

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

FILED

April 18, 2011

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

In Re: J.A.:

No. 10-4014
(Mercer County 10-JA-24-OA)

MEMORANDUM DECISION

Petitioner Father appeals the termination of his parental rights to J.A. 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 (“DHHR”) has filed its response. The guardian ad litem has filed her response on behalf of the child, J.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. 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.

On appeal, Petitioner Father argues that he could not form the requisite intent to commit the felonious bodily injury due to suffering from a mental illness, and therefore the circuit court erred in its adjudication and termination. Petitioner Father argues that due to his lack of intent, the circuit court erred in its adjudicatory order by finding “without question that the [Petitioner] Father abused the infant child and that such abuse constitutes a felonious assault resulting in serious bodily injury to that child.” Further, Petitioner Father argues that the ruling that J.A.’s injuries fell within the category of “aggravated circumstances” was erroneous, and finally argues that the circuit court had already made its decision prior to the offering of any evidence at the dispositional hearing. Pursuant to West Virginia Code §49-6-5(a)(7)(B)(iv), reasonable efforts at reunification are not required if a parent has committed a felonious assault that results in serious bodily injury to the child.

After hearing evidence, the circuit court found that J.A. suffered a serious bodily injury as a result of Petitioner Father’s felonious assault, and that due to the inerrant risk of

future injury no improvement period is warranted, as the “risk of injury outweighs the benefits of any improvement period.” The circuit court also found that Petitioner Father’s acts constitute aggravated circumstances and thus DHHR is not required to make reasonable efforts to reunify the child with his Father. The circuit court then terminated Petitioner Father’s parental rights. The guardian ad litem argues in support of the termination of parental rights, as does DHHR.

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: April 18, 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