

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

In Re: J.R.:

No. 11-0381 (Kanawha County 07-JA-59)

FILED

June 27, 2011

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

MEMORANDUM DECISION

This appeal arises from the Circuit Court of Kanawha County, wherein the Petitioner Father's parental rights to his child, J.R., were terminated. 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 child, J.R.¹ The Court has carefully reviewed the record provided and the written arguments of the parties, and the case is mature for consideration.

This Court has considered the parties' briefs and the record on appeal. 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 March 3, 2011. 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*

¹ The associated abuse and neglect matters below concerned J.R.'s half siblings. Petitioner did not attempt to appeal any decisions in relation to the other children, and the order at issue terminates his parental rights to J.R. only.

Interest of: Tiffany Marie S., 196 W.Va. 223, 470 S.E.2d 177 (1996). Petitioner challenges the circuit court's order terminating his parental rights, arguing that termination was improper and that the circuit court erred in failing to continue the dispositional hearing due to petitioner's absence. The Court notes that the circuit court found that petitioner had adequate notice of the dispositional hearing and was represented by competent counsel. The circuit court further found that Petitioner Father had "failed to participate in the proceedings since awarded an improvement period." As such, it was not clear error to hold the dispositional hearing in petitioner's absence.

As for termination of petitioner's parental rights, petitioner argues that termination was premature, as he had acknowledged his problem with alcohol and had done well with his services in the past. However, the record shows that petitioner was granted a post-adjudicatory improvement period during which he did not show "even minimal efforts to rectify the circumstances that led to the filing of [the DHHR's] Petition." Specifically, the circuit court found that, despite the West Virginia Department of Health and Human Resources' ("DHHR") reasonable efforts to avoid removal, petitioner did not follow through with the reasonable family case plan or other rehabilitative services. The record also shows that petitioner was, on more than one occasion, intoxicated during parenting and life skills classes, openly consumed alcohol in front of a DHHR employee, and also failed to attend both an out-patient and in-patient rehabilitation program that he had been ordered to attend. 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). Because the record clearly supports the circuit court's finding that there was no reasonable likelihood that petitioner could substantially correct the conditions of neglect in the near future, the Court finds no error in the decision to terminate petitioner's parental rights.

This Court reminds the circuit court of its duty to establish permanency for J.R. pursuant to Rules 36a, 39, 41 and 42 of the West Virginia Rules of Procedure for Child Abuse and Neglect. Further, this Court reminds the circuit court of its duty pursuant to Rule 43 to find permanent placement for the child within eighteen months of the date of the disposition order. As this Court has stated, "[t]he eighteen-month period provided in Rule 43 of the West Virginia Rules of Procedures for Child Abuse and Neglect Proceedings for permanent placement of an abused and neglected child following the final dispositional order must be strictly followed except in the most extraordinary circumstances which are fully substantiated in the record." Syl. Pt. 6, *In re Cecil T.*, 2011 WL 864950 (W.Va.2011). Moreover, this Court has stated that "[i]n determining the appropriate permanent out-of-home placement of a child under *W.Va.Code* § 49-6-5(a)(6) [1996], the circuit court shall give priority to securing a suitable adoptive home for the child and shall consider other placement alternatives, including permanent foster care, only where the court finds that

adoption would not provide custody, care, commitment, nurturing and discipline consistent with the child's best interests or where a suitable adoptive home can not be found.” Syl. Pt. 3, *State of West Virginia v. Michael M.*, 202 W.Va. 350, 504 S.E.2d 177 (1998).

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 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