

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

In Re: J.S. and J.R.S.:

No. 11-0109 (Webster County Nos. 09-JA-3, 10-JA-21 & 22)

FILED

June 17, 2011

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

MEMORANDUM DECISION

This appeal arises from the Circuit Court of Webster County, wherein the Petitioner Mother's parental rights to J.S. and J.R.S. were terminated. The appeal was timely perfected by counsel, with the petitioner's appendix accompanying the petition. Additionally, the Respondent Father filed a response brief with an additional appendix. The West Virginia Department of Health and Human Resources ("DHHR") has filed its response. The guardian ad litem has filed his response on behalf of the children. 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.

"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). The petitioner challenges the circuit court's order terminating her parental rights, arguing that the circuit court erred in terminating her parental rights to both children, while leaving Respondent Father Johnny S.'s parental rights intact through a rehabilitation program despite his egregious conduct. Petitioner asserts that she substantially completed all the terms of her rehabilitation period and satisfactorily remedied the conditions that led to the filing of the

abuse and neglect petitions against her. Despite the circuit court's decisions concerning Respondent Johnny S.'s entitlement to a rehabilitation period, this Court finds that termination as to petitioner was appropriate. The circuit court, in ordering termination, cited petitioner's numerous opportunities to comply with the terms of her two-year rehabilitation period, her positive drug screens during that period, the fact that she gave birth to a child who tested positive for controlled substances during the proceedings below, and her failure to comply with the terms of her Braxton County probation resulting in a two to ten year prison sentence. As such, the circuit court found that it was in the children's best interest to terminate the petitioner's parental rights. The Court finds that this decision was within the circuit court's discretion and concludes that there was no error in relation to the termination of parental rights.

Additionally, petitioner argues that the state did not satisfy its clear and convincing burden in adjudicating petitioner as an abusive or neglecting parent in regard to J.R.S. She alleges several deficiencies with the witnesses who testified to her drug use during pregnancy, to her newborn's withdrawal symptoms, and to the positive results of her newborn infant's drug screen. "W.Va. Code, 49-6-2 (c) [1980], requires the [DHHR], in a child abuse or neglect case, to prove 'conditions existing at the time of the filing of the petition... by clear and convincing proof.' The statute, however, does not specify any particular manner or mode of testimony or evidence by which the [DHHR] is obligated to meet this burden." Syl. Pt. 1, *In the Interest of: S.C.*, 168 W.Va. 366, 284 S.E.2d 867 (1981). The record in this matter, including the testimony presented below, clearly shows that the infant, J.R.S., tested positive for multiple controlled substances upon birth. As such, the circuit court's ruling that the child was abused and neglected is supported by the evidence, and the state met its clear and convincing burden.

For the foregoing reasons, we find no error in the decision of the circuit court to terminate petitioner's parental rights, and in its adjudication of J.R.S. as an abused and neglected child, and the circuit court's order is hereby affirmed.

Affirmed.

ISSUED: June 17, 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