

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re L.C.-1

No. 20-0591 (W. Va. Dec. 10, 2020) · No. No. 20-0591 · Decided December 10, 2020

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed an order terminating a father's parental rights in an abuse and neglect proceeding. The court held that the record supported findings of abandonment, inadequate financial and emotional support, lack of bonding, and no reasonable likelihood that the conditions of neglect could be substantially corrected in the near future. The court also held that termination could be ordered without employing a less-restrictive dispositional alternative.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per curiam; Chief Justice Tim Armstead; Justice Margaret L. Workman; Justice Elizabeth D. Walker; Justice Evan H. Jenkins; Justice John A. Hutchison
JURISDICTION	West Virginia
DECIDED	December 10, 2020
DOCKET	No. 20-0591
DISPOSITION	affirmed
PROCEDURAL POSTURE	Father appealed the Circuit Court of Wetzel County's order 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 upon 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 has been made.
PRECEDENTIAL VALUE	Published memorandum decision; no reporter citation appears in the supplied text.
PARTIES	Petitioner Father L.C.-2 v. West Virginia Department of Health and Human Resources, L.C.-1, through guardian ad litem Elmer Earl Bowser Jr.

TOPICS

termination of parental rights

parental rights

family law procedure

appellate procedure

standard of review

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the circuit court erred by terminating Father's parental rights instead of imposing a less-restrictive dispositional alternative under West Virginia Code § 49-4-604(c).
2. Whether termination was authorized because there was no reasonable likelihood that the conditions of neglect could be substantially corrected in the near future and termination was necessary for the child's welfare.

HOLDINGS

1. A court may terminate parental rights without first employing less-restrictive alternatives when it finds 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.
2. The Supreme Court would not disturb the circuit court's findings that Father neglected and abandoned the child or its credibility determinations because the findings were supported by the record and were not clearly erroneous.

KEY QUOTATIONS

“Termination of parental rights, the most drastic remedy under the statutory provision covering the disposition of neglected children, [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 [West Virginia Code § 49-4-604(d)] that conditions of neglect or abuse can be substantially corrected.” (3)

“A finding is clearly erroneous when, although there is evidence to support the finding, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.” (2)

FACTUAL BACKGROUND

The DHHR alleged that Father had abandoned L.C.-1 by failing to visit, maintain meaningful contact with, or financially support her. Father testified that he had seen the child only five or six times since 2012, had provided no child support, had sent no correspondence or gifts, and had not attended school events. At disposition, Father acknowledged that he had not developed a bond with the child, lacked independent housing and a driver's license, and had a prior involuntary termination of parental rights involving another child. The circuit court found no reasonable likelihood that the conditions of neglect could be corrected in the near future and terminated Father's parental rights.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition alleging that Father had abandoned the child and that the child's home environment was unsafe. After an amended petition, adjudicatory hearing, and dispositional hearing, the

circuit court found that Father had neglected and abandoned the child, that there was no reasonable likelihood that the conditions of neglect could be substantially corrected in the near future, and that termination was necessary for the child's welfare. The circuit court terminated Father's parental rights, and the Supreme Court of Appeals 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)
- Michael D.C. v. Wanda L.C., 201 W. Va. 381, 497 S.E.2d 531 (1997)
- 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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