

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

In Re: I.V., C.V., E.V. II, D.B. II, & G.C

No. 14-0286 (Jackson County 12-JA-32 through 12-JA-36)

FILED

August 29, 2014

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

MEMORANDUM DECISION

Petitioner Mother, by counsel Ryan Ruth, appeals the Circuit Court of Jackson County's February 27, 2014, order denying her a three-month extension of her post-adjudicatory improvement period and terminating her parental rights to I.V., C.V., E.V. II, D.B. II, and G.C.¹ The West Virginia Department of Health and Human Resources ("DHHR"), by counsel Sandra Evans, filed its response in support of the circuit court's order. The guardian ad litem ("GAL"), Erica Gunn, 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 denying her a three-month extension of her post-adjudicatory improvement period because the DHHR failed to provide her with a special medical card to pay for special psychiatric treatment.

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 August of 2012, the DHHR filed a petition for immediate custody of the all of the children against Petitioner Mother and an amended petition in November of 2012, alleging that Petitioner Mother failed to protect her children despite her knowledge that several of her romantic partners committed various sex acts against I.V. and C.V.

Following an adjudicatory hearing in September of 2012, the circuit found that Petitioner Mother was an abusive and neglectful parent. Specifically, the circuit court found that Petitioner Mother exposed the children to illegal drugs and domestic violence in the home and that she failed to provide the children with necessary shelter and supervision. Additionally, the circuit court heard testimony that the house was in a deplorable condition. For instance, the house was filled with fecal matter and rotten food debris and infested with flies, roaches, and maggots. By order entered on May 16, 2013, the circuit court granted Petitioner Mother a six-month post-adjudicatory improvement period with directions to submit to a psychological evaluation and to follow subsequent treatment recommendations, participate in parenting and life skills classes, maintain gainful employment, and obtain and maintain safe and adequate housing.

¹I.V. was born on April 12, 2007. C.V. was born on December 14, 2005. E.V. II was born on April 26, 2008, D.B. II was born on October 12, 2009. G.C. was born on June 13, 2011.

At the dispositional hearing on January 30, 2014, Child Protective Services worker Anna Bailey testified that while Petitioner Mother submitted to a psychological evaluation, she failed to maintain a safe and appropriate living environment for her children and to abide by the terms of her improvement period. Specifically, Ms. Bailey testified that there was a domestic violence incident at Petitioner Mother's residence on January 1, 2014. Ms. Bailey also testified that Petitioner Mother lived in a small trailer with five other individuals and that it would not be appropriate for Petitioner Mother's five children to reside in the same trailer. The circuit court continued the dispositional hearing to February 3, 2014, during which several more witnesses testified. Importantly, one of Petitioner Mother's service providers testified that while Petitioner Mother participated in parenting services, she failed to accept any responsibility for her actions that led to the filing of this petition. By order entered on February 27, 2014, the circuit court denied Petitioner Mother an extension of her post-adjudicatory improvement period and terminated her parental rights to the children. It is from this order that 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).

On appeal, Petitioner Mother argues that the circuit court erred in not extending her post-adjudicatory improvement period. Petitioner Mother asserts that she could not substantially comply with some of the terms of her improvement period because the DHHR failed to provide her with a special medical card to pay for special psychiatric treatment.

Upon our review of the record, we find no error by the circuit court in denying petitioner's motion to extend her improvement period. West Virginia Code § 49-6-12(g) states that

[a] court may extend [any] improvement period . . . for a period not to exceed three months when the [circuit] court finds that the [subject parent] has substantially complied with the terms of the improvement period; that the

continuation of the improvement period will not substantially impair the ability of the [DHHR] to permanently place the child[ren]; and that such extension is otherwise consistent with the best interest of the child[ren].

Further, this Court has stated 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.

W.Va. Dept. of Health and Human Res. ex rel. Wright v. Doris S., 197 W.Va. 489, 498, 475 S.E.2d. 865, 874 (1996). Our review of the record reveals that Petitioner Mother failed to substantially comply with the terms of her improvement period. As noted above, while Petitioner Mother participated in parenting services, she failed to maintain safe and appropriate housing, and failed to accept responsibility for her actions that led to the filing of this petition. In fact, in her brief to this Court, Petitioner Mother acknowledges that she did not substantially comply with the terms of her improvement period. Further, none of the evidence in the record reveals that continuing the improvement period would not have substantially impaired the child's permanency or that it would have been consistent with the children's best interests.

For the foregoing reasons, we affirm.

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