

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

FILED

January 28, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

In Re: T.W and K.Y.

No. 101531
(Mercer 08-JA-57 & 58-DS)

MEMORANDUM DECISION

This appeal arises from the Circuit Court of Mercer County, wherein the Petitioner Father's parental rights to T.W. and custodial rights to K.Y. were terminated. The appeal was timely perfected by counsel, with the complete record from the circuit court accompanying the Petition. The Guardian-ad-litem has filed his response on behalf of the children, T.W. and K.Y. The Court has carefully reviewed the record provided and the written arguments of the parties, and the case is mature for consideration.

The Petitioner Father challenges the circuit court's order terminating his parental rights to his children, and argues that his dispositional improvement period should have been extended. Pursuant to West Virginia Code § 49-6-12(g), before a circuit court can grant an extension of a dispositional improvement period, the court must first find that the parent has substantially complied with the terms of the improvement period; that the continuation of the improvement period would not substantially impair the ability of the DHHR to permanently place the child; and that such extension is otherwise consistent with the best interest of the child. The circuit court in this matter found that Father "has not responded to the recommended and appropriate treatment which should have improved his capacity for adequate parental functioning..." (Dispositional Order p. 2) The circuit court found that "...reunification is not in [the children's] best interest because [Petitioner] cannot quit using marijuana and he has made his choice for that substance over these infant children." (Id.) Further, the circuit court found that there is no reasonable likelihood that the conditions of abuse and neglect can be substantially corrected in the near future, due to the factors as set forth above. The Guardian-ad-litem indicates in his response that termination was proper under the circumstances and was in the best interests of the children.

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.

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

Affirmed.

ISSUED: January 28, 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