

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re Tonjia M.

212 W. Va. 443 (2002) · Decided November 1, 2002

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the termination of Dorlen M.’s parental rights to Tonjia M. The court upheld findings that Tonjia was an abused and neglected child, rejected challenges to the denial of supervised visitation and a post-adjudicatory improvement period, and held that any error in admitting sexually explicit photographs was harmless.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
JURISDICTION	West Virginia
DECIDED	November 1, 2002
DISPOSITION	affirmed
PROCEDURAL POSTURE	Father appealed an order of the Circuit Court of Lewis County terminating his parental rights after the court adjudicated his daughter an abused and neglected child, denied supervised visitation during the proceedings, and denied a post-adjudicatory improvement period.
STANDARD OF REVIEW	Factual findings in abuse-and-neglect proceedings are reviewed for clear error; conclusions of law are reviewed de novo; visitation and improvement-period decisions are reviewed for abuse of discretion; termination findings must be supported by clear and convincing evidence.
PRECEDENTIAL VALUE	published, precedential opinion
PARTIES	Dorlen M. v. West Virginia Department of Health & Human Resources, Guardian ad litem for Tonjia M.

TOPICS

- termination of parental rights
- parental rights
- evidence
- standard of review
- harmless error

PRACTICE AREAS

- family law
- child welfare
- evidence
- appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court clearly erred in finding that Tonjia M. was an abused and neglected child based on the evidence of sexual abuse and neglect.
2. Whether the circuit court abused its discretion by denying supervised visitation during the pendency of the abuse-and-neglect proceedings.
3. Whether the circuit court abused its discretion by denying Dorlen M. a post-adjudicatory improvement period.
4. Whether admission of sexually explicit photographs from an undeveloped roll of film was reversible error.
5. Whether termination of Dorlen M.'s parental rights was supported by the required findings and clear and convincing evidence.

HOLDINGS

1. The circuit court did not clearly err in finding that Dorlen M. sexually abused Tonjia and that Tonjia was an abused and neglected child.
2. The circuit court did not abuse its discretion in terminating and denying supervised visitation because the evidence showed that visitation was contrary to Tonjia's best interests.
3. The circuit court acted within its discretion in denying Dorlen M. a post-adjudicatory improvement period.
4. Any error in admitting the photographs was harmless.
5. Termination of Dorlen M.'s parental rights was supported by clear and convincing evidence and was not clearly erroneous.

KEY QUOTATIONS

“Although parents have substantial rights that must be protected, the primary goal in cases involving abuse and neglect, as in all family law matters, must be the health and welfare of the children.” (446)

“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.” (448)

“Given the weight of evidence against Dorlen M. and because there was no jury involved, any error that might have occurred in admitting the photographs into evidence was rendered harmless.” (449)

FACTUAL BACKGROUND

The DHHR alleged that five-year-old Tonjia M. had been exposed to sexually explicit materials, physically struck, sexually touched by her father, and otherwise neglected. During an initial supervised visit, the father repeatedly kissed Tonjia passionately on the lips, and the child became distressed; the court also received evidence that the grandmother attempted to discourage Tonjia from reporting abuse. Expert and lay testimony established that Tonjia exhibited sexual knowledge and behaviors inappropriate for her age, and the circuit court

found that Dorlen M. had sexually abused her and that the abuse and neglect could not be substantially corrected.

PROCEDURAL HISTORY

The West Virginia Department of Health and Human Resources filed an abuse-and-neglect petition in the Circuit Court of Lewis County. The circuit court placed Tonjia in DHHR custody, initially allowed supervised visitation, later terminated visitation, adjudicated Tonjia abused and neglected, found no substantial likelihood that the conditions could be corrected, denied Dorlen M. an improvement period, and terminated his parental rights. The Supreme Court of Appeals of West Virginia affirmed.

DISPOSITION

affirmed

CASES CITED

- In re Katie S., 198 W. Va. 79, 479 S.E.2d 589 (1996)
- In Interest Tiffany Marie S., 196 W. Va. 223, 470 S.E.2d 177 (1996)
- State ex rel. West Virginia Department of Human Services v. Cheryl M., 177 W. Va. 688, 356 S.E.2d 181 (1987)
- West Virginia Department of Health and Human Resources ex rel. Wright v. Doris S., 197 W. Va. 489, 475 S.E.2d 865 (1996)