

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re Kristopher E.

212 W. Va. 393 (2002) · Decided November 4, 2002

SUMMARY

The Supreme Court of Appeals of West Virginia reviewed a circuit court’s adjudication of Kenneth E. as an abusive and neglectful parent based primarily on threatened corporal punishment, discipline practices, and his response to the threatened removal of his children. The court held that the adjudication was clearly erroneous, reversed it, and remanded for disposition consistent with the father’s voluntary relinquishment agreement.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
JURISDICTION	West Virginia
DECIDED	November 4, 2002
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Kenneth E. appealed from an order of the Circuit Court of Preston County adjudicating him an abusive and neglectful parent in an abuse-and-neglect proceeding. He did not challenge removal of the children from his custody but challenged the adjudication, arguing that the evidence was insufficient and that the case should instead be resolved through his voluntary surrender of custody.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo. In an abuse-and-neglect case tried without a jury, factual findings will not be set aside unless clearly erroneous; a finding is clearly erroneous when, after reviewing the entire evidence, the appellate court is left with the definite and firm conviction that a mistake has been made.
PRECEDENTIAL VALUE	Published, precedential opinion
PARTIES	Kenneth E. v. West Virginia Department of Health & Human Resources

TOPICS

- parental rights
- termination of parental rights
- family law procedure
- standard of review
- appellate procedure

PRACTICE AREAS

family law

child welfare

parental rights

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court clearly erred in adjudicating Kenneth E. an abusive and neglectful parent based on the evidence that he failed to intervene in the stepmother's threatened corporal punishment, used improper disciplinary practices, and declined services.
2. Whether the abuse-and-neglect proceeding could be disposed of through Kenneth E.'s voluntary relinquishment of custody without an adjudication of abuse or neglect.

HOLDINGS

1. The circuit court's adjudication that Kenneth E. was an abusive and neglectful parent was clearly erroneous.
2. A court may accept a parent's voluntary relinquishment of parental rights and dispose of an abuse-and-neglect proceeding without adjudicating the ultimate abuse-and-neglect question.

KEY QUOTATIONS

"A finding is clearly erroneous when, although there is evidence to support the finding, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." (396)

"Although dealing with a very close case, this Court, after reviewing the evidence, comes away with the firm conviction that the trial court's conclusion is erroneous." (397)

FACTUAL BACKGROUND

Kenneth E. had custody of his two sons, who exhibited severe behavioral problems, including property destruction, animal cruelty, school problems, fires, and aggression toward their stepmother. The father sought extensive behavioral and mental-health assistance, including counseling, parenting classes, and psychiatric evaluation for one child. In May 2001, while the father was away for National Guard training, the stepmother threatened to beat or switch one child, and the children were removed from the home. The father acknowledged using derogatory names and occasionally withholding meals as punishment, but there was no evidence that he had physically harmed the children; he later voluntarily agreed to surrender custody.

PROCEDURAL HISTORY

The children were removed from the home on May 24, 2001, and an abuse-and-neglect petition was filed the same day. After a preliminary hearing at which the circuit court found probable cause for emergency removal, Kenneth E. entered an agreement with the Department of Health and Human Resources voluntarily surrendering custody. The circuit court accepted the agreement but adjudicated Kenneth E. an abusive and neglectful parent before disposing of the matter. The Supreme Court of Appeals reversed the adjudication and remanded for disposition consistent with the opinion and the voluntary relinquishment agreement.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Circuit Court of Preston County was directed to dispose of the case consistently with the opinion, including adjudicating the appellant's voluntary relinquishment of parental rights in accordance with the agreement he entered with the Department of Health and Human Resources.

CASES CITED

- In the Interest of Tiffany Marie S., 196 W. Va. 223, 470 S.E.2d 177 (1996)
- In re James G. and Emmett M.L., III, 211 W. Va. 339, 566 S.E.2d 226 (2002)