

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

In Re: J.J. and J.P.

No. 11-0057 (Webster No. 09-JA-14 and 15)

FILED

July 6, 2011

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

MEMORANDUM DECISION

Petitioner Mother appeals the termination of her parental rights to J.J. and J.P. The appeal was timely perfected by counsel, with the 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 his response on behalf of the children. The Court has carefully reviewed the record provided and the written arguments of the parties, and the case is mature for consideration.

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." 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 a domestic violence altercation whereby Petitioner Mother was arrested for assaulting J.P.'s father. The petition alleged that Petitioner Mother and her live-in boyfriend had only recently been released from prison in Texas after serving time on drug charges, and that Petitioner Mother had four prior

terminations of parental rights in the state of Ohio. Petitioner Mother was ordered to stay away from J.P.'s father by the circuit court, but violated that order, and another domestic violence altercation occurred. Petitioner Mother was granted an improvement period in this matter. At the dispositional hearing, Petitioner Mother's caseworker testified that she missed visits, and failed to get suitable housing as she was living with her sister, who has had her own parental rights terminated to five other children. She was advised that this was improper housing but failed to secure other housing. The visitation supervisor testified that visits went well but the children are not overly attached to their mother. Another service provider stated that Petitioner Mother had not tried hard to find housing since the last hearing, although this provider had driven her all over the county more than once trying to find an apartment. Petitioner Mother testified that her sister who had prior terminations had moved out of the home two weeks before the hearing. Petitioner Mother also testified that she was not pregnant at the dispositional hearing, but gave birth to a full term baby approximately three weeks later.

On appeal, Petitioner Mother argues that she complied with all of the terms of her improvement period, and therefore the circuit court erred in terminating her parental rights. The guardian ad litem supports Petitioner Mother's argument, stating that she did comply with the terms of the improvement period. The DHHR argues that she failed to comply with the terms of the improvement period, and that she has two prior relinquishments of parental rights, and two prior terminations of parental rights. Regarding the termination of Petitioner Mother's parental rights, this Court has found that "[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..." Syl. Pt. 1, *In Re: R. J. M.* 164 W.Va. 496, 266 S.E.2d 114 (1980). The circuit court found that there are no reasonable grounds to believe that the conditions of abuse and neglect can be corrected within the foreseeable future. Further, Petitioner Mother has failed to engage in a meaningful way with counseling or rehabilitation, has failed to establish a suitable home, and has failed to take reasonable steps to protect her children from being exposed to further abuse. This Court finds no error in the circuit court's order.

For the foregoing reasons, we find no error in the decision of the circuit court to terminate petitioner's parental rights, and the circuit court's order is hereby affirmed.

Affirmed.

ISSUED: July 6, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman

Justice Robin Jean Davis

Justice Thomas E. McHugh

DISSENTING:

Justice Brent D. Benjamin

Justice Menis E. Ketchum