

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

***In Re: K.C.***

**No. 12-0031** (Webster County 11-JA-47)

**FILED**

October 22, 2012  
RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

**MEMORANDUM DECISION**

Petitioner Mother, by counsel Howard J. Blyler, appeals the Circuit Court of Webster County's order entered on December 13, 2011, adjudicating her as an abusive and neglectful parent based on drug and alcohol addiction. The guardian ad litem, Joyce Helmick Morton, has filed her response on behalf of the child. The West Virginia Department of Health and Human Services ("DHHR"), by counsel William Bands, has filed its response.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

The instant abuse and neglect petition was filed after police found the child, K.C., locked in an apartment alone while he slept. The petition also alleges that Petitioner Mother was homeless at the time, was found to have drug paraphernalia on her person, and tested positive for marijuana. An amended petition was filed alleging bruising on K.C., which she stated was from Petitioner Mother's boyfriend. During the pendency of this action, Petitioner Mother had two more positive drug tests; however, one of those tests was later determined to be a false positive. Petitioner Mother claimed that the other test was a false positive, but also admitted to taking an unknown pill given to her by another person. The circuit court found that Petitioner Mother was fairly compliant in services, but threatened at least one provider with bodily harm and only attended the services she felt she could benefit from rather than all services recommended for her. Petitioner Mother was adjudicated as an abusing parent after the circuit court found that Petitioner Mother abused/neglected the child by failing to provide a suitable home, failing to supervise her, permitting the child to live with a known drug and alcohol user (the mother's boyfriend), and making inappropriate decisions for the child. Further, the circuit court found that Petitioner Mother's addiction to drugs/alcohol affected her ability to parent. At disposition, Petitioner Mother was granted a one year post-dispositional improvement period and the child was reunited with her father.

The Court has previously established the following standard of review:

“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 Interest of Tiffany Marie S.*, 196 W.Va. 223, 470 S.E.2d 177 (1996).

Syl. Pt. 1, *In re Cecil T.*, 228 W.Va. 89, 717 S.E.2d 873 (2011).

Petitioner Mother appeals only the adjudication order finding that she was “addicted to drugs and alcohol which affects her ability to care for her child,” claiming that the adjudicatory finding was based on the initial positive test for marijuana and a positive test which was never confirmed by laboratory analysis. She alleges that there was not sufficient evidence to find that she was a drug addict. Petitioner Mother acknowledges that the argument may be made that this finding had no bearing on the final outcome of her case, but notes that due to her current pregnancy a new petition will be filed against her and she will have the burden of showing that she is not addicted to drugs or alcohol; therefore, she requests that the adjudication finding that she is a drug addict be reversed.

The DHHR responds, arguing that there were numerous other factors contributing to the finding that she was abusive and neglectful to the child, including homelessness, poor decision making, and proven drug use on the night the child was removed. The DHHR notes that the circuit court was lenient in not terminating Petitioner Mother’s parental rights, and states that the adjudication was proper. The guardian concurs, also arguing that the circuit court had a multitude of reasons to adjudicate her as abusive and neglectful. The guardian also states that a drug abuse risk assessment indicated that petitioner met the criteria for long term drug abuse rehabilitation, but petitioner chose not to attend treatment. Finally, the guardian argues that Petitioner Mother admitted to using drugs since approximately fourteen years of age, and thus she qualifies as a long-term drug user and should have gotten the requisite treatment.

Upon a review of the record, this Court does not find the adjudication of Petitioner Mother to be clearly erroneous. She admitted to using drugs the night the child was removed, and admitted to taking a prescription medication that was not hers. Although one positive drug screen was later determined to be a false positive, petitioner’s assessment showed that she was at risk for further drug abuse. Importantly, the adjudication of Petitioner Mother as abusive and neglectful was based on many factors, and was not limited to her drug use. Therefore, we find no error in the circuit court’s adjudication order.

For the foregoing reasons, we find no error in the decision of the circuit court and the adjudication of Petitioner Mother as an abusing and neglectful parent is hereby affirmed.

Affirmed.

**ISSUED:** October 22, 2012

**CONCURRED IN BY:**

Chief Justice Menis E. Ketchum

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Thomas E. McHugh