

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re: I.W. and K.W.

No. No. 15-1097, Supreme Court of Appeals of West Virginia (April 12, 2016)

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the termination of R.W.’s parental rights to I.W. and K.W. The court held that he failed to demonstrate by clear and convincing evidence that he was likely to fully participate in a post-adjudicatory improvement period, citing his noncompliance with services and failure to accept responsibility for the conditions of abuse and neglect. The court also upheld the finding that there was no reasonable likelihood that those conditions could be substantially corrected.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per curiam; Chief Justice Menis E. Ketchum; Justice Robin Jean Davis; Justice Brent D. Benjamin; Justice Margaret L. Workman; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	April 12, 2016
DOCKET	No. 15-1097
DISPOSITION	affirmed
PROCEDURAL POSTURE	Father appealed the Circuit Court of Roane County’s order denying his motion for a post-adjudicatory improvement period and terminating his parental rights in an abuse and neglect proceeding.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo. In an abuse and neglect case tried without a jury, factual findings are reviewed for clear error and will not be set aside unless the reviewing court is left with the definite and firm conviction that a mistake has been made.
PRECEDENTIAL VALUE	Memorandum decision; no substantial question of law and no prejudicial error identified
PARTIES	R.W., Petitioner Father v. West Virginia Department of Health and Human Resources, I.W. and K.W., through guardian ad litem

TOPICS

termination of parental rights

parental rights

family law procedure

appellate procedure

standard of review

PRACTICE AREAS

juvenile abuse and neglect

termination of parental rights

child welfare

QUESTIONS PRESENTED

1. Whether the circuit court erred in denying the father's motion for a post-adjudicatory improvement period.
2. Whether the circuit court erred in finding that there was no reasonable likelihood that the conditions of abuse or neglect could be substantially corrected.

HOLDINGS

1. The circuit court properly denied the father's motion because he failed to demonstrate by clear and convincing evidence that he was likely to fully participate in a post-adjudicatory improvement period.
2. The circuit court did not err in finding no reasonable likelihood that the conditions of abuse or neglect could be substantially corrected.

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.” (1)

“In order to remedy the abuse and/or neglect problem, the problem must first be acknowledged.” (3)

“Failure to acknowledge the existence of the problem, i.e., the truth of the basic allegation pertaining to the alleged abuse and neglect or the perpetrator of said abuse and neglect, results in making the problem untreatable and in making an improvement period an exercise in futility at the child’s expense.” (3)

FACTUAL BACKGROUND

The children, ages two and three, were repeatedly found unsupervised in or along a roadway, and one child ingested medication belonging to the mother's cousin. Father was incarcerated for attempted wanton endangerment with a firearm, which prevented him from supervising the children, and he later stipulated to neglect for failure to supervise. After seeking an improvement period, he failed to comply consistently with parenting classes, drug screens, and other services, did not accept responsibility for his conduct, and received a poor prognosis for parental improvement from the psychological evaluation. He was also arrested for driving while intoxicated after his release.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition in April 2015. After a preliminary hearing, the circuit court found imminent danger and continued custody with the DHHR. Father stipulated to neglect at the June 2015

adjudicatory hearing, later moved for a post-adjudicatory improvement period, and participated inadequately in offered services. Following August and September dispositional hearings, the circuit court denied the motion and terminated his parental rights. The Supreme Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- 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 Timber M., 231 W. Va. 44, 55, 743 S.E.2d 352, 363 (2013)
- In re: Charity H., 215 W. Va. 208, 217, 599 S.E.2d 631, 640 (2004)