

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re J.H. & L.H.

No. 12-1002 (Raleigh County 10-JA-64 & 65) · No. No. 12-1002 · Decided March 12, 2013

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the termination of a mother's parental rights to J.H. and L.H. The court rejected challenges concerning the family case plan, improvement-period terms, findings regarding ongoing neglect and the children's welfare, and consideration of the children's wishes. The court concluded that the record supported termination under West Virginia Code § 49-6-5(a)(6).

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; Chief Justice Brent D. Benjamin; Justice Robin Jean Davis; Justice Margaret L. Workman; Justice Allen H. Loughry II; Justice Menis E. Ketchum
JURISDICTION	West Virginia
DECIDED	March 12, 2013
DOCKET	No. 12-1002
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner Mother appealed the Circuit Court of Raleigh County's order terminating her parental rights to J.H. and L.H.
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 the definite and firm conviction that a mistake has been made.
PRECEDENTIAL VALUE	Published memorandum decision
PARTIES	Petitioner Mother v. West Virginia Department of Health and Human Resources, Respondent Father, J.H. and L.H., through their guardian ad litem

TOPICS

termination of parental rights

parental rights

family law procedure

appellate procedure

standard of review

PRACTICE AREAS

family law

juvenile abuse and neglect

termination of parental rights

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court erred by terminating petitioner's parental rights when a family case plan allegedly was not filed and the terms of her improvement period allegedly were not set forth.
2. Whether termination was improper absent an express finding that the circumstances constituting neglect still existed or that termination was necessary for the children's welfare.
3. Whether the circuit court failed to consider the children's wishes before terminating petitioner's parental rights.
4. Whether termination was contrary to the children's best interests and public policy because it left them without a mother.

HOLDINGS

1. The circuit court's failure to file the family case plan did not warrant reversal where the record showed that a plan had been developed, petitioner knew its terms, and she was aware of the logical steps required to address the neglect.
2. Termination was proper because the circuit court found that petitioner was unable to correct the ongoing neglect-related problems, and 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 children's welfare.
3. The circuit court was required to consider the children's wishes but was not bound to follow them; the record showed that the court was aware that the children did not want petitioner's parental rights terminated.

KEY QUOTATIONS

“Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error.” (at 1)

“Therefore, petitioner was aware of the “logical steps” necessary to resolve the issues of neglect.” (at 2)

“However, circuit courts are not bound to follow children’s wishes, and the record does not establish that the circuit court failed to consider their wishes prior to terminating petitioner’s parental rights.” (at 2)

FACTUAL BACKGROUND

The DHHR alleged that petitioner allowed fourteen-year-old J.H. to consume alcohol, prescription drugs, and marijuana and to have sex with two adult women during a party at petitioner's home. Petitioner later pleaded guilty to accessory after the fact to third-degree sexual abuse related to the incident. The circuit court adjudicated the children neglected, and the record showed that petitioner failed to remedy the conditions of neglect, including inadequate supervision, despite being directed to participate in drug screens, therapy, parenting and adult-life-skills classes, and employment efforts.

PROCEDURAL HISTORY

The West Virginia Department of Health and Human Resources filed an abuse-and-neglect petition alleging that petitioner permitted fourteen-year-old J.H. to consume alcohol, prescription drugs, and marijuana and to engage in sexual activity with two adult women at petitioner's home. After adjudicating the children neglected, the circuit court proceeded as though petitioner had been granted a post-adjudicatory improvement period, and later terminated her parental rights at disposition. The Supreme Court of Appeals of West Virginia 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)
- State ex rel. W. Va. Dep't of Human Servs. v. Cheryl M., 177 W. Va. 688, 356 S.E.2d 181 (1987)
- In re Edward B., 210 W. Va. 621, 558 S.E.2d 620 (2001)