

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

In Re: G.D.

No. 12-0745 (Mercer County 11-JA-132)

FILED

March 12, 2013

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

MEMORANDUM DECISION

Petitioner Mother, by counsel David Kelley, appeals the Circuit Court of Mercer County's order entered on May 21, 2012, terminating her parental, custodial, and guardianship rights to her child¹ without an improvement period. The guardian ad litem, Colin Cline, has filed his response on behalf of the child. The West Virginia Department of Health and Human Resources ("DHHR"), by William Bands, its attorney, 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 Rules of Appellate Procedure.

The abuse and neglect petition in this action was filed after a lengthy investigation by the DHHR alleging that Petitioner Mother emotionally and financially neglected G.D. and knowingly left her child with an inappropriate caregiver who was neglecting the child over the past three years.² The circuit court found that Petitioner Mother was not credible and that she neglected her child through abandonment. Petitioner Mother was denied a post-adjudicatory improvement period. The circuit court found, "that neither continuation in the home nor reunification is in the best interest of the [child] . . ." due to the current abandonment and prior finding of abandonment. The circuit court found, "abandonment is an aggravating circumstance, and the DHHR is not required to make reasonable efforts to preserve the relationship" Finally, the circuit court found "there is no reasonable likelihood that the conditions of neglect can be substantially corrected in the near future"

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

¹ The petition originally included another child, but Petitioner Mother appeals only the termination of her parental rights to her oldest child.

² The allegations against the caregiver were unsubstantiated.

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 the circuit court erred in terminating her parental, custodial, and guardianship rights without the benefit of an improvement period. Petitioner Mother argues she has admitted her shortcomings and is now financially stable and capable of providing support for her child. Petitioner Mother argues the State did not prove by clear and convincing evidence that she should be denied an improvement period.

The guardian ad litem responds in favor of the termination of parental, custodial, and guardianship rights without an improvement period. The guardian argues Petitioner Mother has not challenged the circuit court’s factual findings and that the circuit court’s decision to deny an improvement period is clearly supported by the facts that Petitioner Mother is a continuing drug abuser, was charged with two felonies during the proceedings, and failed to attend the disposition hearing.³ The DHHR concurs that the circuit court properly terminated Petitioner Mother’s parental, custodial, and guardianship rights without an improvement period. The DHHR argues that termination without an improvement period was proper given her failure to show that she would fully participate in an improvement period and that the Department is not required to make reasonable efforts to preserve the family because the circuit court found aggravated circumstances in the form of abandonment.

In order to receive an improvement period, a parent must show that she “is likely to fully participate in the improvement period” W.Va. Code § 49-6-12(b)(2). Throughout the case Petitioner Mother showed she could not meet her burden to justify an improvement period. West Virginia Code § 49-6-5(b)(4) states that:

no reasonable likelihood that conditions of neglect or abuse can be substantially corrected shall mean that . . . the abusing adult or adults have demonstrated an inadequate capacity to solve the problems of abuse or neglect on their own or with help. Such conditions shall be considered to exist . . . [when] [t]he abusing parent or parents have abandoned the child.

West Virginia Code § 49-6-5(a)(6) grants circuit courts the authority to terminate the parental

³ In further support, the DHHR adds that Petitioner Mother tested positive for THC and Oxycontin while pregnant.

rights of the abusing parent. Further, West Virginia Code § 49-6-5(a)(7)(A) states that the DHHR is not required to make reasonable efforts toward reunification if the court finds that the parent has subjected the child to aggravated circumstances, including abandonment. Finally, this Court has held that “‘courts are not required to exhaust every speculative possibility of parental improvement . . . where it appears that the welfare of the child 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). Thus, this Court finds no error in the termination of Petitioner Mother’s parental, custodial, and guardianship rights without an improvement period.

For the foregoing reasons, the circuit court’s order terminating Petitioner Mother’s parental, custodial, and guardianship rights is hereby affirmed.

Affirmed.

ISSUED: March 12, 2013

CONCURRED IN BY:

Chief Justice Brent D. Benjamin
Justice Robin Jean Davis
Justice Margaret L. Workman
Justice Menis E. Ketchum
Justice Allen H. Loughry II