

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re S.D. & C.D.

No. 14-0665 (W. Va. Nov. 24, 2014) · No. 14-0665 · Decided November 24, 2014

SUMMARY

The West Virginia Supreme Court of Appeals affirmed an order terminating a mother's parental rights to S.D. and C.D. The court held that the circuit court did not err in denying a post-adjudicatory improvement period or finding no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected. The case involved allegations of ongoing sexual abuse in the home, failure to protect the children, and inadequate health and dental care.

CASE DETAILS

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	November 24, 2014
DOCKET	14-0665
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner Mother appealed the Circuit Court of Calhoun County's order terminating her parental rights to S.D. and C.D., challenging the denial of a post-adjudicatory improvement period and the termination of parental rights.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo. In an abuse and neglect case tried on the facts without a jury, factual findings are reviewed for clear error and will not be overturned merely because the reviewing court might have decided the case differently; findings must be affirmed if plausible in light of the record viewed in its entirety.
PRECEDENTIAL VALUE	Unpublished memorandum decision under West Virginia Rule of Appellate Procedure 21; no substantial question of law was found.
PARTIES	Petitioner Mother v. West Virginia Department of Health and Human Resources, Guardian ad litem for S.D. and C.D.

TOPICS

termination of parental rights

parental rights

family law procedure

standard of review

appellate procedure

PRACTICE AREAS

family law

juvenile law

parental rights

QUESTIONS PRESENTED

1. Whether the circuit court erred in denying Mother's motion for a post-adjudicatory improvement period.
2. Whether the circuit court erred in terminating Mother's parental rights because the findings were unsupported by the evidence.

HOLDINGS

1. The circuit court did not err in denying the improvement period because Mother failed to demonstrate by clear and convincing evidence that she would fully participate, and the aggravated circumstances of sexual abuse relieved the DHHR of any obligation to make reasonable efforts to preserve the family.
2. The circuit court properly terminated Mother's parental rights because the evidence established that she failed to protect S.D., lacked an adequate capacity to correct the abuse and neglect, and presented no reasonable likelihood that the conditions could be substantially corrected, while termination was required for the children's welfare.

KEY QUOTATIONS

“These findings shall not be set aside by a reviewing court unless clearly erroneous.” (1)

“We have further recognized that an improvement period is futile if the subject parent has failed to acknowledge the existence of the problem.” (2)

“The term “knowingly” as used in West Virginia Code § 49–1–3(a)(1) (1995) does not require that a parent actually be present at the time the abuse occurs, but rather that the parent was presented with sufficient facts from which he/she could have and should have recognized that abuse has occurred.” (3)

FACTUAL BACKGROUND

The DHHR alleged that Mother and other adults in the household knew that Mother's husband was sexually abusing S.D. and failed to protect S.D. or the other children. The evidence showed a history of sexual-abuse allegations, Mother's failure to act after receiving information about the abuse and after her husband's confession, physical abuse of S.D., and inadequate health and dental care. The circuit court found that Mother lacked the ability and willingness to protect the children, that the conditions could not be substantially corrected, and that termination was in the children's best interests.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition in November 2013. After multiple adjudicatory hearings, the circuit court adjudicated the parents as abusing parents and the children as abused and neglected. The circuit

court denied Mother's motion for a post-adjudicatory improvement period and, after a dispositional hearing, terminated her parental rights. 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, 339, 540 S.E.2d 542, 556 (2000)
- In re Travis W., 206 W. Va. 478, 525 S.E.2d 669 (1999)
- W.Va. Dept. of Health and Human Res. ex rel. Wright v. Doris S., 197 W. Va. 489, 475 S.E.2d 865 (1996)