

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

In Re: C.W.:

**No. 11-0135
(Monongalia County 09-JA-21)**

FILED

May 16, 2011

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

MEMORANDUM DECISION

Petitioner Mother appeals the termination of her parental rights to C.W. The appeal was timely perfected by counsel, with the complete record from the circuit court accompanying the petition. 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 child, C.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. 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 abuse and neglect petition in this case was filed because Petitioner Mother had

two prior terminations of her parental rights, one in 2001 and one in 2006. These terminations were due to Petitioner Mother's mental deficiencies. Throughout her life, Petitioner Mother has been a protected person, and at the time C.W. was born, DHHR Adult Protective Services was her guardian, as she was found to need constant supervision in her daily living. Petitioner Mother has been evaluated many times, and has been found to be mentally retarded, with an IQ in the sixties. The petition did not allege abuse or neglect of C.W., as he was removed immediately upon his birth. One month prior to C.W.'s birth, Petitioner Mother married a man who was not the biological father of C.W., but who sought to raise him, and fully participated throughout the litigation in this case. After the petition was filed, the circuit court ordered that Petitioner Mother and her husband be thoroughly evaluated to determine their ability to care for C.W., who has extensive special needs. DHHR complied, offering visitation, parenting and adult life skills services, but throughout the case, Petitioner Mother and her husband were found to be lacking in the skills necessary to raise a child, particularly a special needs child like C.W. The circuit court eventually found that although Petitioner Mother and her husband loved the child and fully complied in services, the circumstances surrounding Petitioner Mother's two prior terminations, her mental deficiencies, had not substantially changed. Further, the circuit court noted that testimony of the child's physician showed that the child would be at great risk if under the care of a mentally deficient parent, due to the child's special medical and physical needs.

On appeal, Petitioner Mother argues that her circumstances have changed since the two prior terminations, as she is now married to a supportive, loving spouse. She also argues that termination was not in the child's best interests because Petitioner Mother's husband will act as the child's father.

Where allegations of neglect are made against parents based on intellectual incapacity of such parent(s) and their consequent inability to adequately care for their children, termination of rights should occur only after the social services system makes a thorough effort to determine whether the parent(s) can adequately care for the children with intensive long-term assistance. In such case, however, the determination of whether the parents can function with such assistance should be made as soon as possible in order to maximize the child(ren)'s chances for a permanent placement.

Syl. Pt. 4, *In re Billy Joe M.*, 206 W.Va. 1, 521 S.E.2d 173 (1999). Moreover, "[w]hen an abuse and neglect petition is brought based solely upon a previous involuntary termination of parental rights to a sibling pursuant to West Virginia Code § 49-6-5b(a)(3) (1998), prior to the lower court's making any disposition regarding the petition, it must allow the development of evidence surrounding the prior involuntary termination(s) and what actions, if any, the parent(s) have taken to remedy the circumstances which led to the prior termination(s)." Syl. Pt. 4, *In Re George Glen B.*, 205 W.Va. 435, 518 S.E.2d 863 (1999). Although the requirement that such a petition be filed does not mandate termination in all circumstances, the legislature has reduced the minimum threshold of evidence necessary for

termination where one of the factors outlined in West Virginia Code § 49-6-5b(a) (1998) is present. Syl. Pt. 2, in part, *In Re George Glen B.*, 205 W.Va. 435, 518 S.E.2d 863 (1999).

In the present case, the circuit court properly allowed extensive services of a duration of more than one year, in an effort to determine if Petitioner Mother could acquire the skills necessary to care for C.W. The circuit court found that despite the efforts of DHHR and Petitioner Mother, Petitioner Mother could not care for C.W., and has not substantially corrected the condition, in this case her mental deficiency, which led to the prior terminations. The guardian ad litem and DHHR concur in the termination of parental rights in the best interest of the child.

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: 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