

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

In Re: D.C. & J.C.:

No. 11-1019 (Wood County 09-JA-69 & 97)

FILED

December 2, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Father appeals the circuit court's order terminating his parental rights to D.C. and J.C. The appeal was timely perfected by counsel, with petitioner's appendix accompanying the petition. The guardian ad litem has filed her response on behalf of the child. The West Virginia Department of Health and Human Resources ("DHHR") has filed its response.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented in the parties' written briefs, and the record on appeal, 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 is appropriate under Rule 21 of the Revised Rules.

“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.” Syllabus Point 1, *In the Interest of: Tiffany Marie S.*, 196 W.Va. 223, 470 S.E.2d 177 (1996).” Syl. Pt. 1, *In re Faith C.*, 226 W.Va. 188, 699 S.E.2d 730 (2010).

This petition was initiated due to a prior termination of parental rights against the Petitioner Father, and due to the mother's drug abuse. Both parents stipulated to neglect, and both were granted improvement periods. At the beginning of the adjudicatory improvement periods, both parents were noncompliant, but eventually both parents entered drug

rehabilitation. During the initial improvement period, Petitioner Father was arrested for shoplifting. Both Petitioner Father and the mother were granted dispositional improvement periods. Although Petitioner Father was participating in services, it does not appear that he was benefitting from services. There were issues regarding proper discipline during visitation, Petitioner Father having no food in his house during visitation, and the children not wanting to come to visitation. There was a one month period when the DHHR and service providers had no contact at all with Petitioner Father, and he ceased visitation during that period. After the month of no contact, Petitioner Father became much less compliant in services. Petitioner Father also continued to repeatedly fluctuate in and out of a relationship with the mother, although this relationship had resulted in domestic violence petitions, police intervention, and even cancelled joint visitations with the children. Upon disposition, the circuit court found that the pattern between the parents continued, showing that although both parents participated in services, they were not learning from them and improving. Further, the circuit court noted that Petitioner Father has a prior termination of parental rights to another child. The circuit court terminated Petitioner Father's parental rights.

On appeal, Petitioner Father argues that the circuit court erred in terminating his parental rights, because he was compliant in all services. "As we explained in *West Virginia Dept. of Human Serv. v. Peggy F.*, 184 W.Va. 60, 64, 399 S.E.2d 460, 464 (1990), it is possible for an individual to show 'compliance with specific aspects of the case plan' while failing 'to improve . . . [the] overall attitude and approach to parenting.'" *In Interest of Carlita B.*, 185 W.Va. 613, 626, 408 S.E.2d 365, 378 (1991). Thus, although Petitioner Father participated in services, the record reflects that he did not substantially correct the unstable lifestyle that led to the filing of the petition. He continued to fluctuate in and out of an unstable and sometimes violent relationship with the mother, was arrested for shoplifting during his improvement period, and showed little improvement in his parenting skills. This Court finds no error in the circuit court's finding.

Additionally, Petitioner Father argues that the circuit court erred in failing to consider less restrictive alternatives. Specifically, he argues that the circuit court should have extended his dispositional improvement period. This Court has noted that "the trial court must accept the fact that the statutory limits on improvement periods (as well as our case law limiting the right to improvement periods) dictate that there comes a time for decision, because a child deserves resolution and permanency in his or her life, and because part of that permanency must include at minimum a right to rely on his or her caretakers to be there to provide the basic nurturance of life." *State ex rel. Amy M. v. Kaufman*, 196 W.Va. 251, 260, 470 S.E.2d 205, 214 (1996). Moreover,

"As a general rule the least restrictive alternative regarding parental rights to

custody of a child under W.Va.Code [§] 49–6–5 (1977) will be employed; however, courts are not required to exhaust every speculative possibility of parental improvement before terminating parental rights where it appears that the welfare of the child will be seriously threatened, and this is particularly applicable to children under the age of three years who are more susceptible to illness, need consistent close interaction with fully committed adults, and are likely to have their emotional and physical development retarded by numerous placements.” Syllabus Point 1, *In re R.J.M.*, 164 W.Va. 496, 266 S.E.2d 114 (1980).

Syl. Pt. 4, *In re Kristin Y.*, 227 W.Va. 558, 712 S.E.2d 55 (2011). In the present case, the parents were given nineteen months of services, but failed to show sufficient improvement. Although the parents participated in services, it is clear that they failed to benefit from said services. This Court finds no error in the disposition, and in the failure to grant an extension to the dispositional improvement period.

For the foregoing reasons, we find no error in the decision of the circuit court to terminate petitioner’s parental rights, and the circuit court’s order is hereby affirmed.

Affirmed.

ISSUED: December 2, 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