

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re A.M. and M.M.

No. 23-242 (W. Va. Oct. 25, 2023) · No. 23-242 · Decided October 25, 2023

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the termination of petitioner mother C.M.'s parental rights to A.M. and M.M. The court held that the circuit court did not abuse its discretion in denying an improvement period because petitioner failed to acknowledge the abuse and neglect issues, and that sufficient evidence supported the finding that the conditions could not be substantially corrected. The court also declined to consider certain arguments that were waived below or asserted on behalf of a third party.

CASE DETAILS

|                       |                                                                                                                                                                                                         |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Appeals of West Virginia                                                                                                                                                               |
| WRITING FOR THE COURT | Per Curiam; Chief Justice Elizabeth D. Walker; Justice Tim Armstead; Justice John A. Hutchison; Justice William R. Wooton; Justice C. Haley Bunn                                                        |
| JURISDICTION          | West Virginia                                                                                                                                                                                           |
| DECIDED               | October 25, 2023                                                                                                                                                                                        |
| DOCKET                | 23-242                                                                                                                                                                                                  |
| DISPOSITION           | affirmed                                                                                                                                                                                                |
| PROCEDURAL POSTURE    | Petitioner Mother appealed the Wood County Circuit Court's order terminating her parental rights following abuse and neglect proceedings.                                                               |
| STANDARD OF REVIEW    | Findings of fact in an abuse and neglect proceeding are reviewed for clear error, and conclusions of law are reviewed de novo. The denial of an improvement period is reviewed for abuse of discretion. |
| PRECEDENTIAL VALUE    | Nonprecedential memorandum decision                                                                                                                                                                     |
| PARTIES               | C.M., Petitioner Mother v. West Virginia Department of Health and Human Resources, A.M. and M.M., children                                                                                              |

TOPICS

- termination of parental rights
- parental rights
- family law procedure
- appellate procedure
- hearsay

## PRACTICE AREAS

family law

juvenile law

abuse and neglect

termination of parental rights

appellate procedure

## QUESTIONS PRESENTED

1. Whether the circuit court abused its discretion by denying C.M.'s motion for an improvement period.
2. Whether the circuit court erred by terminating C.M.'s parental rights when less restrictive alternatives were allegedly available.
3. Whether C.M. could assert on appeal the alleged failure to provide the children's maternal grandmother appointed counsel.
4. Whether C.M. preserved challenges to the admission of DHHR reports, cross-examination of report authors, and her opportunity to testify at disposition.

## HOLDINGS

1. The circuit court did not abuse its discretion in denying C.M.'s motion for an improvement period because she failed to demonstrate that she was likely to comply with its terms and continued to deny or minimize the abuse and neglect allegations.
2. Termination of C.M.'s parental rights was proper because the circuit court had sufficient evidence to find that there was no reasonable likelihood that the conditions of abuse or neglect could be substantially corrected in the near future and that termination was necessary for the children's welfare and best interests.
3. C.M. lacked standing to assert the rights of the children's maternal grandmother and the court properly declined to address that assignment of error.
4. C.M.'s challenges to admission of the DHHR reports, cross-examination of the report authors, and her opportunity to testify were waived because she failed to timely object or assert those rights in the circuit court.

## KEY QUOTATIONS

*“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.” (3)*

*“In order to remedy the abuse and/or neglect problem, the problem must first be acknowledged.” (2)*

*“Our general rule is that nonjurisdictional questions . . . raised for the first time on appeal, will not be considered.” (4)*

## FACTUAL BACKGROUND

The DHHR alleged that C.M. abused and neglected A.M. and M.M. through unsuitable housing, failure to meet A.M.'s educational needs, substance abuse, and exposure to an inappropriate caregiver. CPS workers observed

extensive trash and clutter, dirty diapers, insects, and an animal without food or water in C.M.'s apartment, and later observed C.M. and the children leaving the home of her boyfriend, whose parental rights to his own children had been terminated because of sexual abuse. C.M. continued to test positive for methamphetamine and alcohol, missed confirmed visits with the children, and disputed or minimized the allegations. The circuit court found no reasonable likelihood that the conditions could be substantially corrected and terminated her parental rights.

## PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition in October 2022. After adjudicatory hearings in November 2022 and February 2023, the circuit court adjudicated C.M. an abusing and neglecting parent. The court denied her motion for an improvement period and, after a March 2023 dispositional hearing, terminated her parental rights. The Supreme Court of Appeals of West Virginia affirmed.

## DISPOSITION

affirmed

## CASES CITED

- In re Cecil T., 228 W. Va. 89, 717 S.E.2d 873 (2011)
- In re Tonjia M., 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002)
- 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)
- Kanawha Cnty. Pub. Library Bd. v. Bd. of Educ. of Kanawha Cnty., 231 W. Va. 386, 398, 745 S.E.2d 424, 436 (2013)
- In re Tiffany Marie S., 196 W. Va. 223, 234, 470 S.E.2d 177, 188 (1996)
- Noble v. W. Va. Dep't of Motor Vehicles, 223 W. Va. 818, 821, 679 S.E.2d 650, 653 (2009)

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