

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

In Re: P.D.:

No. 11-0662 (Calhoun County No. 10-JA-29)

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 child. The appeal was timely perfected by counsel, with Petitioner's appendix accompanying the Petition. The guardian ad litem has filed his response on behalf of the child. The West Virginia Department of Health and Human Resources ("DHHR") has filed its response.

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 initiated due to Petitioner Mother's drug use, affiliation with inappropriate individuals, domestic violence and leaving P.D. with inappropriate caregivers. Petitioner Mother admitted to drug use, and was adjudicated as abusive and neglectful. She was granted an improvement period. However, the improvement period was revoked due to Petitioner Mother's noncompliance, including failure to engage in parenting classes, failure to attend therapy regularly, and abnormal drug tests where Petitioner Mother's urine was found to be diluted. Further, Petitioner Mother was found in a home

whereby a search warrant uncovered a mobile meth lab, drugs and drug paraphernalia. Petitioner Mother moved to reinstate the improvement period, but this motion was denied due to her prior noncompliance. Petitioner Mother's parental rights are terminated. The circuit court found that Petitioner Mother has admitted drug abuse, and that she has made no progress since that admission. The circuit court also found that at the dispositional hearing, Petitioner Mother denied any drug abuse, despite the prior admissions. The circuit court found that she showed no insight into the neglect in this case, and has shown a lack of motivation in remedying her problems. Thus, there is no reasonable likelihood that she can substantially correct the conditions of neglect or abuse in the near future.

On appeal, Petitioner Mother first argues that the circuit court erred in terminating her improvement period, and in terminating her parental rights. In the present case, Petitioner Mother failed to comply with her initial improvement period. Petitioner Mother did not comply in services, and had abnormal drug tests. Further, she was involved with a male who was operating a meth lab, and was found in the home containing a meth lab. Also, Petitioner Mother first admitted that she had a drug problem, but then denied such problem. It is clear that Petitioner Mother could not remedy a problem she no longer believes exists. This Court finds no error in the circuit court's termination of the improvement period.

With regard to the termination of Petitioner Mother's 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, and this is particularly applicable to children under the age of three years who are more susceptible to illness, need consistent close interaction with fully committed adults, and are likely to have their emotional and physical development retarded by numerous placements." Syl. Pt. 1, *In Re: R.J.M.*, 164 W.Va. 496, 266 S.E.2d 114 (1980). In this matter, if the improvement period had been reinstated it would have been 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. This Court finds no error in the termination of Petitioner Mother's parental rights.

Petitioner Mother also argues that the DHHR worker assigned to her case was "hostile" toward her and impeded her success. This Court finds no evidence in the record of hostility, save Petitioner Mother's own testimony.

Finally, Petitioner Mother argues that the DHHR and circuit court erred by not having another preliminary hearing after P.D. was removed from Petitioner Mother's physical custody. Upon a review of the record, the hearing held on August 20, 2011, and the

subsequent order therefrom, satisfied the requirements of West Virginia Code 49-6-3(b), including making all the proper findings. This Court finds no error regarding the lack of a specific preliminary hearing after the removal under the facts of 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: 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