

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In Re: K.S. :

No. 101574
(Wood Co. 09-JA-70)

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

MEMORANDUM DECISION

This appeal arises from the Circuit Court of Wood County, wherein the Petitioner Father's parental rights to K.S. were terminated. The appeal was timely perfected by counsel, with the complete record from the Circuit Court accompanying the petition. The Department of Health and Human Resources has filed its response. The guardian ad litem has filed his response on behalf of the child, K.S. 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, the Court is of the opinion that this case 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.

This is an "aggravated circumstances" case as the Petitioner Father's parental rights to two other children were terminated prior to K.S.'s birth. *See* W.Va. Code §49-6-5b. The Petitioner Father is a convicted sex offender and was found to be a sexual predator by the State of Ohio. His prior terminations were based in part upon grounds of abandonment, his repeated incarcerations, his inability to provide a safe and appropriate home and his lack of compliance with visitation and case plans. In the present case, the Petitioner Father challenges the termination of his parental rights to K.S., arguing that he was not properly served with the petitions alleging abuse and neglect, that there was insufficient support for the termination as he never abused or neglected K.S. and that he changed the conditions which led to the prior termination of parental rights by completing sexual abuse therapy while incarcerated. In the dispositional order terminating parental rights, the circuit court found that the Petitioner Father had abandoned K.S., having provided no support and having no contact with her. Both the DHHR and the guardian ad litem indicate in their respective

responses that the Petitioner Father has made no contact with DHHR in regard to his daughter, K.S., and that he has had no contact with her throughout this case. Both DHHR and the guardian ad litem indicate that termination was proper. The Court is of the opinion that there is no error in the circuit court's determination of abandonment and that there is no reasonable likelihood that the conditions of abuse and neglect can be substantially corrected in the near future.

The Court has carefully considered the Petitioner Father's assertions that the termination of parental rights must be reversed as he was not properly served with the petitions for abuse and neglect pursuant to West Virginia Code § 49-6-1(b). The circuit court addressed this issue and concluded that DHHR had achieved proper service. This finding was based upon a signed certified mail return card from the Marietta, Ohio address which was listed as the Petitioner Father's address on the Ohio Sexual Offender website. In this appeal, the Petitioner Father challenges that the signature on the return card was his; however, at the hearing in which this issue was addressed, the Petitioner Father did not attend and there was no evidence presented showing that it was not his signature.

Further, the record indicates that the Petitioner Father was aware of this abuse and neglect proceeding as early as November 3, 2009, as shown by a notarized signed financial statement filed by the Petitioner Father. In addition, the record indicates that the Petitioner Father received actual notice of the allegations of abuse and neglect as shown by a submission made by his own counsel. This submission, dated February 1, 2010, indicated that a private investigator engaged by the Petitioner Father's counsel "went over the amended petition with him...." Despite such actual notice, the Petitioner Father did not participate in the subsequent underlying proceedings as shown by the record and the responses of the DHHR and guardian ad litem. The Court concludes under these facts that there are insufficient grounds to reverse the otherwise proper termination of parental rights.

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 Menis E. Ketchum
Justice Thomas E. McHugh