

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re S.P.

No. 20-0017 (W. Va. June 24, 2020) · No. No. 20-0017 · Decided June 24, 2020

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the termination of petitioner mother C.W.'s parental rights to S.P. The court held that she failed to demonstrate by clear and convincing evidence that she was likely to fully participate in a post-adjudicatory improvement period and that the record supported the finding that the conditions of abuse and neglect were unlikely to be substantially corrected in the near future.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Tim Armstead; Justice Margaret L. Workman; Justice Elizabeth D. Walker; Justice Evan H. Jenkins; Justice John A. Hutchison
JURISDICTION	West Virginia
DECIDED	June 24, 2020
DOCKET	No. 20-0017
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner mother appealed the Circuit Court of Randolph County's order denying her motion for a post-adjudicatory improvement period and terminating her parental rights.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo; factual findings in an abuse and neglect case are reviewed for clear error. The denial of an improvement period is reviewed for abuse of discretion, and credibility determinations are given substantial deference because the trial court is uniquely situated to make them.
PRECEDENTIAL VALUE	nonprecedential memorandum decision
PARTIES	C.W., petitioner mother v. West Virginia Department of Health and Human Resources, Guardian ad litem for S.P.

TOPICS

termination of parental rights

parental rights

family law procedure

appellate procedure

standard of review

PRACTICE AREAS

family law

child welfare

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appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court abused its discretion by denying petitioner a post-adjudicatory improvement period.
2. Whether the circuit court erred by terminating petitioner's parental rights without an improvement period or other less restrictive alternative.

HOLDINGS

1. The circuit court did not abuse its discretion in denying petitioner's motion because she failed to demonstrate by clear and convincing evidence that she was likely to fully participate in an improvement period.
2. The circuit court did not err in terminating petitioner's parental rights because the conditions of abuse and neglect had not substantially changed, there was no reasonable likelihood that they could be corrected in the near future, and termination was necessary for the child's welfare.

KEY QUOTATIONS

“West Virginia law allows the circuit court discretion in deciding whether to grant a parent an improvement period.” (at 3)

“Termination of parental rights, the most drastic remedy under the statutory provision covering the disposition of neglected children, [West Virginia Code § 49-4-604 (2019)] . . . may be employed without the use of intervening less restrictive alternatives when it is found that there is no reasonable likelihood under [West Virginia Code § 49-4-604(c) (2019)] . . . that conditions of neglect or abuse can be substantially corrected.” (at 4)

FACTUAL BACKGROUND

The DHHR alleged that petitioner used controlled substances while pregnant with S.P., who was born three months premature and required four to six weeks of hospitalization. Petitioner tested positive during pregnancy and after the child's birth for various controlled substances, including methamphetamine, THC, benzodiazepines, and buprenorphine. Her parental rights to three older children had previously been terminated or relinquished following proceedings involving substance abuse, domestic violence, deplorable housing, and failure to participate in services. At the final dispositional hearing, the circuit court found no change in circumstances, little to no participation in services until the final month, and evidence that petitioner appeared impaired by prescription medication while testifying.

PROCEDURAL HISTORY

The DHHR filed a child abuse and neglect petition in July 2019 alleging substance abuse during pregnancy and shortly after the child's birth, as well as prior terminations of petitioner's parental rights. Petitioner stipulated to the allegations and was adjudicated an abusing parent. After the circuit court denied her request for a post-adjudicatory improvement period and terminated her parental rights at the December 2019 dispositional hearing, she appealed. 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)
- 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 re M.M., 236 W. Va. 108, 115, 778 S.E.2d 338, 345 (2015)
- In re Charity H., 215 W. Va. 208, 216, 599 S.E.2d 631, 639 (2004)
- Michael D.C. v. Wanda L.C., 201 W. Va. 381, 388, 497 S.E.2d 531, 538 (1997)
- In re George Glen B., Jr., 205 W. Va. 435, 437, 518 S.E.2d 863, 865 (1999)
- 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)
- State v. Michael M., 202 W. Va. 350, 504 S.E.2d 177 (1998)
- James M. v. Maynard, 185 W. Va. 648, 408 S.E.2d 400 (1991)