

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

In Re: R.F. III, E.T., and P.T.

No. 11-1727 (Harrison County 11-JA-36-1, 37-1, and 38-1)

FILED

May 29, 2012

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

MEMORANDUM DECISION

Petitioner Mother, by counsel, Julie N. Garvin, appeals the Harrison County Circuit Court's November 21, 2011, order terminating her parental rights to R.F. III, E.T., and P.T. The West Virginia Department of Health and Human Resources ("DHHR"), by Lee A. Niezgoda, its attorney, has filed its response. The guardian ad litem, April Conner, did not file a response on behalf of the children.

Having reviewed the appendix 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 appendix 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).

A petition for abuse and neglect was filed due to Petitioner Mother's severe drug use. Petitioner Mother had entered a detoxification program prior to the filing of the petition, but failed to complete the program. Further, there was reported domestic violence in the home, and the oldest child R.F., then ten years old, was responsible for the care of the other two children, then seven and five years old. Petitioner Mother admitted to drug use beginning at the age of thirteen, and inpatient

treatment was recommended after the filing of the petition. Petitioner Mother stipulated to the allegations in the petition and was adjudicated as abusing and neglecting. She moved for an improvement period. However, prior to moving for an improvement period, petitioner was suspected of cheating on drug screens and often appeared under the influence of drugs during services. Petitioner Mother refused detoxification at least three times before finally completing a seven-day detoxification program. Further, she failed to attend multi-disciplinary team meetings and stopped visiting her children. At the status hearing held immediately following Petitioner Mother's request for an improvement period, she failed to appear, but during the hearing texted her attorney to indicate that she had attempted suicide. The hearing was immediately recessed.

At the dispositional hearing, a DHHR employee testified concerning Petitioner Mother's failure to engage in services and her failure to complete drug treatment. Petitioner Mother admitted to a relapse after her seven-day detoxification, and admits that she failed to complete inpatient rehabilitation, as she was removed from the program after approximately a week. She has not completed any other rehabilitation and testified that she is not currently drug free. The circuit court terminated her parental rights, finding that she "failed to seriously address her addiction issues."

On appeal, Petitioner Mother argues that the permanency plan required the children to remain with their aunt or their biological father and, thus, termination was not necessary at the time of disposition. Petitioner Mother argues that she should have been granted an improvement period to address her drug addiction or some other alternative disposition. Petitioner argues that her children were sufficiently protected even absent termination of her parental rights, and that she should have been given additional time to improve.

The DHHR responds in favor of termination and arguing petitioner's failure in her burden of proving that she would comply in an improvement period. The DHHR argues that although petitioner was not granted a formal improvement period, she had the benefit of numerous services but failed to comply with even the most basic term, which was to remain drug-free. Further, DHHR argues that termination was proper because reunification was not in the children's best interests due to petitioner's continued drug abuse. The DHHR argues that the law is not designed to preserve petitioner's opportunity to improve "someday" over the best interests of the children. The DHHR also notes that two of the children are currently in foster care, after removal from a family placement, and thus permanency is important for these children.

"We have held that the granting of an improvement period is within the circuit court's discretion." *In re: Tonjia M.*, 212 W.Va. 443, 448, 573 S.E.2d 354, 359 (2002). In the present case, even though petitioner was not granted a formal improvement period, many services were offered to her, including drug rehabilitation, parenting classes, an alcohol and drug assessment, drug screenings, and visitation. Petitioner repeatedly failed to take advantage of these services. At disposition, she admitted that she was still using drugs. Thus, this Court finds that the circuit court

did not abuse its discretion in failing to grant Petitioner Mother an improvement period, as there is no evidence that petitioner would fully participate.

With regard to the termination of Petitioner Mother's parental rights, this Court has held as follows:

“[a]s a general rule the least restrictive alternative regarding parental rights to custody of a child under W.Va. Code [§] 49–6–5 (1977) will be employed; however, 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 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). Pursuant to West Virginia Code § 49-6-5(b)(1), a parent who habitually uses drugs “to the extent that proper parenting skills have been seriously impaired,” and who has failed to follow through with the recommended treatment, has no reasonable likelihood to substantially correct the conditions of neglect or abuse. Here, Petitioner Mother failed to complete inpatient rehabilitation, and, likewise, did not complete outpatient or any other drug rehabilitation program. She admitted that she continued to use drugs, including on the date of the dispositional hearing. This Court places no weight on the argument that the children were adequately protected without termination of parental rights, as two of the children are in foster care and in need of permanency. Thus, this Court finds no error in the termination of parental rights in this matter.

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.¹ 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

¹ 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.

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 and the termination of parental rights is hereby affirmed.

Affirmed.

ISSUED: May 29, 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