

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re A.K. and E.H.

No. 20-0424 (W. Va. Dec. 10, 2020) · No. 20-0424 · Decided December 10, 2020

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the termination of petitioner mother B.K.'s parental rights to A.K. and E.H. The court held that she failed to demonstrate likely full participation in a post-adjudicatory improvement period and that substantial evidence supported findings that the conditions of abuse and neglect were unlikely to be corrected and termination was necessary for the children's welfare. The decision is a per curiam memorandum decision issued under Rule 21 of the West Virginia Rules of Appellate Procedure.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Tim Armstead; Justice Margaret L. Workman; Justice Elizabeth D. Walker; Justice Evan H. Jenkins; Justice John A. Hutchison
JURISDICTION	West Virginia
DECIDED	December 10, 2020
DOCKET	20-0424
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner mother appealed the Circuit Court of Monongalia County's order terminating her parental rights after the court denied her request for a post-adjudicatory improvement period.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo. In an abuse and neglect case tried upon the facts without a jury, factual findings 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PRECEDENTIAL VALUE	Nonprecedential memorandum decision
PARTIES	B.K., petitioner mother v. West Virginia Department of Health and Human Resources, A.K. and E.H., by guardian ad litem

TOPICS

termination of parental rights

parental rights

family law procedure

standard of review

appellate procedure

PRACTICE AREAS

juvenile law

child welfare

parental rights

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court erred in denying petitioner a post-adjudicatory improvement period.
2. Whether the circuit court erred in terminating petitioner's parental rights for lack of a reasonable likelihood that the conditions of abuse and neglect could be substantially corrected and because termination was necessary for the children's welfare.

HOLDINGS

1. A parent seeking a post-adjudicatory improvement period must demonstrate by clear and convincing evidence that the parent is likely to fully participate in it. Petitioner failed to meet that burden because she largely refused to participate in drug screening and other services, so the circuit court did not abuse its discretion in denying the improvement period.
2. Termination of petitioner's parental rights was proper because substantial evidence established that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected and that termination was necessary for the children's welfare.

KEY QUOTATIONS

“an improvement period in the context of abuse and neglect proceedings is viewed as an opportunity for the miscreant parent to modify his/her behavior so as to correct the conditions of abuse and/or neglect with which he/she has been charged.” (3)

“Termination of parental rights, the most drastic remedy under the statutory provision covering the disposition of neglected children, [West Virginia Code § 49-4-604] . . . may be employed without the use of intervening less restrictive alternatives when it is found that there is no reasonable likelihood under [West Virginia Code § 49-4-604(d)] . . . that conditions of neglect or abuse can be substantially corrected.” (4)

FACTUAL BACKGROUND

Petitioner mother had a history of methamphetamine and other substance abuse, including a prior abuse and neglect proceeding in which she completed an improvement period. In the current proceeding, the DHHR alleged substance abuse affecting her ability to parent, an unsafe home, and domestic violence. Petitioner failed to attend an MDT meeting, missed contact with the children, did not maintain communication with the DHHR, participated in only three drug screens—two of which were ordered at hearings—and tested positive for multiple substances. She did not seek drug treatment or other offered services, and the circuit court found no reasonable likelihood that the conditions of abuse and neglect would be corrected in the foreseeable future.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition in December 2019 alleging substance abuse, an unsafe home, and domestic violence. After finding probable cause, the circuit court adjudicated petitioner as an abusing and neglecting parent. Following evidence that petitioner failed to participate meaningfully in drug screening or other services, the circuit court denied an improvement period and terminated her parental rights in its May 1, 2020 dispositional order. 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 re Kaitlyn P., 225 W. Va. 123, 690 S.E.2d 131 (2010)
- In re Tonjia M., 212 W. Va. 443, 573 S.E.2d 354 (2002)
- In re R.J.M., 164 W. Va. 496, 266 S.E.2d 114 (1980)
- In re Kristin Y., 227 W. Va. 558, 712 S.E.2d 55 (2011)