

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re: J.J.

In re J.J. · No. 17-0523 · Decided November 22, 2017

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the termination of petitioner father J.S.’s custodial and parental rights to J.J. The court held that the child’s drug withdrawal symptoms, the father’s knowledge of the mother’s drug use during pregnancy, and the father’s failure to provide care or engage with the Department of Health and Human Resources supported adjudication as an abusing parent. The court further upheld the finding that there was no reasonable likelihood that the conditions of abuse or neglect could be substantially corrected in the near future.

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	November 22, 2017
DOCKET	17-0523
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner father appealed the Circuit Court of Preston County's order terminating his custodial and parental rights following abuse-and-neglect adjudication and disposition proceedings.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo, while factual findings in an abuse-and-neglect case tried without a jury are reviewed for clear error. A reviewing court must affirm findings if the circuit court's account of the evidence is plausible in light of the record viewed in its entirety.
PRECEDENTIAL VALUE	Unpublished memorandum decision with limited precedential value
PARTIES	J.S., petitioner father v. West Virginia Department of Health and Human Resources, J.J., 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 review

QUESTIONS PRESENTED

1. Whether the circuit court properly adjudicated petitioner as an abusing parent based on the child's exposure to illegal drugs before birth, petitioner's knowledge of the mother's drug use, and his own substance-abuse-related conduct.
2. Whether the circuit court properly terminated petitioner's custodial and parental rights after finding no reasonable likelihood that the conditions of abuse or neglect could be substantially corrected in the near future and that termination was necessary for the child's welfare.
3. Whether petitioner was entitled to relief based on his claim that he had inadequate time after release from incarceration to contact the DHHR and begin services.

HOLDINGS

1. The child's withdrawal symptoms associated with the mother's cocaine and buprenorphine use constituted sufficient evidence supporting the abuse-and-neglect adjudication.
2. Petitioner's knowledge of the mother's drug abuse during pregnancy and failure to stop that abuse supported the circuit court's adjudication of him as an abusing parent.
3. Termination was proper because there was no reasonable likelihood that petitioner could substantially correct the conditions of abuse or neglect in the near future and termination was necessary for the child's welfare.

KEY QUOTATIONS

“Although conclusions of law reached by a circuit court are subject to de novo review, when an action, such as an abuse and neglect case, is tried upon the facts without a jury, the circuit court shall make a determination based upon the evidence and shall make findings of fact and conclusions of law as to whether such child is abused or neglected.” (2)

“When a child is born alive, the presence of illegal drugs in the child’s system at birth constitutes sufficient evidence that the child is an abused and/or neglected child” (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.” (4)

FACTUAL BACKGROUND

J.J. was born with withdrawal symptoms associated with the mother's use of cocaine and illicit buprenorphine. During the pregnancy, the parents were essentially homeless, and petitioner knew of the mother's drug use. After the mother's discharge from the hospital, petitioner left while the child remained hospitalized for five additional days, did not visit or provide necessities, and failed to maintain contact with the DHHR regarding the child's welfare or visitation. Petitioner was later arrested with cocaine in his possession, failed to participate meaningfully in services, and did not appear personally at the dispositional hearing.

PROCEDURAL HISTORY

The DHHR filed an abuse-and-neglect petition in February 2017 alleging that the child was affected by the parents' controlled-substance use and that petitioner failed to provide care. The circuit court adjudicated petitioner an abusing parent, denied his request for a post-adjudicatory improvement period, and terminated his custodial and parental rights by order dated May 5, 2017. The Supreme Court of Appeals of West Virginia reviewed the order and affirmed it 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 A.L.C.M., 239 W. Va. 382, 801 S.E.2d 260 (2017)
- In re Katie S., 198 W. Va. 79, 479 S.E.2d 589 (1996)
- State ex rel. Amy M. v. Kaufman, 196 W. Va. 251, 470 S.E.2d 205 (1996)
- In Interest of Tiffany Marie S., 196 W. Va. 223, 470 S.E.2d 177 (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)