

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re M.B., R.B.-1, and R.B.-2

No. 20-0182 (W. Va. Sept. 23, 2020) · No. No. 20-0182 · Decided September 23, 2020

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the termination of petitioner mother F.H.'s parental rights to three children. The court held that she was not entitled to an improvement period because she failed to acknowledge or address her substance abuse, did not comply with services, and declined visitation. The court also upheld the denial of post-termination visitation because the record did not establish that continued contact was in the children's best interests.

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	September 23, 2020
DOCKET	No. 20-0182
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner mother appealed the Circuit Court of Kanawha County's order terminating her parental rights and denying post-termination visitation.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo. In an abuse and neglect case tried without a jury, factual findings are reviewed for clear error and will not be disturbed unless the reviewing court is left with the definite and firm conviction that a mistake has been made.
PRECEDENTIAL VALUE	Published memorandum decision; the opinion states that it is issued under West Virginia Rule of Appellate Procedure 21 and finds no substantial question of law.
PARTIES	F.H., petitioner mother v. West Virginia Department of Health and Human Resources, M.B., R.B.-1, and R.B.-2, by guardian ad litem

TOPICS

termination of parental rights

parental rights

visitation

family law procedure

standard of review

PRACTICE AREAS

juvenile abuse and neglect

termination of parental rights

child welfare

appellate review

QUESTIONS PRESENTED

1. Whether the circuit court erred by denying petitioner a post-adjudicatory improvement period.
2. Whether the circuit court erred by terminating petitioner's parental rights based on the lack of a reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future and the children's best interests.
3. Whether the circuit court erred by denying petitioner post-termination visitation.

HOLDINGS

1. The circuit court did not abuse its discretion by denying petitioner an improvement period because she failed to demonstrate by clear and convincing evidence that she was likely to fully participate, refused long-term substance-abuse treatment, denied or minimized her substance abuse despite positive drug screens, and had not remedied the conditions leading to adjudication.
2. The circuit court did not err in terminating petitioner's parental rights because the evidence supported findings that there was no reasonable likelihood she could substantially correct the conditions of abuse and neglect in the near future and that termination was required for the children's welfare.
3. The circuit court did not err in denying post-termination visitation because petitioner did not establish that continued visitation was in the children's best interests and the evidence showed that she had rejected visitation during the proceedings and that continued contact could interfere with the children's permanent placements.
4. The Court applied de novo review to legal conclusions and clear-error review to factual findings in the abuse and neglect proceeding.

KEY QUOTATIONS

"A reviewing court cannot assess witness credibility through a record. The trier of fact is uniquely situated to make such determinations and this Court is not in a position to, and will not, second guess such determinations." (3)

"Failure to acknowledge the existence of the problem, i.e., the truth of the basic allegation pertaining to the alleged abuse and neglect . . . results in making the problem untreatable and in making an improvement period an exercise in futility at the child's expense." (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." (4)

FACTUAL BACKGROUND

The DHHR alleged that petitioner's substance abuse impaired her ability to parent and that the family home lacked running water, contained trash, and had been the subject of prior CPS interventions. Petitioner did not comply with prior or current services, had positive drug screens, was not in contact with the DHHR for substantial periods, and rejected an offer of long-term substance-abuse treatment. She also declined visitation with the children during the proceedings. The circuit court found that petitioner had not remedied the conditions of abuse and neglect, that there was no reasonable likelihood of substantial correction in the near future, and that termination served the children's best interests.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition in September 2019. After petitioner waived her preliminary hearing, the circuit court ordered services and visitation; the court later adjudicated her as an abusing and neglectful parent and, following a dispositional hearing, terminated her parental rights. The Supreme Court of Appeals of West Virginia affirmed the January 13, 2020, dispositional order.

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 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 Charity H., 215 W. Va. 208, 599 S.E.2d 631 (2004)
- In re Timber M., 231 W. Va. 44, 743 S.E.2d 352 (2013)
- 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)