

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

FILED

September 26, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

In Re: C.W.:

No. 11-0418 (Wyoming County No. 06-JA-74)

MEMORANDUM DECISION

Petitioner Father appeals the subsidized foster placement of his son, C.W., arguing that C.W. should be placed with Petitioner Father, who is his biological father. The appeal was timely perfected by counsel, with the petitioner's appendix accompanying the petition. The guardian ad litem has filed his response on behalf of the children. The West Virginia Department of Health and Human Resources (DHHR) has also submitted a response.

Having reviewed the record and the relevant decision of the circuit court, the Court is of the opinion that the decisional process would not be significantly aided by oral argument. The case is mature for consideration. Upon consideration of the standard of review and the record presented, the Court determines that there is no prejudicial error. This case does not present a new or significant question of law. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

This petition was first filed in 2006, after C.W. was born addicted to drugs. C.W. has resided with the same foster family since birth, and has never resided with Petitioner Father, who is legally blind. The mother's rights were eventually terminated, and Petitioner Father was granted visitation with the caveat that he was not to reside with the terminated mother. Petitioner Father was eventually granted overnight visitation with C.W.; however, the DHHR learned that the terminated mother was still residing with Petitioner Father, and she was found to be present in the home during C.W.'s visitation. Thus, visitation was moved to the foster home. Petitioner Father sporadically visited C.W. in the foster home, but was disruptive and verbally abusive at times in that setting. The DHHR moved for termination of Petitioner Father's parental rights, but rather than terminating his rights, the circuit court ordered that C.W. be placed in subsidized permanent legal guardianship in the foster home he has resided in since birth. Petitioner Father was ordered to continue to have visitation. The circuit court ordered that all social security benefits and retirement benefits for C.W. are to be sent to the foster parents, and termination was not effectuated so that C.W. can benefit from these services. Both the guardian ad litem and the DHHR have argued in favor of a termination of Petitioner Father's parental rights and a discontinuation of visitation; alternatively, they argue that the circuit court order should stand.

“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 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 the Interest of: Tiffany Marie S.*, 196 W.Va. 223, 470 S.E.2d 177 (1996). This Court has also held that “[t]ermination of parental rights, the most drastic remedy under the statutory provision covering the disposition of neglected children, *W.Va. Code* §49-6-5 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) 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).

On appeal, Petitioner Father argues that the circuit court erred in placing the minor child in permanent foster care rather than with Petitioner Father, who is the biological father. He further argues that despite his blindness he is capable of caring for the child. When a parent has failed to respond to or follow through with a reasonable case plan, and this failure threatens the health, welfare or life of the child, then there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected. *See*, *W.Va. Code* §49-6-5(b). In the present case, Petitioner Father continued to maintain a relationship with the terminated mother, even though she refused drug treatment repeatedly and was still abusing drugs.¹ Petitioner Father resided with the terminated mother against court orders, and allowed her to have contact with C.W., also against court orders. Moreover, Petitioner Father failed to maintain visitation with C.W. for great lengths of time after visitation was removed from Petitioner Father’s home due to the terminated mother’s presence. The circuit court maintained Petitioner Father’s parental rights in order to allow the child to obtain benefits through the Petitioner Father. Under the circumstances of this case, this Court finds no error in the circuit court’s order.

For the foregoing reasons, this Court finds no error in the decision of the circuit court and the subsidized foster placement is hereby affirmed.

¹The terminated mother gave birth to her fourth drug addicted child just after the disposition of this matter.

Affirmed.

ISSUED: September 26, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Menis E. Ketchum

Justice Thomas E. McHugh