

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

FILED

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

In Re: J.R., N.P., and D.A.:

No. 101560
(Mercer Co. 09-JA-145 - 147)

MEMORANDUM DECISION

This appeal arises from the Circuit Court of Mercer County, wherein the Petitioner Father's parental rights to N.P. and D.A. were terminated, along with his custodial and guardianship rights to J.R. 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 the children, J.R., N.P., and D.A. The Court has carefully reviewed the record provided and the written arguments of the parties, and the case is mature for consideration.

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. Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this matter is appropriate for consideration under the Revised Rules. 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.

The Petitioner Father argues that the trial court abused its discretion in failing to grant a post-adjudicatory improvement period, and erred in denying Petitioner's oral motion to continue based upon a newly discovered witness to this proceeding. Pursuant to West Virginia Code §49-6-5(a)(7)(A), when a parent has subjected a child to chronic abuse, the Department of Health and Human Resource is not required to make reasonable efforts to preserve the family. The circuit court found that there is no reasonable likelihood that the conditions of abuse can be substantially corrected in the future in this case. Further, the circuit court found that neither parent assumed responsibility for the multiple physical injuries inflicted on J.R., which were found by medical experts to be non-accidental. Due to the fact that the trauma was found to be non-accidental, a reasonable effort to reunify the

family was not required. The guardian ad litem's response indicates that an improvement period was properly denied, and that termination was in the best interests of the children.

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: March 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