

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re B.M. and M.M.

No. 22-0038 (W. Va. May 12, 2022) · No. No. 22-0038 · Decided May 12, 2022

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the termination of petitioner mother N.H.’s parental rights to B.M. and M.M. The court held that she failed to acknowledge her substance-abuse problem, pursue treatment, or establish a suitable home, supporting the denial of an improvement period and termination under West Virginia law. The court 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	Per curiam; Chief Justice John A. Hutchison; Justice Elizabeth D. Walker; Justice Tim Armstead; Justice William R. Wooton; Justice C. Haley Bunn
JURISDICTION	West Virginia
DECIDED	May 12, 2022
DOCKET	No. 22-0038
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner mother appealed the Circuit Court of Webster County’s order terminating her parental rights in a child abuse and neglect proceeding.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo. Findings of fact in a bench-tried abuse and neglect case 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 under West Virginia Rule of Appellate Procedure 21; no reporter citation appears in the source.
PARTIES	N.H., petitioner mother v. West Virginia Department of Health and Human Resources, B.M. and M.M., through their 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

parental rights

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court clearly erred in finding no reasonable likelihood that petitioner could substantially correct the conditions of abuse and neglect in the near future.
2. Whether the circuit court erred in denying petitioner an improvement period.
3. Whether the circuit court erred by terminating petitioner's parental rights without first imposing a less restrictive alternative.

HOLDINGS

1. A parent in an abuse and neglect proceeding is not unconditionally entitled to an improvement period; the parent must demonstrate by clear and convincing evidence that the parent is likely to fully participate, and the circuit court may deny the request when improvement is unlikely.
2. Termination of parental rights was proper because the evidence established 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.
3. 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.

KEY QUOTATIONS

“In order to remedy the abuse and/or neglect problem, the problem must first be acknowledged.” (3)

“We likewise find no error in the termination of petitioner’s parental rights.” (4)

FACTUAL BACKGROUND

The children lived in a home described as deplorable, with structural damage, trash, old food, garbage, cockroaches, and a broken ladder. Petitioner stipulated that the home was unsafe, that the children lived with a person whose parental rights had previously been terminated, and that she tested positive for methamphetamine and was addicted to controlled substances in a manner that impaired her parenting. During the proceedings, she repeatedly tested positive for methamphetamine, left a detoxification program after four days, failed to enter inpatient or outpatient treatment, continued to live with her boyfriend in violation of court orders, and failed to establish suitable housing or consistently complete services.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition in June 2021 and later amended it to add allegations concerning petitioner's methamphetamine use and addiction. Petitioner stipulated to the allegations and was adjudicated an abusing parent. After multiple dispositional hearings, during which she continued to test positive for

methamphetamine, failed to obtain treatment, and failed to comply with services, the circuit court terminated her parental rights on December 28, 2021. 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 Emily, 208 W. Va. 325, 336, 540 S.E.2d 542, 553 (2000)
- In re Kaitlyn P., 225 W. Va. 123, 126, 690 S.E.2d 131, 134 (2010)
- In re Tonjia M., 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002)
- In re Timber M., 231 W. Va. 44, 55, 743 S.E.2d 352, 363 (2013)
- In re Katie S., 198 W. Va. 79, 90 n.14, 479 S.E.2d 589, 600 n.14 (1996)
- 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)
- 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)