

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re C.K., C.H., C.B., G.B., and T.B.

No. 19-1003 (W. Va. June 24, 2020) · No. No. 19-1003 · Decided June 24, 2020

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the termination of petitioner mother B.A.'s parental rights to five children in an abuse and neglect proceeding. The court upheld findings that she failed to properly supervise the children, address substance abuse, comply with services, and remedy the conditions of neglect. The court also upheld denial of an improvement period and post-termination visitation.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Tim Armstead; Justice Margaret L. Workman; Justice Elizabeth D. Walker; Justice Evan H. Jenkins; Justice John A. Hutchison
JURISDICTION	West Virginia
DECIDED	June 24, 2020
DOCKET	No. 19-1003
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner mother appealed the Circuit Court of McDowell County's order terminating her parental rights and denying post-termination visitation.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo. In an abuse and neglect case tried on the facts without a jury, factual findings 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PRECEDENTIAL VALUE	Nonprecedential memorandum decision
PARTIES	B.A., petitioner mother v. West Virginia Department of Health and Human Resources, C.K., C.H., C.B., G.B., and T.B., by guardian ad litem

TOPICS

termination of parental rights

parental rights

family law procedure

appellate procedure

standard of review

PRACTICE AREAS

family law

child welfare

termination of parental rights

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court adjudicated petitioner as an abusing parent upon insufficient evidence of conditions existing when the abuse and neglect petition was filed.
2. Whether the circuit court erred in allowing the children to be separated into different placements and in failing to apply the sibling-placement preference and the children's best-interest standard.
3. Whether the circuit court erred by failing to rule on petitioner's motion for a post-dispositional improvement period.
4. Whether the circuit court erred in terminating petitioner's parental rights without first allowing her to participate in an improvement period.
5. Whether the circuit court erred in denying petitioner post-termination visitation.

HOLDINGS

1. The DHHR established by clear and convincing evidence that the children were neglected and that petitioner was an abusing parent because her failure to properly supervise the children exposed them to a substantial risk of harm.
2. The sibling-placement preference does not require that all siblings be placed together when separation is supported by the children's best interests or other extenuating circumstances.
3. Petitioner lacked standing to seek modification of disposition through a post-dispositional improvement-period motion filed after her parental rights had been terminated, and the circuit court's denial of an improvement period was not error.
4. The circuit court properly terminated petitioner's parental rights because there was no reasonable likelihood that she could substantially correct the conditions of abuse and neglect in the near future and termination was necessary for the children's welfare.
5. The circuit court did not abuse its discretion in denying post-termination visitation because the record supported its finding that continued visitation was inconsistent with the children's best interests and would be detrimental to their well-being.

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 (2019)] . . . 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) (2019)] . . . that conditions of neglect or abuse can be substantially corrected.” (7)

“The evidence must indicate that such visitation or continued contact would not be detrimental to the child’s well being and would be in the child’s best interest.” (8)

FACTUAL BACKGROUND

Two of petitioner's young children were found outside the home without supervision on separate occasions, including one child found wandering the streets early in the morning and another found in the road. Petitioner admitted abusing Suboxone and tested positive for Suboxone, cocaine, benzodiazepines, and later cocaine and methamphetamine. Despite approximately thirteen months of services, petitioner participated sporadically, missed numerous visits and appointments, failed to comply consistently with drug screening and treatment, and did not remedy the conditions of abuse and neglect. The circuit court terminated her parental rights and denied post-termination visitation based on the lack of reasonable likelihood that the conditions could be substantially corrected and the children's best interests.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition alleging that petitioner improperly supervised the children and abused substances. After an adjudicatory hearing, the circuit court found petitioner to be an abusing parent. Following services, status hearings, and a dispositional hearing, the circuit court entered an October 4, 2019 order terminating petitioner's parental rights, denying post-termination visitation, and denying her request for a post-adjudicatory improvement period. Petitioner later filed a motion for a stay and a post-dispositional improvement period; the stay was denied and the post-dispositional motion was not separately ruled upon. 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 Interest of S.C., 168 W. Va. 366, 284 S.E.2d 867 (1981)
- In re Joseph A., 199 W. Va. 438, 485 S.E.2d 176 (1997)
- In re F.S., 233 W. Va. 538, 759 S.E.2d 769 (2014)
- In re Carol B., 209 W. Va. 658, 550 S.E.2d 636 (2001)
- In re Cesar L., 221 W. Va. 249, 654 S.E.2d 373 (2007)
- In re Kaitlyn P., 225 W. Va. 123, 690 S.E.2d 131 (2010)
- In re Tonjia M., 212 W. Va. 443, 573 S.E.2d 354 (2002)

- In re Katie S., 198 W. Va. 79, 479 S.E.2d 589 (1996)
- 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)
- In re Christina L., 194 W. Va. 446, 460 S.E.2d 692 (1995)
- In re Daniel D., 211 W. Va. 79, 562 S.E.2d 147 (2002)
- 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)

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/west-virginia-supreme-court-of-appeals-of-west-virginia/2020/in-re-c-k-c-h-c-b-g-b-and-t-b-4k8bt0s0>