

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re E.K. and M.C.-W.

No. 21-0394 · No. No. 21-0394 · Decided January 12, 2022

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the termination of petitioner mother C.C.'s parental rights to E.K. and M.C.-W. The court held that substantial compliance with an improvement period did not establish an ability to safely parent the children, and that termination was necessary because there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice John A. Hutchison; Justice Elizabeth D. Walker; Justice Tim Armstead; Justice Evan H. Jenkins; Justice William R. Wooton
JURISDICTION	West Virginia
DECIDED	January 12, 2022
DOCKET	No. 21-0394
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order of the Circuit Court of Kanawha County terminating the mother's parental rights in an abuse and neglect proceeding.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo; factual findings in an abuse and neglect case are reviewed for clear error and will not be disturbed unless the reviewing court is left with a definite and firm conviction that a mistake was made.
PRECEDENTIAL VALUE	Memorandum decision; precedential status is not stated in the opinion text.
PARTIES	C.C., petitioner mother v. West Virginia Department of Health and Human Resources, E.K. and M.C.-W., by guardian ad litem

TOPICS

- termination of parental rights
- parental rights
- family law procedure
- appellate procedure
- standard of review

PRACTICE AREAS

juvenile abuse and neglect

termination of parental rights

child welfare

QUESTIONS PRESENTED

1. Whether the circuit court erred by terminating the mother's parental rights despite her substantial or successful compliance with the terms and conditions of her improvement period.
2. Whether termination of the mother's parental rights was necessary and whether the circuit court was required to impose a less restrictive dispositional alternative because M.C.-W. was placed with a fit, nonabusing father and E.K.'s grandparents sought guardianship.

HOLDINGS

1. A parent's substantial compliance with the specific terms of an improvement period does not require reunification or preclude termination when the parent has not demonstrated sufficient overall improvement to safely parent the children and the statutory conditions for termination are otherwise met.
2. A fit, nonabusing parent's custody of one child and opposition to termination do not automatically preclude termination of the other parent's parental rights when that parent's conduct endangered the child and the conditions of abuse and neglect are not expected to improve. Termination may also be used without an intervening less restrictive alternative when the statutory conditions for termination are satisfied.

KEY QUOTATIONS

“While the circuit court acknowledged the mother’s substantial compliance with the terms and conditions of her improvement period, we have recognized that “it is possible for an individual to show “compliance with specific aspects of the case plan” while failing “to improve . . . [the] overall attitude and approach to parenting.”” (4)

“In making the final disposition in a child abuse and neglect proceeding, the level of a parent’s compliance with the terms and conditions of an improvement period is just one factor to be considered. The controlling standard that governs any dispositional decision remains the best interests of the child.” (4)

“Although it is sometimes a difficult task, the trial court must accept the fact that the statutory limits on improvement periods (as well as our case law limiting the right to improvement periods) dictate that there comes a time for decision, because a child deserves resolution and permanency in his or her life” (5)

FACTUAL BACKGROUND

The DHHR initiated the case after eleven-month-old E.K. overdosed on fentanyl and was hospitalized for acute cardiac arrest. The mother stipulated that her substance abuse affected her ability to parent and received improvement periods requiring substance-abuse treatment, parenting and life-skills services, drug screens, and visitation. Although she completed treatment, obtained negative screens, and substantially complied with services, she remained unable to safely parent during supervised visits, including leaving medication and other dangerous items within the children's reach and failing to apply parenting instruction. The circuit court

terminated her parental rights after finding no reasonable likelihood that the conditions could be substantially corrected in the near future and determining that termination was necessary for the children's welfare.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition after eleven-month-old E.K. overdosed on fentanyl. The mother stipulated that her substance abuse affected her ability to parent, was adjudicated an abusive and neglectful parent, and received improvement periods and remedial services. After review and dispositional hearings, the circuit court found that she could not achieve minimally adequate parenting, that there was no reasonable likelihood of substantially correcting the conditions in the near future, and that termination was necessary for the children's welfare. The mother appealed.

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)
- W.Va. Dept. of Human Serv. v. Peggy F., 184 W. Va. 60, 399 S.E.2d 460 (1990)
- In re Jonathan Michael D., 194 W. Va. 20, 459 S.E.2d 131 (1995)
- In Interest of Carlita B., 185 W. Va. 613, 408 S.E.2d 365 (1991)
- In re B.H., 233 W. Va. 57, 754 S.E.2d 743 (2014)
- State ex rel. Amy M. v. Kaufman, 196 W. Va. 251, 470 S.E.2d 205 (1996)
- In re Emily, 208 W. Va. 325, 540 S.E.2d 542 (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)