

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re M.H. & K.H.

No. 13-0647 (W. Va. Nov. 26, 2013) · No. No. 13-0647 · Decided November 26, 2013

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the termination of a father's parental rights to M.H. and K.H. The court held that the circuit court properly terminated his improvement period and parental rights after he failed to remain drug-free, missed drug screens, and did not participate in required services.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Brent D. Benjamin; Justice Robin Jean Davis; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	November 26, 2013
DOCKET	No. 13-0647
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner Father appealed the Circuit Court of Mineral County's order terminating his parental rights after the court terminated his post-adjudicatory improvement period and held a dispositional hearing.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo. In an abuse and neglect case tried upon 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 has been made.
PRECEDENTIAL VALUE	Published memorandum decision
PARTIES	Petitioner Father v. West Virginia Department of Health and Human Resources, M.H. and K.H., through their guardians ad litem

TOPICS

termination of parental rights

parental rights

family law procedure

appellate procedure

standard of review

PRACTICE AREAS

juvenile law

child welfare

parental rights

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court clearly erred by terminating Father's post-adjudicatory improvement period rather than providing additional drug counseling or rehabilitative services.
2. Whether the circuit court erred in terminating Father's parental rights after finding no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future.

HOLDINGS

1. The circuit court properly terminated Father's improvement period because he failed to participate in its requirements, including remaining drug-free and submitting to scheduled drug testing.
2. The termination of Father's parental rights was not clearly erroneous because the record supported the finding that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the future.

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)

"As such, it is clear that Petitioner Father failed to participate in the services scheduled during his improvement period." (2)

FACTUAL BACKGROUND

After a March 2012 car accident in which three-year-old M.H. suffered a broken femur, Father was criminally charged with child endangerment, drug possession, and driving under the influence of drugs. The DHHR substantiated that Father used drugs and neglected the children through inadequate supervision, driving under the influence, and failure to bond with them. During his improvement period, Father was required to remain drug-free and submit to frequent testing, but he missed six tests and tested positive for alcohol, marijuana, and cocaine.

PROCEDURAL HISTORY

The circuit court adjudicated the children abused and neglected and granted Father a six-month post-adjudicatory improvement period, later extended for three months. The court terminated the improvement period after Father tested positive for alcohol, marijuana, and cocaine, missed six drug screens, and failed to attend anger-management classes. Following a dispositional hearing, the circuit court terminated Father's parental rights. The Supreme Court of Appeals affirmed.

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)

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