

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

**In Re: A.M., E.M. and M.K.:**

**No. 11-0230** (Monongalia County 09-JA-26, 27 and 36)

**FILED**

June 27, 2011

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

**MEMORANDUM DECISION**

Petitioner Grandfather appeals the circuit court's denial of his motion to intervene in the abuse and neglect proceedings concerning his grandchildren A.M., E.M. and M.K. 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") and the guardian ad litem filed a joint 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.

"In reviewing challenges to the findings and conclusions of the circuit court, we apply a two-prong deferential standard of review. We review the final order and the ultimate disposition under an abuse of discretion standard, and we review the circuit court's underlying factual findings under a clearly erroneous standard. Questions of law are subject to a *de novo* review." Syl. Pt. 2, *Walker v. West Virginia Ethics Commission*, 201 W.Va. 108, 492 S.E.2d 167 (1997).

Petitioner Grandfather moved to intervene approximately two months after mother's parental rights were terminated. A hearing was held on said motion, after which the circuit court denied the motion to intervene. The circuit court found that intervention would interfere with permanency at this point. Further, the circuit court notes that Petitioner Grandfather did not attempt to take custody when the children were removed, although he was aware of the removal, and only visited the children once post-removal. He also failed to cooperate with his home study and was found not to be a suitable placement.

On appeal, Petitioner Grandfather argues that the DHHR failed in its statutory duty to do a home study and interviews of him as a potential placement. The guardian ad litem

and the DHHR argue that Petitioner Grandfather failed to cooperate with DHHR, thus precluding the completion of a home study by not giving a proper address for the home he intended to use to house the children, and that Petitioner Grandfather was not a proper placement. West Virginia Code §49-3-1(a)(3) states that “[o]nce any such grandparents who are interested in adopting the child have been identified, the department shall conduct a home study evaluation, including home visits and individual interviews by a licensed social worker. If the department determines, based on the home study evaluation, that the grandparents would be suitable adoptive parents, it shall assure that the grandparents are offered the placement of the child prior to the consideration of any other prospective adoptive parents.” In the present case, the record reflects that Petitioner Grandfather did not attempt to intervene until at least eight months after the children were removed. Further, the circuit court found that Petitioner Grandfather was uncooperative with DHHR by not providing a location where he planned to live with the children. Moreover, Petitioner Grandfather was not a proper placement, as he only had contact with the children one time after their removal, he expressed disbelief as to the children’s abuse, and he continued to associate with mother, whose parental rights were terminated. This Court finds that the circuit court did not abuse its discretion in denying the motion to intervene.

For the foregoing reasons, we find no error in the decision of the circuit court to deny the petitioner’s motion to intervene, 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