

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

In Re: D.D.:

No. 11-1040 (Harrison County 10-JA-69)

FILED

January 18, 2012
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 D.D. The appeal was timely perfected by counsel, with petitioner's appendix 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.' 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 petition in this matter was filed alleging drug use by the mother. There have been prior reports to the DHHR of medical neglect, as the child suffered from liver cancer and underwent a liver transplant in 2009. Petitioner Mother missed several of the child's medical appointments at that time. In July 2010, Petitioner Mother and the child were in a car accident, and the driver of the vehicle they were riding in was intoxicated. The child was

injured and had to undergo several surgeries. Petitioner Mother tested positive for several drugs at the time. Petitioner Mother appeared for the first multidisciplinary team meeting, but then failed to contact her attorney or the DHHR. She has not seen the child since August 2010, and has failed to inquire as to his welfare. Petitioner Mother engaged in no services. Further, Petitioner Mother failed to appear at the adjudicatory hearing wherein she was adjudicated as a neglecting parent. The circuit court found that there is no reasonable likelihood that the conditions of abuse and neglect can be substantially corrected in the near future, and terminated Petitioner Mother's parental rights. The circuit court noted Petitioner Mother's failure to engage in any services, failure to contact the DHHR, failure to contact her attorney, and failure to visit the child.

On appeal, Petitioner Mother argues that termination was not required, and an alternate disposition should have been explored by the circuit court. Petitioner Mother concedes that there was no reasonable likelihood that the conditions of abuse and neglect can be substantially corrected in the near future, but argues that because the child is placed with his biological father, an alternate disposition was proper. This Court has stated that "when a parent cannot demonstrate that he/she will be able to correct the conditions of abuse and/or neglect with which he/she has been charged, an improvement period need not be awarded before the circuit court may terminate the offending parent's parental rights." *In re Emily*, 208 W.Va. 325, 336, 540 S.E.2d 542, 553 (2000). Moreover, termination is proper when "there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future, and when necessary for the welfare of the child" W.Va. Code § 49-6-5(a)(6). In the present case, Petitioner Mother concedes that she could not correct the conditions of abuse or neglect in the near future. She failed to engage in any services, failed to contact her attorney or the DHHR, and failed to even visit the child. This Court finds no error in the termination of her parental rights.

This Court reminds the circuit court of its duty to establish permanency for D.D. 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 Rules of Procedure for Child Abuse and Neglect Proceedings to find permanent placement for D.D.

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 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 of West Virginia 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 and the termination of parental rights is hereby affirmed.

Affirmed.

ISSUED: January 18, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Thomas E. McHugh