

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re: A.U.

No. 17-0198 (W. Va. June 19, 2017) · No. No. 17-0198 · Decided June 19, 2017

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed an order terminating the parental rights of petitioner mother F.H. to A.U. The court held that termination was permissible without a less-restrictive dispositional alternative because there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future. The decision also noted substantial procedural delays in the abuse and neglect proceedings.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Allen H. Loughry II; Justice Robin Jean Davis; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Elizabeth D. Walker
JURISDICTION	West Virginia
DECIDED	June 19, 2017
DOCKET	No. 17-0198
DISPOSITION	affirmed
PROCEDURAL POSTURE	Mother appealed the Circuit Court of Taylor County's order terminating her parental rights 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 committed.
PRECEDENTIAL VALUE	Published memorandum decision; precedential status is not expressly stated in the opinion.
PARTIES	Petitioner Mother F.H. v. West Virginia Department of Health and Human Resources, Guardian ad litem for A.U.

TOPICS

termination of parental rights

parental rights

family law procedure

appellate procedure

standard of review

PRACTICE AREAS

family law

juvenile law

abuse and neglect

QUESTIONS PRESENTED

1. Whether the circuit court erred by terminating Mother's parental rights without first employing a less-restrictive dispositional alternative.
2. Whether termination was authorized when the conditions of abuse and neglect could not be substantially corrected in the near future.

HOLDINGS

1. Termination of parental rights may be ordered without an intervening less-restrictive alternative when the court finds that there is no reasonable likelihood that the conditions of abuse or neglect can be substantially corrected in the near future.
2. Legal conclusions are reviewed de novo, while factual findings are reviewed for clear error and must be affirmed if plausible in light of the record viewed in its entirety.

KEY QUOTATIONS

“Termination . . . may be employed without the use of intervening less[-]restrictive alternatives when it is found that there is no reasonable likelihood . . . that conditions of neglect or abuse can be substantially corrected.” (3)

“A finding is clearly erroneous when, although there is evidence to support the finding, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.” (2)

FACTUAL BACKGROUND

The DHHR alleged that Mother used methamphetamine and other controlled substances while pregnant, failed to follow medical advice during a high-risk pregnancy, failed to provide adequate prenatal care, and permitted the child's father to endanger the child at the hospital. Mother admitted the allegations and later stipulated to them. Evidence showed that neither parent had the capability to meet the infant's basic care and survival needs, and the circuit court found that Mother lacked the capacity to parent safely and could not substantially correct the conditions of abuse and neglect in the near future.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition in June 2015. Mother admitted the allegations, stipulated to them at an adjudicatory hearing, and sought an improvement period, which the circuit court denied after finding that she lacked the capacity to safely parent. Following a dispositional hearing, the circuit court found that the conditions of abuse and neglect could not be substantially corrected in the near future and terminated her parental rights by order entered January 25, 2017. 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 the Interest of Carlita B., 185 W. Va. 613, 408 S.E.2d 365 (1991)
- 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 Katie S., 198 W. Va. 79, 479 S.E.2d 589 (1996)