

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re L.C.

No. 17-0639 (W. Va. Nov. 22, 2017) · No. No. 17-0639 · Decided November 22, 2017

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the termination of petitioner mother K.K.'s parental rights to L.C. The court held that she was not entitled to a post-dispositional improvement period because she failed to comply with her post-adjudicatory improvement period and did not demonstrate by clear and convincing evidence that she was likely to participate fully in another improvement period. The court also upheld the finding that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Allen H. Loughry II; Justice Robin Jean Davis; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Elizabeth D. Walker
JURISDICTION	West Virginia
DECIDED	November 22, 2017
DOCKET	No. 17-0639
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner mother appealed the Circuit Court of Ohio County's order terminating her parental rights and denying a post-dispositional improvement period.
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PRECEDENTIAL VALUE	Nonprecedential memorandum decision
PARTIES	K.K., petitioner mother v. West Virginia Department of Health and Human Resources, L.C., by guardian ad litem

TOPICS

termination of parental rights

parental rights

family law procedure

appellate procedure

standard of review

PRACTICE AREAS

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abuse and neglect

termination of parental rights

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court erred by denying petitioner a post-dispositional improvement period.
2. Whether the circuit court erred by terminating petitioner's parental rights after finding no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future and that termination was necessary for the child's welfare.

HOLDINGS

1. The circuit court did not err in denying a post-dispositional improvement period because petitioner failed to demonstrate by clear and convincing evidence that she was likely to fully participate, and she likewise failed to show that any change in circumstances made such participation likely.
2. The circuit court properly terminated petitioner's parental rights after finding no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future and that termination was necessary for the child's welfare.

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

The child was born affected by drugs because of petitioner's Subutex use, and petitioner had a history of heroin and other drug abuse and untreated mental-health issues. Petitioner was arrested after taking the child to buy drugs and leaving the child with her drug dealer while she ate at a restaurant. During her post-adjudicatory improvement period, she continued using drugs, failed drug screens, failed to complete three treatment programs, and did not comply with treatment, drug screening, or DHHR-contact requirements. Although she later enrolled in another treatment program, records showed continuing drug abuse.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition after the child was born drug-affected and petitioner exposed the child to drug-related dangers. The circuit court adjudicated petitioner as an abusing parent, granted her a post-adjudicatory improvement period, later suspended and terminated that period after continued drug use and noncompliance, and terminated her parental rights. The Supreme Court of Appeals of West Virginia affirmed the dispositional order by memorandum decision.

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)