

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.R. and C.B.:

No. 101591
(Harrison Co. 09-JA-93-3 & 94-4)

MEMORANDUM DECISION

This appeal arises from the Circuit Court of Harrison County, wherein the Petitioner Father's parental rights to his child C.B. and his custodial/guardianship rights to his girlfriend's child J.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 children, J.R. and C.B. 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, this Court is of the opinion that this matter 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 Father challenges the circuit court's order terminating his parental rights to his child, and custodial/guardianship rights to his girlfriend's child, arguing that the circuit court erred in terminating his parental rights based on inadmissible testimony of a Department of Health and Human Resource worker and Respondent Mother, and in finding by clear and convincing evidence that conditions of abuse existed at the time of the filing of the petition. Petitioner Father remained silent when called to testify in the proceedings. "Because the purpose of an abuse and neglect proceeding is remedial, where the parent or guardian fails to respond to probative evidence offered against him/her during the course of an abuse and neglect proceeding, a lower court may properly consider that individual's silence as affirmative evidence of that individual's culpability" Syl. pt. 2, *In re Daniel D.*, 211 W.Va. 79, 562 S.E.2d 17 (2002). The circuit court found that the clear and convincing

evidence showed that Petitioner Father physically and sexually abused the child, and that there is no reasonable likelihood that the conditions of abuse and neglect can be corrected in the near future. The guardian ad litem concurs in the termination in the best interests of the children.

For the foregoing reasons, we find no error in the decision of the circuit court and the termination of parental, custodial and guardianship 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