

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re S.W.

No. 19-0473 (W. Va. Feb. 7, 2020) · No. No. 19-0473 · Decided February 7, 2020

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed an order terminating the parental rights of petitioner father S.J. in an abuse and neglect proceeding involving his untreated drug addiction, noncompliance with services, and repeated incarcerations. The court held that the record supported findings that there was no reasonable likelihood the conditions of abuse and neglect could be substantially corrected in the near future and that termination was necessary for the child's welfare.

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	February 7, 2020
DOCKET	No. 19-0473
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order terminating the father's parental rights in an abuse and neglect proceeding.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo. In an abuse and neglect case tried without a jury, factual findings are reviewed for clear error and will not be disturbed unless the reviewing court is left with a definite and firm conviction that a mistake was made.
PRECEDENTIAL VALUE	Published memorandum decision; the opinion states that it presents no substantial question of law and no prejudicial error.
PARTIES	S.J., Petitioner Father v. West Virginia Department of Health and Human Resources, S.W., through guardian ad litem

TOPICS

termination of parental rights

parental rights

family law procedure

appellate procedure

standard of review

PRACTICE AREAS

juvenile law

abuse and neglect

parental rights

QUESTIONS PRESENTED

1. Whether the circuit court erred by terminating S.J.'s parental rights rather than imposing a less-restrictive dispositional alternative.
2. Whether the evidence supported findings that there was 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 child's welfare.

HOLDINGS

1. The evidence supported the circuit court's finding that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future and that termination of S.J.'s parental rights was necessary for the child's welfare.
2. Termination of parental rights may be ordered without first employing less-restrictive alternatives when there is no reasonable likelihood that the conditions of abuse or neglect can be substantially corrected and termination is necessary for the child's welfare.

KEY QUOTATIONS

“Courts are not required to exhaust every speculative possibility of parental improvement . . . where it appears that the welfare of the child will be seriously threatened” (at 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(c)] that conditions of neglect or abuse can be substantially corrected.” (at 3)

FACTUAL BACKGROUND

The child was born drug-exposed and exhibited symptoms of fetal alcohol syndrome. S.J. stipulated that his drug addiction negatively affected his ability to parent, but he continued to test positive for illegal substances, did not pursue drug treatment, failed to exercise visits, and failed to attend scheduled parental fitness evaluations. He was also arrested and incarcerated multiple times during the proceedings, including for drug-related and violent offenses.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition and later amended it to allege that S.J. was the child's biological father and that his drug addiction impaired his ability to parent. S.J. stipulated at adjudication that his addiction negatively affected his parenting. After evidence of continued positive drug screens, failure to attend treatment, failure to exercise visitation, failure to complete parental fitness evaluations, and repeated arrests, the circuit court denied his motion for a post-adjudicatory improvement period and terminated his 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 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)