

# SUPREME COURT OF APPEALS OF WEST VIRGINIA

## In Re: U.B.

No. 13-0193 (Webster County 11-JA-58) · No. No. 13-0193 (Webster County 11-JA-58) · Decided June 10, 2013

### SUMMARY

The West Virginia Supreme Court of Appeals reviewed a circuit court order terminating a mother's custodial rights to U.B. in an abuse and neglect proceeding. The court held that the mother failed to comply with her improvement period, address her substance abuse, or establish a suitable home, and that sufficient evidence supported the finding that the conditions could not be substantially corrected in the near future. The court affirmed the termination of custodial rights.

### 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               | June 10, 2013                                                                                                                                                                                                                                                 |
| DOCKET                | No. 13-0193 (Webster County 11-JA-58)                                                                                                                                                                                                                         |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                      |
| PROCEDURAL POSTURE    | Petitioner Mother appealed the Circuit Court of Webster County's order terminating her custodial rights to U.B. in an abuse and neglect proceeding.                                                                                                           |
| STANDARD OF REVIEW    | Conclusions of law are reviewed de novo; factual findings in a bench-tried 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 has been made. |
| PRECEDENTIAL VALUE    | Published memorandum decision; no substantial question of law was found and the decision was issued under West Virginia Rule of Appellate Procedure 21.                                                                                                       |
| PARTIES               | Petitioner Mother v. West Virginia Department of Health and Human Resources                                                                                                                                                                                   |

## TOPICS

termination of parental rights

parental rights

family law procedure

standard of review

appellate procedure

## PRACTICE AREAS

family law

child welfare

appellate procedure

remedies

## QUESTIONS PRESENTED

1. Whether the circuit court clearly erred in finding that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future.
2. Whether the petitioner's efforts to seek treatment and bond with the child required preservation of her custodial rights.
3. Whether termination of custodial rights was necessary despite the availability of less restrictive alternatives.

## HOLDINGS

1. The circuit court had sufficient evidence to find that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future because Petitioner Mother failed to comply with her improvement period, habitually abused controlled substances, and did not follow her case plan.
2. The mother's bond with U.B. and her asserted efforts to seek treatment did not preclude termination where she failed to comply with the improvement period and the evidence supported the finding that correction of the conditions was unlikely.
3. The circuit court's findings were not clearly erroneous, and the order terminating Petitioner Mother's custodial rights was affirmed.

## 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 to find 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

CPS received a referral alleging that drug paraphernalia was present in the home and that Petitioner Mother had recently used methamphetamine, hydrocodone, and marijuana. She tested positive for methamphetamine, opiates, benzodiazepines, and THC, and U.B. was removed from the home because the conduct constituted abuse or neglect and posed an imminent danger. During the improvement period, Petitioner Mother did not

participate in inpatient drug rehabilitation, lacked employment, failed to establish a suitable home, and did not comply with her case plan. The circuit court terminated her custodial rights but allowed two hours of supervised weekly visitation conditioned on her remaining drug- and alcohol-free.

#### PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition after CPS received allegations of drug paraphernalia, substance abuse, and positive drug tests. U.B. was removed from the home, and Petitioner Mother was granted an improvement period. After she failed to comply with the improvement period, including failing to participate in inpatient drug rehabilitation and failing to establish a suitable home, the circuit court revoked the improvement period and terminated her custodial rights while permitting supervised visitation. The Supreme Court of Appeals 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)
- In re Katie S., 198 W. Va. 79, 82, 479 S.E.2d 589, 592 (1996)

#### OPINION

##### PER CURIAM.

STATE OF WEST VIRGINIA SUPREME COURT OF APPEALS FILED In Re: U.B. June 10, 2013 RORY L. PERRY II, CLERK No. 13-0193 (Webster County 11-JA-58) SUPREME COURT OF APPEALS OF WEST VIRGINIA MEMORANDUM DECISION Petitioner Mother, by counsel Daniel R. Grindo, appeals the Circuit Court of Webster County's order entered on October 24, 2012, terminating her custodial rights to U.B.

