

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re A.F., K.F., and M.M.

No. 14-0098 (W. Va. June 16, 2014) (memorandum decision) · No. No. 14-0098 · Decided June 16, 2014

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the termination of a mother's parental rights to three children in an abuse and neglect proceeding. The court held that the circuit court did not abuse its discretion in denying an improvement period or in finding that the conditions of abuse and neglect were unlikely to be substantially corrected, based on the mother's failure to acknowledge substance abuse and sexual abuse in the home and her failure to separate from her boyfriend.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per curiam; Chief Justice Robin Jean Davis; Justice Brent D. Benjamin; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	June 16, 2014
DOCKET	No. 14-0098
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner Mother appealed an order of the Circuit Court of Braxton County terminating her parental rights to three children after 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 the definite and firm conviction that a mistake has been made.
PRECEDENTIAL VALUE	Nonprecedential memorandum decision
PARTIES	Petitioner Mother v. West Virginia Department of Health and Human Resources, Guardian ad litem for the children, B.M.

TOPICS

termination of parental rights

parental rights

family law procedure

appellate procedure

standard of review

PRACTICE AREAS

juvenile law

family law

child welfare

QUESTIONS PRESENTED

1. Whether the circuit court abused its discretion by denying Petitioner's motion for an improvement period.
2. Whether the circuit court erred by terminating Petitioner's parental rights based in part on her failure to separate from B.M. and her failure to acknowledge the substance abuse and sexual abuse in the home.

HOLDINGS

1. The circuit court properly denied Petitioner's motion for an improvement period because she failed to demonstrate by clear and convincing evidence that she would fully participate in an improvement period.
2. The circuit court properly terminated Petitioner's parental rights because 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.
3. The circuit court was required to conduct periodic permanent-placement review conferences and pursue permanent placement for the children within the applicable twelve-month period, absent extraordinary circumstances.

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. These findings shall not be set aside by a reviewing court unless clearly erroneous.” (2)

“[I]n order to remedy the abuse and/or neglect problem, the problem must first be acknowledged. Failure to acknowledge the existence of the problem, i.e., the truth of the basic allegation pertaining to the alleged abuse and neglect or the perpetrator of said abuse and neglect, results in making the problem untreatable and in making an improvement period an exercise in futility at the child's expense.” (2)

“At least once every three months until permanent placement is achieved as defined in Rule 6, the court shall conduct a permanent placement review conference, requiring the multidisciplinary treatment team to attend and report as to progress and development in the case, for the purpose of reviewing the progress in the permanent placement of the child.” (3)

“[t]he [twelve]-month period provided in Rule 43 of the West Virginia Rules of Procedures for Child Abuse and Neglect Proceedings for permanent placement of an abused and neglected child following the final dispositional order must be strictly followed except in the most extraordinary circumstances which are fully substantiated in the record.” (3)

FACTUAL BACKGROUND

The DHHR alleged that the children lacked adequate food, clothing, supervision, and medical care, and that B.M. sexually abused A.F. and that the adults used drugs in the children's presence. At the adjudicatory hearing, A.F. and K.F. testified about drug use in the home and A.F. described sexual abuse by B.M.; Petitioner denied the drug use and denied knowledge of the sexual abuse. Before disposition, Petitioner missed required drug screens, did not separate from B.M., continued to deny the abuse and neglect allegations, and failed to demonstrate that she could address the conditions in the home.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition in May 2013 against Petitioner Mother and B.M. After an adjudicatory hearing, the circuit court found that the children were abused and neglected based on sexual abuse by B.M., Petitioner's failure to protect the children, and parental drug abuse. Following a dispositional hearing, the circuit court denied Petitioner's motion for an improvement period and terminated both parents' parental rights in an order entered January 27, 2014. The Supreme Court of Appeals affirmed by memorandum decision.

DISPOSITION

affirmed

CASES CITED

- 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 Katie S., 198 W. Va. 79, 479 S.E.2d 589 (1996)
- In re Timber M., 231 W. Va. 44, 743 S.E.2d 352 (2013)
- W. Va. Dept. of Health and Human Res. ex rel. Wright v. Doris S., 197 W. Va. 489, 475 S.E.2d 865 (1996)
- State v. Michael M., 202 W. Va. 350, 504 S.E.2d 177 (1998)
- James M. v. Maynard, 185 W. Va. 648, 408 S.E.2d 400 (1991)