

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re A.T.-1 and A.T.-2

No. 18-0455 (W. Va. Nov. 19, 2018) · No. No. 18-0455 · Decided November 19, 2018

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the termination of petitioner father's parental rights to two children. The court held that he was not entitled to an improvement period and that termination was appropriate because he had an extensive criminal history, would remain incarcerated until 2025, and could not substantially correct the conditions of abuse and neglect in the near future. The court also concluded that termination was necessary to provide the children with permanency and continuity of care.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; Chief Justice Margaret L. Workman; Justice Elizabeth D. Walker; Justice Tim Armstead; Justice Evan H. Jenkins; Justice Paul T. Farrell, sitting by temporary assignment
JURISDICTION	West Virginia
DECIDED	November 19, 2018
DOCKET	No. 18-0455
DISPOSITION	affirmed
PROCEDURAL POSTURE	Father appealed the Circuit Court of Ohio County's order terminating his parental rights in an abuse and neglect proceeding.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo. Findings of fact in an abuse and neglect case tried without a jury 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 committed. The denial of an improvement period is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	nonprecedential memorandum decision
PARTIES	Petitioner Father A.T.-3 v. West Virginia Department of Health and Human Resources, A.T.-1 and A.T.-2, by guardian ad litem

TOPICS

termination of parental rights

parental rights

family law procedure

appellate procedure

standard of review

PRACTICE AREAS

juvenile law

abuse and neglect

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QUESTIONS PRESENTED

1. Whether the circuit court erred by denying Father an improvement period.
2. Whether the circuit court erred by terminating Father's parental rights rather than imposing a less-restrictive dispositional alternative.
3. Whether the evidence established no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future and that termination was necessary for the children's welfare.

HOLDINGS

1. The circuit court did not err in denying Father an improvement period because he did not demonstrate by clear and convincing evidence that he was likely to fully participate, and the record did not show that he had moved for an improvement period or could participate in the necessary services while incarcerated.
2. The circuit court correctly found that there was no reasonable likelihood that Father could substantially correct the conditions of abuse and neglect in the near future.
3. The circuit court did not err by terminating Father's parental rights rather than using a less-restrictive alternative because termination was necessary to establish permanency and could be ordered without intervening less-restrictive alternatives when the conditions of abuse and neglect could not be substantially corrected.

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.” (at 2)

“Termination of parental rights, the most drastic remedy under the statutory provision covering the disposition of neglected children, W. Va. Code [§] 49-6-5 [now 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 W. Va. Code [§] 49-6-5(b) [now West Virginia Code § 49-4-604(c)] . . . that conditions of neglect or abuse can be substantially corrected.” (at 4)

FACTUAL BACKGROUND

The children had a history of severe physical abuse by their mother, and Father had an extensive criminal history involving drug-related offenses, violent crimes, and other serious convictions. Father had been incarcerated for much of the children's lives and was expected to remain incarcerated until 2025; when not incarcerated, he

engaged in domestic violence with the mother in the children's presence. The oldest child reported that Father had never been involved in the children's lives and expressed a desire for termination of his parental rights. The permanency plan was adoption by the paternal grandmother.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition on May 2, 2016. Following an adjudicatory hearing, the circuit court adjudicated Father an abusing parent. After a dispositional hearing at which Father appeared by video conference, the circuit court found no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected and terminated his parental rights on April 16, 2018. The Supreme Court of Appeals of West Virginia 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 re M.M., 236 W. Va. 108, 778 S.E.2d 338 (2015)
- 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)