

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

In Re: H.R.

No. 11-0053 (Mingo County No. 10-JA-10)

FILED

May 16, 2011

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

MEMORANDUM DECISION

This appeal arises from the Circuit Court of Mingo County, wherein the Petitioner Mother's parental rights to H.R. 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 the child, H.R. The Court has carefully reviewed the record provided and the written arguments of the parties, and the case is mature for consideration.

This matter has been treated and considered under the Revised Rules of Appellate Procedure pursuant to this Court's Order entered in this appeal on January 26, 2011. 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.

The Petitioner Mother challenges the circuit court's order terminating her parental rights to her child, arguing that it was error to terminate her parental rights. She further argues that the circuit court further erred in denying her a dispositional improvement period, and in denying her post-termination visitation rights. "Although conclusions of law reached by a circuit court are subject to *de novo* review, when an action, such as an abuse and neglect case, is tried upon the facts without a jury, the circuit court shall make a determination based upon the evidence and shall make findings of fact and conclusions of law as to whether such child is abused or neglected. These findings shall not be set aside by a reviewing court unless clearly erroneous. A finding is clearly erroneous when, although there is evidence to support the finding, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. However, a reviewing court may not overturn a finding simply because it would have decided the case differently, and it must affirm a finding if the circuit court's account of the evidence is plausible in light of the record viewed in its entirety." Syl. Pt. 1, *In the Interest of Tiffany Marie S.*, 196 W.Va. 223, 470 S.E.2d 177 (1996).

In the present case, petitioner's parental rights were terminated for a number of reasons. To begin, she exhibited numerous problems with drug addiction, including failing to appear for drug screens and providing a positive screen on the day of the adjudicatory hearing. Further, Petitioner Mother failed to obtain appropriate, independent housing and currently resides in a home that is believed to be inappropriate for a child due to the residents' character and activities. She also lacks transportation and would be unable to transport her child to the many medical appointments he requires. Petitioner Mother exhibited mental health issues during the proceedings below, and struggles with decision making and problem solving, among other things. However, despite recommended out-patient psychotherapy, there is no indication that petitioner ever followed through with this recommendation. Additionally, Petitioner Mother has debilitating panic attacks that occur during stressful situations. This condition raised concerns about her ability to provide the high level of care that the subject child requires as a result of the child's injuries that precipitated the proceedings below, including severe muscle spasms.

Due to her lack of cooperation with services ordered by the circuit court, petitioner has exhibited a failure to comply that supports both termination of her parental rights and denial of a dispositional improvement period. This Court has held that "courts are not required to exhaust every speculative possibility of parental improvement before terminating parental rights where it appears that the welfare of the child will be seriously threatened..." Syl. Pt. 7, in part, *In the Interest of Carlita B.*, 185 W.Va. 613, 408 S.E.2d 365 (1991) (quoting Syl. Pt. 1, in part, *In Re R.J.M.*, 164 W.Va. 496, 266 S.E.2d 114 (1980)). In this matter, any additional improvement periods would have been granted to the children's detriment, as petitioner has shown through her non-compliance that the conditions that led to the petition's filing could not be substantially corrected in a reasonable time period. For these reasons, both termination of petitioner's parental rights and denial of a dispositional improvement period were proper and in the minor child's best interest, and do not constitute clear error. Lastly, as to post-termination visitation, this Court has held that "[w]hen parental rights are terminated due to neglect or abuse, the circuit court may nevertheless in appropriate cases consider whether continued visitation or other contact with the abusing parent is in the best interest of the child. Among other things, the circuit court should consider whether a close emotional bond has been established between parent and child and the child's wishes, if he or she is of appropriate maturity to make such request. The evidence must indicate that 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. 5, *In re Christina L.*, 194 W.Va. 446, 460 S.E.2d 692 (1995). Due to the child's young age and the facts above establishing that continued contact with petitioner is not in the child's best interests, the circuit court's denial of post-termination visitation does not constitute clear error.

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: May 16, 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