

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

FILED

In Re: M.K., A.T., T.T., and R.T:

March 14, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

No. 101606
(Mercer Co. 09-JA-89 - 92-DS)

MEMORANDUM DECISION

This appeal arises from the Circuit Court of Mercer County, wherein the Petitioner Mother's parental rights to M.K., A.T., T.T., and R.T. 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 his response on behalf of all the children. 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 child, arguing that the circuit court based its termination, in part, on an erroneous finding of fact. Prior to the initiation of the instant matter, petitioner was involved in another abuse and neglect matter. Ultimately, reunification was achieved through that proceeding. Petitioner alleges, however, that the children were returned to her in 2007, approximately 17 months before the instant matter was initiated. She argues that the circuit court based its termination, in part, on the erroneous finding of fact that the instant matter was initiated "only weeks" after this reunification. "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 Interest of Tiffany Marie S.*, 196 W.Va. 223, 470 S.E.2d 177 (1996). In the present case, the circuit court relied upon the totality of the evidence in ordering termination. Further, the circuit court’s account of the evidence is plausible in light of the Department of Health and Human Resources providing services to Petitioner Mother related to the prior matter until April 24, 2009, a matter of weeks before the initiation of the instant matter. The Court finds that this account was plausible in light of the entire record, and concludes that there was no error in relation to the termination. Even assuming, arguendo, that Petitioner Mother’s factual assertion is correct, such does not change the overall propriety of the circuit court’s decision to terminate parental rights, and the same amounts to harmless 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: 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