

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re A.M.-1, M.M., and J.T.

No. 20-0909 (W. Va. June 3, 2021) (memorandum decision) · No. 20-0909 · Decided June 3, 2021

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the termination of petitioner mother's custodial rights to three children in an abuse and neglect proceeding. The court held that she failed to demonstrate a substantial change in circumstances warranting a post-dispositional improvement period, and that continued substance abuse, inadequate housing, and noncompliance with services supported termination. The court also upheld limiting post-termination visitation to contact at the discretion of the children's father.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Evan H. Jenkins; Justice Elizabeth D. Walker; Justice Tim Armstead; Justice John A. Hutchison; Justice William R. Wooton
JURISDICTION	West Virginia
DECIDED	June 3, 2021
DOCKET	20-0909
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner mother appealed the Kanawha County Circuit Court's order terminating her custodial rights, denying a post-dispositional improvement period, and limiting post-termination visitation.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo. Factual findings 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 was made.
PRECEDENTIAL VALUE	nonprecedential memorandum decision
PARTIES	A.M.-2, petitioner mother v. West Virginia Department of Health and Human Resources, A.M.-1, M.M., and J.T., by guardian ad litem

TOPICS

termination of parental rights

guardianships

family law procedure

standard of review

appellate procedure

PRACTICE AREAS

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abuse and neglect

termination of parental rights

guardianship

QUESTIONS PRESENTED

1. Whether the circuit court erred by denying petitioner a post-dispositional improvement period after she had already received and failed to comply with a post-adjudicatory improvement period.
2. Whether the circuit court erred by denying a further extension of the post-adjudicatory improvement period.
3. Whether the circuit court erred by terminating petitioner's custodial rights rather than imposing a less restrictive disposition.
4. Whether the circuit court erred by permitting continued visitation with A.M.-1 and M.M. only at their father's discretion.

HOLDINGS

1. A parent who has already received a post-adjudicatory improvement period must establish both a substantial change in circumstances since the initial improvement period and that the change makes the parent likely to fully participate in a post-dispositional improvement period. Late compliance with some requirements that were already part of the prior improvement period does not establish the required substantial change.
2. The circuit court was precluded from granting another extension of petitioner's post-adjudicatory improvement period because petitioner had already received the maximum three-month extension permitted by statute.
3. Termination of petitioner's custodial rights was proper because substantial evidence supported the findings that there was 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.
4. The circuit court did not abuse its discretion by permitting petitioner's continued contact with A.M.-1 and M.M. only at their father's discretion because the limitation appropriately protected the children's best interests and avoided potentially detrimental contact.

KEY QUOTATIONS

“Essentially, petitioner asks this Court to reward her earlier noncompliance by finding that her late compliance with only some aspects of her improvement period is sufficient to entitle her to a second improvement period. We decline to do so” (4)

“termination of a parent’s 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 lived with two children in a home containing exposed methamphetamine paraphernalia and pills, that she abused methamphetamine and other substances, and that domestic violence occurred in the children's presence. During the proceedings, petitioner repeatedly failed to comply with drug screening and services, and the screens she completed were positive for multiple substances, including methamphetamine. She also lacked stable housing, and a psychological evaluation indicated poor motivation for treatment and a poor prognosis for improved parenting. The circuit court found no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future and terminated her custodial rights.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition in August 2019. After petitioner waived a preliminary hearing, the circuit court ordered services and supervised visitation, adjudicated her as an abusing parent, and granted a post-adjudicatory improvement period followed by a three-month extension. After evidence of continued drug use, noncompliance, and inadequate housing, the circuit court denied a post-dispositional improvement period, terminated petitioner's custodial rights, and left future contact with two children to their father's discretion. The Supreme Court of Appeals 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)
- Michael D.C. v. Wanda L.C., 201 W. Va. 381, 497 S.E.2d 531 (1997)
- 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)
- In re Christina L., 194 W. Va. 446, 460 S.E.2d 692 (1995)
- In re Daniel D., 211 W. Va. 79, 562 S.E.2d 147 (2002)