

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

**In Re: S.C.**

**No. 11-0058**  
(Marion County No. 09-JA-57)

**FILED**

**May 16, 2011**  
RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

**MEMORANDUM DECISION**

This appeal arises from the Circuit Court of Marion County, wherein the Petitioner Mother's parental rights to S.C. were terminated. The appeal was timely perfected by counsel, with the complete record from the circuit court 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, S.C. 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 adjudication of S.C. as abused and neglected and the resulting termination of her parental rights, arguing that the evidence was insufficient to support the decision. Petitioner further argues that the circuit court erred in failing to order the DHHR to provide her with remedial services. In the adjudicatory order, the circuit court found that the minor child suffered bruising on her body from being held down by her step-brother and that she had used sticks to protect herself from his attacks. Petitioner admitted that she caught the step-brother with his hand on S.C.'s crotch and that she threw him out of the home, though she did not report the incident to the police and later let him move back into the home. Further, S.C. disclosed that she had told the petitioner about the sexual abuse on at least three occasions, and S.C.'s step-father admitted that he put locks on S.C.'s bedroom door to keep out her step-brother. "Termination of parental rights of a parent of an abused child is authorized under *W.Va.Code*, 49-6-1 to 49-6-10, as amended, where such parent contends nonparticipation in the acts giving rise to the

termination petition but there is clear and convincing evidence that such nonparticipating parent knowingly took no action to prevent or stop such acts to protect the child.” Syl. Pt. 2, *Matter of Scottie D.*, 185 W.Va. 191, 406 S.E.2d 214 (1991). Further, “[t]he term ‘knowingly’ as used in West Virginia Code § 49-1-3(a)(1) (1995) does not require that a parent actually be present at the time the abuse occurs, but rather that the parent was presented with sufficient facts from which he/she could have and should have recognized that abuse has occurred.” Syl. Pt. 7, *W.Va. Dept. Of Health & Human v. Doris S.*, 197 W.Va. 489, 475 S.E.2d 865 (1996). Based upon the totality of the evidence, the circuit court found by clear and convincing evidence that Petitioner Mother was presented with sufficient facts from which she should have recognized that abuse occurred. In the order terminating parental rights, the circuit court concluded that the Petitioner Mother failed to accept responsibility for the conditions that led to the filing of the initial petition. The circuit court has the discretion to refuse to grant an improvement period, and the services associated therewith, when no improvement is likely. See *West Virginia Department of Health and Human Resources ex rel. Wright v. Doris S.*, 197 W.Va. 489, 475 S.E.2d. 865 (1996). In further support of the circuit court’s decision, petitioner was the subject of a prior abuse and neglect proceeding that involved sexual abuse against the same minor child by her biological father. Petitioner received extensive services in relation to that matter, including services that stressed how to protect her children from sexual and physical abuse. In the present case, the circuit court found that because of petitioner’s refusal to accept responsibility and the fact that she failed to benefit from the prior services, petitioner was not entitled to additional services in this matter. Both the DHHR and the guardian ad litem indicate in their responses that adjudication, denial of improvement services, and termination were proper given the evidence and were in the best interests of the child.

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 16, 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