

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: T.S., J.S., and T.S.:

No. 101592
(Hampshire Co. 10-JA-05 - 07)

MEMORANDUM DECISION

This appeal arises from the Circuit Court of Hampshire County, wherein the Petitioner Mother's parental rights to her three children, T.S., J.S., and T.S., 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, T.S., J.S., and T.S. The Court has carefully reviewed the record provided and the written arguments of the parties, and the case is mature for consideration.

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. 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 children, arguing that the circuit court erred in finding that Petitioner knew of the sexual abuse against her children, that Petitioner knew of the physical abuse against her children, and in its finding that all three children were the subject of abuse. The children in this matter were removed following an investigation into possible sexual abuse of Petitioner's daughter, to which the child's stepfather later confessed. Through continued therapy with all three children, it was also revealed that the children's uncle sexually assaulted them several years ago while the family lived in another state. Additionally, photographic evidence showed signs of physical abuse against all three children, including a scar in the shape of an "X" on J.S.'s back. West Virginia law states that "[t]ermination of parental rights of a parent of an abused child is authorized under *W.Va.Code*, 49-6-1 to 49-6-10, as amended, where such parent contends nonparticipation in the acts giving rise to the termination petition but there is clear and convincing evidence that such nonparticipating

parent knowingly took no action to prevent or stop such acts to protect the child.” Syl. Pt. 2, *Matter of Scottie D.*, 185 W.Va. 191, 406 S.E.2d 214 (1991). Further, “[t]he term ‘knowingly’ as used in West Virginia Code § 49-1-3(a)(1) (1995) does not require that a parent actually be present at the time the abuse occurs, but rather that the parent was presented with sufficient facts from which he/she could have and should have recognized that abuse has occurred.” Syl. Pt. 7, *W.Va. Dept. Of Health & Human v. Doris S.*, 197 W.Va. 489, 475 S.E.2d 865 (1996). Based upon the totality of the evidence, the circuit court found by clear and convincing evidence that Petitioner Mother was presented with sufficient facts from which she should have recognized that abuse occurred. This evidence also supports the finding that all three children were subjected to abuse and neglect. Additionally, the Petitioner Mother argues that the circuit court erred in its refusal to grant a post-adjudicatory or post-dispositional improvement period, in its refusal to allow the oldest child to testify as to his wishes concerning Mother’s continued parental rights, and in its refusal to allow Petitioner to continue in the proceedings until permanency was established. The Court finds that none of these rulings constitute error. The evidence indicated that continued contact with Petitioner Mother and the child’s offering testimony in regard to the matter would be detrimental to the children’s health and well being, and that an improvement period would be futile.

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: 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