

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re J.S., Z.S., K.S., A.S., and R.S.

In re J.S. · No. No. 20-0085 · Decided September 3, 2020

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the termination of petitioner mother C.S.'s parental and custodial rights to five children. The court held that the mother's continued relationship with a person posing a potential risk to the children, together with her dishonesty and failure to acknowledge the conditions of abuse and neglect, supported findings that there was no reasonable likelihood of substantial correction. The court issued a memorandum decision under Rule 21, finding no substantial question of law or prejudicial error.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Tim Armstead; Justice Margaret L. Workman; Justice Elizabeth D. Walker; Justice Evan H. Jenkins; Justice John A. Hutchison
JURISDICTION	West Virginia
DECIDED	September 3, 2020
DOCKET	No. 20-0085
DISPOSITION	affirmed
PROCEDURAL POSTURE	Mother appealed the Circuit Court of Ohio County's order terminating her parental and custodial rights in an abuse and neglect proceeding.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo. In a bench-tried abuse and neglect case, 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 was made.
PRECEDENTIAL VALUE	Unpublished memorandum decision; nonprecedential under the opinion's designation
PARTIES	Petitioner Mother C.S. v. West Virginia Department of Health and Human Resources, J.S., Z.S., K.S., A.S., and R.S., by guardian ad litem

TOPICS

termination of parental rights

parental rights

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PRACTICE AREAS

juvenile law

child welfare

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appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court erred by terminating mother's parental and custodial rights based on her continued relationship with and exposure of the children to a criminally involved boyfriend when the petition did not specifically identify that boyfriend.
2. Whether the circuit court could rely on mother's violation of the prohibition against exposing the children to the boyfriend when the prohibition was included in a family case plan and communicated by the multidisciplinary team and court.
3. Whether the evidence established no reasonable likelihood that mother could substantially correct the conditions of abuse and neglect in the near future.
4. Whether termination required testimony from a qualified medical or mental-health professional concerning the children's best interests.
5. Whether the guardian ad litem failed to perform required duties concerning the children's wishes, placements, sibling separation, or disposition recommendation.
6. Whether the circuit court failed to make sufficient findings concerning reasonable efforts, reunification, and the children's best interests.

HOLDINGS

1. The DHHR was not required to amend the petition to identify the boyfriend because the petition sufficiently alleged that mother failed to protect the children, and evidence that she later exposed them to another dangerous individual related to the conditions alleged in the petition.
2. The circuit court properly found that mother failed to remedy the conditions of abuse and neglect where she repeatedly concealed and continued a relationship with a person presenting a risk of harm to the children despite case-plan requirements and court directives.
3. A parent's compliance with some improvement-period terms does not preclude termination when the overall evidence shows that termination is required by the children's best interests and the conditions of abuse and neglect cannot be substantially corrected.
4. The circuit court was not required in this case to receive testimony from a licensed medical or mental-health professional concerning the psychological consequences of termination.
5. The record did not establish that the guardian ad litem failed to inform the circuit court of the children's wishes, and any alleged omission concerning placements, sibling separation, or a recommended disposition would not require restoration of mother's parental rights.
6. The circuit court made sufficient findings that the DHHR provided services, that there was no reasonable likelihood mother could substantially correct the conditions of abuse and neglect in the near future, and

that termination was necessary for the children's welfare.

KEY QUOTATIONS

“In order to remedy the abuse and/or neglect problem, the problem must first be acknowledged.” (at 7)

“The controlling standard that governs any dispositional decision remains the best interests of the child.” (at 8)

“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(d)] . . . that conditions of neglect or abuse can be substantially corrected.” (at 12)

FACTUAL BACKGROUND

The children had been exposed to recurring substance abuse, domestic violence, and unsafe conditions involving their father, and mother had previously participated in abuse and neglect proceedings. In the current proceeding, mother stipulated to abuse and neglect allegations and was granted improvement periods requiring sobriety, mental-health treatment, appropriate housing, and avoidance of individuals involved in violence, criminal activity, or substance abuse. Despite repeated warnings and court directives, mother continued a relationship with a boyfriend who had convictions and pending drug-related charges, concealed the relationship, and allowed him to be around the children during a trial reunification. The children were removed again, and the circuit court found that mother had failed to remedy the conditions of abuse and neglect and that termination served their welfare.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition in July 2018. Mother stipulated to allegations at adjudication and received post-adjudicatory and post-dispositional improvement periods, but the children were removed again after mother continued associating with a criminally involved boyfriend despite repeated directives not to expose the children to him. Following a dispositional hearing, the circuit court found no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected and terminated mother's parental and custodial rights. 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)
- Noble v. W. Va. Dep't of Motor Vehicles, 223 W. Va. 818, 679 S.E.2d 650 (2009)
- Shaffer v. Acme Limestone Co., Inc., 206 W. Va. 333, 524 S.E.2d 688 (1999)
- In re Brandon Lee B., 211 W. Va. 587, 567 S.E.2d 597 (2002)
- Legg v. Felinton, 219 W. Va. 478, 637 S.E.2d 576 (2006)
- State ex rel. Department of Human Services v. Cheryl M., 177 W. Va. 688, 356 S.E.2d 181 (1987)
- In re Desarae M., 214 W. Va. 657, 591 S.E.2d 215 (2003)
- In re Timber M., 231 W. Va. 44, 743 S.E.2d 352 (2013)
- In re B.H., 233 W. Va. 57, 754 S.E.2d 743 (2014)
- In re Jessica G., 226 W. Va. 17, 697 S.E.2d 53 (2010)
- Savage v. Booth, 196 W. Va. 65, 468 S.E.2d 321 (1996)
- In re Edward B., 210 W. Va. 621, 558 S.E.2d 620 (2001)
- In re Emily G., 224 W. Va. 390, 686 S.E.2d 41 (2009)
- 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)