

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re B.J. and A.A.

No. 20-0431 (W. Va. Dec. 10, 2020) (memorandum decision) · No. 20-0431 · Decided December 10, 2020

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the termination of petitioner mother J.Y.'s parental rights to B.J. and A.A. The court upheld the denial of an improvement period, finding that petitioner had not demonstrated likely compliance with required services and drug screening. The court also upheld the denial of post-termination visitation and rejected legal guardianship as a less-restrictive alternative.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	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	20-0431
DISPOSITION	affirmed
PROCEDURAL POSTURE	Mother appealed the Randolph County Circuit Court's order terminating her parental rights to B.J. and A.A. and denying her request for post-termination visitation.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo. In abuse and neglect cases tried 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. The denial of an improvement period is reviewed for abuse of discretion, and credibility determinations are not second-guessed on appeal.
PRECEDENTIAL VALUE	Nonprecedential memorandum decision
PARTIES	Petitioner Mother J.Y. v. West Virginia Department of Health and Human Resources, B.J. and A.A., by guardian ad litem

TOPICS

termination of parental rights

guardianships

child custody

visitation

appellate procedure

PRACTICE AREAS

family law

juvenile law

child welfare

QUESTIONS PRESENTED

1. Whether the circuit court abused its discretion by denying Mother's motion for an improvement period.
2. 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 and in terminating her parental rights without an intervening less-restrictive disposition.
3. Whether the circuit court improperly terminated Mother's parental rights without proof that each child requested termination.
4. Whether the circuit court erred by denying Mother's request for post-termination visitation.

HOLDINGS

1. A parent seeking an improvement period must demonstrate by clear and convincing evidence that the parent is likely to fully participate, and the circuit court may deny the request when the parent's demonstrated noncompliance with court orders and drug-screening requirements undermines that likelihood.
2. Termination of parental rights is authorized when there is no reasonable likelihood that the conditions of abuse or neglect can be substantially corrected in the near future and termination is necessary for the child's welfare; intervening less-restrictive alternatives are not required when those statutory conditions are met.
3. The DHHR is not required in every case to prove that each child requested termination of a parent's rights. The court must consider the wishes of a child age fourteen or older, or otherwise of an age of discretion, regarding permanent termination.
4. After parental rights are terminated, continued visitation or contact may be considered only when it is in the child's best interests, including consideration of an established emotional bond, the child's wishes when sufficiently mature, and evidence that contact would not be detrimental to the child.

KEY QUOTATIONS

"acknowledgement of the conditions of abuse and neglect at issue is not determinative of whether a parent has satisfied the applicable burden." (3)

"Legal guardianship does not provide assurance in permanency" (4)

"The DHHR is not required to present evidence in all cases that each individual child wishes for a parent's rights to be terminated in order for a court to order such termination." (5)

"The evidence must indicate that such visitation or continued contact would not be detrimental to the child's well being and would be in the child's best interest." (6)

FACTUAL BACKGROUND

Law enforcement executing a search warrant at Mother's home observed her attempting to hide a bag containing methamphetamine, an unidentified pill, and drug paraphernalia. The DHHR also found raw sewage, razor blades, and bug killer accessible to the children, while A.A. reported that Mother failed to clean the home, required A.A. to care for herself and B.J., and used or traded property to obtain drugs. Mother admitted a substance-abuse problem and later tested positive for methamphetamine and Suboxone; she also failed to comply consistently with ordered drug screening and other court or probation requirements.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition in July 2019 after law enforcement found methamphetamine, drug paraphernalia, and hazardous conditions in Mother's home. Mother stipulated at the adjudicatory hearing that she abused and neglected the children. The circuit court denied her motion for an improvement period, later found no reasonable likelihood that she could substantially correct the conditions of abuse and neglect, terminated her parental rights, denied post-termination visitation, and affirmed the child's adoption-based permanency plan. The Supreme Court of Appeals affirmed in a 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 Timber M., 231 W. Va. 44, 55, 743 S.E.2d 352, 363 (2013)
- In re M.M., 236 W. Va. 108, 115, 778 S.E.2d 338, 345 (2015)
- In re Katie S., 198 W. Va. 79, 479 S.E.2d 589 (1996)
- Michael D.C. v. Wanda L.C., 201 W. Va. 381, 388, 497 S.E.2d 531, 538 (1997)
- State v. Michael M., 202 W. Va. 350, 504 S.E.2d 177 (1998)
- In re Emily, 208 W. Va. 325, 344, 540 S.E.2d 542, 561 (2000)
- 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)
- In re Christina L., 194 W. Va. 446, 460 S.E.2d 692 (1995)
- In re Daniel D., 211 W. Va. 79, 562 S.E.2d 147 (2002)

