

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re R.W., H.S., and A.L.

No. 21-0894 (W. Va. Apr. 14, 2022) · No. No. 21-0894 · Decided April 14, 2022

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the termination of petitioner mother H.L.'s parental rights to R.W., H.S., and A.L. The court held that the circuit court did not abuse its discretion in denying an improvement period because petitioner failed to acknowledge the abuse and neglect conditions, inconsistently participated in services, and continued to test positive for drugs. The court also held that termination was permissible despite the availability of placement with relatives or nonabusing parents because there was no reasonable likelihood that the conditions could be substantially corrected.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; Chief Justice John A. Hutchison; Justice Elizabeth D. Walker; Justice Tim Armstead; Justice William R. Wooton; Justice Alan D. Moats sitting by temporary assignment
JURISDICTION	West Virginia
DECIDED	April 14, 2022
DOCKET	No. 21-0894
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner Mother appealed the Kanawha County Circuit Court's order terminating her parental rights following abuse-and-neglect proceedings.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo; factual findings in a bench-tried abuse-and-neglect case are reviewed for clear error. The denial of an improvement period is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	memorandum decision; no substantial question of law under W. Va. R. App. P. 21
PARTIES	H.L., Petitioner Mother v. West Virginia Department of Health and Human Resources, Guardian ad litem for R.W., H.S., and A.L.

TOPICS

termination of parental rights

parental rights

family law procedure

appellate procedure

standard of review

PRACTICE AREAS

family law

juvenile law

abuse and neglect

termination of parental rights

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court erred by denying petitioner an improvement period.
2. Whether termination of petitioner's parental rights was improper because less restrictive alternatives, including placement with relatives or the children's fathers, were available.
3. Whether the circuit court's findings supported termination of parental rights.

HOLDINGS

1. The circuit court did not abuse its discretion in denying an improvement period because petitioner failed to demonstrate by clear and convincing evidence that she was likely to fully participate in it.
2. Termination of petitioner's parental rights was permissible without an intervening less restrictive alternative because the circuit court found no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future.
3. The circuit court's findings were supported by substantial evidence and were not clearly erroneous, and termination of petitioner's parental rights was proper.

KEY QUOTATIONS

“In order to remedy the abuse and/or neglect problem, the problem must first be acknowledged.” (4)

“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(d)] . . . that conditions of neglect or abuse can be substantially corrected.” (5)

FACTUAL BACKGROUND

The DHHR alleged that petitioner had a history of substance abuse, mental-health-related behavior, and medical neglect involving the children. During the events leading to the petition, petitioner took two children outside in cold weather without shoes or coats while experiencing an apparent mental-health or substance-related episode, later entered a stranger's home, and appeared to law enforcement to be under the influence of methamphetamine. During the proceedings, petitioner was inconsistently compliant with services, repeatedly tested positive for THC and sometimes methamphetamine, refused or failed to participate fully in required services, and denied or failed to acknowledge the conditions underlying the abuse-and-neglect allegations. A psychological evaluation concluded that her prognosis for improved parenting was extremely poor and that no services could reasonably be expected to correct her parenting within a reasonable time.

PROCEDURAL HISTORY

The DHHR filed an abuse-and-neglect petition in April 2021. After adjudicating the children abused and neglected, ordering services, and finding petitioner's compliance inadequate, the circuit court denied her motion for an improvement period and terminated her parental rights on October 1, 2021. 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 Timber M., 231 W. Va. 44, 55, 743 S.E.2d 352, 363 (2013)
- In re M.M., 236 W. Va. 108, 115, 778 S.E.2d 338, 345 (2015)
- In re Emily, 208 W. Va. 325, 344, 540 S.E.2d 542, 561 (2000)
- 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)