

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

**In Re: R.P. and J.P.:**

**No. 11-0453**  
(Webster County Nos. 09-JA-43 & 44)

**FILED**

September 13, 2011  
RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

**MEMORANDUM DECISION**

Petitioner Mother appeals the termination of her parental rights to R.P. and J.P. The appeal was timely perfected by counsel, with the petitioner's appendix accompanying the petition. The West Virginia Department of Health and Human Resources ("DHHR") has filed its response. The guardian ad litem has filed his response on behalf of the children.

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.

"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 the Interest of: Tiffany Marie S.*, 196 W.Va. 223, 470 S.E.2d 177 (1996).

The petition in this matter was filed after J.P. was born with morphine, oxycodone and marijuana in his system. J.P. was life flighted to another hospital due to the severity of his condition and then suffered drug withdrawal. Petitioner Mother had been arrested for domestic battery the day before J.P. was born, and at that time was found with drug paraphernalia, including spoons, pills and cutting instruments. Petitioner Mother admitted to the allegations in the petition, and was granted an improvement period in order to enter

drug rehabilitation. She completed detoxification and entered rehabilitation, at which time the circuit court ordered a Disposition 5 pursuant to West Virginia Code §49-6-5(5), giving Petitioner Mother a two year rehabilitation period. Petitioner Mother completed rehabilitation, and moved to a treatment home. However, due to a conflict with another patient in the home, she was removed from that home. After leaving the treatment home, Petitioner Mother requested permission from the circuit court to live with the psychological father of R.P., and the court reluctantly granted permission, noting that “the requested modification may be setting the adult respondent [Petitioner Mother] up to fail.” The circuit court also advised Petitioner Mother at that time that a violation of her rehabilitation period would lead to termination. Less than a month later, Petitioner Mother relapsed on prescription medication, testing positive for oxycodone. Her rehabilitation period was revoked and her parental rights were terminated. The circuit court noted in the termination order that Petitioner Mother had again abused drugs and had contact with J.P.’s terminated father, although she was court ordered not to have contact with him. Further, at the time Petitioner Mother relapsed, R.P. was in her care and she admitted that he was in the home while she was under the influence of drugs.

On appeal, Petitioner Mother makes several assignments of error. She first argues that the circuit court erred in not holding hearings in a timely manner according to the mandates of the Rules of Child Abuse and Neglect Proceedings and statutory law, in that the final adjudicatory hearing was not held until almost three months after the petition was filed, and ten weeks after the preliminary hearing. However, Petitioner Mother failed to present any evidence that she objected to this timeline below, and failed to show any prejudice. This Court concludes that she has not established any reversible error based upon the timing of the hearings in the underlying matter.

Petitioner Mother next argues that the circuit court erred by extending her six month post adjudicatory improvement period for an additional two years absent specific evidence and motion by the DHHR. Pursuant to West Virginia Code §49-6-5(a)(5), the circuit court found in its September 29, 2010 Order that giving Petitioner Mother a rehabilitation period was the least restrictive alternative in this matter, as Petitioner Mother has a “long history” of drug abuse. This Court finds no error in the granting of a rehabilitation period under the facts of this case.

Petitioner Mother also argues that the DHHR failed to develop and adhere to a family and child’s case plan as required by Rule 28 of the West Virginia Rules of Procedure for Child Abuse and Neglect and West Virginia Code §49-6-5(a). No case plan was filed in this matter; however, it is clear from the court orders that Petitioner Mother’s first priority was to remain drug free, and she was repeatedly told by the circuit court in its orders that failure to remain drug free would result in termination. Although we are concerned about the allegations that the DHHR failed to follow procedures such as preparation of the Child’s

Case Plan, we conclude that such alleged omissions do not warrant reversal in light of all the circumstances in this case.

Petitioner Mother argues that the DHHR failed to continue remedial services for her after her discharge from the treatment home. The DHHR responds, indicating that Petitioner Mother was first placed in a shelter but refused to stay, and instead went to stay with a friend. Further, DHHR attempted to find Petitioner Mother a home in Webster County, but she would only accept homes in Nicholas County. Finally, life skills and parenting classes were set up for Petitioner Mother, but she failed to attend. This Court finds no error in the services offered by the DHHR in this matter.

Finally, Petitioner Mother argues that there was no evidence to support the finding that there was no reasonable likelihood that the circumstances which led to the filing of the petition could be reasonably corrected in the foreseeable future. However, there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected when a parent habitually abuses drugs to the extent that their parenting skills have been seriously impaired. W. Va. Code §49-6-5(b)(1). Moreover, termination is proper when there is evidence that a parent is addicted to controlled substances and that the parent failed to follow through with a Family Case Plan or rehabilitative efforts. *In re Aaron Thomas M.*, 212 W.Va. 604, 575 S.E.2d 214 (2002). In the present case, it is clear that Petitioner Mother has had a long struggle with drugs, and even after being told that further drug use would cause her parental rights to be terminated, she used again, while R.P. was in her care. The circuit court did not err in finding that the conditions leading to the abuse and/or neglect could not be reasonably corrected in the foreseeable future.

This Court reminds the circuit court of its duty to establish permanency for R.P. and J.P. pursuant to Rules 36a, 39, 41 and 42 of the West Virginia Rules of Procedure for Child Abuse and Neglect. Further, this Court reminds the circuit court of its duty pursuant to Rule 43 to find permanent placement for R.P. and J.P. within eighteen months of the date of the disposition order. As this Court has stated, “[t]he eighteen-month period provided in Rule 43 of the West Virginia Rules of Procedures for Child Abuse and Neglect Proceedings for permanent placement of an abused and neglected child following the final dispositional order must be strictly followed except in the most extraordinary circumstances which are fully substantiated in the record.” Syl. Pt. 6, *In re Cecil T.*, 2011 WL 864950 (W.Va.2011). Moreover, this Court has stated that “[i]n determining the appropriate permanent out-of-home placement of a child under W.Va.Code § 49-6-5(a)(6) [1996], the circuit court shall give priority to securing a suitable adoptive home for the child and shall consider other placement alternatives, including permanent foster care, only where the court finds that adoption would not provide custody, care, commitment, nurturing and discipline consistent with the child's best interests or where a suitable adoptive home can not be found.” Syl. Pt.

3, *State of West Virginia v. Michael M., II*, 202 W.Va. 350, 504 S.E.2d 177 (1998).

For the foregoing reasons, we find no error in the decision of the circuit court to terminate petitioner's parental rights, and the circuit court's order is hereby affirmed.

Affirmed.

**ISSUED:** September 13, 2011

**CONCURRED IN BY:**

Chief Justice Margaret L. Workman  
Justice Robin Jean Davis  
Justice Thomas E. McHugh

**DISSENTING:**

Justice Brent D. Benjamin  
Justice Menis E. Ketchum