

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re: E.M.

In re: E.M. · No. 17-0649 · Decided November 22, 2017

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the termination of the petitioner mother's parental rights to E.M. The Court held that the circuit court properly found no reasonable likelihood that the conditions of abuse and neglect, primarily involving longstanding substance abuse and repeated relapses, could be substantially corrected in the near future.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; 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	November 22, 2017
DOCKET	17-0649
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner Mother appealed the Circuit Court of Marion County's order terminating her parental rights following an abuse and neglect proceeding.
STANDARD OF REVIEW	Conclusions of law in an abuse and neglect case are reviewed de novo; factual findings 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.
PRECEDENTIAL VALUE	Memorandum decision; the opinion states that it is issued under West Virginia Rule of Appellate Procedure 21.
PARTIES	D.M., Petitioner Mother v. West Virginia Department of Health and Human Resources, Guardian ad litem for E.M.

TOPICS

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

PRACTICE AREAS

family law

juvenile law

parental rights

termination of parental rights

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court erred by terminating petitioner's parental rights despite her claimed periods of sobriety and commitment to controlling her substance abuse.
2. Whether the evidence supported the finding that there was no reasonable likelihood petitioner could substantially correct the conditions of abuse and neglect in the near future and that termination was necessary for the child's welfare.

HOLDINGS

1. The circuit court properly terminated 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 necessary for the child's welfare.
2. Conclusions of law are reviewed de novo, while factual findings are reviewed for clear error and will be upheld if the circuit court's account of the evidence is plausible in light of the entire record.

KEY QUOTATIONS

“Although conclusions of law reached by a circuit court are subject to de novo review, when an action, such as an abuse and neglect case, is tried upon the facts without a jury, the circuit court shall make a determination based upon the evidence and shall make findings of fact and conclusions of law as to whether such child is abused or neglected.” (at 2)

“The circuit court properly found that petitioner was not reasonably likely to substantially correct the conditions of abuse and neglect in the near future, and it is clear from the record that the child’s welfare necessitated the termination of petitioner’s parental rights.” (at 2)

FACTUAL BACKGROUND

The DHHR alleged that petitioner abused alcohol, amphetamines, and opiates, including an incident in which she became unconscious while caring for E.M. and the child sought help from a neighbor. Petitioner stipulated to a history of drug and alcohol abuse and to abusing substances to the point of unconsciousness, placing the child in imminent danger. Despite extensive services and treatment efforts over many years, petitioner continued to relapse, failed to complete long-term treatment, and remained unable to maintain sobriety. The circuit court also relied on the child's continued exposure to substance abuse and domestic violence and the history of numerous referrals and placements.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition alleging that petitioner's alcohol and drug abuse interfered with her ability to parent E.M. Petitioner stipulated at adjudication that her substance abuse had placed the child in imminent danger and was adjudicated an abusing parent. After a dispositional hearing at which petitioner did not

appear, the circuit court found no reasonable likelihood that she could substantially correct the conditions of abuse and neglect in the near future and terminated her parental rights. 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)