

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re J.R.-S., M.R.-S., and T.S.

In re J.R.-S., M.R.-S., and T.S. · No. No. 18-0671 · Decided November 19, 2018

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the termination of petitioner father A.R.-S.'s parental rights to three children. The court held that he did not demonstrate a substantial change in circumstances warranting a post-dispositional improvement period and that the record supported findings that the conditions of abuse and neglect could not be substantially corrected in the near future. The court issued a memorandum decision under Rule 21 of the West Virginia Rules of Appellate Procedure.

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. 18-0671
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner Father appealed the Taylor County Circuit Court's order terminating his parental rights to three children in an abuse and neglect proceeding.
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. A reviewing court may not overturn a finding merely because it would have decided the case differently and must affirm if the circuit court's account of the evidence is plausible in light of the record viewed in its entirety.
PRECEDENTIAL VALUE	Unpublished memorandum decision; limited precedential value under West Virginia appellate practice.
PARTIES	Petitioner Father A.R.-S. v. West Virginia Department of Health and Human Resources, Guardian ad litem for J.R.-S., M.R.-S., and T.S.

TOPICS

termination of parental rights

parental rights

family law procedure

standard of review

appellate procedure

PRACTICE AREAS

family law

juvenile law

abuse and neglect

parental rights

QUESTIONS PRESENTED

1. Whether the circuit court erred by denying or failing to grant Father a post-dispositional improvement period.
2. Whether the circuit court erred by terminating Father's parental rights rather than using a less-restrictive dispositional alternative.
3. 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. Father was not entitled to a post-dispositional improvement period because, having previously received an improvement period, he failed to prove a substantial change in circumstances and that he was likely to fully participate in another improvement period.
2. Termination of Father's parental rights was proper because there was no reasonable likelihood that the conditions of abuse and 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 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.” (1-2)

“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 Father and the children's mother abused substances and engaged in domestic violence in the children's presence, and that Father failed to provide necessary supervision and protection. Father admitted

the allegations and was granted a post-adjudicatory improvement period. Although he completed a twenty-eight-day inpatient substance-abuse program, he later relapsed, resumed substance abuse, moved into a home with a known drug addict, ceased participating in the proceedings, and failed to attend the dispositional hearing.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition alleging substance abuse, domestic violence, and failure to protect the children. Father admitted the allegations, was adjudicated an abusing parent, and received a post-adjudicatory improvement period. After evidence that he relapsed, failed to participate in services, moved into a home with a known drug addict, and did not attend the dispositional hearing, the circuit court terminated his parental 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 M.M., 236 W. Va. 108, 778 S.E.2d 338 (2015)
- 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)

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