

# SUPREME COURT OF APPEALS OF WEST VIRGINIA

## In Re: B.W.

No. 14-0416 (Mercer County 12-JA-20) · No. No. 14-0416 · Decided September 22, 2014

### SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the termination of a father's parental, custodial, and guardianship rights to B.W. The court held that the record supported findings that the conditions of neglect could not be substantially corrected, where the father relapsed after extended drug-treatment improvement periods and failed to fully benefit from services.

### CASE DETAILS

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| COURT                 | Supreme Court of Appeals of West Virginia                                                                                                                                                                                                                                |
| WRITING FOR THE COURT | Per Curiam; Chief Justice Robin Jean Davis; Justice Brent D. Benjamin; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Allen H. Loughry II                                                                                                                |
| JURISDICTION          | West Virginia                                                                                                                                                                                                                                                            |
| DECIDED               | September 22, 2014                                                                                                                                                                                                                                                       |
| DOCKET                | No. 14-0416                                                                                                                                                                                                                                                              |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                 |
| PROCEDURAL POSTURE    | Petitioner Father appealed the Mercer County Circuit Court's order terminating his parental, custodial, and guardianship rights to B.W. in an abuse and neglect proceeding.                                                                                              |
| 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 made. |
| PRECEDENTIAL VALUE    | Published memorandum decision                                                                                                                                                                                                                                            |
| PARTIES               | Petitioner Father v. B.W., Department of Health and Human Resources, Guardian ad litem for B.W.                                                                                                                                                                          |

### TOPICS

termination of parental rights

parental rights

standard of review

appellate procedure

family law procedure

## PRACTICE AREAS

juvenile law

family law

parental rights

## QUESTIONS PRESENTED

1. Whether the circuit court erred by terminating petitioner's parental rights when less restrictive alternatives, including termination only of custodial rights, allegedly were available.
2. Whether the evidence supported the circuit court's finding that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future.

## HOLDINGS

1. The circuit court did not err in terminating petitioner's parental, custodial, and guardianship rights because the record supported a finding that 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.
2. In an abuse and neglect case tried without a jury, the circuit court's factual findings are reviewed for clear error, while conclusions of law are reviewed de novo.

## 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.” (at 1)*

## FACTUAL BACKGROUND

The Department alleged that petitioner failed to meet B.W.'s physical, financial, and emotional needs because of substance abuse and had previously lost parental rights to other children. Petitioner stipulated to neglect and received multiple improvement-period extensions, including substance-abuse treatment. He relapsed in October 2013, drove under the influence with B.W. and his injured wife in the vehicle, and later testified about another incident involving Lortabs and alcohol that resulted in his hospitalization. The circuit court found no reasonable likelihood that the conditions of neglect could be substantially corrected in the near future and terminated his rights.

## PROCEDURAL HISTORY

The Department of Health and Human Resources filed an abuse and neglect petition in February 2012. After petitioner stipulated to neglect based on substance abuse, the circuit court granted and extended an improvement period. Following petitioner's relapse and additional substance-related incidents, the circuit court terminated his parental, custodial, and guardianship rights in April 2014. The Supreme Court of Appeals of West Virginia affirmed by memorandum decision.

## 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)

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