

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re D.A., J.R.-1, D.R., and J.A.

No. 20-0986 (W. Va. June 3, 2021) · No. 20-0986 · Decided June 3, 2021

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the termination of petitioner Mother J.R.-2's parental rights to four children. The court held that the circuit court did not abuse its discretion in denying a post-adjudicatory improvement period because the mother failed to participate in court-ordered services, including drug screening, parenting classes, and substance-abuse treatment. The court also upheld termination as to a child placed with the child's biological father, concluding that less-restrictive alternatives were not required where the statutory conditions for termination were established.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Evan H. Jenkins; Justice Elizabeth D. Walker; Justice Tim Armstead; Justice John A. Hutchison; Justice William R. Wooton
JURISDICTION	West Virginia
DECIDED	June 3, 2021
DOCKET	20-0986
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, while factual findings in an abuse and neglect case are reviewed for clear error. The Court also reviewed the denial of an improvement period for abuse of discretion.
PRECEDENTIAL VALUE	nonprecedential memorandum decision
PARTIES	J.R.-2, petitioner mother v. West Virginia Department of Health and Human Resources, Guardian ad litem for the children

TOPICS

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PRACTICE AREAS

juvenile abuse and neglect

termination of parental rights

improvement periods

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court erred by denying petitioner a post-adjudicatory improvement period.
2. Whether the circuit court erred by terminating petitioner's parental rights to D.A. rather than selecting a less-restrictive dispositional alternative because D.A. was placed with her biological father.
3. Whether the circuit court otherwise erred in terminating petitioner's parental rights to J.R.-1, D.R., and J.A.

HOLDINGS

1. The circuit court did not err in denying petitioner's motion for a post-adjudicatory improvement period because she failed to demonstrate by clear and convincing evidence that she was likely to fully participate in the improvement period.
2. The circuit court did not err by terminating petitioner's parental rights to D.A. despite D.A.'s placement with her biological father.
3. The circuit court did not err in terminating petitioner's parental rights to J.R.-1, D.R., and J.A.; the circuit court's supported finding that the conditions of abuse and neglect were unlikely to be substantially corrected justified termination.

KEY QUOTATIONS

“Based on petitioner’s failure to participate in court-ordered services, we find the circuit court did not err in denying her motion for a post-adjudicatory improvement period.” (4)

“simply because one parent has been found to be a fit and proper caretaker for [the] child does not automatically entitle the child’s other parent to retain his/her parental rights if his/her conduct has endangered the child and such conditions of abuse and/or neglect are not expected to improve.” (5)

“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.” (5)

FACTUAL BACKGROUND

The DHHR alleged that petitioner exposed the children to domestic violence, failed to protect them from abuse by her husband, and had a history of heroin use. Petitioner stipulated that domestic violence occurred in the children's presence, affected her ability to parent, and that she failed to protect the children. Although the circuit court ordered drug screening, parenting and life-skills classes, domestic-violence education, substance-abuse treatment, and a psychological evaluation, petitioner did not participate consistently, failed to submit to required random screenings, and tested positive for THC and fentanyl after the preliminary and adjudicatory hearings. She also violated or disregarded the no-contact order by traveling with her husband.

PROCEDURAL HISTORY

In March 2020, the DHHR filed a child abuse and neglect petition alleging that petitioner exposed the children to domestic violence, failed to protect them from domestic violence, and had a history of heroin use. After a preliminary hearing, the circuit court ratified removal and ordered services, including drug screening, parenting and life-skills classes, and a psychological evaluation. Petitioner stipulated at adjudication that domestic violence affected her ability to parent and that she failed to protect the children; the court adjudicated her an abusing parent and held her motion for a post-adjudicatory improvement period in abeyance. Following a final dispositional hearing, the circuit court denied the improvement period and 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)
- In re Tonjia M., 212 W. Va. 443, 573 S.E.2d 354 (2002)
- Michael D.C. v. Wanda L.C., 201 W. Va. 381, 497 S.E.2d 531 (1997)
- In re Emily, 208 W. Va. 325, 540 S.E.2d 542 (2000)
- 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)