

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

FILED

April 18, 2011

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

In Re: J.L.:

No. 10-4015
(Marion County 09-JA-76)

MEMORANDUM DECISION

This appeal arises from the Circuit Court of Marion County, wherein the Petitioner Father's parental rights to J.L. 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 child, J.L. The Department of Health and Human Resources ("DHHR") has filed its response. 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.

Petitioner Father appeals the termination of his parental rights, arguing that the Guardian ad litem did not fulfill her duties, that Petitioner Father's low functioning status requires that he be given additional time to remedy the conditions of abuse and/or neglect, that the termination was improperly based on Petitioner Father's lack of financial resources, and that Petitioner Father was entitled to a dispositional improvement period. Pursuant to West Virginia Code §49-6-12(g), before a circuit court can grant an extension of an improvement period, the court must first find that the parent has substantially complied with the terms of the improvement period; that the continuation of the improvement period would not substantially impair the ability of the DHHR to permanently place the child; and that such extension is otherwise consistent with the best interest of the child. The circuit court

terminated Petitioner Father's post-adjudicatory improvement period in this matter due to his noncompliance. Petitioner Father failed to maintain employment, failed to maintain consistent housing, failed to maintain contact with DHHR and his social workers, failed to attend visitation, and failed to attend the hearing to terminate his improvement period. The circuit court terminated his parental rights, finding that there is no reasonable likelihood that the conditions of abuse and/or neglect can be remedied in the near future, even if additional services are provided. The court found that Petitioner Father "is unable to provide for his own needs and well-being and therefore cannot provide for [the child's] needs or provide adequate care for her." The circuit court also denied post-termination visitation based upon its finding that such visitation was not in the best interests of the child. The guardian ad litem indicates in her response that termination was proper under the circumstances and was in the best interests of the child, and was not motivated in any way by Petitioner Father's lack of financial resources. DHHR also argues that termination was proper in the best interests of the child.

After receiving the record and arguments of counsel, we find no error in the decision of the circuit court and the termination of parental rights is hereby affirmed.

Affirmed.

ISSUED: April 18, 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