

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re K.D.-1, K.D.-2, J.J.-1, J.J.-2, and L.J.

No. 20-0084 (W. Va. Sept. 3, 2020) · No. No. 20-0084 · Decided September 3, 2020

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the termination of petitioner mother M.D.’s parental rights to five children. The court held that she failed to demonstrate a substantial change in circumstances warranting a post-dispositional improvement period and that the record supported findings that the conditions of abuse and neglect were unlikely to be substantially corrected in the near future.

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	September 3, 2020
DOCKET	No. 20-0084
DISPOSITION	affirmed
PROCEDURAL POSTURE	Mother appealed the circuit court's order terminating her parental rights and denying her request for a post-dispositional improvement period.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo; factual findings in an abuse and neglect case 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 was made.
PRECEDENTIAL VALUE	Unpublished memorandum decision; limited precedential value under West Virginia appellate practice.
PARTIES	Petitioner Mother M.D. v. West Virginia Department of Health and Human Resources, Guardians ad litem for K.D.-1, K.D.-2, J.J.-1, J.J.-2, and L.J.

TOPICS

termination of parental rights

parental rights

family law procedure

standard of review

appellate procedure

PRACTICE AREAS

juvenile law

family law

child welfare

QUESTIONS PRESENTED

1. Whether the circuit court abused its discretion by denying Mother's request for a post-dispositional improvement period after she had previously received an improvement period.
2. Whether the circuit court properly terminated Mother's parental rights based on the absence of a reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future and the children's best interests.

HOLDINGS

1. A parent who has previously received an improvement period must demonstrate a substantial change in circumstances since the initial improvement period and show that, because of that change, the parent is likely to fully participate in a post-dispositional improvement period. Mother failed to make that showing, so the circuit court properly denied her request.
2. Termination of Mother's parental rights was proper because the evidence supported findings that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future and that termination was in the children's best interests.

KEY QUOTATIONS

“West Virginia Code § 49-4-610(3)(D) provides that in order to obtain a post-dispositional improvement period after the granting of a previous improvement period, a parent must “demonstrate[] that since the initial improvement period, the [parent] has experienced a substantial change in circumstances” and that “due to that change in circumstances, the [parent] is likely to fully participate in the improvement period.”” (4)

“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.” (5)

FACTUAL BACKGROUND

The DHHR alleged that Mother engaged in methamphetamine abuse, domestic violence, unsafe housing conditions, and educational neglect. Mother stipulated to abuse and neglect and received an improvement period, but repeatedly missed drug screens, produced diluted samples, tested positive for controlled substances, and failed to complete substance-abuse evaluation, counseling, or treatment. She also continued to deny or minimize her substance-abuse problems, including after testing positive while pregnant, and visitation was suspended because of positive and missed screens.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition in May 2018. Mother stipulated at the September 2018 adjudicatory hearing to abuse and neglect based on substance abuse, domestic violence, and educational neglect, and received a six-month post-adjudicatory improvement period that was later extended. After evidence of continuing substance abuse, missed and diluted drug screens, and failure to complete treatment and other services, the circuit court denied a post-dispositional improvement period and terminated Mother's parental rights in its January 2, 2020 order. The Supreme Court of Appeals of West Virginia 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 Tonjia M., 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002)
- 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)
- State v. Michael M., 202 W. Va. 350, 504 S.E.2d 177 (1998)
- James M. v. Maynard, 185 W. Va. 648, 408 S.E.2d 400 (1991)
- Cecil T., 228 W. Va. 89, 717 S.E.2d 873 (2011)