

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re J.S.-1, K.S., and M.S.

No. 20-0832 (W. Va. Apr. 20, 2021) · No. No. 20-0832 · Decided April 20, 2021

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the termination of petitioner father's parental rights to three children in a child abuse and neglect proceeding. The court held that the circuit court properly found no reasonable likelihood that the conditions of neglect or abuse could be substantially corrected, based on the father's relapse into substance abuse and inconsistent visitation after extensive services. The court also rejected the challenge to post-termination visitation because the circuit court had permitted the children's mothers to determine whether visitation would occur and under what conditions.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Evan H. Jenkins; Justice Elizabeth D. Walker; Justice Tim Armstead; Justice John A. Hutchison; Justice William R. Wooton
JURISDICTION	West Virginia
DECIDED	April 20, 2021
DOCKET	No. 20-0832
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner Father appealed the Taylor County Circuit Court's order terminating his parental rights and addressing post-termination visitation.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo, while factual findings in an abuse and neglect case are reviewed for clear error. A finding is clearly erroneous only when, on the entire evidence, the reviewing court is left with the definite and firm conviction that a mistake has been committed.
PRECEDENTIAL VALUE	Memorandum decision; no substantial question of law and no prejudicial error identified under Rule 21.
PARTIES	J.S.-2, Petitioner Father v. West Virginia Department of Health and Human Resources, Guardian ad litem for J.S.-1, K.S., and M.S.

TOPICS

termination of parental rights

parental rights

domestic violence

family law procedure

appellate procedure

PRACTICE AREAS

juvenile law

child abuse and neglect

parental rights

substance abuse

QUESTIONS PRESENTED

1. Whether the circuit court terminated petitioner's parental rights without giving him a meaningful opportunity to complete his improvement period.
2. Whether the circuit court erred in denying petitioner post-termination visitation.
3. Whether the evidence supported a finding that there was no reasonable likelihood that the conditions of neglect or abuse could be substantially corrected in the near future.

HOLDINGS

1. The circuit court did not err in terminating petitioner's parental rights without granting additional time to complete his improvement period because petitioner identified no services he was denied and his relapse and missed drug screens demonstrated that he had not successfully completed the improvement period.
2. The circuit court properly terminated petitioner's parental rights because his relapse after extensive services and his failure to maintain consistent visitation supported the finding that there was no reasonable likelihood that the conditions of neglect or abuse could be corrected in the near future.
3. The circuit court did not deny petitioner post-termination visitation because its final order expressly permitted future contact or visitation at the discretion of the children's respective mothers.

KEY QUOTATIONS

“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.” (at 4)

FACTUAL BACKGROUND

The DHHR alleged that petitioner engaged in domestic violence with the mother of one of the children and had a history of substance abuse and domestic violence. Although petitioner initially completed services and maintained sobriety during improvement periods, he later missed multiple drug screens and tested positive for methamphetamine and amphetamine in June and July 2020. He also failed to maintain consistent visitation, including having no visits with two of the children since November 2018. The circuit court found that petitioner had not completed his improvement period, that the conditions of neglect could not be corrected in the near future, and that termination was necessary for the children's welfare.

PROCEDURAL HISTORY

The DHHR filed a child abuse and neglect petition in April 2018 alleging domestic violence and substance abuse. The circuit court granted and extended improvement periods, but after petitioner relapsed into methamphetamine use and failed to maintain visitation, it terminated his parental rights by order dated September 18, 2020. The Supreme Court of Appeals of West Virginia affirmed by memorandum decision.

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 Katie S., 198 W. Va. 79, 90 n.14, 479 S.E.2d 589, 600 n.14 (1996)
- 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)

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