

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re L.L.

No. 16-1227 (Jackson County 15-JA-142) (W. Va. June 9, 2017) · No. No. 16-1227 · Decided June 9, 2017

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the termination of a grandmother’s custodial rights to a child in an abuse and neglect proceeding. The court held that the circuit court properly found the grandmother had not successfully remedied the conditions underlying the petition during her post-adjudicatory improvement period, despite her participation in services. The court emphasized her failure to accept responsibility, make lasting changes, and provide a home in the child’s best interests.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Allen H. Loughry II; Justice Robin Jean Davis; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Elizabeth D. Walker
JURISDICTION	West Virginia
DECIDED	June 9, 2017
DOCKET	No. 16-1227
DISPOSITION	affirmed
PROCEDURAL POSTURE	Grandmother B.L. appealed the Circuit Court of Jackson County's order terminating her custodial rights to L.L. and finding that she had not successfully completed her post-adjudicatory improvement period.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo, while factual findings in an abuse and neglect case tried without a jury are reviewed for clear error. A reviewing court may not overturn a finding merely because it would have decided the case differently and must affirm if the circuit court's account of the evidence is plausible in light of the entire record.
PRECEDENTIAL VALUE	Published memorandum decision; the opinion states that a memorandum decision under Rule 21 is appropriate.
PARTIES	B.L., grandmother v. West Virginia Department of Health and Human Resources, Guardian ad litem for L.L.

TOPICS

termination of parental rights

child custody

family law procedure

appellate procedure

standard of review

PRACTICE AREAS

family law

child welfare

appellate practice

QUESTIONS PRESENTED

1. Whether the circuit court clearly erred in finding that B.L. failed to successfully complete her post-adjudicatory improvement period.
2. Whether the circuit court properly relied on conflicting service-provider and psychological-evaluation evidence in determining that B.L. had not remedied the conditions of abuse and neglect.
3. Whether B.L.'s compliance with services required reversal of the custodial-rights termination when she failed to make meaningful changes and return to her home was not in L.L.'s best interests.

HOLDINGS

1. The circuit court did not abuse its discretion or clearly err in finding that B.L. failed to successfully complete her improvement period because, despite participating in services, she did not make lasting changes or remedy the conditions of abuse and neglect.
2. The circuit court properly relied on the evidence supporting its findings and was not required to accept the testimony of B.L.'s most recent service provider.
3. Even assuming B.L. fully complied with the terms and conditions of her improvement period, the circuit court properly denied a return of L.L. because B.L. failed to make meaningful changes and returning the child while the unsafe conditions persisted was not in L.L.'s best interests.

KEY QUOTATIONS

“In order to remedy the abuse and/or neglect problem, the problem must first be acknowledged.” (at 5)

“The controlling standard that governs any dispositional decision remains the best interests of the child.” (at 5)

FACTUAL BACKGROUND

B.L. was the grandmother and custodial caregiver of L.L., who lived in a home where the DHHR alleged chronic domestic violence and drug use by adults. B.L. stipulated that she exposed L.L. to domestic violence and was granted a post-adjudicatory improvement period. Although she participated in services, psychological and service-provider evidence indicated that she failed to accept responsibility, continued to permit unsafe conditions, and made no meaningful or lasting changes. The circuit court concluded that the conditions of abuse and neglect had not been remedied and that returning L.L. to B.L.'s home was not in the child's best interests.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition concerning L.L.'s mother and later amended the petition to add B.L. as a respondent based on allegations that she exposed L.L. to chronic domestic violence and allowed drug

use in the home. B.L. stipulated to exposing the child to domestic violence, received a post-adjudicatory improvement period, and participated in services. After hearings, the circuit court found that she had not made lasting changes, that the conditions of abuse and neglect persisted, and that returning L.L. to her home was not in the child's best interests. 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)
- James M. v. Maynard, 185 W. Va. 648, 408 S.E.2d 400 (1991)
- 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 the Interest of Carlita B., 185 W. Va. 613, 408 S.E.2d 365 (1991)
- In re Faith C., 226 W. Va. 188, 699 S.E.2d 730 (2010)
- In re Timber M., 231 W. Va. 44, 743 S.E.2d 352 (2013)
- In re: Charity H., 215 W. Va. 208, 599 S.E.2d 631 (2004)
- In re B.H., 233 W. Va. 57, 754 S.E.2d 743 (2014)