

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

In Re: D.W., R.W. and N.W.

No. 11-0327
(Barbour County 09-JA-7, 14 &15)

FILED

May 16, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Stepfather appeals the termination of his custodial rights to D.W., R.W. and N.W. The appeal was timely perfected by counsel, with the complete record from the circuit court accompanying the petition. The guardian ad litem has filed her response on behalf of the children, D.W., R.W. and N.W. 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. 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 February 28, 2011. 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 re Tiffany Marie S.*, 196 W.Va. 223, 470 S.E.2d 177 (1996).

This petition was initiated for the purpose of placing D.W. under DHHR care for inpatient mental health treatment. Upon further investigation, it became apparent that there were significant abuse and neglect issues in the family, and thus an Amended Petition was filed, eventually including all three children, as well as the biological mother and father, the stepmother and Petitioner Stepfather as respondents. The biological parents stipulated to the abuse and neglect, and began a post-adjudicatory improvement period. Petitioner Stepfather refused to stipulate to the allegations against him, which included physical abuse, emotional abuse, a prior criminal record, domestic violence against the mother, and possible sexual abuse allegations. His proposed stipulation included only that he had witnessed Respondent Mother punishing the children in an inappropriate manner, but under questioning by the circuit court, he stated that he did not believe that the punishments were inappropriate and indicated that he believed in corporal punishment. The circuit court refused to accept the proposed stipulation. The circuit court denied Petitioner Stepfather's motion for an improvement period and ultimately terminated his custodial rights to his stepchildren.

Petitioner Stepfather appeals the termination of his custodial rights, arguing that the circuit court erred in not accepting his proposed stipulation and granting him an improvement period. In order to receive an improvement period, the parent must demonstrate, by clear and convincing evidence, that he or she is likely to fully participate in the improvement period. *See* W.Va. Code §49-6-12. Also, this Court has previously stated that “[f]ailure 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 v. Doris S.*, 197 W.Va. 489, 498, 475 S.E.2d 865, 874 (1996). The circuit court denied Petitioner Stepfather's request for an improvement period, as Petitioner Stepfather denies he has done anything wrong, and thus there is no likelihood that he will improve the conditions leading to the abuse and neglect petition. The circuit court concluded that no services can be offered because Petitioner Stepfather denies there are any problems. In terminating Petitioner Stepfather's custodial rights, the circuit court found that Petitioner Stepfather has made no admissions of any wrongdoing and therefore the conditions of abuse and neglect cannot be substantially corrected. The guardian ad litem argues in favor of the circuit court's denial of an improvement period, and supports termination in this matter.

Based upon careful consideration of the record and arguments of counsel, we find no error in the decision of the circuit court and the termination of custodial 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 Menis E. Ketchum
Justice Thomas E. McHugh