

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re C.W. and N.S.

No. 21-0052 (W. Va. June 3, 2021) · No. No. 21-0052 · Decided June 3, 2021

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the termination of petitioner mother M.S.'s parental and custodial rights to C.W. and N.S. The court held that the mother had not remedied the conditions of abuse and neglect, citing ongoing substance abuse, criminal conduct, noncompliance with services, and her refusal to acknowledge the underlying problems. The court concluded that termination was supported by the evidence and that less-restrictive alternatives were unnecessary.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Evan H. Jenkins; Justice Elizabeth D. Walker; Justice Tim Armstead; Justice John A. Hutchison; Justice William R. Wooton
JURISDICTION	West Virginia
DECIDED	June 3, 2021
DOCKET	No. 21-0052
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner Mother appealed the Circuit Court of Preston County's order terminating her parental and custodial rights after an abuse-and-neglect proceeding.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo. In an abuse-and-neglect case tried without a jury, factual findings 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PRECEDENTIAL VALUE	memorandum decision; nonprecedential value not otherwise specified in the opinion
PARTIES	M.S., Petitioner Mother v. West Virginia Department of Health and Human Resources, Guardian ad litem for C.W. and N.S.

TOPICS

termination of parental rights

parental rights

family law procedure

standard of review

appellate procedure

PRACTICE AREAS

juvenile abuse and neglect

termination of parental rights

appellate review

QUESTIONS PRESENTED

1. Whether the circuit court erred by terminating petitioner's parental and custodial rights despite her claimed substantial compliance with the improvement period.
2. Whether the circuit court was required to impose a less-restrictive dispositional alternative instead of terminating petitioner's parental and custodial rights.

HOLDINGS

1. Petitioner was not entitled to relief based on claimed compliance because the evidence showed that she failed to remedy the conditions of abuse and neglect, including through continued substance abuse, missed drug screens, criminal conduct, and refusal to acknowledge the underlying problems.
2. 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 was necessary for the children's welfare.
3. The circuit court was not required to use a less-restrictive alternative before terminating petitioner's parental and custodial rights because the evidence established that the conditions of abuse and neglect could not be substantially corrected in the near future.

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." (at 3)

"In order to remedy the abuse and/or neglect problem, the problem must first be acknowledged." (at 4)

"Termination of parental rights, the most drastic remedy under the statutory provision covering the disposition of neglected children, [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 [West Virginia Code § 49-4-604(d)] . . . that conditions of neglect or abuse can be substantially corrected." (at 4)

FACTUAL BACKGROUND

The DHHR became involved after repeated concerns about petitioner's lack of supervision and unsuccessful in-home services. One child suffered severe burns, and petitioner delayed seeking medical care, refused the recommended burn-unit evaluation, and did not provide a credible explanation for the injuries. During the improvement period, petitioner continued to test positive for controlled substances, missed numerous drug screens, failed to obtain recommended substance-abuse treatment and housing, engaged in criminal conduct, and refused to acknowledge the conditions that led to removal. The circuit court concluded that the conditions were

not reasonably likely to be corrected in the near future and that termination was necessary for the children's welfare.

PROCEDURAL HISTORY

The DHHR filed an abuse-and-neglect petition in February 2019. Petitioner stipulated to failing to provide adequate medical care for an injured child, was adjudicated an abusing and neglectful parent, and received multiple extensions of a post-adjudicatory improvement period. After dispositional hearings, the circuit court found no reasonable likelihood that petitioner could substantially correct the conditions of abuse and neglect in the near future and terminated her parental and custodial rights. 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 Timber M., 231 W. Va. 44, 55, 743 S.E.2d 352, 363 (2013)
- 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)