

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

In Re: L.Y., B.F., N.Y., and V.F.:

No. 11-0162 (Kanawha County 09-JA-17 - 19 & 173)

FILED

June 27, 2011

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

MEMORANDUM DECISION

This appeal arises from the Circuit Court of Kanawha County, wherein the Petitioner Father's parental rights to B.F. and V.F. were terminated.¹ 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 her 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). The petitioner challenges the circuit court's order terminating his parental rights, arguing that the circuit

¹Petitioner is the stepfather to the remaining children.

court erred in denying him an improvement period and post-termination visitation.² Petitioner asserts that he should have been granted an improvement period, as he assured the circuit court that he would be fully compliant with the terms thereof. The circuit court has the discretion to refuse to grant an improvement period when no improvement is likely. In addressing a similar situation, this Court stated that “...in order to remedy the abuse and/or neglect problem, the problem must first be acknowledged. Failure to acknowledge the existence of the problem, i.e., the truth of the basic allegation pertaining to the alleged abuse and neglect or the perpetrator of said abuse and neglect, results in making the problem untreatable and in making an improvement period an exercise in futility at the child's expense.” *West Virginia Department of Health and Human Resources ex rel. Wright v. Doris S.*, 197 W.Va. 489, 498, 475 S.E.2d. 865, 874 (1996).

In this matter, the circuit court noted that petitioner “vacillated in the telling of the facts which led to the filing of [the abuse and neglect] Petition.” In ordering termination, the circuit court based its decision on petitioner’s failure to admit any wrongdoing, having accused the subject child of lying and suggesting that the child’s injuries were sustained in a fall. The circuit court also relied upon petitioner’s non-compliance with DHHR services, noting that he failed to attend domestic violence counseling for two months prior to disposition. Lastly, the circuit court relied upon petitioner’s failure to follow through with the reasonable family case plan or other rehabilitative services. As such, the circuit court found it in the children’s best interest to terminate the petitioner’s parental rights without an improvement period. The Court finds that this decision was within the circuit court’s discretion and concludes that there was no error in relation to the termination of parental rights.

As to denial of post-termination visitation, this Court has held that “[w]hen parental rights are terminated due to neglect or abuse, the circuit court may nevertheless in appropriate cases consider whether continued visitation or other contact with the abusing parent is in the best interest of the child. Among other things, the circuit court should consider whether a close emotional bond has been established between parent and child and the child’s wishes, if he or she is of appropriate maturity to make such request. The evidence must indicate that such visitation or continued contact would not be detrimental to the child's well being and would be in the child's best interest.” Syl. Pt. 5, *In re Christina L.*, 194 W.Va. 446, 460 S.E.2d 692 (1995). In this matter, both the DHHR and the guardian ad litem opposed petitioner’s motion for post-termination visitation. Further, the evidence shows that continued contact with the petitioner would not be in the children’s best interest due to the

² The order from which petitioner appeals is silent as to post-termination visitation. However, review of the petitioner’s appendix shows that the circuit court set a hearing for petitioner’s motion for post-termination visitation on October 27, 2010, though no order from that hearing, or in regard to petitioner’s motion, was included in the appendix.

circumstances of the abuse, their bond with their potential adoptive family, and the tender age of two of the infants.

For the foregoing reasons, we find no error in the decision of the circuit court to terminate petitioner's parental rights without an improvement period or to deny post-termination visitation, and the circuit court's order is hereby affirmed.

Affirmed.

ISSUED: June 27, 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