

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

FILED

February 14, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

In Re: N.S.:

No. 101532
(Nicholas County 10-JA-3)

MEMORANDUM DECISION

This appeal arises from the Circuit Court of Nicholas County, wherein the Petitioner Mother's parental rights to N.S. 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 her response on behalf of N.S. The Court has carefully reviewed the record provided and the written arguments of the parties, and the case is mature for consideration.

The Petitioner Mother argues that the circuit court erred in imputing the wrongful conduct of Maternal Grandmother onto Petitioner Mother; erred in terminating the parental rights of Petitioner Mother; and erred in denying Petitioner Mother an improvement period. Pursuant to W.Va. Code 49-6-5(c), the circuit court may grant an improvement period up to 6 months, with a 3 month extension. In the present case, the circuit court found that DHHR is not required to make reasonable efforts due to Petitioner Mother's incarceration throughout the entire period an improvement period would span. Judge Johnson also found that prior to her incarceration, Petitioner Mother was addicted to drugs and did not care for her child or provide necessary food, clothing or shelter, nor did she request any services in the past to help her parent her child. Thus, the circuit court found that there is no reasonable likelihood that the conditions will be corrected. The Guardian-ad-litem indicates in her response that termination was proper under the circumstances and was in the best interests 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.

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: February 14, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Thomas E. McHugh

DISSENTING:

Justice Menis E. Ketchum