

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re M.P.

No. 21-0817 (W. Va. Apr. 14, 2022) · No. No. 21-0817 · Decided April 14, 2022

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the termination of petitioner mother D.H.’s parental rights to M.P. The court held that she was not entitled to a post-dispositional improvement period because she did not demonstrate that she requested one or satisfy the applicable statutory burden, including showing a substantial change in circumstances. The court also upheld the finding that there was no reasonable likelihood that the conditions of abuse and neglect would be corrected in the near future.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; 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	April 14, 2022
DOCKET	No. 21-0817
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner mother appealed the Kanawha County Circuit Court’s order terminating her parental rights after an abuse and neglect proceeding.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo. Factual findings 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	Memorandum decision; precedential effect not specified in the opinion
PARTIES	D.H., petitioner mother v. West Virginia Department of Health and Human Resources, M.P., through guardian ad litem

TOPICS

- termination of parental rights
- parental rights
- domestic violence
- family law procedure
- 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 petitioner's parental rights without first granting her a post-dispositional improvement period.
2. Whether the circuit court erred in finding that there was no reasonable likelihood that petitioner could substantially correct the conditions of abuse and neglect in the near future and that termination was necessary for the child's welfare.

HOLDINGS

1. The circuit court did not err in denying a post-dispositional improvement period because petitioner failed to show that she properly requested one and, independently, failed to satisfy the statutory burden of demonstrating a substantial change in circumstances and a likelihood of full participation.
2. The circuit court did not err in terminating petitioner's parental rights because the evidence supported findings that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future and that termination was necessary for the child's welfare.

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 2)

“Courts are not required to exhaust every speculative possibility of parental improvement . . . where it appears that the welfare of the child will be seriously threatened.” (at 3)

“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.” (at 3)

FACTUAL BACKGROUND

The child was removed from the parents' custody after extensive domestic violence and allegations that each parent physically abused the child, resulting in bruising. Petitioner was adjudicated an abusing parent and received a post-adjudicatory improvement period requiring domestic-violence counseling, parenting and adult-life-skills classes, and random drug screens. Although she initially complied with services, she later failed to cooperate with a service provider, continued testing positive for methamphetamine and amphetamine, and did not demonstrate that she had corrected the conditions of abuse and neglect.

PROCEDURAL HISTORY

The DHHR filed a child abuse and neglect petition in June 2020 after the child was removed from the parents' custody because of extensive domestic violence and allegations of physical abuse. The circuit court adjudicated petitioner an abusing parent, granted her a post-adjudicatory improvement period, and later denied continued services and set the matter for disposition after evidence of noncompliance and continued positive drug screens. Following a September 2021 dispositional hearing, the circuit court terminated petitioner's parental rights. 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 re M.M., 236 W. Va. 108, 778 S.E.2d 338 (2015)
- State ex rel. P.G.-1 v. Wilson, 2021 WL 5355634 (W. Va. 2021)
- 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)