

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

In Re: M.T.

No. 12-0807 (Nicholas County 11-JA-79)

FILED

November 19, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Mother's appeal, by counsel Gregory W. Sproles, arises from the Circuit Court of Nicholas County, wherein her parental rights to the child, M.T., were terminated by order entered on May 30, 2012. The West Virginia Department of Health and Human Resources ("DHHR"), by counsel William L. Bands, has filed its response. The guardian ad litem, Cammie L. Chapman, has filed a response on behalf of the child.

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 is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

On May 23, 2011, the DHHR filed its initial abuse and neglect petition in which it alleged that Petitioner Mother was transient and without safe and suitable housing. The petition further alleged that the child's father had previously had his parental rights to two older children involuntarily terminated, that the parents engaged in acts of domestic violence in the child's presence, and that the father physically abused the child. Petitioner was granted a post-adjudicatory improvement period, but the circuit court eventually found that petitioner had failed to comply with the terms thereof. On April 26, 2012, a dispositional hearing was held during which the circuit court denied petitioner's motion for a dispositional improvement period and terminated her parental rights.

On appeal, petitioner alleges that the circuit court erred in denying her motion for a dispositional improvement period. She argues that the primary basis for the circuit court's finding that she failed to comply with the terms of her post-adjudicatory improvement period was the arrest of individuals for drug-related offenses while in her home. Petitioner argues that the circuit court ignored the fact that she was seeking alternative housing, that she had made progress relating to several terms of her improvement period, and that there was no evidence that any person possessed drugs in her home. Lastly, petitioner argues that she was not instructed to obtain employment as part of her improvement period, yet she managed to do so, although she later lost this job and chose to focus on her education.

In response, the DHHR argues that the circuit court correctly denied petitioner's motion. Specifically, the DHHR argues that the circuit court based its decision on petitioner's failure to provide a safe and suitable home, her continued drug use and involvement in the drug trade, and the acts of domestic violence in the child's presence. The guardian ad litem also responds in support of the circuit court's denial of petitioner's motion and argues that petitioner's non-compliance with the terms of her prior improvement period supported the circuit court's denial of her request for an additional improvement period. Specifically, the guardian argues that petitioner failed to comply because of her termination from employment, her arrest for possession of marijuana with intent to deliver, her eviction from her home, and the arrest of two individuals staying in her home for various drug-related offenses.

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 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).

Upon our review, the Court finds no error in the circuit court's denial of petitioner's motion for a dispositional improvement period. Pursuant to West Virginia Code § 49-6-12(c)(2), a parent seeking a dispositional improvement period must demonstrate, by clear and convincing evidence, that he or she is likely to fully participate in the improvement period. The record in this matter shows that petitioner failed to satisfy this burden. In its order terminating petitioner's parental rights, the circuit court noted her prior non-compliance during a post-adjudicatory improvement period as supportive of its decision. While petitioner argues that the circuit court found she had been compliant with services in the thirty days prior to the dispositional hearing, she ignores the circuit court's finding that “this attempt at compliance [was] not sufficient to indicate that she [could] correct the conditions of abuse and neglect.” In fact, the circuit court specifically found that there was no reasonable likelihood that the conditions of abuse or neglect could be substantially corrected in the near future and that termination was necessary for the child's welfare. West Virginia Code § 49-6-5(a)(6) directs circuit courts to terminate parental rights upon these findings. For these reasons, we find no error in the circuit court's denial of petitioner's motion for a dispositional improvement period.

For the foregoing reasons, we find no error in the decision of the circuit court, and the termination of petitioner's parental rights is hereby affirmed.

Affirmed.

ISSUED: November 19, 2012

CONCURRED IN BY:

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