

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re: J.M., J.W., A.K., and A.K.

No. 15-0325 (W. Va. Sept. 21, 2015) (memorandum decision) · No. 15-0325 · Decided September 21, 2015

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the termination of petitioner mother's parental rights to four children. The court held that the circuit court's credibility findings and determination that there was no reasonable likelihood of substantially correcting the conditions of neglect were supported by substantial evidence.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per curiam; Chief Justice Margaret L. Workman; Justice Robin Jean Davis; Justice Brent D. Benjamin; Justice Menis E. Ketchum; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	September 21, 2015
DOCKET	15-0325
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner mother appealed the Kanawha County Circuit Court's order terminating her parental rights following abuse and neglect proceedings.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo. Findings of fact 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 was made.
PRECEDENTIAL VALUE	Memorandum decision under West Virginia Rule of Appellate Procedure 21
PARTIES	S.M., petitioner mother v. J.M., J.W., A.K.-1, A.K.-2, West Virginia Department of Health and Human Resources

TOPICS

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parental rights

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QUESTIONS PRESENTED

1. Whether the circuit court clearly erred in finding that petitioner's testimony concerning contact with D.K. was not credible.
2. Whether the circuit court erred in terminating petitioner's parental rights despite her claimed substantial completion of the improvement period.

HOLDINGS

1. The circuit court did not clearly err in finding that petitioner's testimony was not honest or credible because the DHHR's evidence and D.K.'s testimony supported the finding that petitioner continued to contact D.K. in violation of the protective and no-contact orders.
2. The circuit court properly terminated petitioner's parental rights because her compliance with the improvement period was only one factor, the controlling consideration was the children's best interests, and the evidence showed no reasonable likelihood that she could substantially correct the conditions of abuse or neglect in the near future.

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 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." (at 3)

"In making the final disposition in a child abuse and neglect proceeding, the level of a parent's compliance with the terms and conditions of an improvement period is just one factor to be considered. The controlling standard that governs any dispositional decision remains the best interests of the child." (at 3)

FACTUAL BACKGROUND

The DHHR alleged that petitioner neglected the children, committed domestic violence in their presence, left them with unsafe caregivers, and failed to provide for them. Petitioner stipulated to domestic violence and anger-management issues and received a post-adjudicatory improvement period. During that period, she continued telephone and face-to-face contact with D.K. despite a domestic violence protective order and a circuit-court no-contact order, tested positive for marijuana, and engaged in conduct reflecting continued poor judgment. The circuit court found that she had not substantially corrected the conditions of abuse or neglect and terminated her parental rights.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition in September 2013. After a preliminary hearing, adjudication, a post-adjudicatory improvement period, and review hearings, the circuit court held a dispositional hearing in January 2015 and entered a March 17, 2015 order terminating petitioner's parental rights. 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)
- Michael D.C. v. Wanda L.C., 201 W. Va. 381, 497 S.E.2d 531 (1997)
- In re: B.H. and S.S., 233 W. Va. 57, 754 S.E.2d 743 (2014)

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