

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re B.S. and S.C.

In re B.S. and S.C. · No. 18-0423 · Decided November 19, 2018

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the termination of petitioner mother A.S.’s parental rights to B.S. and S.C. The court held that the circuit court properly found no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future and properly denied a post-adjudicatory improvement period.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; Chief Justice Margaret L. Workman; Justice Elizabeth D. Walker; Justice Tim Armstead; Justice Evan H. Jenkins; Justice Paul T. Farrell sitting by temporary assignment
JURISDICTION	West Virginia
DECIDED	November 19, 2018
DOCKET	18-0423
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner Mother A.S. appealed the Wood County Circuit Court's order terminating her parental rights to B.S. and S.C. following an abuse and neglect proceeding.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo. In an abuse and neglect case tried upon the facts 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PRECEDENTIAL VALUE	Nonprecedential memorandum decision under West Virginia Rule of Appellate Procedure 21
PARTIES	A.S., Petitioner Mother v. West Virginia Department of Health and Human Resources, B.S. and S.C., through guardian ad litem

TOPICS

- termination of parental rights
- parental rights
- family law procedure
- appellate procedure
- standard of review

PRACTICE AREAS

juvenile abuse and neglect

termination of parental rights

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court clearly erred in finding no reasonable likelihood that A.S. could substantially correct the conditions of abuse and neglect in the near future.
2. Whether the circuit court erred by terminating A.S.'s parental rights rather than granting a post-adjudicatory improvement period or using another less-restrictive dispositional alternative.

HOLDINGS

1. The circuit court correctly found no reasonable likelihood that A.S. could substantially correct the conditions of abuse and neglect in the near future.
2. Termination of A.S.'s parental rights was appropriate because no reasonable likelihood existed that the conditions of abuse and neglect could be substantially corrected and termination was necessary for the children's welfare; intervening less-restrictive alternatives were not required.

KEY QUOTATIONS

“A finding is clearly erroneous when, although there is evidence to support the finding, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.” (at 1-2)

“West Virginia law allows the circuit court discretion in deciding whether to grant a parent an improvement period.” (at 3)

“Termination of parental rights, the most drastic remedy under the statutory provision covering the disposition of neglected children, W. Va. Code [§] 49-6-5 [now 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 W. Va. Code [§] 49-6-5(b) [now West Virginia Code § 49-4-604(c)] . . . that conditions of neglect or abuse can be substantially corrected.” (at 3-4)

FACTUAL BACKGROUND

A.S. used methamphetamine during her pregnancy with B.S.; B.S. tested positive for methamphetamine, amphetamines, and THC at birth and experienced withdrawal symptoms. A.S. was unable to provide appropriate care and supervision, had no contact with B.S. after his birth, and had not seen S.C. since July 20, 2016. She also missed multiple proceedings and was incarcerated in West Virginia or Ohio during at least part of the case. Her proposed participation in a future residential substance-abuse program was speculative and unsupported by evidence that she would complete it.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition on July 14, 2017. A.S. stipulated to the allegations at the January 24, 2018 adjudicatory hearing and was adjudicated an abusing parent. The circuit court denied her request for a

post-adjudicatory improvement period at the April 2, 2018 dispositional hearing and entered an April 5, 2018 order terminating her 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)
- In re M.M., 236 W. Va. 108, 778 S.E.2d 338 (2015)
- 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)