

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re B.S. and A.S.

No. 19-0431 (W. Va. Nov. 8, 2019) · No. No. 19-0431 · Decided November 8, 2019

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the termination of a father's parental rights to B.S. and A.S. The court held that he failed to demonstrate a substantial change in circumstances warranting a post-dispositional improvement period and that the conditions of abuse and neglect were unlikely to be substantially corrected. The court concluded that termination without a less-restrictive alternative was supported by the record.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Elizabeth D. Walker; Justice Margaret L. Workman; Justice Tim Armstead; Justice Evan H. Jenkins; Justice John A. Hutchison
JURISDICTION	West Virginia
DECIDED	November 8, 2019
DOCKET	No. 19-0431
DISPOSITION	affirmed
PROCEDURAL POSTURE	Father appealed the circuit court's order terminating his parental rights, arguing that the court should have imposed a less-restrictive dispositional alternative and granted a post-dispositional improvement period.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo, while factual findings in an abuse and neglect case are reviewed for clear error. A finding is clearly erroneous only when, after reviewing the entire record, the appellate court is left with a definite and firm conviction that a mistake was made.
PRECEDENTIAL VALUE	Memorandum decision; no substantial question of law and no prejudicial error found under Rule 21.
PARTIES	Petitioner Father C.S. v. West Virginia Department of Health and Human Resources, Guardian ad litem for B.S. and A.S., Respondent Mother S.S.

TOPICS

termination of parental rights

parental rights

domestic violence

family law procedure

appellate procedure

PRACTICE AREAS

juvenile law

family law

child welfare

QUESTIONS PRESENTED

1. Whether the circuit court erred by denying the father's motion for a post-dispositional improvement period.
2. Whether the circuit court erred by terminating the father's parental rights without first employing a less-restrictive dispositional alternative.

HOLDINGS

1. A parent who was previously granted an improvement period must demonstrate a substantial change in circumstances and that, because of the change, the parent is likely to fully participate in a post-dispositional improvement period. The father failed to make either showing, so the circuit court properly denied his motion.
2. Termination of parental rights was authorized because there was no reasonable likelihood that the conditions of abuse or neglect could be substantially corrected in the near future and termination was necessary for the children's welfare.
3. Termination of parental rights may be imposed without intervening less-restrictive alternatives when there is no reasonable likelihood that the conditions of abuse or neglect can be substantially corrected.

KEY QUOTATIONS

“A parent that has previously been granted an improvement period during the proceedings must show that he has “experienced a substantial change in circumstances” and “due to that change in circumstances, the [parent] is likely to fully participate in the improvement period.”” (3)

“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(c)] . . . that conditions of neglect or abuse can be substantially corrected.” (4)

FACTUAL BACKGROUND

The father engaged in domestic violence against the children's mother, including tackling her, wrestling her to the ground, and striking her with an electronic tablet; the incident resulted in criminal charges and a domestic violence protective order. He also had a persistent controlled-substance-abuse problem and admitted that substance abuse negatively affected his parenting. Although he received multiple opportunities to participate in improvement periods and services, he failed to complete random drug screening, parenting classes, domestic-

violence classes, and visitation, continued using controlled substances after detoxification, and did not substantially correct the conditions of abuse and neglect.

PROCEDURAL HISTORY

The DHHR and the mother filed a child abuse and neglect petition in August 2018 alleging domestic violence and controlled-substance abuse. The circuit court adjudicated the father as an abusing parent after accepting his stipulation that substance abuse negatively affected his parenting, granted and repeatedly extended a post-adjudicatory improvement period, and later found that he failed to participate successfully. After a final dispositional hearing, the circuit court terminated his parental rights on April 16, 2019. The Supreme Court of Appeals affirmed by memorandum decision.

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)