

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

**FILED**

June 17, 2011

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

**In Re: K.M., A.M., and D.M.:**

**No. 11-0121** (Mercer County Nos. 09-JA-136, 137 and 138-WS)

**MEMORANDUM DECISION**

This appeal arises from the Circuit Court of Mercer County, wherein the Petitioner Mother's parental rights to K.M., A.M., and D.M. were terminated. 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). Petitioner Mother challenges the circuit court's order terminating her parental rights, arguing that the circuit court erred in denying her a dispositional improvement period. While petitioner admits that she has a history of chronic substance abuse and dependency on a number of controlled substances, she argues that she was prepared to make reunification a goal and should have been granted a dispositional improvement period while awaiting re-admittance to inpatient

substance abuse therapy. However, in ordering termination, the circuit court found that petitioner had been non-compliant with the services offered during her post-adjudicatory improvement period, and that she further refused to address or appropriately respond to the reunification plan. Specifically, petitioner twice left her inpatient therapy against medical advice, and was administratively discharged the third time for smuggling drugs into the facility and using them during her treatment. The circuit court determined that petitioner's serious substance abuse problems resulted in the neglect of the infant children, who had been in foster care for over one year. Ultimately, the circuit court found that the children's best interests required termination so that they could have permanency and stability in their lives.

This Court has held that, “[a]t the conclusion of the improvement period, the court shall review the performance of the parents in attempting to attain the goals of the improvement period and shall, in the court's discretion, determine whether the conditions of the improvement period have been satisfied and whether sufficient improvement has been made in the context of all the circumstances of the case to justify the return of the child[ren].” Syl. Pt. 6, *In the Interest of Carlita B.*, 185 W. Va. 613, 408 S.E.2d 365 (1991). In this matter, testimony showed that petitioner failed to attain any goals of the improvement period, and specifically that she continued her substance abuse throughout the pendency of the action below, often disappearing for months at a time, which resulted in lack of communication with providers and non-compliance with the services provided. As such, the circuit court found that petitioner was not entitled to a dispositional improvement period, as there was no reasonable likelihood that the conditions leading to the petition's filing could be substantially corrected in the near future, and further that termination of petitioner's parental rights was in the best interest of the children.

For the foregoing reasons, we find no error in the decision of the circuit court to deny petitioner a dispositional improvement period, or the decision to terminate petitioner's parental rights to K.M., A.M., and D.M., and the circuit court's order is hereby affirmed.

Affirmed.

**ISSUED:** June 17, 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