The West Virginia Department of Health and Human Resources ("DHHR"), by Lee Niezgoda, its attorney, has filed its response. The guardian ad litem, Michael Asbury, filed a response on behalf of the child. This Court has considered the parties' briefs and the record on appeal.

The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error.

For these reasons, a memorandum decision is appropriate under Rule 21 of the Rules of Appellate Procedure. The DHHR sought custody of U.B. after Child Protective Services ("CPS") received a referral alleging the following: that drug paraphernalia was found at the home; that Petitioner

Mother used methamphetamine, hydrocodone, and marijuana within a few days of inspection of the home; and that Petitioner Mother tested positive for methamphetamine, opiates, benzodiazepines, and THC.

U.B. was immediately removed from the home based on the finding that petitioner's actions constituted abuse and/or neglect and posed an imminent danger to the child. From November of 2011, when the petition was filed, until August of 2012, petitioner failed to comply with her improvement period because she never participated in inpatient drug rehabilitation and had no job, leading to revocation of the improvement period.

Additionally, petitioner failed to establish a suitable home for the child. At a review hearing the DHHR recommended termination of parental rights, but the circuit court terminated only the custodial rights after the guardian suggested that the goal of protecting U.B. can be accomplished without terminating parental rights. Following disposition, petitioner's custodial rights were terminated for noncompliance and for failure to establish a suitable home for her child.

The circuit court granted two hours of supervised visitation each week, so long as she remains drug and alcohol free. The Court has previously established the following standard of review: "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 1 evidence and shall make findings of fact and conclusions of law as to whether such child is abused or neglected.

These findings shall not be set aside by a reviewing court unless clearly erroneous. 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.

However, a reviewing court may not overturn a finding simply because it would have decided the case differently, and it must affirm a finding if the circuit court's account of the evidence is plausible in light of the record viewed in its entirety." Syl. Pt. 1, *In Interest of Tiffany Marie S.*, 196 W.Va. 223, 470 S.E.2d 177 (1996). Syl. Pt. 1, *In re Cecil T.* 228 W.Va.

89, 717 S.E.2d 873 (2011). On appeal, petitioner argues that the circuit court erred in terminating her custodial rights to U.B. Petitioner alleges that her efforts to seek treatment demonstrate that she was not unlikely to correct the conditions of abuse and neglect. Petitioner further argues that the mutual bond she shares with the child necessitates continuing custodial rights with U.B.

The DHHR and the guardian argue petitioner did nothing to address her chronic drug addiction until her improvement period was terminated for noncompliance. The DHHR and the guardian further argue that the circuit court considered the strong bond between petitioner and U.B. and that the bond warrants the continued contact through weekly visitation, but does not prevent the circuit court from terminating petitioner's custodial rights.

This Court has held that “‘courts are not required to exhaust every speculative possibility of parental improvement... where it appears that the welfare of the child will be seriously threatened....’ Syl. Pt. 1, in part, *In re R.J.M.*, 164 W.Va. 496, 266 S.E.2d 114 (1980).” Syl. Pt. 4, in part, *In re Cecil T.*, 228 W.Va. 89, 717 S.E.2d 873 (2011). “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.” Syl.

Pt. 7, in part, *In re Katie S.*, 198 W.Va. 79, 82, 479 S.E.2d 589, 592 (1996). It is undisputed that petitioner’s improvement period was revoked because she did not comply with its terms. The circuit court found that petitioner habitually abused controlled substances and did not follow through with her case plan. This Court finds that the circuit court was presented with sufficient evidence to find 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.

Pursuant to West Virginia Code § 49-6-5(a)(6), circuit courts are directed to terminate custodial rights upon these findings. For the foregoing reasons, the circuit court’s order terminating petitioner’s custodial rights is hereby affirmed. Affirmed. 2 ISSUED: June 10, 2013 CONCURRED IN BY: Chief Justice Brent D. Benjamin Justice Robin Jean Davis Justice Margaret L. Workman Justice Menis E. Ketchum Justice Allen H. Loughry II 3