

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

In Re: A.M., K.W., B.W., & A.W.

No. 12-1426 (Kanawha County 12-JA-39, 40, 41 & 42)

FILED

March 12, 2013
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Mother filed this appeal, by counsel Sandra K. Bullman, from the Circuit Court of Kanawha County which terminated her parental rights by order entered on October 31, 2012. The guardian ad litem for the children, Jennifer R. Victor, has filed a response supporting the circuit court's order. The Department of Health and Human Resources ("DHHR"), by its attorney Michael L. Jackson, also filed a response in support of the circuit court's order.

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.

In February of 2012, the DHHR filed its petition based on allegations of physical and sexual abuse by petitioner's boyfriend and unsafe and unsanitary conditions in the home. For instance, cockroaches were observed to fall from the ceiling. In addition, the petition discussed the children's developmental delays, petitioner's lack of interest in meeting with school teachers for any of the children's behavioral problems, and petitioner's failure to participate in services during the instant case and during prior involvement with the DHHR. The DHHR later filed an amended petition that alleged drug abuse by the parents at home. After the preliminary hearing, the circuit court ordered the DHHR to provide Petitioner Mother with remedial and reunification services such as adult life skills education, parenting education, domestic violence counseling, supervised visitation with her children, and a psychological evaluation. Throughout the case, Petitioner Mother expressed her disbelief in her children's accusations against her boyfriend, failed to separate from her boyfriend, and continued to keep an uninhabitable home. In light of these circumstances, the circuit court denied Petitioner Mother's motion for an improvement period and terminated her parental rights but granted post-termination visitation. It is from this order that Petitioner Mother appeals.

Petitioner Mother argues two assignments of error. First, she argues that the circuit court erred by terminating her parental rights without granting her an improvement period. She argues that because she clearly demonstrated that she would comply with services, the circuit court should have granted her an improvement period pursuant to West Virginia Code § 49-6-12(b)(2). In response, the children's guardian ad litem and the DHHR contend that the circuit court did not err in this regard. They assert that Petitioner Mother failed to sufficiently benefit from the

services the DHHR was already providing her, continued to keep a filthy home, and continued to deny that her boyfriend had ever physically or sexually abused the children.

Petitioner Mother also argues that, should the termination of her parental rights stand, the circuit court should have granted her a meaningful post-termination visitation. She argues that the visitation directions from the circuit court as ordered do not, in reality, afford any visitation to her with the children. The children's guardian ad litem and the DHHR respond and argue that the circuit court did not err in its conditional post-termination visitation ordered. They both highlight that Petitioner Mother's post-termination visitation was subject to reasonable conditions: (1) that visitations would occur at the discretion of the children's custodians, (2) that visitations would occur in the best interests of the children, and (3) that visitations would occur at the request of the children. They assert that such conditions ensure the children's safety and best interests and, accordingly, direct meaningful visitation between Petitioner Mother and her children.

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).

Upon our review, the Court finds no error in the circuit court's termination of Petitioner Mother's parental rights without an improvement period or in its directions to Petitioner Mother for post-termination visitation. The Court finds that the circuit court was presented with sufficient evidence upon which it based findings that Petitioner Mother would be unable to substantially comply with an improvement period. Pursuant to West Virginia Code § 49-6-12, a subject parent bears the burden of proving that he or she would substantially comply with an improvement period. Under the same statute, the circuit court has the discretion to grant or deny such a motion for an improvement period. The Court also finds that the circuit court was presented with sufficient evidence upon which it based findings that there was no reasonable likelihood to believe that the conditions of abuse and neglect could be substantially corrected in the near future and that termination was necessary for the children's welfare. Pursuant to West Virginia Code § 49-6-5(a)(6), circuit courts are directed to terminate parental rights upon such findings. Upon our review, we also find no error in the circuit court's directions concerning

petitioner's post-termination visitation. After terminating parental rights, a circuit court may grant post-termination visitation if it considers that such a relationship is in the children's best interests and if it would not unreasonably interfere with their permanent placement. *See State ex rel. Amy M. v. Kaufman*, 196 W.Va. 251, 260, 470 S.E.2d 205, 214 (1996). The circuit court's termination order with directions for post-termination visitation reflects these considerations.

For the foregoing reasons, we affirm the circuit court's order terminating petitioner's parental rights to the subject children.

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