

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re M.S., J.S.-1, and P.S.

No. 17-0871 (W. Va. Mar. 12, 2018) · No. No. 17-0871 · Decided March 12, 2018

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the termination of petitioner mother J.S.-2's parental rights to M.S., J.S.-1, and P.S. The court held that she failed to demonstrate a substantial change in circumstances warranting a post-dispositional improvement period and that the conditions of abuse and neglect could not be substantially corrected. The court also upheld the denial of post-termination visitation with the younger children, while noting that limited visitation with M.S. and C.M. had been permitted.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per curiam; Chief Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Allen H. Loughry II; Justice Elizabeth D. Walker; Justice Robin Jean Davis
JURISDICTION	West Virginia
DECIDED	March 12, 2018
DOCKET	No. 17-0871
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner mother appealed an order of the Circuit Court of Morgan County terminating her parental rights and denying post-termination visitation.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo; factual findings in abuse and neglect proceedings 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 has been made. Witness-credibility determinations are given deference.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Petitioner Mother J.S.-2 v. West Virginia Department of Health and Human Resources, M.S., J.S.-1, and P.S., by guardian ad litem

TOPICS

termination of parental rights

parental rights

family law procedure

appellate procedure

standard of review

PRACTICE AREAS

family law

juvenile law

child welfare

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court abused its discretion by denying petitioner a post-dispositional improvement period.
2. Whether the circuit court properly terminated petitioner's parental rights after finding no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected and that termination was necessary for the children's welfare.
3. Whether the circuit court's failure to make an exceptional-circumstances finding concerning in-camera interviews required vacation of the dispositional order.
4. Whether the circuit court erred in denying post-termination visitation with J.S.-1 and P.S. and limiting visitation with M.S. and C.M.

HOLDINGS

1. A parent who previously received an improvement period is not entitled to a post-dispositional improvement period absent proof of a substantial change in circumstances and a showing that the parent is likely to fully participate in the new improvement period. Petitioner failed to make that showing.
2. Termination of parental rights was proper because there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected and termination was necessary for the children's welfare.
3. The circuit court's failure to place exceptional circumstances on the record before restricting access to in-camera interview recordings did not require vacation of the dispositional order because petitioner failed to demonstrate prejudice and the omission did not substantially disregard or frustrate the abuse and neglect process.
4. The circuit court did not err in denying post-termination visitation with J.S.-1 and P.S. because the evidence supported a finding that continued contact was not in their best interests; visitation with M.S. and C.M. was permissibly granted or limited at the caregiver's discretion and subject to restrictions.

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.” (at 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.” (at 5)

FACTUAL BACKGROUND

The DHHR alleged that the parents locked eleven-year-old C.M. in an unheated, unelectrified shed for approximately two days as punishment and that petitioner failed to protect him. The parents stipulated to essential allegations, received improvement periods, and petitioner completed services, but she was later incarcerated for six months for misdemeanor child abuse related to the allegations. At disposition, the children had been in foster care for more than fifteen months, the younger children lacked a bond with petitioner, and the circuit court found that petitioner had not demonstrated an ability or willingness to apply learned parenting techniques.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition in February 2016. The parents stipulated to essential allegations, were adjudicated abusing parents, and received post-adjudicatory improvement periods, including extensions. After petitioner was convicted of misdemeanor child abuse and incarcerated, she sought a post-dispositional improvement period. Following a three-day dispositional hearing, the circuit court terminated her parental rights and denied or limited post-termination visitation. 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 Katie S., 198 W. Va. 79, 479 S.E.2d 589 (1996)
- In re B.H., 233 W. Va. 57, 754 S.E.2d 743 (2014)
- In re Edward B., 210 W. Va. 621, 558 S.E.2d 620 (2001)
- 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)