

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

In Re: A.L., M.C., D.M., J.S., and N.S.

No. 12-0673 (Mercer County 11-JA-193 through 11-JA-197)

FILED

November 19, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Mother files this appeal, by counsel Natalie Hager, from the Circuit Court of Mercer County, which terminated petitioner's parental rights to the subject children by order entered on May 23, 2012. The guardian ad litem for the children, Julie Lynch, has filed a response on behalf of the children supporting the circuit court's order. The Department of Health and Human Resources ("DHHR"), by its attorney William Bands, also filed a response in support of termination.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented in the parties' written briefs and the record on appeal, 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.

In September of 2011, DHHR filed a petition against Petitioner Mother and alleged neglect of her children resulting from substance abuse. Petitioner Mother waived her preliminary hearing and at the adjudicatory hearing, the circuit court found A.L., M.C., D.M., J.S., and N.S. as neglected children as a result of Petitioner Mother's substance abuse. Before the instant petition was filed, Petitioner Mother had prior involvement with Child Protective Services ("CPS") concerning her three oldest children, also due to her substance abuse. The circuit court granted Petitioner Mother a post-adjudicatory improvement period. A review hearing in February of 2012 revealed that Petitioner Mother was not making any progress. At the dispositional hearing in May of 2012, the circuit court terminated Petitioner Mother's parental rights to the subject children. Petitioner Mother appeals.

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 argues that the circuit court erred in terminating her parental rights to the subject children when she was reunified with them in previous CPS cases and has admitted to her drug addiction. Petitioner argues that the circuit court should have given her additional time in her improvement period so that she could enter a drug rehabilitation program and work towards reunification. In response, the guardian ad litem and DHHR argue that termination was in the children's best interests. Petitioner Mother was given an improvement period, but failed to successfully comply with its terms. For instance, she did not regularly call Amity Detoxification Center as required in the program, nor did she regularly maintain contact with DHHR or regularly attend visitation with her children.

We find no error in the circuit court's order terminating Petitioner Mother's parental rights. "[C]ourts are not required to exhaust every speculative possibility of parental improvement . . . where it appears that the welfare of the child[ren] will be seriously threatened" Syl. Pt. 1, in part, *In re R.J.M.*, 164 W.Va. 496, 266 S.E.2d 114 (1980)." Syl. Pt. 4, in part, *In re Cecil T.*, 228 W.Va. 89, 717 S.E.2d 873 (2011). Moreover, we have held as follows:

"Termination of parental rights, the most drastic remedy under the statutory provision covering the disposition of neglected children, *W.Va.Code* [§] 49-6-5 [1977] may be employed without the use of intervening less restrictive alternatives when it is found that there is no reasonable likelihood under *W.Va.Code* [§] 49-6-5(b) [1977] that conditions of neglect or abuse can be substantially corrected." Syllabus Point 2, *In re R.J.M.*, 164 W.Va. 496, 266 S.E.2d 114 (1980).

Syl. Pt. 7, *In re Katie S.*, 198 W.Va. 79, 479 S.E.2d 589 (1996) (internal citations omitted). Further, "the primary goal in cases involving abuse and neglect, as in all family law matters, must be the health and welfare of the children." Syl. Pt. 3, in part, *In re Katie S.*, 198 W.Va. 79, 479 S.E.2d 589 (1996). Based on our review of the record and given the circumstances of the case, we find no error by the circuit court.

For the foregoing reasons, we affirm the circuit court's order terminating Petitioner Mother's parental rights.

Affirmed.

ISSUED: November 19, 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