

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

In Re: M.C.

No. 11-0141
(Cabell County No.09-JA-13)

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 Cabell County, wherein the Petitioner Mother's parental rights to M.C. were terminated. The appeal was timely perfected by counsel, with a portion of the record from the circuit court accompanying the petition. The guardian ad litem has filed his response on behalf of the child, M.C.. The Court has carefully reviewed the record provided and the written arguments of the parties, and the case is mature for consideration.

This matter has been treated and considered under the Revised Rules of Appellate Procedure pursuant to this Court's Order entered in this appeal on January 21, 2011. 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 to her child, arguing that the West Virginia Department of Health and Human Resources ("DHHR") failed to make reasonable efforts to assist her to achieve reunification with her child. She also argues that the circuit court erred in finding that the conditions that led to the filing of the abuse and neglect petition could not be substantially corrected in the near future. "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 Interest of Tiffany Marie S.*, 196 W.Va. 223, 470 S.E.2d 177 (1996). In the present case, petitioner’s various improvement periods lasted over eleven months. During that time the DHHR attempted to assist petitioner in her efforts to complete the terms of the applicable case plan, but she was uncooperative. Petitioner was offered extensive services, including parenting classes, therapy, assistance with financial stability, assistance in obtaining suitable housing, and assistance in obtaining a GED. Despite these services, petitioner did not comply with the terms of her improvement period. She failed to consistently attend visitations and to obtain suitable housing. The circuit court deemed termination of petitioner’s parental rights as the only option, citing petitioner’s non-compliance as the basis. This Court has held that “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. 7, in part, *In the Interest of Carlita B.*, 185 W.Va. 613, 408 S.E.2d 365 (1991) (quoting Syl. Pt. 1, in part, *In Re: R.J.M.*, 164 W.Va. 496, 266 S.E.2d 114 (1980)). As such, the Court concludes that there was no error in relation to the circuit court’s termination of either the petitioner’s improvement period or her parental rights.

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 Thomas E. McHugh

DISSENTING:

Justice Menis E. Ketchum