

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.T:

No. 101619
(Kanawha Co. 09-JA-67)

MEMORANDUM DECISION

This appeal arises from the Circuit Court of Kanawha County, wherein the Petitioner Mother's parental rights to J.T. were terminated. The appeal was timely perfected by counsel, with the complete record from the circuit court accompanying the petition. The Department of Health and Human Resources has filed its response. The guardian ad litem has filed her response on behalf of the child, J.T. 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, arguing that the State did not meet its clear and convincing burden. She further alleges that the circuit court erred in terminating her rights based upon the finding that the circumstances leading to the conditions of abuse and neglect could not be corrected in a reasonable time, that it abused its discretion in denying post-termination visitation, and that it failed to make the requisite findings of fact and conclusions of law necessary for termination of parental rights. She lastly alleges that the termination was a violation of her state and federal due process rights. "*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 State... is obligated to meet

this burden.” Syllabus Point 1, *In Interest of S.C.*, 168 W.Va. 366, 284 S.E.2d 867 (1981). In this matter, the circuit court found this burden satisfied, and clearly established the same in its findings of fact and conclusions of law. In its October 25, 2010 disposition order, the circuit court found that the child was neglected based upon Petitioner Mother’s attempted sale of a minor sibling; her abandonment of the child on numerous occasions; and, her extensive abuse and neglect history, including drug use, domestic violence, and poor parenting decision making. The circuit court further found that Petitioner Mother failed to cooperate with the conditions of her post-adjudicatory improvement period, including refusal to participate in drug screens, substance abuse evaluation, parenting, adult life skills, and even visitation. The circuit court also held that Petitioner Mother failed to provide financially for the child. In finding that there was no reasonable likelihood that these conditions could be substantially corrected in the near future, the circuit court based its decision on Petitioner Mother’s failure to take the appropriate steps to remedy the circumstances which lead to the filing of the initial abuse and neglect petition. West Virginia Code § 49-6-5(b)(1) lists several circumstances in which there exists “no reasonable likelihood that conditions of neglect or abuse can be substantially corrected,” including the situation where “an abusing parent habitually abuses or is addicted to alcohol, controlled substances, or drugs, to the extent that proper parenting skills have been seriously impaired and such parent has not responded to or followed through the recommended and appropriate treatment which could have improved the capacity for adequate parental functioning.” The record supports the circuit court’s decision that the clear and convincing burden was met, that the conditions leading to the initial petition could not be substantially corrected in the near future, and further that the requisite findings of fact and conclusions of law support these decisions.

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