

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re B.B.

In re B.B. · No. 19-0582 · Decided February 7, 2020

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the termination of petitioner father D.B.'s parental rights to B.B. The court held that the evidence supported findings that he failed to protect the child from the mother's substance abuse, failed to provide necessary medical care, and was unable or unwilling to correct the conditions of abuse and neglect. The court also concluded that termination was warranted without less restrictive alternatives because there was no reasonable likelihood of substantial correction in the near future.

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	February 7, 2020
DOCKET	19-0582
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner Father D.B. appealed the Circuit Court of Mingo County's May 31, 2019, dispositional order terminating his parental rights to B.B. The Supreme Court of Appeals of West Virginia affirmed by memorandum decision.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo; findings of fact in an abuse and neglect case are reviewed for clear error and will not be set aside unless the reviewing court is left with the definite and firm conviction that a mistake has been made.
PRECEDENTIAL VALUE	Published memorandum decision; the source identifies the opinion as published, but the opinion is designated a memorandum decision under West Virginia Rule of Appellate Procedure 21.
PARTIES	D.B., Petitioner Father v. West Virginia Department of Health and Human Resources, Guardian ad litem for B.B.

TOPICS

termination of parental rights

parental rights

family law procedure

standard of review

appellate procedure

PRACTICE AREAS

juvenile law

child abuse and neglect

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QUESTIONS PRESENTED

1. Whether the circuit court's findings supported termination of petitioner's parental rights.
2. Whether termination was proper when petitioner disputed the existence of abuse and neglect and the DHHR did not provide him services while he was incarcerated.
3. Whether the circuit court could terminate parental rights without employing less restrictive alternatives after finding no reasonable likelihood that the conditions of abuse or neglect could be substantially corrected in the near future.

HOLDINGS

1. The circuit court properly found that petitioner demonstrated an inadequate capacity to correct the conditions of abuse and neglect because he failed to acknowledge the child's untreated medical condition, developmental delays, and the mother's substance abuse.
2. Parental rights may be terminated when there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future and termination is necessary for the child's welfare; the circuit court satisfied that standard here.
3. The absence of services did not require reversal because petitioner remained incarcerated throughout the proceedings, was unable to participate in services, and independently rendered services or an improvement period futile by failing to acknowledge the abuse and neglect.
4. Termination of parental rights may be employed without intervening less restrictive alternatives when there is no reasonable likelihood that the conditions of abuse or neglect can be substantially corrected.

KEY QUOTATIONS

"In order to remedy the abuse and/or neglect problem, the problem must first be acknowledged." (3)

"Failure to acknowledge the existence of the problem, i.e., the truth of the basic allegation pertaining to the alleged abuse and neglect or the perpetrator of said abuse and neglect, results in making the problem untreatable and in making an improvement period an exercise in futility at the child's expense." (3)

"Termination of parental rights, the most drastic remedy under the statutory provision covering the disposition of neglected children, [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 [West Virginia Code § 49-4-604(c)] that conditions of neglect or abuse can be substantially corrected." (4)

FACTUAL BACKGROUND

The child was found in the mother's care while she was under the influence of drugs, including methamphetamine, and was hospitalized with severe untreated eczema, dehydration, critically low hemoglobin, and developmental delays. The child required a blood transfusion and medical treatment, and his condition improved rapidly after removal and placement in foster care. Petitioner was incarcerated during the proceedings, had failed to protect the child from the mother's substance abuse, continued to deny or minimize the child's medical and developmental problems, and did not participate in services or the case plan.

PROCEDURAL HISTORY

The DHHR filed a child abuse and neglect petition in September 2018, later amending it to add allegations concerning prior proceedings. After an adjudicatory hearing, the circuit court adjudicated petitioner an abusing parent. Following a dispositional hearing, the court found no reasonable likelihood that the conditions of abuse or neglect could be substantially corrected in the near future and terminated petitioner's parental rights. Petitioner appealed, arguing that the findings were unsupported and that the DHHR failed to provide services.

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 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)
- 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)