

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re J.S.

No. 14-0747 (W. Va. Jan. 12, 2015) · No. No. 14-0747 · Decided January 12, 2015

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the termination of the petitioner mother’s parental rights in an abuse and neglect proceeding. The court held that she failed to demonstrate that she was likely to fully participate in a post-adjudicatory improvement period and that the record supported findings that the conditions of abuse and neglect could not be substantially corrected. The court concluded that termination was necessary for the child’s welfare under the applicable West Virginia statutes.

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	January 12, 2015
DOCKET	No. 14-0747
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner Mother appealed the Roane County Circuit Court’s order terminating her parental rights and denying her motion for a post-adjudicatory improvement period.
STANDARD OF REVIEW	Conclusions of law in an abuse and neglect case are reviewed de novo, while 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PRECEDENTIAL VALUE	Unpublished memorandum decision; issued under West Virginia Rule of Appellate Procedure 21.
PARTIES	Petitioner Mother v. West Virginia Department of Health and Human Resources

TOPICS

termination of parental rights

parental rights

family law procedure

appellate procedure

standard of review

PRACTICE AREAS

family law

juvenile law

abuse and neglect

QUESTIONS PRESENTED

1. Whether the circuit court properly denied petitioner's motion for a post-adjudicatory improvement period.
2. Whether the circuit court properly terminated petitioner's parental rights without imposing a less restrictive dispositional alternative.

HOLDINGS

1. A circuit court may grant a post-adjudicatory improvement period only when the parent demonstrates by clear and convincing evidence that the parent is likely to fully participate; petitioner failed to meet that burden.
2. Termination of parental rights was proper because there was no reasonable likelihood that petitioner could substantially correct the conditions of abuse and neglect and termination was necessary for the child's welfare; under those findings, the circuit court was required to terminate parental rights.
3. Legal conclusions are reviewed de novo, while factual findings are reviewed for clear error and affirmed when plausible in light of the record viewed in its entirety.

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)

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

“Pursuant to West Virginia Code § 49-6-5(a)(6), circuit courts are directed to terminate parental rights upon these findings.” (3)

FACTUAL BACKGROUND

The child was placed in DHHR custody after a domestic-violence proceeding established imminent danger to the child's well-being. The abuse and neglect petition alleged that petitioner exposed the child to domestic violence, failed to provide adequate care including dental and educational care, abused drugs, and had mental-health concerns. Petitioner stipulated to abuse, but before disposition she missed visitations, failed to participate fully in services, failed multiple drug screens, failed to appear for a psychological evaluation, denied her substance-abuse problem, and was incarcerated on misdemeanor charges.

PROCEDURAL HISTORY

In January 2014, the Roane County Family Court placed the child in DHHR custody in a domestic-violence proceeding, and DHHR filed an abuse and neglect petition. After a preliminary hearing, the circuit court found imminent danger and abuse and neglect; at the April 2014 adjudicatory hearing, petitioner stipulated to abuse. The circuit court denied petitioner's motion for a post-adjudicatory improvement period at the May 2014 dispositional hearing and terminated her 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)
- In re Timber M., 231 W. Va. 44, 55, 743 S.E.2d 352, 363 (2013)
- In re Charity H., 215 W. Va. 208, 217, 599 S.E.2d 631, 640 (2004)