

# SUPREME COURT OF APPEALS OF WEST VIRGINIA

## In re H.J., D.J., and A.J.-1

No. 16-0727 (W. Va. May 22, 2017) · No. No. 16-0727 · Decided May 22, 2017

### SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the termination of a mother's parental rights to three children. The court held that the evidence supported adjudication based on persistent untreated mental-health and substance-abuse issues and aggravated circumstances arising from a prior involuntary termination of parental rights. The court also concluded that requiring the mother to establish, by clear and convincing evidence, her likelihood of fully participating in an improvement period did not improperly shift the burden of proof.

### CASE DETAILS

|                       |                                                                                                                                                                                                                                                    |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Appeals of West Virginia                                                                                                                                                                                                          |
| WRITING FOR THE COURT | Chief Justice Allen H. Loughry II; Justice Robin Jean Davis; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Elizabeth D. Walker                                                                                                    |
| JURISDICTION          | West Virginia                                                                                                                                                                                                                                      |
| DECIDED               | May 22, 2017                                                                                                                                                                                                                                       |
| DOCKET                | No. 16-0727                                                                                                                                                                                                                                        |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                           |
| PROCEDURAL POSTURE    | Mother appealed the Logan County Circuit Court's order terminating her parental rights in an 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    | unpublished memorandum decision; nonprecedential                                                                                                                                                                                                   |
| PARTIES               | Petitioner Mother A.J.-3 v. West Virginia Department of Health and Human Resources, H.J., D.J., and A.J.-1, by guardian ad litem, Unknown fathers                                                                                                  |

### TOPICS

termination of parental rights

parental rights

family law procedure

appellate procedure

standard of review

## PRACTICE AREAS

family law

child welfare

termination of parental rights

abuse and neglect

## QUESTIONS PRESENTED

1. Whether the DHHR presented sufficient evidence to support adjudication of the children as neglected and termination of Mother's parental rights, where Mother disputed the evidence that she breastfed A.J.-1 while using drugs.
2. Whether the circuit court improperly shifted the burden of proof to Mother by finding that she failed to establish that she would fully participate in an improvement period.

## HOLDINGS

1. The circuit court did not err in adjudicating the children as neglected or terminating Mother's parental rights because the breastfeeding allegation was not dispositive in light of the aggravated-circumstances allegation and Mother's admission that persistent untreated mental-health and substance-abuse issues impaired her ability to parent.
2. The circuit court did not improperly shift the DHHR's burden of proof because the finding that Mother failed to prove that she would fully participate in an improvement period concerned her eligibility for discretionary remedial relief, not the DHHR's burden to prove neglect or grounds for termination.

## KEY QUOTATIONS

*“As such, it is clear that the lack of evidence relating to petitioner breastfeeding the child is irrelevant, in light of the DHHR’s allegation of aggravated circumstances and petitioner’s admission to the persistent issues of untreated mental health and substance abuse.” (4)*

*“As such, it is clear that the circuit court’s finding regarding petitioner’s failure to establish that she would fully comply with an improvement period did not constitute an improper shifting of the burden required to adjudicate petitioner or terminate her parental rights.” (5)*

## FACTUAL BACKGROUND

The DHHR received a referral that Mother was using cocaine while breastfeeding A.J.-1 and investigated concerns regarding her ability to care for the children. Mother had repeated positive drug screens, including screens positive for cocaine, methadone, cannabinoids, opiates, benzodiazepines, and oxycodone, and she had a substantial history of CPS intervention and a prior involuntary termination of parental rights to an older child. Mother admitted at adjudication that persistent untreated mental-health and substance-abuse issues resulted in the children's neglect. She failed to participate consistently in treatment and drug screening, and the circuit court terminated her parental rights.

## PROCEDURAL HISTORY

The West Virginia Department of Health and Human Resources filed abuse and neglect petitions alleging that Mother's substance abuse and untreated mental-health issues impaired her ability to care for the children. The circuit court adjudicated the children neglected, denied Mother improvement periods, found aggravated circumstances based on a prior involuntary termination of her parental rights to an older child, and terminated her parental rights after a dispositional hearing. Mother appealed, arguing insufficient evidence and improper burden shifting. 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)
- In Interest of S.C., 168 W. Va. 366, 284 S.E.2d 867 (1981)
- In re Joseph A., 199 W. Va. 438, 485 S.E.2d 176 (1997)
- In re Kyiah P., 213 W. Va. 424, 427, 582 S.E.2d 871, 874 (2003)
- In the Matter of George Glen B., 205 W. Va. 435, 518 S.E.2d 863 (1999)
- In re K.L., 233 W. Va. 547, 759 S.E.2d 778 (2014)