

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

**In Re: D.S.:**

**No. 11-0365** (Nicholas County 10-JA-40)

**FILED**

June 27, 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 D.S. 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 his response on behalf of the child. 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).

This petition was filed in June 2010 after Petitioner Mother ceased participation in services through the DHHR. She failed several drug screens before she stopped appearing for said screens. She also was living in a motel that was deemed inappropriate housing for her child, failed to contact DHHR and had services canceled for nonparticipation. Petitioner Mother was granted an improvement period after she was adjudicated as neglectful, and the conditions of the improvement period were that she remain drug and alcohol free, submit to

screenings, obtain a safe home, attend supervised visitation and attend inpatient drug rehabilitation. Less than three months later, her improvement period was revoked based on her failure to remain drug and alcohol free and her failure to establish a suitable home. The circuit court noted that the DHHR provided drug treatment to Petitioner Mother, but that after leaving Amity Detox and Treatment Center, Petitioner Mother failed to cooperate, did not remain drug and alcohol free, had no home or transportation, missed an MDT meeting and failed to pay fines in order to have her drivers' license reinstated. Petitioner Mother was found to be unable or unwilling to provide adequately for the child. Therefore, the circuit court found that there is no reasonable likelihood that the conditions of neglect and abuse could be substantially corrected in the near future.

On appeal, Petitioner Mother argues that the circuit court erred in finding that there was "no reasonable likelihood that the conditions of neglect and abuse can be substantially corrected in the near future..." West Virginia Code §49-6-5(b)(1) states that there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected when a parent habitually abuses drugs to the extent that their parenting skills have been seriously impaired. Moreover, this Court has found that termination is proper when there is evidence that a parent is addicted to controlled substances and that the parent failed to follow through with a Family Case Plan or rehabilitative efforts. *In re Aaron Thomas M.*, 212 W.Va. 604, 575 S.E.2d 214 (2002). It is apparent in this case that Petitioner Mother suffers from addiction to drugs and/or alcohol and that this addiction has impaired her ability to parent her child. She failed to engage in services and has not remained drug and alcohol free, despite the DHHR's efforts at placing her in rehabilitation. Both the DHHR and the guardian ad litem argue in favor of the termination of Petitioner Mother's parental rights. This Court finds no error in the circuit court's order.

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