

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

In Re: K.T., B.M., E.M., & E.M.

No. 14-0241 (Randolph County 13-JA-34 through 13-JA-37)

FILED

August 29, 2014

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

MEMORANDUM DECISION

Petitioner Mother, by counsel Dwight Hall, appeals the Circuit Court of Randolph County's February 11, 2014, order terminating her parental rights to K.T., B.M., E.M.-1, and E.M.-2.¹ The West Virginia Department of Health and Human Resources ("DHHR"), by counsel Melinda Dugas, filed its response in support of the circuit court's order. The guardian ad litem ("GAL"), Heather Weese, 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 parental rights without first granting her an improvement period.

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 September of 2013, the DHHR filed an abuse and neglect petition alleging that Petitioner Mother failed to provide the children with a clean and safe home, failed to provide the children with proper nutrition despite receiving \$953 in Supplemental Nutrition Assistance Program ("SNAP") benefits, and educational neglect. The petition further alleged that Petitioner Mother's parental rights to another child were terminated in 2000. In October of 2013, the DHHR filed an amended petition to include allegations that Petitioner Mother abused drugs, manufactured drugs in the home, and failed to provide proper medical care for E.M.-2.

On November 12, 2013, the circuit court held an adjudicatory hearing.² After hearing testimony concerning the DHHR's allegations, the circuit court adjudicated Petitioner Mother as an abusive and neglectful parent. Specifically, the circuit court found that aggravated circumstances existed due to Petitioner Mother's prior termination of her parental rights, and that she failed to demonstrate a change in circumstances. Further, the circuit court found that Petitioner Mother abused illegal substances; misused public assistance benefits; and failed to

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.

²Following the adjudicatory hearing, Petitioner Mother tested positive for methamphetamine, benzodiazepine, amphetamine, and marijuana.

supply the children with necessary food, clothing, shelter, supervision, medical care, and education. Importantly, the circuit court also found that Petitioner Mother was manufacturing drugs in the home.

In January of 2014, the circuit court held the dispositional hearing, during which it denied Petitioner Mother an improvement period and terminated her parental rights. The circuit court heard testimony that Petitioner Mother failed to remedy the conditions of abuse and neglect in this case, and that these same conditions of abuse and neglect existed when Petitioner Mother's parental rights were terminated in 2000. Further, DHHR worker Rebecca Brenwalt testified that she was not able to offer services to Petitioner Mother because she failed to maintain contact with the DHHR. Petitioner Mother also tested positive for marijuana and admitted to taking methamphetamine. Following the dispositional hearing, the circuit court terminated Petitioner Mother's parental rights. Petitioner Mother now 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).

Upon our review, the Court finds no error in the circuit court's order denying Petitioner Mother's request for an improvement period or in the termination of her parental rights. West Virginia Code § 49-6-12(b)(2) gives circuit courts discretion in granting post-adjudicatory improvement periods upon a showing that the parent will fully participate in the improvement period. The record in this matter supports the circuit court's denial because Petitioner Mother failed to show by clear and convincing evidence that she would fully comply with the terms of a post-adjudicatory improvement period, if one had been granted.

While Petitioner Mother argues that she satisfied this burden by testifying that she obtained appropriate housing and proper nutrition for the children, this argument fails to address the other issues of abuse and neglect in the home. As noted above, the circuit court heard testimony that the DHHR and other services providers were unable to establish services for Petitioner Mother to address the other conditions of abuse and neglect. At the dispositional hearing, Petitioner Mother tested positive for marijuana and admitted to taking

methamphetamine. As noted in the dispositional order, the circuit court found that Petitioner Mother continued to abuse illegal substances and failed to seek treatment for her substance abuse.

We have previously held that

in order to remedy the abuse and/or neglect problem, the problem must first be acknowledged. Failure to acknowledge the existence of the problem, i.e., the truth of the basic allegation pertaining to the alleged abuse and neglect or the perpetrator of said abuse and neglect, results in making the problem untreatable and in making an improvement period an exercise in futility at the child's expense.

In re Kaitlyn P., 225 W.Va. 123, 126, 690 S.E.2d 131, 134 (2010) (quoting *W.Va. Dep't of Health and Human Res. v. Doris S.*, 197 W.Va. 489, 498, 475 S.E.2d 865, 874 (1996)). Based upon the evidence above, it is clear that Petitioner Mother failed to acknowledge the abuse and neglect she perpetrated on the children. This encompasses more than failing to provide the children with necessary food, clothing, shelter, supervision, medical care, or education; it also includes Petitioner Mother's substance abuse. As such, it was not error to deny her motion for a post-adjudicatory improvement period. Further, the circuit court found that Petitioner Mother's prior involuntary termination constituted aggravated circumstances. Pursuant to West Virginia Code § 49-6-5(a)(7)(C) "the [DHHR] is not required to make reasonable efforts to preserve the family if the court determines the parental rights of the parent to another child have been terminated involuntarily." This same evidence constitutes a circumstance in which there is no reasonable likelihood that the conditions of abuse or neglect could be substantially corrected in the near future under West Virginia Code §§ 49-6-5(b)(1) and (2), and circuit courts are directed to terminate parental rights upon this finding and when termination is necessary for the children's welfare pursuant to West Virginia Code § 49-6-5(a)(6). Therefore, it was not error for the circuit court to proceed to termination without first granting Petitioner Mother an improvement period.

For the foregoing reasons, we find no error in the decision of the circuit court and its February 11, 2014, order is hereby affirmed.

Affirmed.

ISSUED: August 29, 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