

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

FILED

October 25, 2011

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

In Re: Z.U., C.U., and M.K., Jr.:

No. 11-0610 (Fayette County 10-JA-63, 64 & 65)

MEMORANDUM DECISION

Petitioner Mother appeals the termination of her parental rights to her children Z.U., C.U., and M.K. Jr. The appeal was timely perfected by counsel, with petitioner's record and the Department of Health and Human Resources' supplemental 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.

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. 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 filed after M.K., Jr. was born addicted to drugs. Petitioner Mother

had previously lost custody of Z.U. and C.U. in 2009 due to drug abuse. Petitioner Mother stipulated to the drug use during her pregnancy and was adjudicated as neglectful. Petitioner Mother failed to participate in services, missed Multi-Disciplinary Treatment team meetings and hearings, and repeatedly failed to contact DHHR workers. Petitioner Mother also had numerous positive drug tests. Due to her lack of participation, and her positive drug test on the morning of the hearing, Petitioner Mother's motion for an improvement period was denied. Petitioner Mother then tested positive for drugs on both mornings of the dispositional hearings. The circuit court terminated Petitioner Mother's parental rights. The circuit court notes that Petitioner Mother has tested positive for drugs at each of the last three hearings, and that there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future. The circuit court stated that "[t]he respondent mother's love for drugs outweighs her love for her children." Both the DHHR and the guardian ad litem argue in favor of termination of Petitioner Mother's parental rights.

On appeal, Petitioner Mother first argues that the circuit court erred in terminating her rights when DHHR resources failed to provide her with sufficient guidance and help to achieve reunification. In the present case, DHHR attempted to provide several services, including parenting classes, a substance abuse assessment, drug screens, and visitation. However, the record shows that Petitioner Mother continually cancelled appointments, failed to contact DHHR, and failed her drug screens. When DHHR workers arrived to take her to her substance abuse assessment as a first step in treating her drug addiction, Petitioner Mother was not there. This Court finds no error in the termination of Petitioner Mother's parental rights.

Petitioner Mother also argues that the circuit court erred in allowing DHHR to submit a child case plan one day prior to the dispositional hearing, in contravention of the Rules of Procedure in Child Abuse and Neglect Proceedings. Rule 29 of the Rules of Procedure for Child Abuse and Neglect Proceedings provides that "[c]opies of the child's case plan shall be provided to the parties, their counsel, and persons entitled to notice and the opportunity to be heard, at least five (5) judicial days prior to the disposition hearing." In the present case, the child case plan was only submitted to counsel for Petitioner Mother one day prior to the hearing. 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.

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: October 25, 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