STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In Re: D.G. and M.G.:

No. 11-0328
(Braxton County 10-JA-24, 25)

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 D.G. and his custodial rights to M.G. 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 his response on behalf of the children, D.G. and M.G. The Court has carefully reviewed the complete record 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 after D.G. was born addicted to drugs. The

petition also alleged that Petitioner Father was arrested for hitting D.G.'s mother in the face with a crowbar while she was pregnant. Despite a no contact order, Petitioner Father lives with D.G.'s mother, and both are alleged to be addicted to drugs. Throughout the case, Petitioner Father has tested positive for drugs three times, has refused all other services, and has had no visitation with D.G. since D.G.'s birth. Citing the lack of participation in any services, the circuit court terminated Petitioner Father's parental rights to D.G., and his custodial rights to mother's older child. No improvement period was ever granted. DHHR and the guardian ad litem each concur in the termination of Petitioner Father's parental and custodial rights.

On appeal, Petitioner Father argues that his failure to comply with services was a result of his employment, and that the circuit court erred in not granting him an improvement period. 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). As to Petitioner Father's failure to comply with services, the record shows that there was a period of time that Petitioner Father was not employed during the pendency of this case, and did not engage in any services or visitation during this period. Further, a DHHR caseworker testified that Petitioner Father never contacted her to ask for an alternate schedule due to his employment. This Court finds no error in the circuit court's termination of parental and custodial rights.

Pursuant to West Virginia Code §49-6-12(b), before a circuit court can grant a post-adjudicatory improvement period, the court must first find that the parent is likely to fully participate in the improvement period. In this matter, the evidence is clear that Petitioner Father did not comply with services, and therefore the circuit court did not err in failing to grant an improvement period.

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