2011

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

In Re: J.A.:

No. 11-0583 (Mineral County Nos. 09-JA-36; 10-JA-30)

MEMORANDUM DECISION

Petitioner Mother appeals the termination of her parental rights to J.A.¹ This appeal was timely perfected by counsel, with the petitioner's appendix accompanying the petition. The West Virginia Department of Health and Human Resources ("DHHR") has filed its response. The guardian ad litem has filed his response on behalf of the child.

Having reviewed the record and the relevant decision of the circuit court, the Court is of the opinion that the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review and the record presented, the Court determines that there is no prejudicial error. This case does not present a new or significant question of law. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

"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 the Interest of: Tiffany Marie S.*, 196 W.Va. 223, 470 S.E.2d 177 (1996).

The petition in this matter was filed after a drug raid on the parents' home found deplorable living conditions and drug paraphernalia in the home. Petitioner Mother stipulated to the deplorable conditions and to some prior drug use, and was granted an improvement period. Petitioner Mother complied in her improvement period for a time, but

¹ Petitioner Mother is the stepmother of D.A. and T.A. and her parental rights to them were also terminated; however, she only appeals the termination as to her biological child, J.A.

then began to miss required drug testing and the children were removed from the home again. Petitioner Mother began to comply in her improvement period again, testing negative for drugs, and received physical custody of J.A. Less than ten days after receiving custody, police were called to the home due to a domestic violence incident between Petitioner Mother and Father. Further, Petitioner Mother allowed J.A. to stay in a home with a man who was court ordered not to be around the children, and drug paraphernalia was once again found in the home. The court terminated the parental rights of Petitioner Mother to all three children. The court notes that the parents have a history of missing meetings, court dates and drug tests, and have disobeyed court orders. Further, their relationship continues to be volatile. Father admits that both parents use drugs and that the children are better off with the foster family. The court found no reasonable likelihood that the conditions of abuse and/or neglect can be substantially corrected in the near future.

On appeal, Petitioner Mother asserts that the circuit court erred in terminating her parental rights, as she has made significant progress during her improvement period and would have made more progress but for the interference of the father of the child, to whom she was married. This Court has held that “courts are not required to exhaust every speculative possibility of parental improvement before terminating parental rights where it appears that the welfare of the child will be seriously threatened...” Syl. Pt. 1, in part, *In Re: R.J.M.*, 164 W.Va. 496, 266 S.E.2d 114 (1980). The evidence shows that Petitioner Mother was in an improvement period for approximately fourteen months, yet made little progress. The home was still nearly unliveable, and she continued to have violent altercations with her then-husband. Further, she did not comply in many of the drug tests, and admits to allowing J.A. to stay overnight in a house with a man who was not allowed around the child, as per a court order, due to violent gun-related threats and alcoholism. This Court finds no error in the circuit court’s order.

For the foregoing reasons, we find no error in the decision of the circuit court to terminate petitioner’s parental rights, and the circuit court’s order is hereby affirmed.

Affirmed.

ISSUED: September 13, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Menis E. Ketchum
Justice Thomas E. McHugh