

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re H.H.

In re H.H. · No. 20-0061 · Decided September 3, 2020

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the termination of a father’s parental rights in an abuse and neglect proceeding. The court held that the father waived challenges concerning the child’s in camera interview and cross-examination by failing to object before the interview, submit questions or topics, or file the motion requested by the circuit court.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; Chief Justice Tim Armstead; Justice Margaret L. Workman; Justice Elizabeth D. Walker; Justice Evan H. Jenkins; Justice John A. Hutchison
JURISDICTION	West Virginia
DECIDED	September 3, 2020
DOCKET	20-0061
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner Father J.H. appealed the Circuit Court of Tyler County's order terminating his parental rights, arguing that the circuit court erred by requiring him to file a motion to cross-examine the child after an in camera interview.
STANDARD OF REVIEW	Conclusions of law in an abuse and neglect case are reviewed de novo. 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PRECEDENTIAL VALUE	nonprecedential memorandum decision
PARTIES	J.H., Petitioner Father v. West Virginia Department of Health and Human Resources, H.H., by guardian ad litem

TOPICS

- termination of parental rights
- parental rights
- family law procedure
- appellate procedure
- evidence

PRACTICE AREAS

juvenile abuse and neglect

termination of parental rights

appellate procedure

evidence and witness examination

QUESTIONS PRESENTED

1. Whether the circuit court violated petitioner's right to be heard or to cross-examine the child by conducting an in camera interview and requiring petitioner to file a motion to cross-examine the child.
2. Whether petitioner waived any challenge to the in camera interview or cross-examination procedure by failing to object before the interview and failing to submit questions or topics for the court's consideration.

HOLDINGS

1. West Virginia Code § 49-4-601(h) provides a meaningful opportunity to be heard, including the opportunity to cross-examine witnesses, but that right is not absolute as to a child's cross-examination. Rule 8(b) permitted the circuit court to exclude the parties' attorneys from the in camera interview and to receive questions or topics for the court to ask the child instead of allowing direct questioning.
2. Petitioner waived any challenge to the in camera interview and to the denial of direct cross-examination because he did not object before the interview, did not submit questions or topics for the court's consideration, and waited until after the interview to request cross-examination.
3. Although Rule 8(b) did not require petitioner to file a motion, the circuit court's erroneous or unnecessary direction to do so did not warrant relief because petitioner never filed the motion and therefore could not establish prejudice or obtain appellate relief.

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.” (2)

“What he fails to recognize, however, is that this right is not absolute in regard to the cross-examination of a child.” (3)

“Simply put, Rule 8 requires parties to submit questions and topics prior to the court conducting the in camera interview and the rule does not direct a circuit court to hold a second interview after the parties submit their questions or topics for consideration.” (4)

FACTUAL BACKGROUND

The DHHR alleged that H.H., then seven years old, disclosed to school personnel and law enforcement that petitioner had sexually abused her and had threatened to shoot her mother and himself. The child underwent a forensic interview and made specific disclosures that petitioner touched her vagina and touched her private parts with his private parts. During the adjudicatory hearing, the circuit court conducted an in camera interview with

the child; petitioner did not object beforehand or submit questions or topics for the court to ask. The circuit court later adjudicated petitioner as having sexually abused the child and terminated his parental rights after finding no reasonable likelihood that he could substantially correct the conditions of abuse and neglect.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition in May 2019 based on allegations that petitioner sexually abused H.H. After an adjudicatory hearing, including an in camera interview of the child, the circuit court found that petitioner sexually abused the child. Following a dispositional hearing, the circuit court found no reasonable likelihood that petitioner could substantially correct the conditions of abuse and neglect and terminated his parental rights on January 6, 2020. The Supreme Court of Appeals affirmed in a memorandum decision.

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)
- State v. Miller, 194 W. Va. 3, 459 S.E.2d 114 (1995)