

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re H.G. and K.G.

No. 18-0773 (W. Va. Mar. 15, 2019) · No. 18-0773 · Decided March 15, 2019

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the termination of a custodian’s custodial rights to two children in an abuse and neglect proceeding. The court held that the custodian failed to demonstrate by clear and convincing evidence that she was likely to fully participate in a post-adjudicatory improvement period and that the circuit court properly found no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Elizabeth D. Walker; Justice Margaret L. Workman; Justice Tim Armstead; Justice Evan H. Jenkins; Justice John A. Hutchison
JURISDICTION	West Virginia
DECIDED	March 15, 2019
DOCKET	18-0773
DISPOSITION	affirmed
PROCEDURAL POSTURE	Custodian D.R. appealed the Circuit Court of Roane County's order terminating her custodial rights after the court denied her motion for a post-adjudicatory improvement period and found no reasonable likelihood that she could substantially correct the conditions of abuse and neglect in the near future.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo, while factual findings in a bench-trying abuse and neglect case are reviewed for clear error.
PRECEDENTIAL VALUE	Published memorandum decision; the supplied opinion states that it is issued under Rule 21.
PARTIES	Custodian D.R. v. West Virginia Department of Health and Human Resources, H.G. and K.G., by guardian ad litem

TOPICS

termination of parental rights

parental rights

family law procedure

appellate procedure

standard of review

PRACTICE AREAS

juvenile abuse and neglect

termination of parental and custodial rights

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court erred in denying D.R.'s motion for a post-adjudicatory improvement period.
2. Whether the circuit court erred in finding no reasonable likelihood that D.R. could substantially correct the conditions of abuse and neglect in the near future and in terminating her custodial rights.

HOLDINGS

1. The circuit court properly denied D.R.'s motion because she failed to demonstrate by clear and convincing evidence that she was likely to fully participate in an improvement period.
2. The circuit court did not err in finding no reasonable likelihood that D.R. could substantially correct the conditions of abuse and neglect in the near future and in determining that termination of her custodial rights 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.” (at 2)

“a court may grant a respondent an improvement period of a period not to exceed six months when . . . the respondent demonstrates, by clear and convincing evidence, that the respondent is likely to fully participate in the improvement period.” (at 3)

“Therefore, we find no error in the circuit court’s decision to terminate petitioner’s custodial rights.” (at 4)

FACTUAL BACKGROUND

The children lived with D.R. and their father in a home that the DHHR alleged was deplorable and dangerous, with excessive clutter, animal waste, prescription bottles, chickens kept in the bathroom, cats housed in a bedroom, and no proper bedroom for the children. The children experienced head lice, embarrassment about the odor of their clothing, and emotional harm. D.R. stipulated to the abuse and neglect allegations, and a psychological evaluation found borderline intellectual functioning, an unspecified personality disorder, significant dysfunctional behaviors likely including animal hoarding, and an extremely poor prognosis for improvement. D.R. had also previously lost parental rights to another child.

PROCEDURAL HISTORY

The West Virginia Department of Health and Human Resources filed an abuse and neglect petition in December 2017. D.R. stipulated to the allegations on January 29, 2018, and moved for a post-adjudicatory improvement

period. After a dispositional hearing on June 4, 2018, the circuit court denied the motion, found that D.R. could not substantially correct the conditions of abuse and neglect in the near future, and terminated her custodial rights in a July 25, 2018 order. 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 M.M., 236 W. Va. 108, 778 S.E.2d 338 (2015)