

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

**In Re: B.M., E.M., & B.M.**

**No. 14-0328** (Kanawha County 13-JA-83, 13-JA-84, & 13-JA-85)

**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, Sandra K. Bullman, from an order entered March 24, 2014, in the Circuit Court of Kanawha County that terminated Petitioner Mother's parental rights to five-year-old B.M., three-year-old E.M., and one-year-old B.M. The guardian ad litem for the children, Jennifer R. Victor, filed a response in support of the circuit court's order. The Department of Health and Human Resources ("DHHR"), by its attorney, S.L. Evans, also filed a response in support of the circuit court's order. Petitioner argues that the circuit court erred in terminating her parental rights and in denying her post-termination visitation.

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.

In April of 2013, the DHHR filed an abuse and neglect petition against petitioner and the children's father, B.L. The petition alleged that B.L. committed domestic battery against petitioner in the children's presence. In particular, the petition specified that petitioner claimed that her black eye was as a result of a car accident, despite reports and arrests against B.L. for domestic battery. The petition also alleged that petitioner refused offered services and that both parents failed to provide the children with the necessary food, clothing, supervision, and housing, placing them in the risk of harm. Both parents waived their rights to a preliminary hearing. At the adjudicatory hearing in June of 2013, petitioner stipulated to the allegations of domestic violence in the children's presence. The circuit court adjudicated the children as abused and neglected and granted petitioner a post-adjudicatory improvement period with ordered services. In October of 2013, the circuit court terminated B.L.'s parental rights, without post-termination visitation, while petitioner continued her improvement period.

Petitioner made enough progress during her improvement period that the circuit court granted her unsupervised visitation with the children and, later, returned the children to petitioner's physical custody. During this time, however, one of the children stated that she saw her father hit petitioner in the face. Shortly thereafter, during a home visit in January of 2014, the family's Child Protective Services ("CPS") worker discovered B.L. hiding in petitioner's laundry room. In an effort to prevent the CPS worker from taking physical custody of the children, petitioner physically restrained the CPS worker and B.L. forced his way out of the home with

two of the children in tow. Petitioner picked up the third child and all three children were placed in the backseat of a vehicle that was driven away by a family friend. The children were not restrained by seatbelts and were wearing improper and inadequate clothing for the ten-degree weather outside. The police finally recovered the children after a standoff with petitioner, who was later arrested for child concealment.

The circuit court subsequently proceeded with a dispositional hearing, which petitioner failed to attend, and entered an order in March of 2013 that terminated petitioner's paternal rights without post-termination visitation. Petitioner now brings this appeal.

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 raises two arguments on appeal. First, she argues that the circuit court erred in terminating her parental rights because she successfully completed her improvement period. Petitioner asserts that although she exercised poor judgment in allowing B.L. to come to the home after his parental rights were terminated, there was no evidence presented that the children had been harmed or were in any danger. Second, petitioner argues that she should have been granted post-termination visitation because she was consistent with her visits throughout the proceedings and because she and the children are closely bonded.

Upon our review of the record, we find no error in 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). Under West Virginia Code § 49-6-5(b)(3), a subject parent's failure to follow through with rehabilitative efforts to reduce or prevent the abuse and neglect of the children constitutes circumstances in which there is no reasonable likelihood that the conditions of abuse or neglect can be substantially corrected. Further, termination of parental rights is proper if the subject parent has failed to improve his or her overall attitude and approach to parenting. *See W.Va. Dept. of Human Servs. v. Peggy F.*, 184

W.Va. 60, 64, 399 S.E.2d 460, 464 (1990). “In making the final disposition in a child abuse and neglect proceeding, the level of a parent's compliance with the terms and conditions of an improvement period is just one factor to be considered. The controlling standard that governs any dispositional decision remains the best interests of the child.” Syl. Pt. 4, *In Re: B.H.*, 233 W.Va. 57, 754 S.E.2d 743 (2014). The record shows that although petitioner complied with particular aspects of her improvement period, she failed to meaningfully benefit from the services. Petitioner’s contention that her children were never in any harm is rivaled by the evidence that B.L. continued to abuse petitioner in the children’s presence and that both parents practiced reckless behavior that compromised the children’s safety. This evidence supports the circuit court’s findings and conclusions that there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected and that termination is 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.

Second, we find no error by the circuit court in denying petitioner post-termination visitation. We have held as follows:

“When parental rights are terminated due to neglect or abuse, the circuit court may nevertheless in appropriate cases consider whether continued visitation or other contact with the abusing parent is in the best interest of the child. Among other things, the circuit court should consider whether a close emotional bond has been established between parent and child and the child’s wishes, if he or she is of appropriate maturity to make such request. The evidence must indicate that such visitation or continued contact would not be detrimental to the child’s well being and would be in the child’s best interest.” Syl. Pt. 5, *In re Christina L.*, 194 W.Va. 446, 460 S.E.2d 692 (1995).

Syl. Pt. 2, *In re Billy Joe M.*, 206 W.Va. 1, 521 S.E.2d 173 (1999). As previously discussed, the record presents no evidence that visitation or continued contact between petitioner and her children would have been in the children’s best interests or would not be detrimental to their well-being.

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