

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In Re: S.A. and S.A.

In re S.A. and S.A. · No. No. 12-1181 · Decided March 12, 2013

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the termination of the petitioner mother's parental rights to two children. The court held that the circuit court did not err in denying a post-adjudicatory improvement period, finding sufficient evidence that the mother would not substantially comply and that the conditions of abuse and neglect could not 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 Brent D. Benjamin; Justice Robin Jean Davis; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	March 12, 2013
DOCKET	No. 12-1181
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order of the Circuit Court of Roane County denying petitioner mother 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	published memorandum decision
PARTIES	Petitioner Mother v. Department of Health and Human Resources, Guardian ad litem for the children

TOPICS

- termination of parental rights
- parental rights
- family law procedure
- appellate procedure
- standard of review

PRACTICE AREAS

family law

child welfare

termination of parental rights

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court abused its discretion by denying petitioner mother a post-adjudicatory improvement period.
2. Whether the evidence supported termination of petitioner mother's parental rights based on the findings that the conditions of abuse and neglect could not be substantially corrected in the near future and that termination was necessary for the children's welfare.

HOLDINGS

1. A parent bears the burden of proving that he or she would substantially comply with a post-adjudicatory improvement period, and the circuit court has discretion to grant or deny the period. The circuit court did not err in denying petitioner mother an improvement period because the evidence supported its finding that she would not substantially comply.
2. Termination of petitioner mother's parental rights was proper because the record supported findings that there were no reasonable grounds to believe the conditions of abuse and neglect could be substantially corrected in the near future and that termination was necessary for the children's welfare.

KEY QUOTATIONS

“Although conclusions of law reached by a circuit court are subject to de novo review, when an action, such as an abuse and neglect case, is tried upon the facts without a jury, the circuit court shall make a determination based upon the evidence and shall make findings of fact and conclusions of law as to whether such child is abused or neglected.” (1)

“These findings shall not be set aside by a reviewing court unless clearly erroneous.” (1)

FACTUAL BACKGROUND

The DHHR alleged that petitioner mother failed to protect her children from their father, a previously convicted sex offender. Amended petitions described inappropriate behavior by the father toward minor children and an instance in which he sexually molested petitioner mother's daughter; petitioner mother denied knowledge of some incidents but admitted knowledge of others. Petitioner mother participated in psychological evaluations and requested a post-adjudicatory improvement period, but the circuit court found insufficient grounds to believe she would substantially comply or that the conditions of abuse and neglect could be corrected in the near future.

PROCEDURAL HISTORY

The Department of Health and Human Resources filed an abuse and neglect petition in July 2011 and later filed two amended petitions alleging that petitioner mother failed to protect the children from their father, a previously convicted sex offender. After psychological evaluations and proceedings in the circuit court, petitioner mother moved for a post-adjudicatory improvement period. The circuit court denied the motion and terminated her parental rights by order entered September 25, 2012. The Supreme Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- 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)

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