

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re M.J.

No. 15-0084 (W. Va. June 15, 2015) (memorandum decision) · No. No. 15-0084 · Decided June 15, 2015

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the termination of petitioner mother S.C.'s parental rights to M.J. The Court held that the circuit court properly allowed the mother to present evidence concerning whether she had remedied the circumstances underlying the prior involuntary termination of her parental rights, and that the current proceeding was not based solely on the prior termination.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Margaret L. Workman; Justice Robin Jean Davis; Justice Brent D. Benjamin; Justice Menis E. Ketchum; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	June 15, 2015
DOCKET	No. 15-0084
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner Mother S.C. appealed the Circuit Court of Raleigh County's order terminating her parental rights to M.J. in an abuse and neglect proceeding.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo. Findings of fact 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 has been committed.
PRECEDENTIAL VALUE	Unpublished memorandum decision; precedential effect not stated in the provided text.
PARTIES	Petitioner Mother S.C. v. West Virginia Department of Health and Human Resources, M.J., by guardian ad litem

TOPICS

termination of parental rights

parental rights

family law procedure

appellate procedure

standard of review

PRACTICE AREAS

juvenile law

abuse and neglect

parental rights

termination of parental rights

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court improperly denied petitioner the opportunity to present evidence that she had remedied the circumstances leading to the prior involuntary termination of her parental rights.
2. Whether the circuit court properly terminated petitioner's parental rights when the current abuse and neglect petition was based not solely on the prior termination, but also on alleged current conduct and circumstances.

HOLDINGS

1. The circuit court did not err because it allowed petitioner to present evidence concerning the prior involuntary termination and the steps she claimed to have taken to remedy the prior conditions before terminating her parental rights.
2. The circuit court's findings and termination order were not clearly erroneous, and the court affirmed the December 23, 2014, order.

KEY QUOTATIONS

“When an abuse and neglect petition is brought based solely upon a previous involuntary termination of parental rights to a sibling pursuant to West Virginia Code § 49-6-5b(a)(3)(1998), prior to the lower court’s making any disposition regarding the petition, it must allow the development of evidence surrounding the prior involuntary termination(s) and what actions, if any, the parent(s) have taken to remedy the circumstances which led to the prior termination(s).” (2)

“Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error.” (1)

FACTUAL BACKGROUND

Petitioner's parental rights to five older children were involuntarily terminated in 2010 after an abuse and neglect proceeding involving a child's spiral femur fracture and other evidence of abuse or neglect. In 2014, petitioner gave birth to M.J., and the DHHR filed a new abuse and neglect petition based in part on the prior termination. The amended petitions also alleged that petitioner lived with and cared for the older children despite the prior termination order, committed domestic violence against B.R. in the children's presence, and used excessive corporal punishment. At the preliminary hearing, petitioner presented photographs and testimony regarding claimed improvements and remediation of the prior conditions.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition after M.J.'s birth based on the prior involuntary termination of petitioner's parental rights to five older children. The circuit court permitted petitioner to present evidence

concerning whether she had remedied the circumstances underlying the prior termination, but later adjudicated M.J. abused and neglected and terminated petitioner's parental rights after a dispositional hearing. The Supreme Court of Appeals of West Virginia affirmed.

DISPOSITION

affirmed

CASES CITED

- In re Kaitlyn P., 225 W. Va. 123, 690 S.E.2d 131 (2010)
- 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)
- In the Matter of George Glen B., 205 W. Va. 435, 518 S.E.2d 863 (1999)