

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re S.L. and E.L.

No. 22-601 (W. Va. Apr. 25, 2023) · No. No. 22-601 · Decided April 25, 2023

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the termination of petitioner father K.L.'s custodial rights to S.L. and E.L. The court held that the circuit court properly denied an extension of the father's improvement period and terminated his custodial rights based on continuing alcohol abuse and the absence of a reasonable likelihood that the conditions of neglect would be corrected in the near future. The court also upheld post-termination visitation at the discretion of the children's guardians.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; Chief Justice Elizabeth D. Walker; Justice Tim Armstead; Justice John A. Hutchison; Justice William R. Wooton; Justice C. Haley Bunn
JURISDICTION	West Virginia
DECIDED	April 25, 2023
DOCKET	No. 22-601
DISPOSITION	affirmed
PROCEDURAL POSTURE	Father appealed the circuit court's order terminating his custodial rights to S.L. and E.L., denying an extension of his post-dispositional improvement period, and allowing post-termination visitation only at the discretion of the children's guardians.
STANDARD OF REVIEW	Findings of fact in an abuse and neglect proceeding are reviewed for clear error; conclusions of law are reviewed de novo.
PRECEDENTIAL VALUE	memorandum decision; source identifies the opinion as published
PARTIES	K.L., Petitioner Father v. West Virginia Department of Health and Human Resources, S.L. and E.L., represented by guardian ad litem Jessica E. Myers

TOPICS

- termination of parental rights
- family law procedure
- child custody
- visitation
- appellate procedure

PRACTICE AREAS

family law

juvenile abuse and neglect

QUESTIONS PRESENTED

1. Whether the circuit court properly terminated Father's post-dispositional improvement period and denied his motion for an extension.
2. Whether the circuit court properly terminated Father's custodial rights based on the continuing risk posed by his substance abuse and the absence of a reasonable likelihood that the neglect conditions would be substantially corrected in the near future.
3. Whether the circuit court properly granted post-termination visitation at the discretion of the children's guardians rather than at the children's discretion.

HOLDINGS

1. A parent may comply with many specific case-plan requirements yet fail to fully participate in an improvement period when the parent does not address the underlying substance-abuse problem. The circuit court therefore did not err in terminating Father's post-dispositional improvement period or denying his request for an extension.
2. Termination of Father's custodial rights was proper because the evidence supported findings that there was no reasonable likelihood that the conditions of neglect could be substantially corrected in the near future and that termination was necessary for the children's welfare.
3. The circuit court did not err by making post-termination visitation contingent on the discretion of the children's guardians, because visitation after termination may occur only when it is in the children's best interests and is not detrimental to their well-being.

KEY QUOTATIONS

"Simply put, the record demonstrates that petitioner's ongoing abuse of alcohol poses a substantial risk to the future health and safety of the children." (at 3)

"Accordingly, visitation should only occur if such contact is in the children's best interests." (at 4)

FACTUAL BACKGROUND

Father stipulated to allegations that untreated anger, substance abuse, domestic violence, and alcohol abuse affected his ability to parent. Although he complied with many improvement-period requirements, he failed alcohol screens in August 2021 and February 2022 and was later arrested for public intoxication and disorderly conduct. The circuit court found that his alcohol abuse was ongoing and escalating, that there was no reasonable likelihood the neglect conditions would be substantially corrected in the near future, and that continued placement in Father's home was contrary to the children's welfare.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition in March 2021 alleging that Father's untreated anger and substance-abuse problems impaired his parenting and that domestic violence and alcohol abuse had resulted in a permanent restraining order. Father stipulated to the allegations, was adjudicated a neglectful parent, and received post-adjudicatory and post-dispositional improvement periods. After repeated alcohol relapses, including an arrest for public intoxication and disorderly conduct, the circuit court terminated the improvement period, denied a further extension, terminated Father's custodial rights, and ordered post-termination visitation at the guardians' discretion. The Supreme Court of Appeals affirmed in a memorandum decision without oral argument.

DISPOSITION

affirmed

CASES CITED

- In re Cecil T., 228 W. Va. 89, 717 S.E.2d 873 (2011)
- In re Jonathan Michael D., 194 W. Va. 20, 459 S.E.2d 131 (1995)
- In re Kristin Y., 227 W. Va. 558, 712 S.E.2d 55 (2011)
- In re Christina L., 194 W. Va. 446, 460 S.E.2d 692 (1995)
- In re Daniel D., 211 W. Va. 79, 562 S.E.2d 147 (2002)