

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

**In Re: D.C. and M.C.**

**No. 11-0974** (Mingo County 10-JA-14 & 15)

**FILED**

March 12, 2012  
RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

**MEMORANDUM DECISION**

This appeal arises from the Circuit Court of Mingo County, wherein Petitioner Mother's parental rights to her children, D.C. and M.C., were terminated. The appeal was timely perfected by counsel, Marsha Webb-Rumora, with petitioner's appendix from the circuit court accompanying the petition. The West Virginia Department of Health and Human Resources ("DHHR"), by William L. Bands, has filed its response. The guardian ad litem, Diana Carter Wiedel, has filed her response on behalf of the children.

This Court has considered the parties' briefs and the appendix on appeal. The facts and legal arguments are adequately presented in the parties' written briefs and the appendix on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the appendix presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules.

On appeal, petitioner argues that the circuit court erred in terminating her parental rights upon a finding that there was no reasonable likelihood that the circumstances of abuse and/or neglect could be substantially corrected in the near future. Petitioner argues that the evidence does not support termination, and that the decision to terminate was based on erroneous findings of fact. She further argues that, in direct contradiction to this Court's holding in *Syllabus Point 2 of In re: Tiffany P.*, 215 W.Va. 622, 600 S.E.2d 334 (2004), the circuit court employed the most drastic alternative to disposition and disregarded evidence that petitioner has improved in every area of her life. In support of this argument, petitioner argues that she not only participated in all services offered, but also benefitted from the same. Petitioner also notes that although she was not granted a completion certificate due to a rule infraction, she did complete a seven month inpatient substance abuse program, providing nothing but negative drug screens, and also participating in individual and group therapy. Because she followed through with everything required of her, petitioner argues that the circuit court's decision to terminate her parental rights was not supported by the evidence below. Petitioner also alleges that the circuit court erred in denying her an additional post-termination improvement period, arguing that the circuit court had already found that she was willing and able to correct the conditions of abuse and/or neglect that necessitated the children's removal, and that she would meaningfully participate in a post-dispositional improvement period when it first granted her such improvement period. As such, she argues that the circuit court's subsequent finding that there was no reasonable likelihood that petitioner could correct the conditions of abuse and/or

neglect in the near future was error, and argues that she should be allowed to complete her post-dispositional improvement period.

The guardian ad litem has responded, arguing in favor of affirming the circuit court's decision. She states that although the petitioner did enter and participate in a rehabilitation program, she did not benefit from those services. This is evidenced by the petitioner filling a prescription for Neurontin during her stay at the facility, and the fact that she sent some of the pills home to the Respondent Father who she knew to have a substance abuse problem. While there was no proof that petitioner herself used the pills or distributed them to other members of the program, it is obvious that she continued her former lifestyle while at the facility. The guardian argues that petitioner was either a drug user or drug dealer while enrolled in rehabilitation, or even worse, both. Further, the guardian argues that there was no evidence of a reasonable likelihood that petitioner would correct the problems necessitating removal of her children, based on the evidence above and her continued contact with Petitioner Father, who is addicted to drugs and was non-compliant with DHHR services. These actions made it abundantly clear that, despite numerous opportunities, petitioner would not comply with the terms of another improvement period.

The DHHR argues that, while the petitioner's parental rights survived two prior DHHR cases, it was obvious that she has not benefitted from any services provided. Substance abuse was prevalent in all the cases, and the threat of domestic violence always loomed. The DHHR argues that petitioner's rehabilitation incident involved abuse of prescription medication, that petitioner continued to have contact with Respondent Father despite his parental rights having been terminated, and that petitioner herself admitted that she continued to use Neurontin. These facts all evidence petitioner's inability to correct the conditions of abuse and neglect in the near future. The DHHR cites this Court's prior holdings that the best interests of the child are the "polar star" by which circuit courts must guide their decisions. *In re Samantha S.*, 222 W.Va. 517, 667 S.E.2d 573 (2008). As such, the best interests of the children herein dictated termination. Petitioner's parental rights were not terminated immediately; instead she received various extended improvement periods. However, the DHHR argues that the circuit court correctly recognized that the only option to preserve the welfare, safety, and physical and developmental health of the children was to terminate parental rights.

"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.' Syllabus Point 1, *In the Interest of: Tiffany Marie S.*, 196 W.Va. 223, 470 S.E.2d 177 (1996)." Syl. Pt. 1, *In re Faith C.*, 226 W.Va. 188, 699 S.E.2d 730 (2010).

The circuit court below terminated petitioner's parental rights after it was found that petitioner had violated the rules of her rehabilitation program. Specifically, evidence was presented that petitioner "had a prescription for ninety (90) Neurontin[.]" and "[t]hat of the ninety (90) Neurontin prescribed only thirty-one (31) pills were recovered." Further, testimony established that petitioner admitted to social worker Lisa Shepard that she had sent some of the pills to her husband, Respondent Father. Testimony was also presented that petitioner spent the night with Respondent Father, despite his parental rights to the children having previously been terminated. This decision caused D.C. to become visibly upset at petitioner's decision to stay with Respondent Father instead of the children. Petitioner also admitted to receiving financial support from Respondent Father during her stay at the rehabilitation facility. As such, the circuit court found that there was no reasonable likelihood that petitioner's circumstances could be corrected in the near future because "[t]he [c]ourt has repeatedly given the [petitioner] the opportunity to make sufficient progress and become a proper parent for her children. However, the [petitioner] has failed to take advantages of the opportunities afforded to her by this [c]ourt." In support of this finding, the circuit court noted petitioner's continued engagement in at-risk behavior, including drug use and continued contact with Respondent Father. The circuit court also noted the extended length of the pendency of the action, and the need for stability and permanency for the children, which petitioner was unable to provide.

