

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re T.W.-1 and N.W.

No. 15-0910 (W. Va. Mar. 7, 2016) · No. No. 15-0910 · Decided March 7, 2016

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the termination of a father's parental rights in an abuse and neglect proceeding. The court held that the evidence supported adjudicating the father as an abusing parent, denied relief concerning conflicting dispositional orders, and upheld the denial of a subsequent improvement period and the termination disposition.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; Chief Justice Menis E. Ketchum; Justice Robin Jean Davis; Justice Brent D. Benjamin; Justice Margaret L. Workman; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	March 7, 2016
DOCKET	No. 15-0910
DISPOSITION	affirmed
PROCEDURAL POSTURE	Father appealed the Circuit Court of Kanawha County's order terminating his parental rights to two children in an abuse and neglect proceeding.
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PRECEDENTIAL VALUE	Unpublished memorandum decision; precedential status is not stated in the opinion text beyond its designation as a memorandum decision.
PARTIES	T.W.-2, Petitioner Father v. West Virginia Department of Health and Human Resources, Guardian ad litem for T.W.-1 and N.W.

TOPICS

termination of parental rights

parental rights

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standard of review

PRACTICE AREAS

family law

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appellate procedure

QUESTIONS PRESENTED

1. Whether sufficient evidence supported adjudicating father as an abusing parent based on his failure to protect the children from their mother.
2. Whether the circuit court erred by terminating father's parental rights without a further hearing after inadvertently entering a conflicting order granting him a post-adjudicatory improvement period.
3. Whether the circuit court erred in denying father a subsequent improvement period.
4. Whether the evidence supported the finding that there was no reasonable likelihood that father could substantially correct the conditions of abuse or neglect and that termination of parental rights was in the children's best interests.

HOLDINGS

1. The circuit court properly adjudicated father as an abusing parent because he failed to protect the children from their mother and failed to provide appropriate supervision despite an explicit court order prohibiting her presence in the home when the children were present.
2. The circuit court did not err by correcting the inadvertent entry of a conflicting improvement-period order and reaffirming termination without holding an additional hearing to explain the clerical error.
3. The circuit court acted within its discretion in denying father a subsequent improvement period because he failed to demonstrate by clear and convincing evidence that he was likely to fully participate.
4. The circuit court properly found no reasonable likelihood that father could substantially correct the conditions of abuse or neglect, determined that termination was in the children's best interests, and terminated his parental rights rather than imposing a less restrictive alternative.

KEY QUOTATIONS

“This argument only underscores petitioner’s failure to recognize the danger the mother posed to the children and disregards his actual neglect of the children.” (3)

“Petitioner cites to no authority requiring a circuit court to hold a hearing to address a clerical error, and we find that such a hearing is unnecessary given the circuit court’s subsequent order vacating the June 26, 2015, order granting petitioner an improvement period.” (4)

“Courts are not required to exhaust every speculative possibility of parental improvement . . . where it appears that the welfare of the child will be seriously threatened” (5)

FACTUAL BACKGROUND

The family had an extensive history of child-protective-services referrals involving substance abuse, unsafe housing, domestic violence, and inadequate supervision. During father's improvement period, he allowed the children's mother, whose improvement period had been terminated because of noncooperation and drug use, to

enter and sometimes stay in the home despite a court order prohibiting her presence when the children were there. The mother was found hiding under a bed while the children were present, one child was physically assaulted, father tested positive for methamphetamine, and the children disclosed sexual abuse by individuals whom the parents had allowed into the home. Father also stopped participating in services and missed a multidisciplinary team meeting after being arrested following an alleged domestic altercation.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition in August 2014. Father waived a preliminary hearing, participated in services, received a pre-adjudicatory improvement period, and temporarily regained custody subject to conditions. After the improvement period was terminated for noncompliance, the children were removed again; father was adjudicated an abusing and neglecting parent after an amended petition and later denied a further improvement period. Following a dispositional hearing, the circuit court entered an order terminating his parental rights, inadvertently entered a conflicting order granting an improvement period, and then vacated the conflicting order and reaffirmed termination. The Supreme Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- In re Edward B., 210 W. Va. 621, 558 S.E.2d 620 (2001)
- In re Emily G., 224 W. Va. 390, 686 S.E.2d 41 (2009)
- In re R.J.M., 164 W. Va. 496, 266 S.E.2d 114 (1980)
- In re Cecil T., 228 W. Va. 89, 717 S.E.2d 873 (2011)
- In Interest of Tiffany Marie S., 196 W. Va. 223, 470 S.E.2d 177 (1996)

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