

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

In Re: P.S., T.S., and S.S.

No. 13-0309 (Barbour County 11-JA-37, 11-JA-38, and 11-JA-39)

FILED

October 1, 2013
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Mother filed this appeal, by counsel Chaelyn W. Casteel, from the Circuit Court of Barbour County, which terminated her parental rights to the subject children, by order entered on February 25, 2013. The guardian ad litem for the children, Karen Hill Johnson, has filed a response supporting the circuit court's order. The Department of Health and Human Resources ("DHHR"), by its attorney Lee A. Niezgodna, has also filed a response in support of the circuit court's order. Petitioner contends that the circuit court should have terminated her custodial rights only, not her parental rights.

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

In October of 2011, the DHHR filed its petition initiating this abuse and neglect case. The petition alleged that a domestic dispute occurred on October 11, 2011, between petitioner and her boyfriend, S.S.'s father. Both parents waived their rights to a preliminary hearing and, at adjudication, each stipulated to daily drug use and to their history of domestic violence. The circuit court granted both parents six-month improvement periods. In August of 2012, each parent pled guilty to one count of possession with the intent to manufacture a controlled substance. Following the dispositional hearing in October of 2012, the circuit court terminated petitioner's parental rights to the subject children, transferred legal and physical custody of P.S. and T.S. to their respective biological fathers, and placed S.S. with his paternal grandfather. Petitioner now appeals this termination.

The 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's sole argument on appeal is that the circuit court improperly ordered termination of her parental rights, rather than terminating only her custodial rights, to each of the subject children. Petitioner contends that less drastic alternatives to terminating her parental rights were available because each child was placed with a family member. Petitioner asserts that she shares a significant bond with her children and that the circuit court did not need to terminate her parental rights to ensure the children's safety and best interests. Petitioner also highlights that her mother was a significant caretaker for her two older children during the majority of the proceedings. As a result of her termination of parental rights, petitioner argues that her children's link to their maternal side of their family could become lost.

Upon our review of the record, we find no error or abuse or discretion in the 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.*, -- W.Va. --, 743 S.E.2d 352 (2013). The record and the circuit court's findings support its conclusions that there was no reasonable likelihood to believe that the conditions of abuse and neglect could have been substantially corrected in the near future, and that the termination was necessary for the children's welfare. For instance, the record reflects that petitioner was unwilling and unable to conquer her drug addiction. Pursuant to West Virginia Code § 49-6-5(a)(6), circuit courts are directed to terminate parental rights upon such findings. Our review of the record does not provide support for anything short of the terminating petitioner's parental rights to warrant overturning the circuit court.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: October 1, 2013

CONCURRED IN BY:

Chief Justice Brent D. Benjamin
Justice Robin Jean Davis
Justice Margaret L. Workman
Justice Menis E. Ketchum
Justice Allen H. Loughry II