

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re M.A., A.A.-1, and A.A.-2

No. 17-0394 (W. Va. Oct. 23, 2017) · No. No. 17-0394 · Decided October 23, 2017

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the termination of a mother's parental rights to two children in an abuse and neglect proceeding. The court held that clear and convincing evidence supported adjudication based on the mother's allowing children to consume alcohol and engaging in inappropriate conduct, and that her failure to acknowledge the abuse supported denial of a post-adjudicatory improvement period. The court further upheld the finding that there was no reasonable likelihood that the conditions of abuse could be substantially corrected.

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	October 23, 2017
DOCKET	No. 17-0394
DISPOSITION	affirmed
PROCEDURAL POSTURE	Mother appealed the Circuit Court of Randolph County's order adjudicating her as an abusing parent, denying her request for a post-adjudicatory improvement period, and terminating her parental rights to M.A. and A.A.-2.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo; factual findings in an 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 committed.
PRECEDENTIAL VALUE	Nonprecedential memorandum decision
PARTIES	S.A., Petitioner Mother v. West Virginia Department of Health and Human Resources, M.A. and A.A.-2, by guardian ad litem

TOPICS

termination of parental rights

parental rights

family law procedure

evidence

appellate procedure

PRACTICE AREAS

juvenile law

family law

child welfare

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to adjudicate petitioner as an abusing parent.
2. Whether the circuit court erred by denying petitioner a post-adjudicatory improvement period.
3. Whether the circuit court properly terminated petitioner's parental rights after finding 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.

HOLDINGS

1. The evidence was sufficient to adjudicate petitioner as an abusing parent because permitting children to consume alcohol in her presence, together with the other inappropriate conduct, constituted abuse sufficient to support adjudication.
2. The circuit court properly denied petitioner's request for a post-adjudicatory improvement period because she failed to establish that she was likely to fully participate in it.
3. Termination of petitioner's parental rights was proper because there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future and termination 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.” (2)

“A reviewing court cannot assess witness credibility through a record. The trier of fact is uniquely situated to make such determinations and this Court is not in a position to, and will not, second guess such determinations.” (4)

“In order to remedy the abuse and/or neglect problem, the problem must first be acknowledged.” (4)

FACTUAL BACKGROUND

The DHHR alleged that petitioner and the children's father provided alcohol to A.A.-1, then sixteen, and another underage girl, and participated in a sexually oriented game involving the children. The petition also alleged that the parents failed to obtain appropriate medical treatment for A.A.-2, who had a cleft palate, and that the parents were incarcerated on related criminal charges. At adjudication, multiple witnesses testified consistently about A.A.-1's disclosures, while the circuit court found her recantation not credible because evidence indicated she

recanted to help her siblings return home. Petitioner did not testify or present evidence at adjudication and later failed to acknowledge the abuse and neglect.

PROCEDURAL HISTORY

The West Virginia Department of Health and Human Resources filed an abuse and neglect petition in August 2016 and later amended it. After an adjudicatory hearing in December 2016, the circuit court adjudicated petitioner as an abusing parent based principally on permitting minors to consume alcohol and engaging in inappropriate conduct with them. At a January 2017 dispositional hearing, the court denied petitioner's request for an improvement period and terminated her parental rights. 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 Interest of S.C., 168 W. Va. 366, 284 S.E.2d 867 (1981)
- In re Joseph A., 199 W. Va. 438, 485 S.E.2d 176 (1997)
- Michael D.C. v. Wanda L.C., 201 W. Va. 381, 497 S.E.2d 531 (1997)
- In re Timber M., 231 W. Va. 44, 743 S.E.2d 352 (2013)
- In re Charity H., 215 W. Va. 208, 599 S.E.2d 631 (2004)

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