

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re: A.S.

No. 12-1029 (W. Va. Jan. 14, 2013) · No. No. 12-1029 · Decided January 14, 2013

SUMMARY

The West Virginia Supreme Court of Appeals affirmed a circuit court order terminating the father's parental rights in an abuse and neglect proceeding. The court held that sufficient evidence supported findings of imminent danger from domestic violence and no reasonable likelihood of correcting the conditions of abuse and neglect, and it also reminded the circuit court of its permanent-placement obligations.

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	January 14, 2013
DOCKET	No. 12-1029
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner Father appealed the Circuit Court of Barbour County's order terminating his parental rights in an abuse and neglect proceeding.
STANDARD OF REVIEW	Conclusions of law in abuse and neglect cases are reviewed de novo. Factual findings made by a circuit court sitting 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PRECEDENTIAL VALUE	Unpublished memorandum decision; precedential status is not stated in the opinion.
PARTIES	Petitioner Father v. A.S., the child, West Virginia Department of Health and Human Resources, Guardian ad litem

TOPICS

termination of parental rights

domestic violence

parental rights

standard of review

appellate procedure

PRACTICE AREAS

family law

child welfare

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court erred in finding that imminent danger existed when the abuse and neglect petition was filed and in removing the child from the home.
2. Whether the circuit court erred by terminating Petitioner's parental rights rather than imposing a less drastic disposition.

HOLDINGS

1. The circuit court did not err in removing the child because the pattern of domestic violence in the home, including domestic violence occurring in the child's presence, constituted sufficient evidence of imminent danger.
2. Termination 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 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)

“This Court finds that the circuit court was presented with sufficient evidence upon which it could have found 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 children’s welfare.” (2)

“At least once every three months until permanent placement is achieved as defined in Rule 6, the court shall conduct a permanent placement review conference, requiring the multidisciplinary treatment team to attend and report as to progress and development in the case, for the purpose of reviewing the progress in the permanent placement of the child.” (2)

“The [twelve]-month period provided in Rule 43 of the West Virginia Rules of Procedures for Child Abuse and Neglect Proceedings for permanent placement of an abused and neglected child following the final dispositional order must be strictly followed except in the most extraordinary circumstances which are fully substantiated in the record.” (2)

FACTUAL BACKGROUND

The child was removed from the home after both parents filed domestic violence petitions and admitted to domestic violence occurring in the home while the child was present. Petitioner Father was incarcerated on

unrelated charges, later received an improvement period after adjudication, and then failed to comply by fleeing the jurisdiction, missing drug tests, and abandoning the child. The circuit court terminated his parental rights after finding that the conditions of abuse and neglect could not be substantially corrected in the near future and that termination was necessary for the child's welfare.

PROCEDURAL HISTORY

The abuse and neglect action followed domestic violence petitions filed by both parents, and the child was removed from the home based on allegations of domestic violence. After Petitioner Father was adjudicated abusive and neglectful, the circuit court granted him an improvement period, but he fled the jurisdiction, failed to appear for drug testing, and abandoned the child. The circuit court terminated his parental rights, and the Supreme Court of Appeals of West Virginia 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)
- In re R.J.M., 164 W. Va. 496, 266 S.E.2d 114 (1980)
- 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)