

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re N.P., R.P., and J.P.-1

No. 16-0623 (W. Va. Oct. 11, 2016) · No. No. 16-0623 · Decided October 11, 2016

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the termination of petitioner father J.P.-2's parental rights to three children. The court held that he failed to fully participate in his post-adjudicatory improvement period, including required treatment, evaluations, services, drug screens, and visitation. The court also concluded that statutory grounds required termination because there was no reasonable likelihood that he could substantially correct the conditions of abuse or neglect and termination was necessary for the children's welfare.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per curiam; Chief Justice Menis E. Ketchum; Justice Robin Jean Davis; Justice Brent D. Benjamin; Justice Margaret L. Workman; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	October 11, 2016
DOCKET	No. 16-0623
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner father appealed the Circuit Court of Jackson County's order terminating his post-adjudicatory improvement period and parental rights in an abuse and neglect proceeding.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo. Factual findings in an abuse and neglect case tried without a jury 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; no substantial question of law and no prejudicial error found
PARTIES	J.P.-2, petitioner father v. West Virginia Department of Health and Human Resources, N.P., R.P., and J.P.-1, through guardian ad litem

TOPICS

termination of parental rights

parental rights

family law procedure

standard of review

appellate procedure

PRACTICE AREAS

family law

juvenile abuse and neglect

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appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court properly terminated petitioner's post-adjudicatory improvement period based on his failure to fully participate and make necessary progress.
2. Whether the circuit court properly terminated petitioner's parental rights when there was no reasonable likelihood that he could substantially correct the conditions of abuse or neglect and termination was necessary for the children's welfare.
3. Whether placement of one child with a nonoffending mother and the permanency circumstances of the other children required a less-restrictive disposition than termination of petitioner's parental rights.

HOLDINGS

1. A circuit court may terminate a post-adjudicatory improvement period when the parent fails to fully participate in its terms or fails to make the necessary progress. The circuit court did not abuse its discretion in terminating petitioner's improvement period.
2. Termination of petitioner's parental rights was proper because the circuit court found no reasonable likelihood that he could substantially correct the conditions of abuse or neglect and found that termination was necessary for the children's welfare.
3. A child's placement with a fit, nonoffending parent does not automatically entitle the other parent to retain parental rights when that parent's conduct endangered the child and the conditions of abuse or neglect are not expected to improve.

KEY QUOTATIONS

"It is within the court's discretion to grant an improvement period . . . [and] it is also within the court's discretion to terminate the improvement period . . . if the court is not satisfied that the [parent] is making the necessary progress." (at 2)

"simply because one parent has been found to be a fit and proper caretaker for [the] child does not automatically entitle the child's other parent to retain his/her parental rights if his/her conduct has endangered the child and such conditions of abuse and/or neglect are not expected to improve." (at 3)

FACTUAL BACKGROUND

The DHHR alleged that petitioner father abused illegal drugs, including heroin, to the point that his ability to parent was affected and that he exposed the children to domestic violence. After stipulating to the abuse and neglect conditions, petitioner received a post-adjudicatory improvement period requiring treatment-related meetings, parenting and life-skills classes, drug screens, a psychological evaluation, and supervised visitation. He failed to meaningfully participate in those services, failed to maintain visitation and contact with the DHHR,

admitted to drug use during the improvement period, and did not complete required evaluations or classes. The circuit court found no reasonable likelihood that he could substantially correct the conditions of abuse or neglect and terminated his parental rights as necessary for the children's welfare.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition alleging that petitioner abused illegal drugs and exposed the children to domestic violence. Petitioner stipulated to the alleged conditions, and the circuit court granted him a post-adjudicatory improvement period. After evidence that he failed to participate in required services, visitation, evaluations, and drug screening and continued to use drugs, the circuit court terminated the improvement period and his parental rights. The Supreme Court of Appeals of West Virginia 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 Lacey P., 189 W. Va. 580, 433 S.E.2d 518 (1993)
- In re Emily, 208 W. Va. 325, 540 S.E.2d 542 (2000)