

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

FILED

In Re: M.S.:

March 14, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

No. 11-0033
(Mingo Co. 10-JA-9)

MEMORANDUM DECISION

This appeal arises from the Circuit Court of Mingo County, wherein the Petitioner Mother's parental rights to her child, M.S., were terminated. The appeal was timely perfected by counsel, with the complete record from the circuit court accompanying the Petition. The Department of Health and Human Resources has filed its response. The guardian ad litem has filed her response on behalf of the child, M.S. The Court has carefully reviewed the record provided and the written arguments of the parties, and the case is mature for consideration.

Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this matter is appropriate for consideration under the Revised Rules. 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.

The Petitioner Mother challenges the circuit court's order terminating her parental rights. She argues that the circuit court erred in denying a dispositional improvement period, in denying post-termination visitation, and in terminating her parental rights. Aggravated circumstances as to the Petitioner Mother exist, as she previously had her parental rights to another child terminated. When an abuse and neglect petition is brought based solely upon a previous involuntary termination of parental rights to a sibling pursuant to West Virginia Code § 49-6-5b(a)(3) (1998), prior to the lower court's making any disposition regarding the petition, it must allow the development of evidence surrounding the prior involuntary termination(s) and what actions, if any, the parent(s) have taken to remedy the circumstances which led to the prior termination(s). Syl. Pt. 4, *In Re George Glen B.*, 205 W.Va. 435, 518 S.E.2d 863 (1999). Although the requirement that such a petition be filed does not mandate termination in all circumstances, the legislature has reduced the minimum threshold of

evidence necessary for termination where one of the factors outlined in West Virginia Code § 49-6-5b(a) (1998) is present. Syl. Pt. 2, *In Re George Glen B.*, 205 W.Va. 435, 518 S.E.2d 863 (1999).

The circuit court found that Petitioner Mother missed numerous parenting sessions with her in-home service provider, and could not complete a home study because she did not have her own residence. Further, for the duration of the proceeding and against all direction, Petitioner Mother resided with a woman who has a prior history with Child Protective Services. The circuit court found that the Petitioner Mother was unable or unwilling to correct the conditions of abuse and/or neglect that necessitated the infant's removal, and further that there was no reasonable likelihood that she could or would correct those conditions in the near future. The Court finds that this decision was within the circuit court's discretion and concludes that there was no error in relation to the termination of parental rights or the denial of a dispositional improvement period and post-termination visitation.

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: March 14, 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