

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re: J.W. and A.W.

No. 17-0575 (W. Va. Nov. 22, 2017) · No. No. 17-0575 · Decided November 22, 2017

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the termination of petitioner father E.N.'s parental and custodial rights to J.W. and A.W. The court held that the circuit court properly considered the nature and duration of the father's incarceration, the children's best interests, and the lack of reasonable likelihood that the conditions of abuse and neglect could be substantially corrected, and that no less-restrictive alternative was required.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Allen H. Loughry II; Justice Robin Jean Davis; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Elizabeth D. Walker
JURISDICTION	West Virginia
DECIDED	November 22, 2017
DOCKET	No. 17-0575
DISPOSITION	affirmed
PROCEDURAL POSTURE	Father appealed the circuit court's order terminating his parental and custodial rights following 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 and will not be set aside unless the reviewing court is left with a definite and firm conviction that a mistake was made.
PRECEDENTIAL VALUE	Unpublished memorandum decision; persuasive value only under the court's applicable rules.
PARTIES	Petitioner Father E.N. v. West Virginia Department of Health and Human Resources, J.W., A.W.

TOPICS

termination of parental rights

parental rights

family law procedure

standard of review

appellate procedure

PRACTICE AREAS

family law

juvenile abuse and neglect

parental rights

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court improperly terminated father's parental and custodial rights based solely on his incarceration.
2. Whether the circuit court was required to impose a less-restrictive dispositional alternative instead of terminating father's parental and custodial rights.

HOLDINGS

1. The circuit court did not err in terminating father's parental and custodial rights because it considered the nature of his offense, the terms and length of his incarceration, his limited prior caregiving, the children's best interests, and their need for permanency; the termination was not based solely on incarceration.
2. Termination of parental rights may be ordered without first employing less-restrictive alternatives when there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected.

KEY QUOTATIONS

“When no factors and circumstances other than incarceration are raised at a disposition hearing in a child abuse and neglect proceeding with regard to a parent’s ability to remedy the condition of abuse and neglect in the near future, the circuit court shall evaluate whether the best interests of a child are served by terminating the rights of the biological parent in light of the evidence before it.” (at 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.” (at 3)

FACTUAL BACKGROUND

The children were exposed to severe neglect while in the care of their mother and maternal aunt, including inadequate dental and medical care, insufficient food, filthy living conditions, animal feces and urine, and unexplained scratches, bites, bruises, and circular marks. Father was incarcerated on a three-to-fifteen-year sentence for attempted first-degree murder, with a possible release date no earlier than August 2022, and had spent little time caring for the children before incarceration. The circuit court found that father could not substantially correct the conditions of abuse and neglect in the near future and that adoption by the foster parents best served the children's need for permanency and continuity.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition in June 2016. Father waived his preliminary hearing and stipulated to adjudication. After continuances requested by father, the circuit court held a dispositional hearing in

April 2017 and entered a May 24, 2017 order terminating his parental and custodial rights. Father appealed to the Supreme Court of Appeals of West Virginia, which 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)