

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

In Re: B.S., D.S., and J.S.

No. 14-0301 (Marion County 12-JA-47, 12-JA-48, and 12-JA-49)

FILED

August 29, 2014

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

MEMORANDUM DECISION

Petitioner Mother filed this appeal by counsel, Holly Turkett, from an order entered February 4, 2014, in the Circuit Court of Marion County that terminated Petitioner Mother's parental rights to eight-year-old B.S., six-year-old D.S., and four-year-old J.S. The guardian ad litem for the children, Scott A. Shough, filed a response in support of the circuit court's order. The Department of Health and Human Resources ("DHHR"), by its attorney, Lee A. Niezgoda, also filed a response in support of the circuit court's order. The biological father of B.S., by his attorney, Robyn M. Danford, also filed a response supporting termination of petitioner's parental rights. Petitioner argues that the circuit court erred in terminating her parental rights because less restrictive alternatives were available and in the best interest of her children.

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 order is appropriate under Rule 21 of the Rules of Appellate Procedure.

The DHHR filed an abuse and neglect petition against petitioner in August of 2012 after petitioner received approximately one year of services from Child Protective Services ("CPS"). The petition alleged that petitioner abused drugs and left needles within the children's reach. The petition further alleged that the home was without hot water, a stove, or a refrigerator, and that petitioner allowed her children to be exposed to inappropriate people in the home, including one individual who improperly touched the youngest child. Petitioner waived her rights to a preliminary hearing. At the adjudicatory hearing in September of 2012, petitioner stipulated to the allegations set forth in the abuse and neglect petition, admitting that as a result of her substance abuse and addiction, she neglected the children and threatened their physical and mental health. Petitioner acknowledged that she needed professional help to overcome her addiction and to acquire and maintain the parenting skills necessary to avoid future child abuse and neglect. The circuit court granted petitioner a post-adjudicatory improvement period.

During petitioner's improvement period, she began drug rehabilitation in April of 2013 at a facility in Parkersburg. The rehabilitation program was projected to last six months to a year. While she was enrolled in this program, petitioner filed a motion for a dispositional improvement period. The circuit court granted petitioner's motion in May of 2013 on the condition that petitioner complete her inpatient drug treatment.

In August of 2013, the children's guardian ad litem ("GAL") and the DHHR filed a motion to terminate petitioner's improvement period, based on allegations that petitioner left the Parkersburg treatment facility without completion and that she had resumed drug abuse. The circuit court terminated petitioner's improvement period and set the matter for disposition. Following the dispositional hearing, the circuit court entered an order terminating petitioner's parental rights. However, the circuit court permitted post-termination visitation at the discretion of the children's custodians. The circuit court based this termination on petitioner's failure to complete substance abuse treatment, maintain consistent contact with her children, and acquire stable housing for herself and the children. Petitioner now appeals the termination order.

This 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).

Petitioner argues that the circuit court erred in terminating her parental rights because less drastic alternatives were available and in the best interests of her children. Petitioner asserts that, because the children are all in relative placements, termination is unnecessary and restricts the children's relationship with her.

Upon our review of the record, we find no error by the circuit court's termination of petitioner's parental rights. "Although parents have substantial rights that must be protected, the primary goal in cases involving abuse and neglect, as in all family law matters, must be the health and welfare of the children." Syl. Pt. 3, *In re Katie S.*, 198 W.Va. 79, 479 S.E.2d 589 (1996)." Syl. Pt. 2, *In re Timber M.*, 231 W.Va. 44, 743 S.E.2d 352 (2013). West Virginia Code § 49-6-5(b) provides a non-exclusive list of circumstances that a circuit court must consider when determining whether there is no reasonable likelihood that the conditions of abuse and neglect can be substantially corrected. Included in this list are circumstances in which the subject parent has not responded to or followed through with a reasonable family case plan. Our review of the record indicates that petitioner failed to complete the terms of her improvement periods after nearly three years of ongoing services. This evidence supports the circuit court's findings and conclusions that there was no reasonable likelihood that 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.

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