

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

FILED

April 18, 2011

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

In Re: G.A., R.A. and M.S. :

No. 11-0128

(Roane County 10-JA-1-3)

MEMORANDUM DECISION

Petitioner Mother appeals the termination of her parental rights to G.A., R.A. and M.S. The appeal was timely perfected by counsel, with the complete record from the circuit court accompanying the petition. The guardian ad litem has filed her response on behalf of the children, G.A., R.A., and M.S. The Department of Health and Human Resources (“DHHR”) has filed its response. 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.

Prior to the current proceeding, Petitioner Mother was involved with DHHR for several years. The circuit court noted that Petitioner Mother was given extensive services, and would show improvement, but then conditions would quickly deteriorate back to the original state or worse. The petition in this case was filed alleging failure to provide proper shelter not due to a lack of financial means, failure to provide necessary medical care, failure to provide necessary education, and failure to provide proper hygiene.

Petitioner Mother argues that the circuit court erred in denying her motion for a post-adjudicatory improvement period after she stipulated to the abuse and neglect in the petition. In order to receive an improvement period, the parent must demonstrate, by clear and convincing evidence, that he or she is likely to fully participate in the improvement period. *See* W.Va. Code 49-6-12. Judge Nibert denied Petitioner’s motion for an improvement period, because he found that there are no additional services that can be provided that have

not already been provided to Petitioner Mother previously. The circuit court concluded that there is no reasonable likelihood that the conditions of abuse and neglect can be substantially corrected in the near future, and a post-adjudicatory improvement period would only continue the circumstances which have led to the abuse and neglect petition. The guardian ad litem and DHHR both responded in favor of termination, noting that Petitioner Mother had failed to show sustained improvement from the many years of services she had received, and failed to show that she would comply in an improvement period should an improvement period be granted.

Based upon careful consideration of the record and arguments of counsel, we find no error in the decision of the circuit court and the termination of parental rights is hereby affirmed.

Affirmed.

ISSUED: April 18, 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