

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

In Re:C.H., D.C., D.B.C., and H.H.:

No. 11-0616 (Mercer County No. 07-JA-175 - 178)

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 C.H., D.C., D.B.C. and H.H. 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 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. 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 April 13, 2011. 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 in 2007 after C.H. was born testing positive for opiates and marijuana. After the birth, Petitioner Mother was given time to improve, but failed to meet with DHHR and comply with services. After the petition was filed, Petitioner

Mother was given both a pre-adjudicatory improvement period, and a post-adjudicatory improvement period with later extensions after stipulating at adjudication to the conditions alleged in the petition. However, Petitioner Mother was repeatedly incarcerated for various crimes throughout these improvement periods, and when she was not incarcerated, she failed to comply with services. Petitioner Mother's parental rights were terminated in November 2010 after many delays due to her repeat incarcerations. The circuit court noted that this case has been pending since 2007, and that DHHR has made reasonable efforts toward reunification. Petitioner Mother has been prevented from cooperating due to her periodic incarceration; however, the circuit court found that when she was not incarcerated, Petitioner Mother failed to cooperate and even evaded the DHHR. Thus, there is no reasonable likelihood that the conditions of neglect can be substantially corrected in the near future. The guardian ad litem and the DHHR both argue in support of the termination of parental rights and the denial of a dispositional improvement period.

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. W. Va. Code §49-6-5(b)(1). Moreover, 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).

On appeal, Petitioner Mother argues that the circuit court erred in failing to consider her inability to enter long-term substance abuse treatment due to her incarceration. However, this Court notes that the circuit court did consider this factor, but found that she failed to cooperate even when she was not incarcerated. This Court finds no error in the circuit court's termination of parental rights.

Petitioner Mother also argues that the circuit court erred in denying her motion for a dispositional improvement period. "The goal of an improvement period is to facilitate the reunification of families whenever that reunification is in the best interests of the children involved. Both the statute and our case law grant trial courts considerable flexibility in developing meaningful improvement periods designed to address the myriad possible problems causing abuse and neglect. We have held repeatedly, however, 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....'" *State ex rel. Amy M. v. Kaufman*, 196 W.Va. 251, 258, 470 S.E.2d 205, 212 (1996), citing Syl. Pt. 1, in part, *In re: R.J.M.*, 164 W.Va. 496, 266 S.E.2d 114 (1980). Petitioner's pre-adjudicatory improvement period and post-adjudicatory improvement period, with extensions, have already exceeded the maximum time allowed for improvement periods. Further, Petitioner Mother made virtually no progress during her other extended improvement periods. 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