

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re R.M.-1 and R.M.-2

No. 19-1090 (W. Va. June 25, 2020) (memorandum decision) · No. No. 19-1090 · Decided June 25, 2020

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the termination of Petitioner Mother S.M.'s parental rights to two children. The court held that she failed to demonstrate likely full participation in a post-adjudicatory improvement period, did not substantially comply with her case plan, and failed to acknowledge her substance-abuse-related neglect. The court also upheld the denial of post-termination visitation because continued contact was not shown to be in the children's best interests.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Tim Armstead; Justice Margaret L. Workman; Justice Elizabeth D. Walker; Justice Evan H. Jenkins; Justice John A. Hutchison
JURISDICTION	West Virginia
DECIDED	June 25, 2020
DOCKET	No. 19-1090
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner mother appealed the Hampshire County Circuit Court's order terminating her parental rights and denying post-termination visitation.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo. In an abuse and neglect case tried 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PRECEDENTIAL VALUE	Unpublished memorandum decision; the opinion states that it is issued under West Virginia Rule of Appellate Procedure 21 and finds no substantial question of law.
PARTIES	S.M., Petitioner Mother v. West Virginia Department of Health and Human Resources, R.M.-1 and R.M.-2, by guardian ad litem

TOPICS

termination of parental rights

parental rights

visitation

family law procedure

appellate procedure

PRACTICE AREAS

family law

juvenile law

child welfare

QUESTIONS PRESENTED

1. Whether the circuit court abused its discretion by denying the mother's motion for a post-adjudicatory improvement period.
2. Whether the evidence supported termination of the mother's parental rights 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.
3. Whether the circuit court erred by denying the mother's request for post-termination visitation.

HOLDINGS

1. The circuit court did not abuse its discretion in denying the post-adjudicatory improvement period because the mother failed to demonstrate by clear and convincing evidence that she was likely to fully participate.
2. Termination of the mother's parental rights 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.
3. The circuit court properly denied post-termination visitation because the evidence did not establish that continued visitation would be in the children's best interests and would not be detrimental to them.

KEY QUOTATIONS

“The decision to grant or deny an improvement period rests in the sound discretion of the circuit court.” (3)

“In order to remedy the abuse and/or neglect problem, the problem must first be acknowledged.” (4)

“Failure to acknowledge the existence of the problem, i.e., the truth of the basic allegation pertaining to the alleged abuse and neglect or the perpetrator of said abuse and neglect, results in making the problem untreatable and in making an improvement period an exercise in futility at the child’s expense.” (4)

“When parental rights are terminated due to neglect or abuse, the circuit court may nevertheless in appropriate cases consider whether continued visitation or other contact with the abusing parent is in the best interest of the child.” (4)

FACTUAL BACKGROUND

The DHHR removed the children after law enforcement searched the parents' home and found stolen contraband, firearms, drug paraphernalia, and methamphetamine. The mother stipulated that she failed to protect the children from drug culture and that drug contraband was found within the children's reach. During the proceedings, she repeatedly missed drug screens, tested positive for methamphetamine and amphetamine, failed to attend

treatment and other case-plan services, missed or arrived late to supervised visitations, and denied or minimized her substance-abuse problem. The circuit court found that she had not substantially corrected the conditions of abuse and neglect and that termination was necessary for the children's welfare.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition after law enforcement discovered drugs, drug paraphernalia, firearms, and other contraband in the parents' home, and the children were removed. The circuit court adjudicated the mother as an abusing parent after she stipulated that she failed to protect the children from drug culture and that contraband was accessible to them. After hearings concerning her noncompliance with drug screening, treatment, visitation, and other case-plan services, the circuit court denied an improvement period, terminated her parental rights by order entered November 1, 2019, and denied post-termination visitation. 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 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)
- Michael D.C. v. Wanda L.C., 201 W. Va. 381, 497 S.E.2d 531 (1997)
- In re Timber M., 231 W. Va. 44, 743 S.E.2d 352 (2013)
- In re Christina L., 194 W. Va. 446, 460 S.E.2d 692 (1995)
- In re Daniel D., 211 W. Va. 79, 562 S.E.2d 147 (2002)