

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re: K.H.-1, K.H.-2, and K.H.-3

No. 16-0195 (W. Va. Sept. 6, 2016) · No. No. 16-0195 · Decided September 6, 2016

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the termination of petitioner mother S.H.'s parental rights to three children following continued substance abuse, failure to comply with services, and failure to acknowledge the conditions underlying the abuse and neglect proceedings. The court held that no reasonable likelihood existed that the conditions could be substantially corrected and that termination was necessary for the children's welfare. The court also upheld the denial of post-termination visitation because continued contact would not be in the children's best interests.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	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	September 6, 2016
DOCKET	No. 16-0195
DISPOSITION	affirmed
PROCEDURAL POSTURE	Mother appealed the Circuit Court of Wood County's order terminating her parental rights 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 the definite and firm conviction that a mistake has been made.
PRECEDENTIAL VALUE	nonprecedential memorandum decision
PARTIES	S.H., Petitioner Mother v. West Virginia Department of Health and Human Resources, K.H.-1, K.H.-2, K.H.-3

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 erred by terminating mother's parental rights when she argued that less-restrictive dispositional alternatives and an additional improvement period were available.
2. Whether the circuit court erred by denying mother post-termination visitation with the children.
3. Whether the circuit court's factual findings and conclusions in the abuse and neglect proceeding were clearly erroneous or otherwise legally unsupported.

HOLDINGS

1. Termination of mother's parental rights was proper because her continued substance abuse, failure to comply with rehabilitative services, and failure to acknowledge the conditions of abuse and neglect established that there was no reasonable likelihood that she could substantially correct those conditions and that termination was necessary for the children's welfare.
2. The denial of post-termination visitation was proper because mother presented no evidence that continued visitation would serve the children's best interests, while her continued substance abuse and failure to acknowledge the abuse and neglect conditions indicated that continued contact would be detrimental.
3. The circuit court's findings were not clearly erroneous, and the Supreme Court found no substantial question of law or prejudicial error.

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)

"In order to remedy the abuse and/or neglect problem, the problem must first be acknowledged." (3)

"The evidence must indicate that such visitation or continued contact would not be detrimental to the child's well being and would be in the child's best interest." (4)

FACTUAL BACKGROUND

Mother abused heroin during pregnancy with K.H.-3 and tested positive for marijuana, heroin, and benzodiazepines when admitted for the child's birth. Although the parents initially complied with services and the children were returned to their home for a trial reunification, mother later tested positive for cocaine, the parents lost their housing, and the parents continued abusing synthetic marijuana and prescription drugs. Mother was hospitalized after a substance-related incident, stopped participating in services after August 2015, denied her drug use and need for treatment, and did not acknowledge the conditions underlying the abuse and neglect petition.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition in December 2014 based on the parents' drug use. Mother stipulated to abusing heroin while caring for two children and while pregnant with the third, and the circuit court granted the parents post-adjudicatory improvement periods. After a trial reunification failed because of continuing substance abuse, the children were removed again. Following dispositional hearings, the circuit court denied an additional improvement period, terminated mother's parental rights, 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 Timber M., 231 W. Va. 44, 743 S.E.2d 352 (2013)
- In re: Charity H., 215 W. Va. 208, 599 S.E.2d 631 (2004)
- 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)