

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re J.H. and C.H.

No. 18-0618 (W. Va. Nov. 19, 2018) · No. 18-0618 · Decided November 19, 2018

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the termination of petitioner father A.H.’s parental rights to J.H. and C.H. The court held that he failed to demonstrate a substantial change in circumstances warranting a post-dispositional improvement period, had not substantially complied with his post-adjudicatory improvement period, and presented no reasonable likelihood of correcting the conditions of abuse and neglect. The court also held that termination was appropriate without a less-restrictive alternative because it was necessary for the children’s welfare and permanency.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Margaret L. Workman; Justice Elizabeth D. Walker; Justice Tim Armstead; Justice Evan H. Jenkins; Justice Paul T. Farrell sitting by temporary assignment
JURISDICTION	West Virginia
DECIDED	November 19, 2018
DOCKET	18-0618
DISPOSITION	affirmed
PROCEDURAL POSTURE	Father appealed the Monongalia County Circuit Court's order terminating his parental rights following abuse-and-neglect proceedings.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo. In an abuse-and-neglect case tried on the facts without a jury, 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 was made.
PRECEDENTIAL VALUE	Published memorandum decision; the opinion states that it is issued under Rule 21 and finds no substantial question of law.
PARTIES	Petitioner Father A.H. v. West Virginia Department of Health and Human Resources, J.H. and C.H., represented by guardian ad litem

TOPICS

termination of parental rights

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appellate procedure

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termination of parental rights

appellate review

QUESTIONS PRESENTED

1. Whether the circuit court abused its discretion by denying Father's motion for a post-dispositional improvement period.
2. Whether the circuit court clearly erred in finding no reasonable likelihood that Father could substantially correct the conditions of abuse and neglect in the near future.
3. Whether the circuit court erred by terminating Father's parental rights instead of using a less-restrictive dispositional alternative.

HOLDINGS

1. The circuit court properly denied Father's request for a post-dispositional improvement period because he failed to prove a substantial change in circumstances since the initial improvement period and failed to show that he was likely to fully participate in another improvement period.
2. The circuit court properly found that there was no reasonable likelihood that Father could substantially correct the conditions of abuse and neglect in the near future.
3. Termination of Father's parental rights was proper because there was no reasonable likelihood that the conditions of abuse or neglect could be substantially corrected in the near future and termination was necessary for the children's welfare; intervening less-restrictive alternatives were not required.

KEY QUOTATIONS

“Termination of parental rights, the most drastic remedy under the statutory provision covering the disposition of neglected children, W.Va. Code [§] 49-6-5 [now West Virginia Code § 49-4-604] . . . may be employed without the use of intervening less restrictive alternatives when it is found that there is no reasonable likelihood under W.Va. Code [§] 49-6-5(b) [now West Virginia Code § 49-4-604(c)] . . . that conditions of neglect or abuse can be substantially corrected.” (4)

FACTUAL BACKGROUND

The DHHR alleged that Father left J.H. and C.H. unsupervised while he went to a nearby bar, that the home lacked adequate food, and that he abused substances. Father received a post-adjudicatory improvement period requiring participation in treatment-team meetings, random drug screening, stable housing, and psychological and substance-abuse evaluations, but he failed to comply with those requirements. During the proceedings, he was arrested for possession of crystal methamphetamine and marijuana, possession of stolen property, and illegal possession of a firearm. The circuit court found that he could not substantially correct the conditions of abuse and neglect in the near future and that termination was in the children's best interests.

PROCEDURAL HISTORY

The DHHR filed an abuse-and-neglect petition alleging inadequate supervision, inadequate food, and substance abuse. After a contested preliminary hearing, the children were removed from Father's custody; Father was adjudicated an abusing parent and granted a post-adjudicatory improvement period. After he failed to comply with the improvement-period requirements, the circuit court denied a post-dispositional improvement period, found no reasonable likelihood that the conditions could be substantially corrected in the near future, and terminated his parental rights. 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 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)

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