

# SUPREME COURT OF APPEALS OF WEST VIRGINIA

## In re H.P., S.W., and E.W.

No. 12-1408 (W. Va. Apr. 16, 2013) · No. No. 12-1408 · Decided April 16, 2013

### SUMMARY

The West Virginia Supreme Court of Appeals affirmed the Mercer County Circuit Court’s termination of the petitioner father’s parental, custodial, and guardianship rights. The Court held that sufficient evidence supported findings that the conditions of abuse and neglect were unlikely to be substantially corrected in the near future and that termination was necessary for the children’s welfare.

### CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                         |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Appeals of West Virginia                                                                                                                                                                                                                                               |
| WRITING FOR THE COURT | Per Curiam; Chief Justice Brent D. Benjamin; Justice Robin Jean Davis; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Allen H. Loughry II                                                                                                                               |
| JURISDICTION          | West Virginia                                                                                                                                                                                                                                                                           |
| DECIDED               | April 16, 2013                                                                                                                                                                                                                                                                          |
| DOCKET                | No. 12-1408                                                                                                                                                                                                                                                                             |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                |
| PROCEDURAL POSTURE    | Petitioner Father appealed the Mercer County Circuit Court's order terminating his parental, custodial, and guardianship rights to the children.                                                                                                                                        |
| 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    | Memorandum decision; no substantial question of law and no prejudicial error were found.                                                                                                                                                                                                |
| PARTIES               | Petitioner Father v. H.P., S.W., and E.W., by guardian ad litem, West Virginia Department of Health and Human Resources                                                                                                                                                                 |

### TOPICS

termination of parental rights

parental rights

domestic violence

guardianships

appellate procedure

## PRACTICE AREAS

family law

child welfare

parental rights

domestic violence

appellate procedure

## QUESTIONS PRESENTED

1. Whether the circuit court erred by terminating Petitioner Father's parental, custodial, and guardianship rights rather than terminating only his custodial rights.
2. Whether the evidence supported findings that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future and that termination of Father's rights was necessary for the children's welfare.

## HOLDINGS

1. The circuit court did not err in terminating Petitioner Father's parental, custodial, and guardianship rights; limiting the disposition to termination of custodial rights was not required.
2. The circuit court's findings were supported by sufficient evidence and were not clearly erroneous.

## 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.” (1)*

*“The Court finds that the circuit court was presented with sufficient evidence upon which it based findings that there was no reasonable likelihood to believe that conditions of abuse and neglect could be substantially corrected in the near future, and that termination was necessary for the children’s welfare.” (2)*

## FACTUAL BACKGROUND

The DHHR alleged that Petitioner Father engaged in violent behavior toward the children's mother in the children's presence, including yelling outside the mother's home throughout one night. The mother had filed several petitions for domestic violence protective orders during the preceding years. Although the circuit court granted Father an improvement period and ordered a mental-health evaluation, he failed to complete the evaluation, remained intermittently incarcerated, lacked income, did not visit the children, and left his mental-health and substance-abuse issues untreated.

## PROCEDURAL HISTORY

The West Virginia Department of Health and Human Resources filed an abuse and neglect petition in December 2011. The circuit court granted Petitioner Father an improvement period, but he failed to complete ordered mental-health and substance-abuse evaluations and did not correct the conditions underlying the case. Following a dispositional hearing, the circuit court entered an order on November 5, 2012, terminating his parental, custodial, and guardianship rights. The Supreme Court of Appeals affirmed.

## DISPOSITION

affirmed

#### CASES CITED

- 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)

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