

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

In Re: D.C. and M.C.

No. 11-0522 (Mingo County 10-JA-14 & 15)

FILED

November 15, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

This appeal arises from the Circuit Court of Mingo County, wherein the Petitioner Father's parental rights to his two children, D.C. and M.C., were terminated. The appeal was timely perfected by counsel, with petitioner's appendix from the circuit court accompanying the petition. The West Virginia Department of Health and Human Resources ("DHHR") has filed its response. The guardian ad litem has filed her 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).

Petitioner challenges the termination of his parental rights, arguing that the DHHR did not make reasonable efforts to achieve reunification, that his circumstances have changed following the successful completion of an inpatient substance abuse treatment program, and that the circuit court did not make the appropriate findings upon which to base its order that he have no further contact with the children at issue.

Petitioner argues that the DHHR's goal should be reunification and that the circuit court failed to consider the totality of the circumstances. Petitioner argues that the allegations of abuse and neglect primarily related to the mother, and that the DHHR failed to offer the appropriate services so that he could enter a substance abuse program. According to the circuit court's order terminating his parental rights, petitioner disclosed health problems on his applications for substance abuse treatment that prompted the facilities to request medical clearance from a physician before petitioner could be accepted. However, contrary to petitioner's assertions that the DHHR did not provide assistance in obtaining the necessary clearance, the circuit court's order goes on to say that "the [DHHR] advised [petitioner] . . . that a special medical card would be issued to cover the costs of the medical evaluation and testing; however, the [petitioner] . . . failed to make the necessary appointments." Clear from the order, and the record below, is the fact that the DHHR attempted to facilitate petitioner's entry into a substance abuse program, but petitioner's unwillingness to cooperate prevented his acceptance into such program.

As for petitioner's assertions that his circumstances have changed subsequent to his completing a substance abuse program following termination of his parental rights, this fact has no bearing on the circuit court's decision below. At termination, the circuit court had only the facts concerning this matter to consider, as well as evidence from prior DHHR involvement with petitioner and his children. Contrary to petitioner's assertion that the allegations of abuse and neglect related primarily to the children's mother, the record below clearly illustrates that petitioner has a long history of domestic violence and substance abuse resulting in multiple interventions by the DHHR. In this matter, the allegations of abuse and neglect primarily concerned both parents' substance abuse problems and related inability to care for the children. Throughout the proceedings below, petitioner demonstrated an unwillingness or inability to correct the issues of abuse and neglect by only sporadically participating in visitation with his children, providing positive drug screen results, failing to submit to multiple drug screens, failing to stay in contact with the DHHR, and also failing to take efforts to obtain treatment for his substance abuse issues.

Pursuant to West Virginia Code § 49-6-5(a)(6), a circuit court may terminate the parental rights of an individual upon a finding that there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future. The code goes on to provide examples of when there is no reasonable likelihood that conditions can be substantially corrected, and these examples include situations in which the abusing parent is addicted to controlled substances, and when the abusing parent has not followed through with a reasonable family case plan. W.Va. Code § 49-6-5(b)(1)(3). As the circuit court noted in its order terminating petitioner's parental rights, both of these circumstances exist in this matter and are evidence that there was no reasonable likelihood that petitioner could substantially correct the abuse or neglect in the near future. In further support of the circuit

court's decision to terminate 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). For these reasons, the circuit court's termination of petitioner's parental rights was not clearly erroneous.

Lastly, petitioner asserts that the circuit court failed to make the requisite findings necessary to order that he have no further contact with his children per this Court's prior holdings. This Court has held that "[w]hen parental rights are terminated due to neglect or abuse, the circuit court may nevertheless in appropriate cases consider whether continued visitation or other contact with the abusing parent is in the best interest of the child. Among other things, the circuit court should consider whether a close emotional bond has been established between parent and child and the child's wishes, if he or she is of appropriate maturity to make such request. The evidence must indicate that such visitation or continued contact would not be detrimental to the child's well being and would be in the child's best interest." Syl. Pt. 5, *In re Christina L.*, 194 W.Va. 446, 460 S.E.2d 692 (1995). Given petitioner's history of domestic violence and substance abuse, the circuit court did not err in denying post-termination visitation.

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

Affirmed.

ISSUED: November 15, 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