

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re S.C. and N.D.

No. 20-0165 (W. Va. Sept. 23, 2020) · No. No. 20-0165 · Decided September 23, 2020

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the termination of a custodian and guardian's custodial and guardianship rights to two children. The Court held that the Department of Health and Human Resources made reasonable reunification efforts and that the custodian failed to complete required counseling and engaged in conduct that undermined the children's stability. The Court also upheld termination rather than a less-restrictive disposition because there was no reasonable likelihood that the conditions of neglect could be substantially corrected in the near future.

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	September 23, 2020
DOCKET	No. 20-0165
DISPOSITION	affirmed
PROCEDURAL POSTURE	T.K., a custodian and guardian, appealed the Mercer County Circuit Court's order terminating her custodial and guardianship rights to S.C. and N.D. following child abuse and neglect proceedings.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo. Findings of fact 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PRECEDENTIAL VALUE	nonprecedential
PARTIES	T.K., Custodian/Guardian v. West Virginia Department of Health and Human Resources, S.C. and N.D., by guardian ad litem

TOPICS

termination of parental rights

guardianships

guardianship procedure

appellate procedure

standard of review

PRACTICE AREAS

family law

juvenile law

child welfare

QUESTIONS PRESENTED

1. Whether the circuit court erred by terminating T.K.'s custodial and guardianship rights after finding no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future.
2. Whether the West Virginia Department of Health and Human Resources failed to monitor T.K.'s improvement period or provide required guidance and constructive advice.
3. Whether the circuit court erred by terminating T.K.'s custodial and guardianship rights rather than imposing a less-restrictive dispositional alternative.
4. Whether the DHHR made reasonable efforts to reunify T.K. with the children.

HOLDINGS

1. The circuit court properly terminated T.K.'s custodial and guardianship 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 children's welfare.
2. The DHHR complied with its statutory duty to monitor T.K.'s improvement period, and it had no statutory obligation to provide the additional constructive advice or guidance asserted by T.K.
3. The circuit court was not required to impose a less-restrictive alternative because termination may be ordered without intervening less-restrictive alternatives when the statutory conditions for termination are satisfied.
4. The Supreme Court reviews legal conclusions de novo and factual findings in a bench-tried abuse and neglect case for clear error.

KEY QUOTATIONS

“Termination of parental[, custodial, and guardianship] 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.” (at 5)

FACTUAL BACKGROUND

T.K. had legal guardianship of S.C. and was the primary caregiver for N.D. The DHHR alleged that T.K. and her husband abused controlled substances and were arrested on criminal charges; T.K. stipulated to the abuse and neglect allegations and received improvement periods. Although she participated in some services and

visitations, she failed to complete individual and family therapy, violated home confinement, and instructed the children to misrepresent what they ate during an overnight visit, leading the circuit court to find that the conditions could not be substantially corrected and that termination was necessary for the children's welfare.

PROCEDURAL HISTORY

The DHHR filed a child abuse and neglect petition in March 2018. T.K. stipulated to the allegations and received post-adjudicatory and later post-dispositional improvement periods, but she failed to complete required individual and family counseling and engaged in conduct that undermined the children's stability and honesty during visitation. After a January 2020 dispositional hearing, the circuit court terminated her custodial and guardianship 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)
- 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)