

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re R.S.

In re R.S. · No. No. 18-0562 · Decided January 31, 2019

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the termination of the petitioner father's parental rights to R.S. The court held that, despite eighteen months of improvement periods and various services, the father had been unable to provide a safe and suitable home, and there was no reasonable likelihood that the conditions of neglect could be substantially corrected. The court also rejected the request for an additional improvement period and found no error concerning consultation with R.S.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Elizabeth D. Walker; Justice Margaret L. Workman; Justice Tim Armstead; Justice Evan H. Jenkins; Justice John A. Hutchison
JURISDICTION	West Virginia
DECIDED	January 31, 2019
DOCKET	No. 18-0562
DISPOSITION	affirmed
PROCEDURAL POSTURE	Father appealed an order of the Circuit Court of Barbour County terminating his parental rights to R.S. in an abuse and neglect proceeding.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo. Findings of fact in an abuse and neglect case tried without a jury 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PRECEDENTIAL VALUE	nonprecedential memorandum decision under West Virginia Rule of Appellate Procedure 21
PARTIES	C.S., petitioner father v. West Virginia Department of Health and Human Resources, Guardian ad litem for R.S.

TOPICS

termination of parental rights

parental rights

family law procedure

standard of review

appellate procedure

PRACTICE AREAS

family law

juvenile law

abuse and neglect

termination of parental rights

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court erred by terminating C.S.'s parental rights rather than imposing a less restrictive disposition.
2. Whether C.S. was entitled to an additional improvement period or extension of time.
3. Whether the circuit court erred by failing to consult R.S. regarding the permanent termination of C.S.'s parental rights.

HOLDINGS

1. The circuit court did not err in terminating C.S.'s parental rights because, after eighteen months of improvement periods and the provision of services, C.S. remained unable to provide a safe and suitable home or protect and provide for R.S., establishing that there was no reasonable likelihood that the conditions of neglect or abuse could be substantially corrected.
2. C.S. was not entitled to an additional improvement period because the statutory time limits generally prohibit combinations of improvement periods or extensions that keep a child in foster care for more than fifteen of the most recent twenty-two months absent compelling circumstances shown by clear and convincing evidence.
3. The circuit court did not err even if R.S. was not consulted because he was thirteen at the time of disposition, while the statute expressly requires consideration of the wishes of a child fourteen or older or otherwise of an age of discretion as determined by the court, and the record did not establish that R.S. possessed the requisite discretion.

KEY QUOTATIONS

“courts are not required to exhaust every speculative possibility of parental improvement before terminating parental rights where it appears that the welfare of the child will be seriously threatened” (3)

“Termination of parental rights, the most drastic remedy under the statutory provision covering the disposition of neglected children, W.Va. Code, 49-6-5 (1977) [now W.Va. Code § 49-4-604(b)] may be employed without the use of intervening less restrictive alternatives when it is found that there is no reasonable likelihood . . . that conditions of neglect or abuse can be substantially corrected.” (3)

FACTUAL BACKGROUND

R.S. was removed from the home of his mother and her live-in boyfriend after allegations of domestic violence, substance abuse, and inadequate care. C.S., who lived and worked out of state, admitted that his alcohol use adversely affected his care of R.S. and that he knew of domestic violence but failed to act to protect the child. Despite receiving eighteen months of improvement periods and services, C.S. remained unable to provide a safe

and suitable home, missed visits, and acknowledged at the final disposition hearing that he could not take custody of R.S. R.S. remained with his foster parent, who planned to adopt him.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition in April 2016. The circuit court adjudicated C.S. an abusive parent after he admitted that alcohol use affected his care of R.S. and that he failed to protect R.S. from domestic violence. After granting C.S. eighteen months of improvement periods and conducting a final disposition hearing, the circuit court terminated his parental rights on May 23, 2018. The Supreme Court of Appeals of West Virginia affirmed by memorandum decision.

DISPOSITION

affirmed

CASES CITED

- State v. Edward Charles L., 183 W. Va. 641, 398 S.E.2d 123 (1990)
- 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)
- In re Katie S., 198 W. Va. 79, 479 S.E.2d 589 (1996)
- 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)