

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

In Re: H.B.

No. 11-0651 (Randolph County No. 10-JA-17)

FILED

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

MEMORANDUM DECISION

Petitioner Father appeals the termination of his parental rights to H.B. The appeal was timely perfected by counsel, with the entire record 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 child.

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 case was first initiated due to the mother’s prior termination of her parental rights to her older child, C.J.H., after Petitioner Father, who is not C.J.H.’s father, severely and repeatedly physically abused him, including physical beatings leaving cuts and bruises, holding him under water in a bathtub to the point of unconsciousness, and hanging him from a hook. C.J.H. was three years old at the time. Both Petitioner Father and the mother pled guilty to felony child neglect resulting in injury, and served prison sentences. They reunited upon their subsequent releases from prison, and conceived H.B., the child in

the present case. H.B. was removed within weeks of her birth, prior to suffering any abuse. Petitioner Father was adjudicated as an abusive parent due to his prior abuse of H.B.'s half-brother, C.J.H., although he claims not to have abused C.J.H. and states that he merely "disciplined" him. Petitioner Father objected to the adjudication, as the petition was initiated due to the mother's prior termination of parental rights, but since Petitioner Father had no parental rights to C.J.H., the same were not terminated. However, the circuit court found aggravated circumstances regarding Petitioner Father, as he committed persistent physical abuse causing injury to C.J.H. while that child was in his care. Further, the court notes that if it dismissed the adjudication as to Petitioner Father, the child would be immediately returned to his care, and held that DHHR should not have to wait until H.B. is abused before removing her. He requested an improvement period, but said improvement period was denied due to his continuous claims that he had no parenting issues to resolve and his denial of the prior abuse, and because he failed to complete the domestic violence perpetrator program he was offered. The circuit court terminated Petitioner Father's parental rights. The circuit court further found that due to Petitioner Father's mental illness, he is incapable of exercising proper parenting skills or improving his skills, and thus there is no likelihood that he could substantially correct the conditions of abuse or neglect. Both the DHHR and the guardian ad litem concur in the circuit court's orders and the termination of parental rights in this matter.

On appeal, Petitioner Father first argues that he was improperly adjudicated, as he did not have a prior termination, H.B. was born after C.J.H. was removed, and there was no finding that H.B. was abused. Upon a review of the records, this Court finds no error in the circuit court's adjudication of Petitioner Father, as Petitioner Father had perpetrated severe, repeated abuse upon C.J.H., H.B.'s half-sibling, and that even after pleading guilty to charges resulting from this abuse, he continued to deny culpability. The circuit court found that the risk to H.B. was too great, and under these specific facts, this Court does not find that the circuit court erred.

Petitioner Father also argues that the circuit court erred in denying his request for an improvement period, because he showed that he would comply by taking a parenting class and an anger management class while incarcerated. The circuit court has the discretion to refuse to grant an improvement period when no improvement is likely. In addressing a similar situation, this Court stated that "...in order to remedy the abuse and/or neglect problem, the problem must first be acknowledged. Failure to acknowledge the existence of the problem, i.e., the truth of the basic allegation pertaining to the alleged abuse and neglect or the perpetrator of said abuse and neglect, results in making the problem untreatable and in making an improvement period an exercise in futility at the child's expense." *West Virginia Department of Health and Human Resources ex rel. Wright v. Doris S.*, 197 W.Va. 489, 498, 475 S.E.2d. 865, 874 (1996). Although Petitioner Father did avail himself of two classes while incarcerated for his role in abusing C.J.H., he continues to deny that he abused

the child, and when asked to identify parenting problems he needed to address, he indicated that he had no parenting problems. Further, he was enrolled in a batterer's intervention program, but failed to complete the program. This Court finds no error in the circuit court's finding that Petitioner Father was not likely to complete an improvement period, and no error in the denial of the requested improvement period.

Finally, Petitioner Father argues that the circuit court erred in terminating his parental rights. This Court has held that, "[t]ermination of parental rights, the most drastic remedy under the statutory provision covering the disposition of neglected children, W.Va. Code, 49-6-5 [1977] may be employed without the use of intervening less restrictive alternatives when it is found that there is no reasonable likelihood under W.Va. Code, 49-6-5(b) [1977] 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). Furthermore, "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 the present case, the circuit court found that due to Petitioner Father's mental illness, he is incapable of exercising proper parenting skills or improving his skills, and thus there is no likelihood that he can substantially correct the conditions of abuse or neglect. Additionally, his prior documented abuse of C.J.H. places H.B. at risk and seriously threatens her welfare. Thus, this Court finds no error in the circuit court's order terminating Petitioner Father's parental rights.

For the foregoing reasons, we find no error in the decision of the circuit court to terminate petitioner's parental rights without an improvement period, 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 Brent D. Benjamin
Justice Menis E. Ketchum
Justice Thomas E. McHugh