

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re K.F.-1

No. 20-0428 (Webster County 19-JA-9) · No. No. 20-0428 · Decided December 10, 2020

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the termination of petitioner father P.F.'s parental rights to K.F.-1. The court held that the circuit court did not abuse its discretion by denying a post-adjudicatory improvement period because petitioner failed to explain the child's nonaccidental injuries or identify the perpetrator. The court also upheld the finding that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future.

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	No. 20-0428
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner father appealed the Circuit Court of Webster County's order terminating his parental rights to K.F.-1 and denying his request for a post-adjudicatory improvement period.
STANDARD OF REVIEW	Conclusions of law in an abuse and neglect case are reviewed de novo, while findings of fact are reviewed for clear error. A reviewing court may not set aside factual findings unless, upon review of the entire record, it is left with the definite and firm conviction that a mistake has been made.
PRECEDENTIAL VALUE	Unpublished memorandum decision; precedential value not specified in the opinion.
PARTIES	P.F., Petitioner Father v. West Virginia Department of Health and Human Resources, Guardian ad litem for K.F.-1

TOPICS

termination of parental rights

parental rights

family law procedure

standard of review

appellate procedure

PRACTICE AREAS

family law

juvenile law

child welfare

termination of parental rights

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court abused its discretion by denying petitioner a post-adjudicatory improvement period.
2. Whether the evidence supported termination of petitioner's parental rights based on the absence of a reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future and the necessity of termination for K.F.-1's welfare.

HOLDINGS

1. The circuit court did not err in denying petitioner an improvement period because he failed to demonstrate by clear and convincing evidence that he was likely to fully participate in it, including by failing to acknowledge or provide a satisfactory explanation for the abuse and the child's injuries.
2. In re S.J. did not require an improvement period because petitioner's circumstances were materially different; unlike the mother in S.J., petitioner never acknowledged responsibility or provided an explanation for the injuries.
3. The circuit court properly terminated petitioner's parental rights because there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future and termination was necessary for K.F.-1's welfare.

KEY QUOTATIONS

"In order to remedy the abuse and/or neglect problem, the problem must first be acknowledged. Failure to acknowledge the existence of the problem, i.e., the truth of the basic allegation pertaining to the alleged abuse and neglect or the perpetrator of said abuse and neglect, results in making the problem untreatable and in making an improvement period an exercise in futility at the child's expense." (at 4)

"As provided above, a circuit court may terminate a parent's parental rights when they refuse to identify the perpetrator of physical abuse." (at 5)

FACTUAL BACKGROUND

K.F.-1 and her twin, K.F.-2, were hospitalized at approximately two months of age with multiple rib fractures. The parents offered explanations involving the children rolling or falling from a bed or slipping from the mother's lap, but medical testimony indicated that the children were not developmentally capable of rolling over and that K.F.-1's injuries were nonaccidental and inconsistent with those explanations. Petitioner admitted abusing methamphetamine and marijuana while the children were in his care, and neither parent identified how the injuries occurred or who caused them. K.F.-2 later died during the proceedings, while K.F.-1 remained the subject of the abuse and neglect case.

PROCEDURAL HISTORY

The DHHR filed a child abuse and neglect petition in May 2019 after petitioner's twin infants were hospitalized with rib fractures. Following adjudicatory hearings, the circuit court adjudicated the parents as abusing parents. After a March 2020 dispositional hearing, the circuit court denied petitioner's motion for an improvement period and terminated his parental rights by order entered April 7, 2020. 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 S.J., No. 18-0243, 2018 WL 6119793 (W. Va. Nov. 21, 2018) (memorandum decision)
- In re Jeffrey R.L., 190 W. Va. 24, 435 S.E.2d 162 (1993)
- In re M.M., 236 W. Va. 108, 778 S.E.2d 338 (2015)
- In re Katie S., 198 W. Va. 79, 479 S.E.2d 589 (1996)
- In re Charity H., 215 W. Va. 208, 599 S.E.2d 631 (2004)
- In re Timber M., 231 W. Va. 44, 743 S.E.2d 352 (2013)