

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re T.H.-1, A.H.-1, B.P., and A.H.-2

No. 18-0536 · No. No. 18-0536 · Decided November 19, 2018

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the termination of a father’s parental rights in an abuse and neglect proceeding. The court held that continued substance abuse, failure to maintain appropriate housing, and inadequate parenting demonstrated no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected, making termination an appropriate disposition without a less-restrictive alternative.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; Chief Justice Margaret L. Workman; Justice Elizabeth D. Walker; Justice Tim Armstead; Justice Evan H. Jenkins; Justice Paul T. Farrell sitting by temporary assignment
JURISDICTION	West Virginia
DECIDED	November 19, 2018
DOCKET	No. 18-0536
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner Father appealed the Circuit Court of Randolph County's order terminating his parental rights following abuse and neglect proceedings.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo; factual findings in an abuse and neglect case tried without a jury are reviewed for clear error and will not be set aside unless the reviewing court is left with a definite and firm conviction that a mistake has been made.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Petitioner Father T.H.-2 v. West Virginia Department of Health and Human Resources, Guardian ad litem on behalf of the children

TOPICS

termination of parental rights

parental rights

family law procedure

appellate procedure

standard of review

PRACTICE AREAS

juvenile law

child welfare

parental rights

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court erred by terminating petitioner's parental rights rather than using a less-restrictive dispositional alternative.
2. Whether the evidence supported findings that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future and that termination was necessary for the children's welfare.

HOLDINGS

1. The circuit court properly found that there was no reasonable likelihood petitioner could substantially correct the conditions of abuse and neglect in the near future and that termination of his parental rights was necessary for the children's welfare.
2. Termination of parental rights may be employed without intervening less-restrictive alternatives when there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected.

KEY QUOTATIONS

“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.” (2)

“Termination of parental rights, the most drastic remedy under the statutory provision covering the disposition of neglected children, W.Va. Code [§] 49-6-5 [now West Virginia Code § 49-4-604] . . . 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) [now West Virginia Code § 49-4-604(c)] . . . that conditions of neglect or abuse can be substantially corrected.” (3)

FACTUAL BACKGROUND

The DHHR alleged that petitioner and the children's mother had longstanding substance-abuse and family-safety problems. Police responding to a domestic dispute found the home in dangerous condition, including unsafe heaters, a cockroach infestation, and illegal drugs in plain sight, and both parents were arrested. During petitioner's improvement period, he repeatedly tested positive for methamphetamine, opiates, and other illegal substances, became unable to visit the children after missing drug screens, failed to maintain safe housing, and did not demonstrate adequate parenting skills.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition in December 2016. Petitioner stipulated to the allegations and received multiple extensions of a post-adjudicatory improvement period, but continued to test positive for illegal substances, stopped submitting to drug screens, missed visitation, failed to maintain appropriate housing, and did

not demonstrate adequate parenting skills. After a dispositional hearing, the circuit court denied a post-dispositional improvement period and terminated his parental rights on April 10, 2018. The Supreme Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- In re K.H., 235 W. Va. 254, 773 S.E.2d 20 (2015)
- Melinda H. v. William R. II, 230 W. Va. 731, 742 S.E.2d 419 (2013)
- State v. Brandon B., 218 W. Va. 324, 624 S.E.2d 761 (2005)
- State v. Edward Charles L., 183 W. Va. 641, 398 S.E.2d 123 (1990)
- In Interest of Tiffany Marie S., 196 W. Va. 223, 470 S.E.2d 177 (1996)
- In re Cecil T., 228 W. Va. 89, 717 S.E.2d 873 (2011)
- In re R.J.M., 164 W. Va. 496, 266 S.E.2d 114 (1980)
- In re Kristin Y., 227 W. Va. 558, 712 S.E.2d 55 (2011)