

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

In Re: R.G., T.G. and A.G.:

No. 11-0761(Mercer County No. 08-JA-83, 84 & 85)

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 custodial rights to R.G., T.G. and A.G.. The appeal was timely perfected by counsel, with the record below 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 children. Petitioner Mother has filed a reply.

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. This matter has been treated and considered under the Revised Rules of Appellate Procedure pursuant to this Court’s Order entered in this appeal on May 9, 2011. 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 after Petitioner Mother was accused of sexually exploiting another minor in her care by forcing that child to give an adult male oral sex for money. The petition details deplorable living conditions, a lack of food in the home, and Petitioner Mother’s mental instability, including a suicide attempt. The petition also notes

the fact that Petitioner Mother's children were previously removed from her for twenty one months due to prior suicide attempts and threats that she would kill the children. Petitioner Mother was adjudicated as neglectful and was granted an improvement period. Petitioner Mother complied in services and had negative drug screens; however, the testimony shows that Petitioner Mother did not progress as well as her therapists had hoped, and after eighteen months of combined post-adjudicatory and dispositional improvement periods, Petitioner Mother was still only visiting her children for two hours one day a week. Overnight visits were scheduled, but due to the condition of the home, including a lack of beds for the children and no heat in the room the children were to sleep in, the children could not attend overnight visitation with Petitioner Mother. Eventually the circuit court terminated Petitioner Mother's custodial rights. The circuit court noted that the family has made great progress, but that the testimony indicated that reunification would take at least another year. The children are in a stable placement with their grandparents, and placement back into their parents' home is not in their best interest. The circuit court also noted that the parents continue to cohabituate, and that this is the second removal of these same children; thus, placement with the father is inappropriate. Weekend visitation was ordered.

On appeal, Petitioner Mother argues that the circuit court erred in failing to grant her an extension of her dispositional improvement period, and erred in terminating her custodial rights. "The goal of an improvement period is to facilitate the reunification of families whenever that reunification is in the best interests of the children involved. Both the statute and our case law grant trial courts considerable flexibility in developing meaningful improvement periods designed to address the myriad possible problems causing abuse and neglect. We have held repeatedly, however, 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....'" *State ex rel. Amy M. v. Kaufman*, 196 W.Va. 251, 258, 470 S.E.2d 205, 212 (1996), citing Syl. Pt. 1, in part, *In re: R.J.M.*, 164 W.Va. 496, 266 S.E.2d 114 (1980). Although Petitioner Mother has shown some improvement, Petitioner Mother's post-adjudicatory and dispositional improvement periods, with extensions, have already exceeded the maximum time allowed for improvement periods. This Court has recently stated that "[t]he eighteen-month period provided in Rule 43 of the West Virginia Rules of Procedures for Child Abuse and Neglect Proceedings for permanent placement of an abused and neglected child following the final dispositional order must be strictly followed except in the most extraordinary circumstances which are fully substantiated in the record." Syl. Pt. 6, *In re: Cecil T.*, no. 35659, 2011 WL 864950 (W.Va. Mar. 10, 2011). In the present case, the children were removed previously for twenty-one months, while Petitioner Mother underwent an improvement period and engaged in services. Despite these services, the children were again removed from her care, this time for a period of over two years. In total, these children spent almost four years of their lives removed from their mother before permanency was achieved. Given these facts, this Court finds no error in the

circuit court's termination of Petitioner Mother's custodial rights without granting an extension to her dispositional improvement period.

For the foregoing reasons, we find no error in the decision of the circuit court to terminate petitioner's custodial rights, 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