

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)