

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re B.W., A.W., & E.W.

No. 15-0219 (W. Va. Aug. 31, 2015) · No. No. 15-0219 · Decided August 31, 2015

SUMMARY

The West Virginia Supreme Court of Appeals affirmed an order terminating petitioner mother L.W.'s parental rights to three children. The court held that the circuit court did not abuse its discretion in denying an extension of the mother's improvement period because she failed to substantially comply with required services and continued to test positive for drugs. The court also concluded that the evidence supported findings that there was no reasonable likelihood of correcting the neglect conditions in the near future and that termination was necessary for the children's welfare.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Margaret L. Workman; Justice Robin Jean Davis; Justice Brent D. Benjamin; Justice Menis E. Ketchum; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	August 31, 2015
DOCKET	No. 15-0219
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner mother appealed the Circuit Court of Preston County's order terminating her parental rights and denying her motion to extend her improvement period.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo. In an abuse and neglect case tried 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PRECEDENTIAL VALUE	Unpublished memorandum decision; the opinion states that it is issued under Rule 21 because there is no substantial question of law and no prejudicial error.
PARTIES	L.W., Petitioner Mother v. West Virginia Department of Health and Human Resources, B.W., A.W., and E.W., through guardian ad litem

TOPICS

termination of parental rights

parental rights

family law procedure

appellate procedure

standard of review

PRACTICE AREAS

family law

juvenile law

child welfare

QUESTIONS PRESENTED

1. Whether the circuit court abused its discretion by denying the mother's motion to extend her improvement period.
2. Whether the evidence supported termination of the mother's parental rights based on the absence of a reasonable likelihood that she could substantially correct the conditions of neglect in the near future and the necessity of termination for the children's welfare.

HOLDINGS

1. The circuit court did not abuse its discretion in denying the mother's motion to extend her improvement period because the record did not show substantial compliance with the improvement-period requirements.
2. The circuit court did not err in terminating the mother's parental rights because there was no reasonable likelihood that she could substantially correct the conditions of abuse or neglect in the near future and termination was necessary for the children's welfare.
3. Legal conclusions in abuse and neglect cases are reviewed de novo, while factual findings are reviewed for clear error.

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." (2)

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

"It is clear, therefore, there was no reasonable likelihood that she could substantially correct the conditions of abuse or neglect in the near future." (3)

FACTUAL BACKGROUND

The DHHR alleged that the mother left the children with various caretakers for extended periods, failed to maintain appropriate contact with the children and caretakers, and abused illegal drugs. The mother stipulated that she neglected the children, and the circuit court granted her a post-adjudicatory improvement period. She missed parenting and adult life-skills classes, failed to provide drug-screen results, tested positive for buprenorphine and marijuana, and failed to maintain contact with the children. The circuit court found no

reasonable likelihood that she could substantially correct the conditions of neglect in the near future and terminated her parental rights.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition in December 2013. The circuit court adjudicated the mother as having neglected the children, granted her a post-adjudicatory improvement period, and later continued it despite evidence of noncompliance. After a dispositional hearing, the circuit court denied a further improvement period and terminated her parental rights in an order entered February 18, 2015. The Supreme Court of Appeals of West Virginia 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)
- Gebr. Eickhoff Maschinenfabrik Und Eisengieberei mbH v. Starcher, 174 W. Va. 618, 328 S.E.2d 492 (1985)

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