

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re M.W.-1, M.W.-2, C.R., L.W., R.W., and H.W.

No. 19-0528 · No. No. 19-0528 · Decided February 7, 2020

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the termination of a father's parental rights and custodial rights in a child abuse and neglect proceeding. The court held that the father was not entitled to an extension of his improvement period, that the circuit court properly rejected his proposed voluntary relinquishment, and that termination was supported by his failure to address substance abuse and domestic violence. The court remanded for limited proceedings concerning the identity and parental rights of C.R.'s father.

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. 19-0528
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Father appealed the circuit court's dispositional order terminating his parental rights to five children and his custodial rights to C.R. The Supreme Court of Appeals affirmed the termination ruling and remanded for a limited inquiry concerning C.R.'s unidentified biological father and the child's permanent placement.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo; factual findings in an abuse and neglect case tried without a jury are reviewed for clear error and will not be overturned when the circuit court's account of the evidence is plausible in light of the entire record.
PRECEDENTIAL VALUE	Published memorandum decision; the opinion states that it is issued under Rule 21 and contains no substantial question of law.
PARTIES	Petitioner Father M.W.-3 v. West Virginia Department of Health and Human Resources, Guardian ad litem for the children, Respondent

TOPICS

termination of parental rights parental rights family law procedure appellate procedure remedies

PRACTICE AREAS

juvenile law abuse and neglect parental rights appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court erred in denying Father an extension of his post-adjudicatory improvement period.
2. Whether the circuit court erred in rejecting Father's proposed voluntary relinquishment of his parental rights at the dispositional hearing.
3. Whether the circuit court erred by terminating Father's parental rights without first imposing a less-restrictive disposition.
4. Whether the record required a remand to determine the identity and status of C.R.'s biological father so that C.R.'s permanent placement would not be jeopardized.

HOLDINGS

1. Father was not entitled to relief because the record did not show that he moved for an extension or that the circuit court denied such a motion, and the issue was not preserved below.
2. A circuit court has discretion in an abuse and neglect proceeding to accept or reject a parent's proposed voluntary termination of parental rights and may reject the proposal and proceed to involuntary termination after independently considering the relevant factors.
3. Termination was proper because 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.
4. The circuit court may terminate parental rights without first employing less-restrictive alternatives when there is no reasonable likelihood that the conditions of abuse or neglect can be substantially corrected.
5. The matter had to be remanded for the limited purpose of determining what actions were necessary to ensure that C.R.'s permanent placement with the mother was not jeopardized by the unidentified status of C.R.'s biological father.

KEY QUOTATIONS

“Our general rule is that nonjurisdictional questions . . . raised for the first time on appeal, will not be considered.” (3)

“A circuit court has discretion in an abuse and neglect proceeding to accept a proffered voluntary termination of parental rights, or to reject it and proceed to a decision on involuntary termination.” (4)

“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.” (5)

FACTUAL BACKGROUND

The DHHR alleged that Father engaged in domestic violence against Respondent Mother K.R. in the children's presence and abused drugs, impairing his ability to parent. Father stipulated to the allegations and received a post-adjudicatory improvement period requiring sobriety, random drug screening, anger-management services, and supervised visitation. He had twelve positive drug screens between September and December 2018, failed to enter inpatient treatment, did not participate in anger-management services, and failed to comply with further drug screening after the improvement period was terminated. The circuit court found no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected and terminated Father's parental rights.

PROCEDURAL HISTORY

The DHHR filed a child abuse and neglect petition alleging domestic violence in the presence of the children and substance abuse. Father stipulated to the allegations, was adjudicated an abusing parent, and received a post-adjudicatory improvement period. After evidence of repeated positive drug screens and noncompliance, the circuit court terminated the improvement period, rejected Father's proposed voluntary relinquishment at the dispositional hearing, and terminated his parental rights and custodial rights. The Supreme Court affirmed those rulings but remanded for proceedings concerning the identity and status of C.R.'s biological father.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The circuit court must determine what actions are necessary to ensure C.R.'s permanent placement with the mother is not jeopardized. If C.R.'s known or unknown father was included in the DHHR petition, the court must proceed in light of that inclusion and any allegations against him under the applicable rules and statutes. If the father was not included, the court must require the DHHR to investigate whether he engaged in conduct constituting abuse or neglect and file any necessary additional petitions in furtherance of C.R.'s permanency and best interests.

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)
- Shaffer v. Acme Limestone Co., Inc., 206 W. Va. 333, 349 n.20, 524 S.E.2d 688, 704 n.20 (1999)
- Noble v. W. Va. Dep't of Motor Vehicles, 223 W. Va. 818, 821, 679 S.E.2d 650, 653 (2009)
- In re James G., 211 W. Va. 339, 341, 566 S.E.2d 226, 228 (2002)
- 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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