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: S.M., M.M., and J.M.:

No. 11-0221 (Harrison County Nos. 09-JA-82-2, 83-2 and 84-2)

MEMORANDUM DECISION

This appeal arises from the Circuit Court of Harrison County, wherein the Petitioner Fathers's parental rights to M.M. and J.M. 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 because such termination was not in the children's best interest. Petitioner does not contest that he failed to comply

[1]Petitioner is not the biological father of S.M.

with the terms of his improvement period, but instead challenges the circuit court's reliance on the fact that his continued custody of the children at issue potentially posed a problem for the Respondent Mother. In ordering termination, the circuit court did state that "[petitioner] is very hostile and a danger to the respondent mother." Petitioner argues that, instead of looking to the best interest of the children in ordering termination of his parental rights, the circuit court instead based termination on the Respondent Mother's best interests. However, the circuit court went on to conclude that "[petitioner] has not put forth the effort necessary to be reunified with his children," and further found that petitioner was non-compliant with the terms of his improvement period and the services offered to him.

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 he refused to submit to multiple drug screens, failed to attend or timely appear for multidisciplinary team ("MDT") meetings and court hearings, was verbally combative and aggressive toward MDT members, and continually harassed and threatened Respondent Mother. As such, the circuit court found that termination of petitioner's parental rights was in the best interest of the children, who were returned to Respondent Mother's custody during her completion of a dispositional improvement period.

For the foregoing reasons, we find no error in the decision of the circuit court to terminate petitioner's parental rights to M.M. and J.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