

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re: A.N. and N.N.-1

No. 17-0105 (W. Va. June 19, 2017) · No. 17-0105 · Decided June 19, 2017

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the Mercer County Circuit Court's order terminating petitioner father N.N.-2's parental rights to A.N. and N.N.-1. The court held that the father failed to comply with his improvement-period requirements, including substance-abuse treatment, adult life-skills classes, visitation, and drug screening, and that there was no reasonable likelihood he could substantially correct the conditions of abuse and neglect. The decision also reminded the circuit court of its obligations concerning permanent placement and periodic review.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Allen H. Loughry II; Justice Robin Jean Davis; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Elizabeth D. Walker
JURISDICTION	West Virginia
DECIDED	June 19, 2017
DOCKET	17-0105
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner father appealed the Mercer County Circuit Court's order terminating his 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 set aside unless the reviewing court is left with a definite and firm conviction that a mistake has been made.
PRECEDENTIAL VALUE	memorandum decision; no substantial question of law and no prejudicial error
PARTIES	N.N.-2, petitioner father v. West Virginia Department of Health and Human Resources, A.N. and N.N.-1, represented by guardian ad litem

TOPICS

termination of parental rights

parental rights

domestic violence

appellate procedure

standard of review

PRACTICE AREAS

family law

juvenile law

child welfare

QUESTIONS PRESENTED

1. Whether the circuit court erred by terminating petitioner's parental rights when termination of his custodial rights allegedly would have been the least-restrictive 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 children's welfare.

HOLDINGS

1. Termination of petitioner's parental rights was proper because he failed to comply with his improvement-period requirements, establishing no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future, and the children's welfare required termination.
2. The circuit court did not err by terminating petitioner's parental rights rather than limiting the disposition to custodial rights.
3. The circuit court's findings were not clearly erroneous.

KEY QUOTATIONS

“Although conclusions of law reached by a circuit court are subject to de novo review, when an action, such as an abuse and neglect case, is tried upon the facts without a jury, the circuit court shall make a determination based upon the evidence and shall make findings of fact and conclusions of law as to whether such child is abused or neglected.” (at 2)

“West Virginia Code § 49-4-604(c)(3) provides that “no reasonable likelihood that conditions of abuse or neglect can be substantially corrected” exists when “[t]he abusing parent . . . ha[s] not responded to or followed through with a reasonable family case plan or other rehabilitative efforts[.]”” (at 3)

“In this case, it is undisputed that petitioner failed to comply with the terms of his improvement period.” (at 4)

FACTUAL BACKGROUND

The DHHR alleged that petitioner and the children's mother engaged in domestic violence in the children's presence and abused and trafficked drugs in the home. Petitioner admitted using intravenous drugs in the home and stipulated that the children were abused and neglected because of his substance abuse. During his improvement period, he failed to complete adult life-skills classes, regularly visit the children, and submit to random drug screens; the few screens collected were positive for controlled substances. The circuit court found no reasonable likelihood of substantial correction in the near future and terminated his parental rights.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition alleging domestic violence, drug abuse, and drug trafficking in the children's home. Father stipulated to the allegations, received a post-adjudicatory improvement period, and thereafter failed to comply with required services, visitation, and drug screening. The circuit court found no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected and terminated his parental rights. The Supreme Court of Appeals 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)
- State v. Michael M., 202 W. Va. 350, 504 S.E.2d 177 (1998)
- James M. v. Maynard, 185 W. Va. 648, 408 S.E.2d 400 (1991)