

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re V.B. and J.B.

No. 18-0098 (W. Va. June 15, 2018) · No. No. 18-0098 · Decided June 15, 2018

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the termination of the mother’s parental rights to V.B. and J.B. The court held that the mother failed to follow through with required improvement-period services, including inpatient substance-abuse treatment, and that termination was supported because there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Margaret L. Workman; Justice Robin Jean Davis; Justice Menis E. Ketchum; Justice Elizabeth D. Walker
JURISDICTION	West Virginia
DECIDED	June 15, 2018
DOCKET	No. 18-0098
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner Mother appealed the Circuit Court of Webster County’s order terminating her parental rights following abuse and neglect proceedings.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo. In an abuse and neglect case tried upon the facts 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PRECEDENTIAL VALUE	nonprecedential
PARTIES	D.B., Petitioner Mother v. West Virginia Department of Health and Human Resources, V.B. and J.B., by guardian ad litem

TOPICS

termination of parental rights

parental rights

family law procedure

appellate procedure

standard of review

PRACTICE AREAS

family law

juvenile abuse and neglect

termination of parental rights

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court erred by terminating petitioner's parental rights without first imposing a less-restrictive dispositional alternative.
2. Whether the evidence supported the findings that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected and that termination was necessary for the welfare of the children.
3. Whether the DHHR failed to provide petitioner with adequate support and services during the improvement period.

HOLDINGS

1. The circuit court correctly found that there was no reasonable likelihood that the conditions of abuse or neglect could be substantially corrected because petitioner failed to follow through with a reasonable family case plan and required rehabilitative services.
2. The circuit court correctly found that termination of petitioner's parental rights was necessary for the welfare of the children.
3. Termination of parental rights may be ordered without the use of intervening less-restrictive alternatives when there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected; the circuit court therefore did not err in terminating petitioner's parental rights without such alternatives.

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.” (at 2)

“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.” (at 3)

FACTUAL BACKGROUND

Petitioner had previously completed an improvement period in an abuse and neglect case, but concerns later arose regarding the children's education and custody. In the subsequent proceeding, the children experienced unexcused absences and educational problems while in their father's custody, and petitioner refused to drug screen when considered as a possible placement. During her post-adjudicatory improvement period, petitioner

failed to complete required services, tested positive for controlled substances, left a long-term inpatient treatment program shortly after arriving, and admitted recent methamphetamine use. The circuit court found no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected and terminated petitioner's parental rights.

PROCEDURAL HISTORY

After a prior abuse and neglect proceeding and improvement period, the DHHR filed a new petition alleging educational neglect, parental substance abuse, and related safety concerns. The circuit court adjudicated petitioner as an abusing parent, granted a post-adjudicatory improvement period, and later terminated that improvement period and petitioner's parental rights after finding that she failed to comply with required services and that the conditions of abuse and neglect could not be substantially corrected. Petitioner appealed the January 11, 2018 termination order, and 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 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)