

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re M.H.-1

No. 17-0585 (W. Va. Nov. 22, 2017) · No. No. 17-0585 · Decided November 22, 2017

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the termination of petitioner mother's parental rights to M.H.-1. 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 circuit court properly found no reasonable likelihood that the conditions of abuse and neglect would be substantially corrected in the near future. The court also upheld the determination that termination was necessary for the child's welfare.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	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	No. 17-0585
DISPOSITION	affirmed
PROCEDURAL POSTURE	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 tried without a jury 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PRECEDENTIAL VALUE	Unpublished memorandum decision; no substantial question of law and no prejudicial error.
PARTIES	Petitioner Mother M.H.-2 v. West Virginia Department of Health and Human Resources, M.H.-1, through guardian ad litem

TOPICS

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parental rights

family law procedure

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standard of review

PRACTICE AREAS

family law

juvenile abuse and neglect

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QUESTIONS PRESENTED

1. Whether the circuit court abused its discretion by denying the mother's motion for a post-adjudicatory improvement period.
2. Whether the circuit court erred by terminating the mother's parental rights when she argued that alternative dispositions, including guardianship, were available.

HOLDINGS

1. The circuit court properly denied the mother's motion because she failed to prove by clear and convincing evidence that she was likely to fully participate in an improvement period.
2. The circuit court properly terminated the mother's parental rights because there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future and termination was necessary for the child's welfare.
3. The circuit court did not err by declining to impose an alternative disposition, including guardianship, because the evidence supported termination and the child's welfare required it.

KEY QUOTATIONS

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

“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)

“West Virginia Code § 49-4-604(b)(6) directs circuit courts to terminate parental rights upon findings that there is “no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future” and that termination is necessary for the child’s welfare.” (3)

FACTUAL BACKGROUND

The mother previously lost her parental rights to two children after knowingly allowing an ex-boyfriend to severely abuse them. After M.H.-1's birth, she represented that she was acting as a surrogate for a couple with a history of abuse and neglect, but later admitted that her current boyfriend was the child's biological father. The mother stipulated that she had prior involuntary terminations and had failed to protect M.H.-1, but later minimized those stipulations and denied the abuse history. A psychological evaluation indicated a low prognosis for change, and the circuit court found that she was unwilling or unable to adequately provide for the child's needs.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition alleging aggravated circumstances based on the mother's prior involuntary termination of parental rights and her failure to protect M.H.-1. After the mother stipulated to relevant allegations, the circuit court adjudicated her as an abusing parent. The court denied her motion for a post-adjudicatory improvement period and, following a dispositional hearing, terminated her parental rights. The Supreme Court of Appeals affirmed by memorandum decision.

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 Charity H., 215 W. Va. 208, 599 S.E.2d 631 (2004)
- In re M.M., 236 W. Va. 108, 778 S.E.2d 338 (2015)
- 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)
- In re Charity H., 215 W. Va. 208, 599 S.E.2d 631 (2004)