

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re B.F., M.H., and B.R.

No. 19-0416 (W. Va. Nov. 8, 2019) (memorandum decision) · No. No. 19-0416 · Decided November 8, 2019

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the termination of petitioner mother K.R.'s parental rights to three children. The court held that the circuit court made sufficient findings, properly determined that the conditions of abuse and neglect were unlikely to be substantially corrected, and appropriately terminated parental rights despite the children's placements with family members. The court also upheld the denial of post-termination visitation because the record showed sporadic contact, continued substance-abuse issues, and no evidence that visitation would serve the children's best interests.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per curiam; Chief Justice Elizabeth D. Walker; Justice Margaret L. Workman; Justice Tim Armstead; Justice Evan H. Jenkins; Justice John A. Hutchison
JURISDICTION	West Virginia
DECIDED	November 8, 2019
DOCKET	No. 19-0416
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner Mother appealed the Wood County Circuit Court's order terminating her parental rights to three children and denying post-termination visitation.
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. The denial of post-termination visitation is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	nonprecedential memorandum decision
PARTIES	K.R., Petitioner Mother v. West Virginia Department of Health and Human Resources, B.F., M.H., and B.R., by guardian ad litem

TOPICS

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visitation

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the circuit court's dispositional order contained sufficient findings of fact and conclusions of law for appellate review.
2. Whether the circuit court erred in terminating petitioner's parental rights despite the children's placements or permanency with family members.
3. Whether the circuit court erred in denying petitioner's request for post-termination visitation.

HOLDINGS

1. The circuit court's dispositional order contained sufficient findings of fact and conclusions of law because the court made adequate findings on the record and in the written order regarding petitioner's lack of measurable improvement and the statutory requirements for termination.
2. The circuit court did not err in terminating petitioner'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. The circuit court did not abuse its discretion in denying post-termination visitation because petitioner failed to present evidence of a close emotional bond with the children, her contact during the proceedings was sporadic, and her continued substance-abuse problems and noncompliance demonstrated that visitation was contrary to the children's best interests.

KEY QUOTATIONS

“Where a trial court order terminating parental rights merely declares that there is no reasonable likelihood that a parent can eliminate the conditions of neglect, without explicitly stating factual findings in the order or on the record supporting such conclusion, and fails to state statutory findings required by West Virginia Code § [49-4-604(b)(6)] . . . on the record or in the order, the order is inadequate.” (at 3)

“Termination of parental rights, the most drastic remedy under the statutory provision covering the disposition of neglected children, [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 [West Virginia Code § 49-4-604(c)] . . . that conditions of neglect or abuse can be substantially corrected.” (at 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.” (at 5)

FACTUAL BACKGROUND

Immediately after B.F.'s birth, petitioner tested positive for methamphetamine, amphetamine, THC, and cocaine, while the child tested positive for methamphetamine, amphetamine, THC, and Suboxone; petitioner also admitted using heroin in the hospital before delivery. During approximately nineteen months of proceedings, petitioner entered multiple inpatient substance-abuse programs but completed none, failed to comply fully with parenting and adult life-skills services, missed drug screens, and repeatedly tested positive for illegal substances. The circuit court found no reasonable likelihood that she could substantially correct the conditions of abuse and neglect in the near future and that termination was necessary for the children's welfare. The children had achieved placements with family members or other caretakers, but petitioner had only sporadic contact with them and did not establish evidence of a close emotional bond supporting continued visitation.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition after petitioner and her newborn tested positive for multiple substances and petitioner admitted using heroin immediately before delivery. Petitioner was adjudicated an abusing parent and received post-adjudicatory and post-dispositional improvement periods, but failed to complete substance-abuse treatment, participate consistently in services, or maintain sobriety. After a final dispositional hearing, the circuit court found no reasonable likelihood that petitioner could substantially correct the conditions of abuse and neglect in the near future, terminated her parental rights, and denied post-termination visitation. 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 Edward B., 210 W. Va. 621, 558 S.E.2d 620 (2001)
- In re Emily, 208 W. Va. 325, 540 S.E.2d 542 (2000)
- 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)
- 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)