

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

September 1997 Term

No. 24156

IN THE MATTER OF ELIZABETH A.D., Infant
Respondent Below, Appellant

V.

FREDERICK HAMMACK,
Petitioner Below, Appellee
and
BRENDA K.J. and JAMES D., Adults
Respondents Below, Appellees

Appeal from the Circuit Court of Calhoun County
Honorable Charles E. McCarty, Judge
Civil Action No. 96-JA-9

REVERSED AND REMANDED

Submitted: September 10, 1997
Filed: October 3, 1997

Loren B. Howley
Howley & Venezia

Tony M. Morgan
Prosecuting Attorney

Grantsville, West Virginia
Attorney for Appellant

Grantsville, West Virginia
Attorney for F. Hammack

Mark G. Sergeant
Spencer, West Virginia
Attorney for Brenda K.J.

F. John Oshoway
Grantsville, West Virginia
Attorney for James D.

The opinion of the Court was delivered PER CURIAM.

SYLLABUS BY THE COURT

1. “ ‘ “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).’ *State ex rel. Virginia M.*

v. Virgil Eugene S. II, 197 W.Va. 456, 475 S.E.2d 548 (1996).” Syl. Pt. 1, *In the Interest of Diva P.*, ___ W.Va. ___, ___ S.E.2d ___ (No. 23928, July 11, 1997).

2. “When 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).

Per Curiam:¹

¹We point out that a per curiam opinion is not legal precedent. *See Lieving v. Hadley*, 188 W.Va. 197, 201 n.4, 423 S.E.2d 600, 604 n.4. (1992) (“Per curiam opinions ... are used to decide only the specific case before the Court; everything in a per curiam opinion beyond the syllabus point is merely obiter dicta.... Other courts, such as many of the United States Circuit Courts of Appeals, have gone to non-published (not-to-be-cited) opinions to deal with similar cases. We do not have such a specific practice, but instead use published per curiam opinions. However, if rules of law or accepted ways of doing things are to be changed, then this Court will do so in a signed opinion, not a per curiam opinion.”).

This appeal was brought by the guardian ad litem for the appellant, Elizabeth A.D., from a final order of the Circuit Court of Calhoun County. The circuit court found Elizabeth A.D. was an abused child and terminated the parental rights of the child's mother, appellee Brenda K.J.

In this appeal the guardian ad litem contends that it was error for the circuit court to deny post-termination visitation between the child and her mother.² We agree.

I.

²The guardian ad litem also argued that it was error to terminate parental rights. We find no error in the circuit court's decision to terminate the mother's parental rights.

On September 18, 1996, a petition was filed against Brenda K.J. charging her with abusing and neglecting her child, by failing to prevent numerous sexual assaults on the child.³ At the time of the petition the child was thirteen years old. The record indicates the child was sexually assaulted more than five times, starting at the age of six and continuing through the age of twelve. On January 9, 1997, a dispositional hearing was held. At the conclusion of the hearing the circuit court found that the child was abused and neglected. At a dispositional hearing held on January 24, 1997, the circuit court terminated the parental rights of the mother. A post-dispositional hearing was held on May 2, 1997, wherein the guardian ad litem requested some form of post-termination visitation between the child and Brenda K.J. The circuit court denied the request. On appeal the guardian ad litem contends that it was error for the circuit court to deny post-termination visitation. We agree.

II.

This Court pointed out in syllabus point 1 of *In the Interest*

³The father of the child was named in the petition, however, his whereabouts were unknown and he was not represented. The record indicates that the child's father "disappeared" when she was six years old.

of Diva P., ___ W.Va. ___, ___ S.E.2d ___ (No. 23928, July 11, 1997) that the ruling of a circuit court, in a civil abuse and neglect proceeding, will not be set aside unless clearly erroneous. The facts in this case leave little doubt that the circuit court committed error in denying supervised post-termination visitation. The record reveals a close emotional bond between Elizabeth A.D. and Brenda K.J. *See* Syl. Pt. 5, *In re Christina L.*, 194 W.Va. 446, 460 S.E.2d 692 (1995); Syl. Pt. 8, *In re Katie S.*, 198 W.Va. 79, 479 S.E.2d 589 (1996). We, therefore, reverse the denial of supervised post-termination visitation and remand for a hearing to determine the appropriate visitation plan.

Reversed and Remanded.