

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re K.W. and S.W.

In re K.W. and S.W. · No. 18-0491 · Decided November 19, 2018

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the termination of petitioner mother's parental rights to K.W. and S.W. The court held that she was not entitled to a post-adjudicatory improvement period or additional services because she had received extensive prior services, failed to acknowledge the abuse and neglect conditions, and had a poor prognosis for parental improvement. The court also concluded that termination was necessary for the children's welfare and reminded the circuit court of its continuing permanency-placement duties.

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	18-0491
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner mother appealed the Circuit Court of Monongalia County's order terminating her parental rights to K.W. and S.W., arguing that the circuit court should have granted her a post-adjudicatory improvement period or provided additional tailored services.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo; factual findings 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	Published memorandum decision; the opinion states that it is issued under Rule 21 and finds no substantial question of law.
PARTIES	S.B., petitioner mother v. West Virginia Department of Health and Human Resources, K.W. and S.W., by guardian ad litem

TOPICS

termination of parental rights

parental rights

domestic violence

appellate procedure

family law procedure

PRACTICE AREAS

juvenile abuse and neglect

termination of parental rights

child welfare

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court abused its discretion by denying petitioner a post-adjudicatory improvement period.
2. Whether the circuit court erred by declining to provide additional services tailored to petitioner's circumstances before terminating her parental rights.
3. Whether the evidence supported termination of petitioner's parental rights based on no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future and the children's best interests.

HOLDINGS

1. The circuit court did not abuse its discretion in denying the requested improvement period because petitioner failed to demonstrate by clear and convincing evidence that she was likely to fully participate in it.
2. The circuit court did not err by denying additional services beyond those already provided.
3. Termination was proper because there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future and termination was necessary for the children's welfare.

KEY QUOTATIONS

"In order to remedy the abuse and/or neglect problem, the problem must first be acknowledged." (at 5)

"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 6)

FACTUAL BACKGROUND

Petitioner's parental rights to an older child were involuntarily terminated in 2005 after she caused severe immersion burns to that child. Petitioner later received repeated abuse and neglect services involving K.W. and S.W., but continued to expose the children to abusive individuals and violated a safety plan by allowing her boyfriend back into the home. The children were subsequently removed after reporting physical and sexual abuse in the home, and petitioner denied or minimized the abuse and failed to acknowledge the conditions that led to the proceedings.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition in May 2017 after petitioner violated a safety plan by allowing an abusive boyfriend to return to the home, followed by allegations that the boyfriend struck K.W. The circuit court accepted petitioner's stipulation to the initial allegations, later adjudicated her an abusing parent on an amended petition alleging that she knew or should have known of sexual abuse in the home, denied her motion for a post-adjudicatory improvement period, and terminated her parental rights after a four-day dispositional hearing. The Supreme Court of Appeals of West Virginia affirmed the April 23, 2018 dispositional order.

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 Katie S., 198 W. Va. 79, 479 S.E.2d 589 (1996)
- In re Charity H., 215 W. Va. 208, 599 S.E.2d 631 (2004)
- In re Timber M., 231 W. Va. 44, 743 S.E.2d 352 (2013)
- 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)