

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re A.R.

No. 13-0487, Supreme Court of Appeals of West Virginia (October 21, 2013)

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the termination of a father's parental rights to A.R. The court held that the abuse and neglect petition adequately alleged the grounds supporting termination and that the circuit court did not abuse its discretion in denying an improvement period. The decision was issued as a memorandum decision 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 Brent D. Benjamin; Justice Robin Jean Davis; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	October 21, 2013
DOCKET	13-0487
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner Father appealed the Circuit Court of Braxton County's order terminating his parental rights to A.R. He challenged the adjudication that he was an abusing parent and the denial of an improvement period.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo. Factual findings in an abuse and neglect case tried without a jury 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PRECEDENTIAL VALUE	Unpublished memorandum decision; no substantial question of law or prejudicial error identified.
PARTIES	Petitioner Father v. West Virginia Department of Health and Human Resources, Guardian ad litem for A.R.

TOPICS

termination of parental rights

parental rights

family law procedure

appellate procedure

standard of review

PRACTICE AREAS

family law

juvenile law

child welfare

QUESTIONS PRESENTED

1. Whether the circuit court terminated petitioner's parental rights on a ground that was not alleged in the abuse and neglect petition.
2. Whether the circuit court abused its discretion by denying petitioner an improvement period.
3. Whether the circuit court clearly erred in adjudicating petitioner an abusing parent and terminating his parental rights.

HOLDINGS

1. The circuit court did not err in terminating petitioner's parental rights because the second amended petition alleged his sporadic contact with A.R., his inability to care for the child because of incarceration, and facts supporting the adjudication and disposition.
2. The circuit court did not abuse its discretion by denying petitioner an improvement period because petitioner failed to establish that he would substantially comply with one.
3. The circuit court did not clearly err in adjudicating petitioner an abusing parent or in terminating his parental rights.

KEY QUOTATIONS

“Pursuant to West Virginia Code § 49-6-12, a respondent parent bears the burden of proving that he or she will substantially comply with an improvement period; consequently, the circuit court has the discretion to deny an improvement period if the circuit court finds that this burden has not been met.” (3)

“The record reflects that petitioner was incarcerated twice during the pendency of this case and communicated sporadically with A.R., giving sufficient support to the circuit court’s finding that there was no reasonable likelihood that petitioner would substantially correct the issues of neglect within the foreseeable future.” (3)

FACTUAL BACKGROUND

A.R. suffered a seizure and serious head trauma while living with his mother and her boyfriend in June 2010. Petitioner was twice incarcerated during the proceedings, had sporadic contact with A.R., failed to provide monetary support, and did not provide a fit and suitable home. Although petitioner presented evidence of rehabilitation, parenting classes, and employment, the circuit court found his testimony and employment documentation inconsistent and concluded that there was no reasonable likelihood he would substantially correct the neglect conditions in the foreseeable future.

PROCEDURAL HISTORY

After a second amended abuse and neglect petition, petitioner was adjudicated an abusing parent in August 2012 based on abandonment, failure to provide monetary support, parole violations involving alcohol, incarceration, and failure to provide a fit and suitable home. Following a December 2012 dispositional hearing, the circuit court entered an order on April 15, 2013, terminating his parental rights. The Supreme Court of Appeals of West Virginia affirmed by memorandum decision.

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)
- State v. Julie G., 201 W. Va. 764, 500 S.E.2d 877 (1997)
- In re Randy H., 220 W. Va. 122, 640 S.E.2d 185 (2006)
- In Re: R.J.M., 164 W. Va. 496, 266 S.E.2d 114 (1980)