

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In Re: C.S., M.S., & M.S.

In re C.S., M.S., & M.S., No. 15-0299 (W. Va. Sept. 21, 2015) · No. 15-0299 · Decided September 21, 2015

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the termination of petitioner father R.S.'s parental rights to three children following findings that he abused and neglected the children and could not substantially correct the conditions of abuse or neglect. The court also upheld the denial of a formal post-termination visitation right, while permitting the children's nonabusing mothers to allow supervised contact at their discretion and in accordance with the children's best interests.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Margaret L. Workman; Justice Robin Jean Davis; Justice Brent D. Benjamin; Justice Menis E. Ketchum; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	September 21, 2015
DOCKET	15-0299
DISPOSITION	affirmed
PROCEDURAL POSTURE	Father appealed the Kanawha County Circuit Court's order terminating his parental rights to three children and denying him post-termination visitation rights.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo. In an abuse and neglect case tried 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 committed.
PRECEDENTIAL VALUE	nonprecedential memorandum decision
PARTIES	R.S., Petitioner Father v. West Virginia Department of Health and Human Resources, C.S., M.S.-1, and M.S.-2, by guardian ad litem

TOPICS

termination of parental rights

parental rights

visitation

family law procedure

appellate procedure

PRACTICE AREAS

family law

juvenile law

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court erred by terminating Father's parental rights when the children were in the custody of their nonabusing mothers and a less restrictive disposition allegedly was available.
2. Whether the circuit court erred by denying Father a right to post-termination visitation.

HOLDINGS

1. The circuit court did not err in terminating Father's parental rights because it found no reasonable likelihood that Father could substantially correct the conditions of abuse and neglect and found that termination was necessary for the children's welfare. The parental rights of one parent may be terminated while the rights of a nonabusing parent remain intact.
2. The circuit court did not err in denying Father a right of post-termination visitation because the record supported the determination that visitation was not in the children's best interests.

KEY QUOTATIONS

“When parental rights are terminated due to neglect or abuse, the circuit court may nevertheless in appropriate cases consider whether continued visitation or other contact with the abusing parent is in the best interest of the child.” (3)

FACTUAL BACKGROUND

A six-week-old sibling of the children died while in Father's care after Father dropped or otherwise inflicted multiple traumatic impacts to the child's head. Father did not contact emergency personnel or notify anyone for approximately twenty-seven hours, during which time another young child remained in his care. Medical testimony supported the circuit court's finding that the child died from abusive head trauma, and Father remained incarcerated on related criminal charges and could not participate in remedial services.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition after the death of the children's six-week-old sibling while in Father's care. The circuit court found abuse and neglect, determined that there was no reasonable likelihood that Father could substantially correct the conditions, held that termination was necessary for the children's welfare, terminated Father's parental rights, and permitted only discretionary, restricted contact by the nonabusing mothers. Father appealed, and 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)
- In re Emily, 208 W. Va. 325, 344, 540 S.E.2d 542, 561 (2000)
- 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)

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/west-virginia-supreme-court-of-appeals-of-west-virginia/2015/in-re-c-s-m-s-and-m-s-vptexxdf>