

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

In Re: R.S. Jr., R.S. and C.S.:

No. 11-0474 (Preston County Nos. 10-JA-20, 21 & 22)

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 her three children, and appeals the circuit court's denial of an extension of her improvement period. The appeal was timely perfected by counsel, with Petitioner's record accompanying the Petition. The guardian ad litem has filed her response on behalf of the children. The West Virginia 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. 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).

This petition was initiated after the children were found unsupervised, with the whereabouts of Petitioner Mother unknown, and their father passed out in a vehicle. The petition alleges at least seventeen prior referrals to Child Protective Services, and an amended petition notes that a physician found extreme bruising, abrasions and burns, leading

the physician to believe that the children had been physically abused. Petitioner Mother was granted an improvement period of six months, during which time she was to comply with services and seek treatment for her drug addiction. Petitioner did not substantially comply with the services provided. She was only minimally successful in procuring a safe residence, and she was involuntarily discharged from the Soboxone Clinic for cancelling appointments, being late and being disruptive in group sessions. Moreover, Petitioner Mother was disruptive during the Multi-Disciplinary Team meetings, and was sporadic in her visitation with her children. At the end of her improvement period, Petitioner Mother requested an extension. However, the extension was denied and Petitioner Mother's parental rights were terminated. The circuit court found that she had not cooperated in her prior improvement period, she was homeless and did not have a job. She had previously rejected inpatient treatment for her drug problem and had failed to participate in the case plan. The circuit court found that there was no reasonable likelihood that the conditions of abuse and neglect can be substantially corrected in the near future. Both DHHR and the guardian ad litem argue on appeal that the circuit court's denial of an extension to the improvement period and the termination of parental rights were correct.

On appeal, Petitioner Mother first argues that the circuit court erred by not granting her request for an extension to her improvement period. Petitioner Mother states that she intended to undergo inpatient drug treatment if granted this extension. 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. In the present case, Petitioner Mother failed to comply with her initial improvement period. She failed to obtain a home or job, missed many appointments with service providers, was involuntarily discharged from the Soboxone Clinic and only sporadically visited her children. This Court finds no error in the circuit court's denial of Petitioner Mother's motion for an extension to her improvement period.

Petitioner Mother also argues that the circuit court erred in terminating her parental rights. This Court has held that "courts are not required to exhaust every speculative possibility of parental improvement before terminating parental rights where it appears that the welfare of the child will be seriously threatened..." Syl. Pt. 1, in part, *In Re: R.J.M.*, 164 W.Va. 496, 266 S.E.2d 114 (1980). In this matter, any additional improvement periods would have been granted to the children's detriment, as Petitioner Mother has shown through her non-compliance that the conditions that led to the petition's filing could not be substantially corrected in a reasonable time period.

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: September 13, 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