

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

In Re: H.F. and B.F.:

No. 11-0376 (Mingo County10-JA-16 and 50)

FILED

June 27, 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 H.F. and B.F. 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 her response on behalf of the children. 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 DHHR first became involved with this family in 2008, due to substance abuse of mother and failure to protect the children by Petitioner Father. Further, there is a history of reciprocal protective orders between the parents. During the DHHR's investigation, Petitioner Father was arrested for battery against a third party and served three months in jail. Both Petitioner Father and mother were arrested during the investigation at different times.

A petition was filed in July 2010. Both parents went into inpatient drug treatment, and were later adjudicated as neglectful. After disposition, Petitioner Father was given a post-dispositional improvement period, as the court found that he had shown some improvement. However, Petitioner Father's parental rights were terminated in January 2011 after he and mother had positive drug tests, and he was arrested. The circuit court found that there is no reasonable likelihood that the circumstances of the parents will permanently improve, as the court has repeatedly given the parents "the opportunity to correct their ways so that they may parent their children." The circuit court found that Petitioner Father failed to participate in services and visitation, had not enrolled in a drug rehabilitation program, and had been recently arrested and incarcerated for stealing pills. The circuit court concluded that Petitioner Father has a severe substance abuse problem that impairs his ability to parent. The circuit court did not allow post-termination visitation.

On appeal, Petitioner Father argues that the circuit court erred in terminating his parental rights by finding that he failed to meaningfully participate in this matter. West Virginia Code §49-6-5(b) 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 Father suffers from addiction to drugs and/or alcohol and that this has impaired his ability to parent his child. He failed to engage in services and has not remained drug and alcohol free, despite his completion of detoxification. Both the DHHR and the guardian ad litem argue in favor of the termination of parental rights. This Court finds no error in the circuit court's termination of parental rights.

Petitioner Father also argues that the circuit court erred in denying him a post-dispositional improvement period. Pursuant to West Virginia Code §49-6-5(c), a circuit court may allow a six month improvement period as an alternative disposition. However, this Court has held that "courts are not required to exhaust every speculative possibility of parental improvement before terminating parental rights where it appears that the welfare of the child will be seriously threatened..." Syl. Pt. 7, in part, *In the Interest of Carlita B.*, 185 W.Va. 613, 408 S.E.2d 365 (1991) (quoting Syl. Pt. 1, in part, *In Re: R.J.M.*, 164 W.Va. 496, 266 S.E.2d 114 (1980)). In the present case, Petitioner Father was granted a post-dispositional improvement period initially; however, Petitioner Father did not comply with this improvement period, as he refused drug testing, was arrested and incarcerated, and failed to engage in services. Thus, this Court finds no error in the denial of continuation of the post-dispositional improvement period.

Finally, Petitioner Father argues that the circuit court erred in its denial of post-

termination visitation.¹ This Court has held that “[w]hen parental rights are terminated due to neglect or abuse, the circuit court may nevertheless in appropriate cases consider whether continued visitation or other contact with the abusing parent is in the best interest of the child. Among other things, the circuit court should consider whether a close emotional bond has been established between parent and child and the child's wishes, if he or she is of appropriate maturity to make such request. The evidence must indicate that such visitation or continued contact would not be detrimental to the child's well being and would be in the child's best interest.” Syl. Pt. 5, *In re Christina L.*, 194 W.Va. 446, 460 S.E.2d 692 (1995). Due to petitioner’s history of violence, substance abuse issues and failure to seek proper treatment for substance abuse, this Court finds no error in the denial of post-termination visitation.

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

¹Petitioner Father argues that he was not granted a post-dispositional improvement period. However, the record reflects that he was granted a post-dispositional improvement period. It appears that the petitioner is actually arguing that his post-dispositional improvement period was prematurely terminated.