

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

FILED

June 16, 2014

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

In Re: A.M., A.M., S.M., & S.G.M.

No. 14-0017 (Taylor County 12-JA-18 through 20, & 13-JA-15)

MEMORANDUM DECISION

Petitioner Mother, by counsel Roger Curry, appeals the Circuit Court of Taylor County's December 10, 2013, order terminating her custodial rights to A.M.-1, A.M.-2, S.M., and S.G.M.¹ The West Virginia Department of Health and Human Resources ("DHHR"), by counsel Katherine Bond, filed its response in support of the circuit court's order. The guardian ad litem ("GAL"), Mary Nelson, filed a response on behalf of the children that also supports the circuit court's order. On appeal, Petitioner Mother alleges that the circuit court erred in terminating her custodial rights.

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 affirming the circuit court's decision is appropriate under Rule 21 of the Rules of Appellate Procedure.

In October of 2012, the Taylor County Sheriff's Department received a report that Petitioner Mother was making methamphetamine in her home. During the investigation, law enforcement officers discovered evidence of a methamphetamine lab inside Petitioner Mother's residence. The investigators also observed animal feces and trash throughout the residence. Petitioner Mother admitted to the investigators that she smoked Percocet, used methamphetamine and other drugs, including bath salts, and cooked methamphetamine on at least one occasion in the home.² As a result of the investigation, the DHHR filed a petition for immediate custody of the children. The petition further alleged educational neglect.

Following a preliminary hearing, Petitioner Mother stipulated that she was a "raging drug addict" who continued to use Percocet illegally and that her drug addiction had a negative impact on her children. On March 15, 2013, the circuit court adjudicated Petitioner Mother as an abusive

¹Because two of the children in this case have the same initials, we have distinguished each of them using numbers 1 and 2 after their initials in this Memorandum Decision. The circuit court case numbers also serve to distinguish each child.

²Following the investigation Petitioner Mother was indicted on three counts of felony child neglect. In June of 2013, Petitioner Mother pled guilty by information to one count of felony child neglect.

and neglectful parent and granted her a six-month post-adjudicatory improvement period. By order entered on July 15, 2013, the circuit court found that Petitioner Mother's post-adjudicatory improvement period had expired and declined to grant her a three-month extension of her improvement period. In September of 2013, Petitioner Mother was sentenced to a term of incarceration of one to five years for her plea to one count of child neglect creating risk of injury.

In October of 2013, the circuit court held a dispositional hearing. The circuit court found that aggravated circumstances existed because Petitioner Mother "engaged in chronic extreme drug abuse." As a result, the circuit court terminated Petitioner Mother's custodial rights. It is from this order that Petitioner Mother appeals.

The Court has previously established the following standard of review in such cases:

"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 raised two assignments of error in her appeal. In the "assignment of error" section, Petitioner Mother alleges that the circuit court's "findings of fact or law that drug addiction and active use of illegal drugs in this case are essentially fixed is contrary to experience and reality." Despite raising this issue, Petitioner Mother failed to address this issue in the argument section of her brief. This Court has held that "[a]ssignments of error that are not argued in the briefs on appeal may be deemed by this Court to be waived." Syl. Pt. 6, *Addair v. Bryant*, 168 W.Va. 306, 284 S.E.2d 374 (1981). Thus, this Court will only consider Petitioner Mother's assignment of error for which argument is set forth in the petition.

As to Petitioner Mother's remaining assignment of error, she argues that the circuit court erred in terminating her custodial rights. Upon our review, the Court finds no error in the circuit court's termination of Petitioner Mother's custodial rights. While Petitioner Mother argues that the circuit court failed to employ the least restrictive alternative pursuant to West Virginia Code § 49-6-5(a) and our holding in syllabus point one of *In re R.J.M.*, 164 W.Va. 496, 266 S.E.2d 114 (1980)³, Petitioner Mother's argument ignores our further directions regarding termination

³This Court has previously held that

upon findings that there is no reasonable likelihood that the conditions of abuse and neglect can be substantially corrected in the near future.

This Court held that

“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.” Syl. pt. 2, *In Re: R.J.M.*, 164 W.Va. 496, 266 S.E.2d 114 (1980).

Syl. Pt. 2, *In re Dejah P.*, 216 W.Va. 514, 607 S.E.2d 843 (2004). In this case, the circuit court found that “the abuse and neglect can not [sic] be corrected in the foreseeable future.” This finding was based upon the substantial evidence set forth herein.

The record shows that Petitioner Mother continued to use drugs throughout the proceedings in this case. Specifically, Petitioner Mother failed multiple drug tests. Petitioner Mother admitted to using cocaine, smoking oxycodone, and ingesting “bath salts.” Petitioner Mother also tested positive for cocaine within hours of being released from substance abuse treatment. Further, Petitioner Mother failed to complete two detox programs. Pursuant to West Virginia Code § 49-6-5(b)(1), a situation in which there is no reasonable likelihood that the parent can substantially correct the conditions of abuse and neglect includes one where “[t]he abusing parent . . . [has] habitually abused or [is] addicted to . . . controlled substances or drugs, to the extent that proper parenting skills have been seriously impaired and . . . have not responded to or followed through the recommended and appropriate treatment” Further, the circuit court found that termination of Petitioner Mother’s custodial rights was “imperative for the security and stability of the minor children” Pursuant to West Virginia Code § 49-6-5(a)(6), circuit courts are directed to terminate Petitioner Mother’s custodial rights upon these findings.

[a]s a general rule the least restrictive alternative regarding parental rights to custody of a child under *W.Va.Code*, 49-6-5 (1977) will be employed; however, 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, and this is particularly applicable to children under the age of three years who are more susceptible to illness, need consistent close interaction with fully committed adults, and are likely to have their emotional and physical development retarded by numerous placements.

Syl. Pt. 1, *In re R.J.M.*, 164 W.Va. 496, 266 S.E.2d 114 (1980).

For the foregoing reasons, we find no error in the decision of the circuit court and the December 10, 2013, order is hereby affirmed.

Affirmed.

ISSUED: June 16, 2014

CONCURRED IN BY:

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