

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

In Re: F.H.

No. 10-4017
(Randolph County No. 10-JA-3)

FILED

May 16, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

This appeal arises from the Circuit Court of Randolph County, wherein the Petitioner Mother's parental rights to F.H. 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 ("DHHR") has filed its response. The guardian ad litem has filed his response on behalf of the child, F.H. 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. 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 termination of her parental rights, arguing that it erred in the following ways: by terminating her post-adjudicatory improvement period; by finding that the conditions of abuse and neglect which led to the termination of her parental rights could not be substantially corrected; and, by failing to employ a less restrictive alternative to termination. In regard to the first two assignments of error, petitioner argues that her lack of financial means was impermissibly relied upon as the major factor in the circuit court's decisions. However, it is clear from the record that petitioner's failure in her improvement period and inability to correct the conditions of abuse and neglect that led to the petition's filing were caused by her lack of compliance with the extensive services that the DHHR provided. This Court has directed that "[a]t the conclusion of the improvement period, the court shall review the performance of the parents in attempting to attain the goals of the improvement period and shall, in the court's discretion, determine whether the conditions of the improvement period have been satisfied and whether sufficient improvement has been made in the context of all the circumstances of the case to justify the return of the child[ren]." Syl. Pt. 6, *In the Interest of Carlita B.*, 185 W. Va. 613, 408 S.E.2d 365 (1991).

The circuit court in this matter held a status hearing at the end of the subject improvement period to determine the progress petitioner had made. During that hearing the circuit court found that, despite the DHHR's reasonable efforts to assist her, the petitioner had failed in several aspects of her improvement period, including the following: maintaining suitable housing; obtaining employment; missing several visitations with her child; providing a positive drug screen during the dispositional hearing; and, continued poor decision making. The record further indicates that the DHHR allocated substantial funding to help petitioner with her back rent, and also attempted to procure her employment by providing transportation and assisting with the application process. Petitioner testified that she had quit at least two jobs during the improvement period. As such, the circuit court's decisions to deny an extension of this improvement period and finding that the circumstances of abuse and neglect which led to the petition's filing could not be substantially corrected were supported by the evidence and were not an abuse of discretion. The circuit court properly determined that termination of petitioner's parental rights was in the best interest of the child, as this Court has held that "[t]ermination of parental rights, the most drastic remedy under the statutory provision covering the disposition of neglected children... may be employed without the use of intervening less restrictive alternatives when it is found that there is no reasonable likelihood... that conditions of neglect or abuse can be substantially corrected." Syl. Pt. 2, *In Re: R.J.M.*, 164 W.Va. 496, 266 S.E.2d 114 (1980). Petitioner's sole argument on this issue is that the circuit court erred in finding that she would be unable to substantially correct the conditions of abuse and neglect; essentially she argues that she was entitled to an indefinite improvement period wherein a relative would be granted guardianship of F.H. while petitioner would continue to seek improvement. The circuit court properly concluded that correction of these conditions was unlikely, and that F.H.'s young age necessitated permanency through adoption.

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: May 16, 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