

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re D.S.

No. 21-0798 (W. Va. Mar. 9, 2022) · No. No. 21-0798 · Decided March 9, 2022

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the termination of petitioner mother M.S.’s parental rights to D.S. The court held that the West Virginia Department of Health and Human Resources made reasonable efforts to preserve and reunify the family, despite the absence of a granted improvement period. The court also concluded that the evidence supported the finding that there was no reasonable likelihood of correcting the conditions of abuse and neglect in the near future and that termination was necessary for the child’s welfare.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice John A. Hutchison; Justice Elizabeth D. Walker; Justice Tim Armstead; Justice William R. Wooton; Justice Alan D. Moats sitting by temporary assignment
JURISDICTION	West Virginia
DECIDED	March 9, 2022
DOCKET	No. 21-0798
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner mother appealed the Wyoming County Circuit Court's order terminating her parental rights in a child abuse and neglect proceeding.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo; factual findings in an abuse and neglect case 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; the opinion states that it is issued under Rule 21 because it presents no substantial question of law and no prejudicial error.
PARTIES	Petitioner Mother M.S. v. West Virginia Department of Health and Human Resources, Guardian ad litem for D.S.

TOPICS

termination of parental rights

parental rights

family law procedure

appellate procedure

standard of review

PRACTICE AREAS

family law

juvenile law

child welfare

parental rights

QUESTIONS PRESENTED

1. Whether the circuit court clearly erred in finding that the DHHR made reasonable efforts to preserve and reunify the family.
2. Whether the circuit court erred by terminating the mother's parental rights rather than employing a less-restrictive dispositional alternative or granting additional time for services.

HOLDINGS

1. The circuit court did not clearly err in finding that the DHHR made reasonable efforts to preserve and reunify the family. The absence of a granted improvement period did not itself establish a lack of reasonable efforts.
2. The circuit court properly terminated the mother's parental rights because there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future and termination was necessary for the child's welfare. Termination could be ordered without first employing a less-restrictive alternative.

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.” (3)

“While the DHHR has a duty to make reasonable efforts, “a parent charged with abuse and/or neglect is not unconditionally entitled to an improvement period.”” (4)

“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.” (5)

FACTUAL BACKGROUND

The DHHR initiated the case after domestic-violence incidents involving the mother, including an incident in which she pushed the fourteen-year-old child into a towel rack, and allegations that she abused methamphetamine or other nonprescribed medications. The mother stipulated that she abused nonprescribed medications affecting her ability to parent and was adjudicated an abusing parent. During the proceedings, she had little contact with the child, failed to participate in offered services and MDT meetings, did not maintain

contact with the DHHR, and did not attend the dispositional hearing. The child, who was living with foster parents, did not want further contact with the mother and wanted to be adopted by the foster family.

PROCEDURAL HISTORY

The DHHR filed a child abuse and neglect petition in March 2019. The mother stipulated to allegations that she abused nonprescribed medications affecting her ability to parent and was adjudicated an abusing parent. After the DHHR moved to terminate her parental rights and a dispositional hearing was held, the circuit court found that she had failed to participate in services, had not corrected the conditions of abuse and neglect, and had abandoned the child. The Supreme Court of Appeals of West Virginia affirmed the September 13, 2021, termination order.

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 Emily, 208 W. Va. 325, 336, 540 S.E.2d 542, 553 (2000)
- In re Charity H., 215 W. Va. 208, 215, 599 S.E.2d 631, 638 (2004)
- 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)