

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

In Re: A.M.

No. 11-0684 (Webster County 11-JA-4)

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 Webster County, wherein the Petitioner Stepfather's custodial rights to the child, A.M., 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 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).

Petitioner challenges only the circuit court's finding of fact that he sexually abused the child at issue, arguing that the DHHR did not meet its burden of clear and convincing evidence. In support of his argument, petitioner cites the minor child's inappropriate relationship with a twenty-three-year-old man and his disapproval of the same as the child's motivation for fabricating the allegations of sexual abuse in this matter. He argues that he objected to the child's relationship and took steps to prevent it by establishing rules that the

child did not like. Petitioner further cites to the Respondent Mother having told investigating officers that the child frequently lies and the lack of investigation into this issue to support his position. Petitioner also admits that some instances of which the child complained were based in fact, though he argues that the child “put a negative spin on them” to implicate the petitioner. This includes situations in which petitioner was required to examine the child’s breasts for lumps and also situations involving vaginal infections, both of which petitioner claims the child required medical treatment to correct. Lastly, petitioner points to conflicting testimony from the child to show that the DHHR failed to meet its burden, including the frequency with which the alleged abuse occurred, the timing of her disclosure of the abuse, the question of whether the Respondent Mother was present during the abuse, and the fact that the child did not disclose the abuse to anyone else despite the abuse allegedly having begun approximately eight years prior to the proceedings below.

Petitioner’s arguments, however, disregard both the important consistencies in the child’s testimony and the corroborating evidence from collateral sources, as well as the law regarding the circuit court’s role in weighing the credibility of witnesses and rendering findings of fact in abuse and neglect proceedings. Clear from a review of the record is the fact that the child was able to give details about various instances of abuse at different stages beginning approximately eight years prior to the instant action. Further, the stress of having to testify to these occurrences in front of her accuser and also the Respondent Mother, who continued to reside with petitioner following these allegations and who had her parental rights terminated below, could have contributed to the alleged problems with her testimony. Petitioner also misrepresents the evidence below, which established that the child told the Respondent Mother, her maternal grandmother, and a friend of the abuse that petitioner was perpetrating against her. Further, testimony was heard regarding medical records corroborating that this abuse was occurring well before the proceedings below, with one record reflecting inappropriate touching of the child as early as 2008.

As this Court has previously held, “in the context of abuse and neglect proceedings, the circuit court is the entity charged with weighing the credibility of witnesses and rendering findings of fact.” *In re Emily*, 208 W.Va. 325, 339, 540 S.E.2d 542, 556 (2000) (citing Syl. Pt. 1, in part, *In re Travis W.*, 206 W.Va. 478, 525 S.E.2d 669 (1999)). Elaborating on the circuit court’s role in these types of proceedings, the Court held that it “cannot set aside a circuit court’s factual determinations unless such findings are clearly erroneous.” *Id.* A review of the record shows that the circuit court’s finding of fact as to the petitioner’s sexual abuse of the child at issue was not clearly erroneous, and the same should not now be overturned because of the supporting evidence presented below.

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