

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: B.C., A.L. and G.C.:

No. 101544
(Harrison County 09-JA-22-1, 23-1 & 76-1)

MEMORANDUM DECISION

This appeal arises from the Circuit Court of Harrison County, wherein the Petitioner Father's parental rights to B.C. and G.C. 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 B.C. and G.C. 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 argues that the circuit court erred in denying Petitioner Father an improvement period, in terminating rights to an after-born child, and in terminating parental rights where this was not the least restrictive alternative. Parental rights may be terminated where there is clear and convincing evidence that the infant child has suffered extensive physical abuse while in the custody of his or her parents, and there is no reasonable likelihood that the conditions of abuse can be substantially corrected because the perpetrator of the abuse has not been identified and the parents, even in the face of knowledge of the abuse, have taken no action to identify the abuser. Syl. Pt. 6, *WV DHHR ex rel. Wright v. Doris S.*, 197 W.Va. 489, 475 S.E.2d 865 (1996). Also, regarding improvement periods, the compelling circumstances necessary to deny a request for an improvement period exist where a parent, who knows that abuse has occurred, refuses to identify a perpetrator of abuse and neglect. *In re Jeffrey R.L.*, 190 W.Va. 24, 435 S.E.2d 162 (1993). Judge Marks found that there is no reasonable likelihood that the conditions of abuse and neglect can be corrected, as one parent seriously injured the child, while the other failed to protect the child from abuse, and neither party has accepted responsibility. Judge Marks found that due to the physical abuse, the potential for further abuse is so great as to preclude DHHR from having to make reasonable efforts to preserve the family, since one of the respondents committed felonious assault resulting in serious bodily injury to one of the children, while the other knowingly protected the perpetrator. The Guardian-ad-litem indicates in her 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: February 14, 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