

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re K.E.

No. 22-782 (W. Va. Sept. 20, 2023) · No. No. 22-782 · Decided September 20, 2023

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the termination of the mother's parental rights in an abuse and neglect proceeding. The court held that the circuit court did not abuse its discretion by denying a post-adjudicatory improvement period because the mother repeatedly failed drug screens and denied the need for treatment. The court also upheld termination as permissible without a less restrictive alternative because there was no reasonable likelihood that the conditions of abuse and neglect would be substantially corrected in the near future.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; Chief Justice Elizabeth D. Walker; Justice Tim Armstead; Justice John A. Hutchison; Justice William R. Wooton; Justice C. Haley Bunn
JURISDICTION	West Virginia
DECIDED	September 20, 2023
DOCKET	No. 22-782
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the Circuit Court of Kanawha County's September 15, 2022, order terminating the mother's parental rights in an abuse and neglect proceeding.
STANDARD OF REVIEW	On appeal from a final order in an abuse and neglect proceeding, the Court reviews the circuit court's findings of fact for clear error and its conclusions of law de novo.
PRECEDENTIAL VALUE	Memorandum decision
PARTIES	S.E., Petitioner Mother v. West Virginia Department of Health and Human Resources, K.E., represented by guardian ad litem

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 erred by terminating the mother's parental rights without granting a post-adjudicatory improvement period.
2. Whether the circuit court erred by terminating the mother's parental rights when a less restrictive alternative was allegedly available.

HOLDINGS

1. The circuit court did not err in denying a post-adjudicatory improvement period because the mother's repeated failure to participate in drug screening and services, positive drug tests, substance abuse during the incident underlying the petition, and denial of the need for treatment demonstrated that improvement was unlikely and that an improvement period would be futile.
2. The circuit court properly terminated the mother's parental rights without employing an intervening less restrictive alternative because it found, on ample evidence, 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.

KEY QUOTATIONS

"We, therefore, find that the circuit court did not err in failing to grant petitioner a post-adjudicatory improvement period, as the same would have been an exercise in futility." (at 2)

"Because the court made the findings necessary to terminate petitioner's parental rights upon ample evidence, we find no error." (at 3)

FACTUAL BACKGROUND

The mother crashed a vehicle while under the influence of substances with the child inside, and the child was not properly secured and was injured. She admitted abusing Zanaflex and heroin, missed more than twenty drug screens, and tested positive for alcohol, fentanyl, cocaine, and norfentanyl on submitted samples. She failed to participate consistently in drug treatment, parenting and adult life-skills classes, and other rehabilitative services, and had not visited the child for approximately ten months before disposition.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition after the mother crashed a vehicle while allegedly under the influence with the child inside. The circuit court adjudicated her as an abusing and neglecting parent, continued the dispositional hearing to permit compliance with drug screening and services, and ultimately terminated her parental rights after finding no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future. The Supreme Court previously vacated an earlier dispositional order and remanded for entry of a new final order; the mother then appealed the circuit court's September 15, 2022, order.

DISPOSITION

affirmed

CASES CITED

- In re K.E., No. 22-0054, 2022 WL 3960511 (W. Va. Aug. 31, 2022)
- In re Cecil T., 228 W. Va. 89, 717 S.E.2d 873 (2011)
- In re Tonjia M., 212 W. Va. 443, 573 S.E.2d 354 (2002)
- In re Timber M., 231 W. Va. 44, 743 S.E.2d 352 (2013)
- In re Kristin Y., 227 W. Va. 558, 712 S.E.2d 55 (2011)
- In re Katie S., 198 W. Va. 79, 479 S.E.2d 589 (1996)
- In re Emily, 208 W. Va. 325, 540 S.E.2d 542 (2000)