

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re V.W.

In re V.W. · No. No. 12-0747 · Decided February 11, 2013

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the termination of Petitioner Father’s parental rights to V.W. The court held that the circuit court had sufficient evidence to find no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future and that termination was necessary for the child’s welfare, despite denying an improvement period.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                            |
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| 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               | February 11, 2013                                                                                                                                                                                                                                                          |
| DOCKET                | No. 12-0747                                                                                                                                                                                                                                                                |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                   |
| PROCEDURAL POSTURE    | Petitioner Father appealed the circuit court’s order terminating his parental rights without granting an improvement period.                                                                                                                                               |
| STANDARD OF REVIEW    | Conclusions of law are reviewed de novo. In an abuse and neglect case tried without a jury, factual findings are reviewed for clear error and will not be set aside unless the reviewing court is left with the definite and firm conviction that a mistake has been made. |
| PRECEDENTIAL VALUE    | Published memorandum decision; precedential effect not otherwise specified in the opinion.                                                                                                                                                                                 |
| PARTIES               | Petitioner Father v. V.W., by guardian ad litem, West Virginia Department of Health and Human Resources                                                                                                                                                                    |

TOPICS

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

## PRACTICE AREAS

family law

child welfare

parental rights

appellate procedure

## QUESTIONS PRESENTED

1. Whether the circuit court erred by terminating Petitioner Father's parental rights without granting an improvement period.
2. Whether 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 necessary for the child's welfare.

## HOLDINGS

1. The circuit court did not err or abuse its discretion by denying an improvement period and terminating Petitioner Father's parental rights.
2. The evidence was sufficient to support 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 necessary for the child'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)*

*“The Court finds that the circuit court was presented with sufficient evidence upon which it could have based 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 necessary for the child’s welfare.” (2)*

## FACTUAL BACKGROUND

DHHR became concerned about the parents' ability to care for their child after the child's birth because both parents appeared mentally challenged and lacked basic parenting skills and knowledge. The parents had recently been charged with animal cruelty, their home lacked water and electricity, and animals freely defecated on the home's floor. The parents' psychiatrist testified that correcting the circumstances would take at least one year, and the parent educator testified that neither parent successfully learned from offered parenting services to care independently for the child.

## PROCEDURAL HISTORY

The Department of Health and Human Resources filed an abuse and neglect petition against both parents in October 2011. Following a dispositional hearing in April 2012, the Circuit Court of Gilmer County terminated both parents' parental rights by order entered May 24, 2012, while permitting post-termination supervised visitation. Petitioner Father separately appealed, and the Supreme Court of Appeals of West Virginia affirmed in a memorandum decision.

## 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)
- In re Maranda T., 223 W. Va. 512, 678 S.E.2d 18 (2009)

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