

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re I.H., O.H., and R.H.

No. 20-0701 (W. Va. Apr. 20, 2021) · No. No. 20-0701 · Decided April 20, 2021

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the termination of petitioner mother Y.G.'s parental rights to I.H., O.H., and R.H. The court upheld findings that the mother failed to protect I.H. from sexual abuse, failed to acknowledge the conditions of abuse and neglect, and could not substantially correct those conditions in the near future. The court also reminded the circuit court of its duties regarding permanent placement and periodic placement review.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Evan H. Jenkins; Justice Elizabeth D. Walker; Justice Tim Armstead; Justice John A. Hutchison; Justice William R. Wooton
JURISDICTION	West Virginia
DECIDED	April 20, 2021
DOCKET	No. 20-0701
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner mother appealed the Berkeley County Circuit Court's order terminating her parental rights to three children following adjudication as an abusing and neglecting parent.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo. Findings of fact 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	Published memorandum decision; precedential status is not otherwise specified in the opinion text.
PARTIES	Y.G., petitioner mother v. West Virginia Department of Health and Human Resources, I.H., O.H., and R.H., 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 clearly erred in adjudicating petitioner as an abusing and neglecting parent based on her failure to protect I.H. from sexual abuse and related neglect.
2. Whether the circuit court erred in 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 children's welfare.
3. Whether the circuit court erred by not considering or disclosing an in camera interview with R.H. when petitioner failed to support that assignment of error with legal authority.
4. Whether the circuit court had continuing duties to pursue permanency for the children after termination of parental rights.

HOLDINGS

1. The court declined to address the assignment of error because petitioner's brief failed to comply with West Virginia Rule of Appellate Procedure 10(c)(7) by lacking supporting legal authority and an adequately structured argument.
2. The circuit court properly adjudicated petitioner as an abusing and neglecting parent because clear and convincing evidence established that J.H. sexually abused I.H. and that petitioner knew of or failed to respond adequately to the abuse and failed to protect the children.
3. The circuit court properly terminated petitioner's parental rights because her continued failure to acknowledge the abuse and neglect established no reasonable likelihood that the conditions could be substantially corrected in the near future, and termination was necessary for the children's welfare.
4. After termination, the circuit court remained obligated to conduct periodic permanency reviews and pursue permanent placement for any child who had not yet achieved permanency.

KEY QUOTATIONS

“A reviewing court cannot assess witness credibility through a record. The trier of fact is uniquely situated to make such determinations and this Court is not in a position to, and will not, second guess such determinations.” (at 5)

“in order to remedy the abuse and/or neglect problem, the problem must first be acknowledged.” (at 6)

“Failure to acknowledge the existence of the problem, i.e., the truth of the basic allegation pertaining to the alleged abuse and neglect or the perpetrator of said abuse and neglect, results in making the problem untreatable and in making an improvement period an exercise in futility at the child’s expense.” (at 6)

FACTUAL BACKGROUND

The children were removed after the oldest child disclosed that the mother's husband, J.H., sexually abused her and made threats involving her and her brothers. The mother initially reported the disclosure but later disbelieved the child, blamed her, cancelled a forensic interview, and failed to take protective measures despite repeated and consistent disclosures. The circuit court found the child's disclosures credible, found that the mother failed to protect the children and that alcohol abuse affected her caregiving, and concluded that the conditions of abuse and neglect could not be substantially corrected in the near future.

PROCEDURAL HISTORY

The West Virginia Department of Health and Human Resources filed an abuse and neglect petition in April 2019. After petitioner waived her preliminary hearing, the circuit court ratified removal, adjudicated her as an abusing and neglecting parent after an October 2019 adjudicatory hearing, and terminated her parental rights following a June 2020 dispositional hearing. The Supreme Court of Appeals of West Virginia affirmed the July 27, 2020, dispositional order and declined to address one inadequately briefed assignment of error.

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 F.S., 233 W. Va. 538, 759 S.E.2d 769 (2014)
- Michael D.C. v. Wanda L.C., 201 W. Va. 381, 497 S.E.2d 531 (1997)
- In re Timber M., 231 W. Va. 44, 743 S.E.2d 352 (2013)
- 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)
- State v. Michael M., 202 W. Va. 350, 504 S.E.2d 177 (1998)
- James M. v. Maynard, 185 W. Va. 648, 408 S.E.2d 400 (1991)

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