

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re T.A.

No. 14-0992 (W. Va. Feb. 9, 2015) · No. No. 14-0992 · Decided February 9, 2015

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the termination of the petitioner mother’s parental rights to T.A. The court held that the mother had failed to substantially correct the conditions of abuse and neglect despite extended improvement periods, making termination appropriate without less restrictive alternatives. The court also declined to remand for post-termination visitation, concluding that the issue had been waived and that the record provided no basis for visitation.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; 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	February 9, 2015
DOCKET	No. 14-0992
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner Mother appealed the Circuit Court of Monongalia County's order terminating her parental rights to T.A. The Supreme Court of Appeals of West Virginia affirmed by memorandum decision.
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 overturned unless the reviewing court is left with the definite and firm conviction that a mistake has been made.
PRECEDENTIAL VALUE	Unpublished memorandum decision; limited precedential value under West Virginia appellate practice.
PARTIES	Petitioner Mother v. West Virginia Department of Health and Human Resources, Guardian ad litem for T.A.

TOPICS

termination of parental rights

parental rights

family law procedure

appellate procedure

standard of review

PRACTICE AREAS

family law

juvenile law

child welfare

QUESTIONS PRESENTED

1. Whether the circuit court clearly erred in finding no reasonable likelihood that Mother could substantially correct the conditions of abuse and neglect in the near future.
2. Whether the circuit court was required to impose a less restrictive disposition instead of terminating Mother's parental rights.
3. Whether termination was necessary for T.A.'s welfare and in the child's best interests.
4. Whether the circuit court erred by failing to grant post-termination visitation.

HOLDINGS

1. The circuit court did not err in finding no reasonable likelihood that Mother could substantially correct the conditions of abuse and neglect in the near future because she failed to respond to or follow through with rehabilitative services during her extended improvement periods.
2. Termination of parental rights may be ordered without an intervening less restrictive alternative when there is no reasonable likelihood that the conditions of abuse or neglect can be substantially corrected in the near future.
3. Termination was necessary for T.A.'s welfare and was in the child's best interests because it would provide permanency and stability and preserve the child's therapeutic progress.
4. Mother waived appellate review of post-termination visitation by failing to raise the issue below, and the record provided no basis for remand even if the issue were properly before the court.

KEY QUOTATIONS

“These findings shall not be set aside by a reviewing court unless clearly erroneous.” (at 2)

“Termination of parental rights, the most drastic remedy under the statutory provision covering the disposition of neglected children, W.Va. Code, 49–6–5 [1977] 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) [1977] that conditions of neglect or abuse can be substantially corrected.” (at 3)

“the primary goal in cases involving abuse and neglect, as in all family law matters, must be the health and welfare of the children.” (at 4)

FACTUAL BACKGROUND

The DHHR alleged that four-year-old T.A. had been exposed to inappropriate sexual behavior, and Mother stipulated to the allegations. During approximately eighteen months of improvement periods, Mother failed to complete or implement parental education and adult life-skills instruction, missed visits, failed to use appropriate

discipline and other parenting skills, and did not acknowledge her role in the child's removal. The child made substantial progress in foster care after specialized therapy, while missed visits with Mother upset the child. The circuit court found that Mother had not substantially corrected the conditions of abuse and neglect and terminated her parental rights.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition against Petitioner Mother and the child's father. Mother stipulated to exposing the child to inappropriate sexual behavior, was adjudicated an abusing parent, and received multiple improvement periods. After finding that she failed to substantially correct the conditions of abuse and neglect, the circuit court entered a corrected dispositional order terminating her parental rights. Mother appealed, challenging the termination findings, the absence of a less restrictive disposition, the child's welfare and best interests findings, and the denial of post-termination visitation.

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 R.J.M., 164 W. Va. 496, 266 S.E.2d 114 (1980)
- In re Dejah P., 216 W. Va. 514, 607 S.E.2d 843 (2004)
- In re Katie S., 198 W. Va. 79, 479 S.E.2d 589 (1996)
- In re Timber M., 231 W. Va. 44, 743 S.E.2d 352 (2013)
- Michael K.T. v. Tina L.T., 182 W. Va. 399, 387 S.E.2d 866 (1989)
- Mowery v. Hitt, 155 W. Va. 103, 181 S.E.2d 334 (1971)
- State v. Grimmer, 162 W. Va. 588, 251 S.E.2d 780 (1979)
- Wimer v. Hinkle, 180 W. Va. 660, 379 S.E.2d 383 (1989)
- State ex rel. Amy M. v. Kaufman, 196 W. Va. 251, 470 S.E.2d 205 (1996)
- In re Christina L. and Kenneth J.L., 194 W. Va. 446, 460 S.E.2d 692 (1995)
- Gebr. Eickhoff Maschinenfabrik Und Eisengieberei mbH v. Starcher, 174 W. Va. 618, 328 S.E.2d 492 (1985)