STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In Re: S.K., J.K. and C.K.:

No. 11-0161
(Mineral County 10-JA-21, 22, 23)

FILED
June 17, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Father appeals the termination of his parental rights to S.K., J.K. and C.K. The appeal was timely perfected by counsel. 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 children, S.K., J.K. and C.K. 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.

> 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 in August 2010, alleging that Petitioner Father sexually abused two year old S.K. S.K. was brought to the hospital by Petitioner Father with vaginal bleeding, after he was the only adult in contact with her for the prior 48 hours. Doctors testified that the injuries were consistent with sexual abuse, although they could not definitively state that S.K. was sexually abused. S.K.'s sister J.K told a DHHR worker that she witnessed her father hurting S.K.'s "pee-pee." No improvement period was granted based upon the aggravated circumstances. The circuit court found by clear and convincing evidence that Petitioner Father sexually abused S.K. Thus, Petitioner Father's parental rights were terminated.

Petitioner Father argues on appeal that there was no clear and convincing evidence to establish that he sexually abused S.K. However, a review of the record indicates that medical professionals testified that S.K.'s injuries were consistent with sexual abuse, S.K's sister had disclosed abuse to a DHHR employee, and Petitioner Father admitted that he was the only adult in contact with S.K. in the forty-eight hours prior to her injury. DHHR and the guardian ad litem each assert that the termination of Petitioner Father's parental rights was proper. This Court has held that "[t]ermination of parental rights, the most drastic remedy under the statutory provision covering the disposition of neglected children... may be employed without the use of intervening less restrictive alternatives when it is found that there is no reasonable likelihood... that conditions of neglect or abuse can be substantially corrected." Syl. Pt. 2, *In Re: R.J.M.*, 164 W.Va. 496, 266 S.E.2d 114 (1980). Based upon the record provided, this Court finds that the circuit court did not err in finding by clear and convincing evidence that Petitioner Father sexually abused S.K., and in terminating Petitioner Father's 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: 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