

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.S., J.S., B.S., R.S., S.S.:

No. 101621
(Grant Co. 10-JA-1 - 5)

MEMORANDUM DECISION

This appeal arises from the Circuit Court of Grant County, wherein the Petitioner Mother's parental rights to J.S., B.S., R.S. and S.S. were terminated, along with her custodial and guardianship rights to J.S. The appeal was timely perfected by counsel, with the complete record from the circuit court accompanying the petition. Both guardians ad litem filed responses on behalf of the children. The Department of Health and Human Resources has filed a response. 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.

The Petitioner Mother appeals the circuit court order terminating her parental rights to J.S., B.S., R.S. and S.S., and terminating her custodial and guardianship rights to J.S., arguing that the circuit court erred in removing the children at the adjudicatory hearing, as there was no evidence of imminent danger. Petitioner Mother also argues that the circuit court erred in adjudicating Petitioner Mother as neglectful of the children's education, as the evidence showed that she properly applied for home schooling privileges, and in adjudicating her as abusive and neglectful when the majority of the Child Protective Services referrals on Petitioner Mother were unsubstantiated. Moreover, Petitioner Mother argues that the circuit court erred in denying her a post-adjudicatory improvement period, in finding that Petitioner Mother neglected J.S. when the court refused to allow the child to participate in hearings and when J.S. was on runaway status when in the custody of DHHR. Finally, Petitioner Mother

argues that the circuit court erred in denying “post-adjudicatory” and post-termination visitation.

Pursuant to West Virginia Code §49-6-12(b) and (c), before a circuit court can grant either a post-adjudicatory or a dispositional improvement period, the court must first find that the parent is likely to fully participate in the improvement period. Post-termination visitation is granted only when “such visitation or continued contact would not be detrimental to the child's well being and would be in the child's best interest.” Syl pt 2, *In re Billy Joe M.*, 206 W.Va. 1, 521 S.E.2d 173 (1999). In the termination order, the circuit court noted that there were twelve years of reports to CPS and extensive years of services, and found no reasonable likelihood that Petitioner Mother could correct the conditions of abuse and neglect. Further, prior services failed so there is no likelihood that Petitioner Mother would fully participate in an improvement period; therefore, the circuit court denied any form of an improvement period. As to post-termination visitation, the circuit court found that it was not in the best interests of the children to have further contact with Petitioner Mother. Both guardians ad litem indicate in their responses that termination was proper under the circumstances and was in the best interests of the children. In its response, DHHR argues that termination and denial of post-termination visitation were proper.

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