As such, the Court finds that termination of petitioner's parental rights below was appropriate, as was the circuit court's determination that there was no reasonable likelihood that petitioner could substantially correct the conditions of abuse and neglect. Specifically, the circuit court found that petitioner "failed to follow through with the family care plan and rehabilitation efforts." West Virginia Code § 49-6-5(b) defines "no reasonable likelihood that conditions of neglect or abuse can be substantially corrected" as meaning that "the abusing adult or adults have demonstrated an inadequate capacity to solve the problems of abuse or neglect on their own or with help." That code section also states that such conditions shall be considered to exist when "[t]he abusing parent or parents have not responded to or followed through with a reasonable family case plan or other rehabilitative efforts of social, medical, mental health or other rehabilitative agencies designed to reduce or prevent the abuse or neglect of the child, as evidenced by the continuation or insubstantial diminution of conditions which threatened the health, welfare or life of the child." Although petitioner argues that she benefitted from the services provided and did not abuse prescription medication during her stay at the rehabilitation facility, it is clear that this is not the case. Petitioner filled a prescription while enrolled there, and well over half of the pills prescribed were unaccounted for. Further, despite prior termination of his parental rights to these children, petitioner continued to associate with Respondent Father and admitted to providing him with prescription medication with full knowledge of his substance abuse issues. As such, the circuit court's determination that there was no reasonable likelihood that petitioner could substantially correct the conditions of abuse and/or neglect was appropriate.

As to petitioner's second assignment of error, the Court notes that improvement periods are not mandatory and are granted at the circuit court's discretion per West Virginia Code § 49-6-12. Further, this Court has also 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.’ Syllabus point 1, [in part], *In re R.J.M.*, 164 W. Va. 496, 266 S.E.2d 114 (1980).” Syl. Pt. 4, in part, *In re Kristin Y.*, 227 W.Va. 558, 712 S.E.2d 55 (2011). In this matter, petitioner was granted multiple improvement periods and extensions, but as addressed above, still failed to comply with the terms thereof. As such, the circuit court did not abuse its discretion in denying petitioner an additional post-disposition improvement period, and was within its discretion to proceed directly to termination of parental rights, based upon the best interest of the child. As such, the decision to terminate petitioner’s parental rights was appropriate.

This Court reminds the circuit court of its duty to establish permanency for the children. Rule 39(b) of the Rules of Procedure for Child Abuse and Neglect Proceedings requires:

At least once every three months until permanent placement is achieved as defined in Rule 6, the court shall conduct a permanent placement review conference, requiring the multidisciplinary treatment team to attend and report as to progress and development in the case, for the purpose of reviewing the progress in the permanent placement of the child.

Further, this Court reminds the circuit court of its duty pursuant to Rule 43 of the Rules of Procedure for Child Abuse and Neglect Proceedings to find permanent placement for the children within eighteen months of the date of the disposition order. As this Court has stated, “[t]he eighteen-month period provided in Rule 43 of the West Virginia Rules of Procedures for Child Abuse and Neglect Proceedings<sup>1</sup> 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.*, 228 W.Va. 89, 717 S.E.2d 873 (2011). Moreover, this Court has stated that “[i]n determining the appropriate permanent out-of-home placement of a child under W.Va. Code § 49-6-5(a)(6) [1996], the circuit court shall give priority to securing a suitable adoptive home for the child and shall consider other placement alternatives, including permanent foster care, only where the court finds that adoption would not provide custody, care, commitment, nurturing and discipline consistent with the child’s best interests or where a suitable adoptive home can not be found.” Syl. Pt. 3, *State v. Michael M.*, 202 W.Va. 350, 504 S.E.2d 177 (1998). Finally, “[t]he guardian ad litem’s role in abuse and neglect proceedings does not actually cease until such time as the child is placed in a permanent home.” Syl. Pt. 5, *James M. v. Maynard*, 185 W.Va. 648, 408 S.E.2d 400 (1991).

For the foregoing reasons, we find no error in the decision of the circuit court to deny petitioner an additional improvement period, and the termination of petitioner’s parental rights is hereby affirmed.

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<sup>1</sup>Rule 43 was amended effective January 3, 2012. The amended rule reducing the eighteen-month period for permanent placement to twelve months only applies to final dispositional orders entered after January 3, 2012.

Affirmed.

**ISSUED:** March 12, 2012

**CONCURRED IN BY:**

Chief Justice Menis E. Ketchum

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Thomas E. McHugh

**NOT PARTICIPATING:**

Justice Margaret L. Workman