

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

In Re: A.A., A.A., A.W., D.W. and T.W.:

No. 11-0754 (Webster County 10-JA-26, 27, 28, 29 & 30)

FILED

October 25, 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 his children, D.W., T.W. and A.W.¹ 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 children. 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 filed due to domestic violence, drug use and alcohol use in the home. Petitioner Father is also accused of driving while intoxicated with one of

¹A.A. and A.A. are the children of Petitioner Father's girlfriend, and Petitioner Father does not appeal regarding either of those children.

the children in the vehicle. Both parents admitted the allegations in the petition, and although the guardian ad litem opposed any improvement period, the circuit court granted a two year rehabilitation period, and required both parents to attend in-patient drug and alcohol treatment for at least six months. The circuit court noted that the parents had been noncompliant, and that both were clearly drug and alcohol addicted and needed treatment. Within two months of the granting of the two year improvement period, the DHHR filed a motion to terminate both parents' parental rights based on their noncompliance with services and court orders. The DHHR contends that the parents failed to stay in contact with the DHHR, and failed to fill out the proper forms required to enter rehabilitation. Moreover, they failed to check in with rehabilitation facilities regularly as directed to find out if beds were available. The night before the dispositional hearing was scheduled, both parents went to a bar and drank, and the mother used drugs. The court was forced to reschedule the hearing and jail the mother on contempt charges, as she appeared in court under the influence of alcohol and tested positive for drugs. Both parents' parental rights were terminated, as the circuit court noted that both parents were granted a rehabilitation period, but have not followed the court's order to seek long term treatment for their alcohol and controlled substance addictions. The parents also showed "complete disregard" for the court's orders, failed to stay in contact with DHHR, failed to participate in services, failed to attend all visitation, and continued to use alcohol. Both the DHHR and the guardian ad litem concur in the termination of Petitioner Father's parental rights.

Petitioner Father argues the circuit court erred in terminating his parental rights when the DHHR failed to arrange for long term in-patient drug treatment, and then terminated his rights due to his continued use of alcohol. With regard to the termination of Petitioner Father'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..." Syl. Pt. 1, in part, *In Re: R.J.M.*, 164 W.Va. 496, 266 S.E.2d 114 (1980). There is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected when a parent habitually abuses drugs to the extent that his/her parenting skills have been seriously impaired. W. Va. Code §49-6-5(b)(1). Moreover, termination is proper when there is evidence that a parent is addicted to controlled substances and that the parent failed to follow through with a Family Case Plan or rehabilitative efforts. *In re Aaron Thomas M.*, 212 W.Va. 604, 611, 575 S.E.2d 214, 221 (2002). In the present case, the evidence shows that the parents continued to use drugs and alcohol against court orders, even the night before the dispositional hearing. Further, the evidence shows that the parents failed to fully participate in services and failed to properly stay in contact with service providers. This Court finds no error in the termination of Petitioner Father's parental rights.

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