

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re S.B., A.B., and K.B.

In re S.B., A.B., and K.B. · No. No. 16-0832 · Decided March 24, 2017

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the termination of petitioner father R.B.'s parental rights to S.B., A.B., and K.B. The court held that the circuit court properly denied a post-adjudicatory improvement period because the father failed to provide clear and convincing evidence that he was likely to fully participate. It also upheld termination, finding that the conditions of abuse and neglect were not reasonably likely to be substantially corrected because the father failed to acknowledge his role in exposing the children to child pornography.

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	March 24, 2017
DOCKET	No. 16-0832
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner father appealed the circuit court's order denying his motion for a post-adjudicatory improvement period and 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, the circuit court's 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PRECEDENTIAL VALUE	Unpublished memorandum decision; nonprecedential
PARTIES	R.B., petitioner father v. West Virginia Department of Health and Human Resources, S.B., A.B., and K.B., through guardian ad litem

TOPICS

termination of parental rights

parental rights

family law procedure

standard of review

appellate procedure

PRACTICE AREAS

juvenile abuse and neglect

termination of parental rights

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court erred in denying petitioner's motion for a post-adjudicatory improvement period.
2. Whether the circuit court erred in finding that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected.
3. Whether termination of petitioner's parental rights was necessary for the children's welfare.

HOLDINGS

1. The circuit court properly denied petitioner's motion because a parent seeking a post-adjudicatory improvement period must demonstrate by clear and convincing evidence that the parent is likely to fully participate, and petitioner presented no evidence supporting that showing.
2. Direct evidence that petitioner personally exposed the children to child pornography was not necessary; allowing the children access to the computer on which petitioner kept the pornography was sufficient to threaten their welfare.
3. Termination of petitioner's parental rights was proper because the circuit court correctly found no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected and that termination was necessary for the children's welfare.

KEY QUOTATIONS

“The record on appeal is clear that petitioner failed to produce any evidence in support of his motion.” (2)

“Importantly, direct evidence of petitioner’s exposure of the children to child pornography was not necessary to establish he was an abusing parent.” (2-3)

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

FACTUAL BACKGROUND

The DHHR alleged that petitioner possessed child pornography and exposed at least one of his children to it. Petitioner admitted possessing child pornography, and a state trooper testified that more than 100 images and approximately 10 videos depicting girls estimated to be four to ten years old were found on petitioner's computer. Petitioner admitted that his children had access to the computer but denied exposing them to the materials. One child displayed atypical sexual knowledge and acknowledged viewing child pornography, while petitioner failed to acknowledge the extent of his role in the abuse.

PROCEDURAL HISTORY

The West Virginia Department of Health and Human Resources filed an abuse and neglect petition in April 2016 alleging that petitioner possessed and exposed at least one child to child pornography. After petitioner waived his preliminary hearing, the circuit court adjudicated him an abusing parent in June 2016. At a July 2016 dispositional hearing, the court denied his motion for a post-adjudicatory improvement period and terminated his parental rights, entering a written order on August 22, 2016. 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 ex rel. W. Va. Dep't of Human Services v. Cheryl M., 177 W. Va. 688, 356 S.E.2d 181 (1987)
- In re Timber M., 231 W. Va. 44, 55, 743 S.E.2d 352, 363 (2013)
- In re Charity H., 215 W. Va. 208, 217, 599 S.E.2d 631, 640 (2004)