

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re T.S., 241 W. Va. 559

827 S.E.2d 29 (2019) · No. 18-0708 · Decided April 11, 2019

SUMMARY

The Supreme Court of Appeals of West Virginia held that a parent in an abuse and neglect proceeding must receive a meaningful opportunity to be heard at a dispositional hearing. This includes the opportunity to testify and present witnesses under West Virginia Code § 49-4-601(h). The court reversed and remanded for a new dispositional hearing limited to allowing the father to present evidence and testify.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Justice Workman
JURISDICTION	West Virginia
DECIDED	April 11, 2019
DOCKET	18-0708
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	R.S. appealed the Circuit Court of Preston County's dispositional order in an abuse-and-neglect proceeding. The circuit court imposed a disposition under West Virginia Code § 49-4-604(b)(5), placing the children in the legal and physical custody of guardians without terminating R.S.'s parental rights, after denying him the opportunity to testify and present witnesses at the dispositional hearing.
STANDARD OF REVIEW	Factual findings in an abuse-and-neglect case tried without a jury are reviewed for clear error, while conclusions of law and questions involving statutory interpretation are reviewed de novo.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	R.S. v. West Virginia Department of Health and Human Resources

TOPICS

family law procedure

parental rights

procedural due process

appellate procedure

standard of review

PRACTICE AREAS

family law

constitutional law

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court violated R.S.'s statutory and constitutional due-process rights by imposing a disposition affecting his parental rights without providing him a meaningful opportunity to testify and present witnesses at the dispositional hearing.

HOLDINGS

1. A parent having custodial or other parental rights or responsibilities must be afforded a meaningful opportunity to be heard at an abuse-and-neglect dispositional hearing, including the opportunity to testify and present witnesses.

KEY QUOTATIONS

“Both our statutory and case law unequivocally require that parents, or any party having custodial or other parental rights and responsibilities, be afforded a meaningful opportunity to be heard.” (12)

“This necessarily includes the right to testify and to present witnesses, as well as to cross-examine witnesses in any abuse and neglect proceeding.” (12)

FACTUAL BACKGROUND

The DHHR alleged that R.S. and the children's mother exposed the children to domestic violence and other abuse and neglect. R.S. stipulated that the children had been exposed to neglect or abuse because of concerns about his failure to make therapeutic admissions and acknowledged that his actions had caused emotional harm to V.A. At disposition, the circuit court relied on evidence concerning R.S.'s lack of empathy and refusal to acknowledge the trauma to V.A., but prevented R.S. from testifying or presenting witnesses before imposing a custody disposition.

PROCEDURAL HISTORY

The DHHR filed an imminent-danger petition alleging domestic violence and neglect. After improvement periods and amended allegations, R.S. stipulated to adjudication as an abusing and neglectful parent and received a post-adjudicatory improvement period. At the dispositional hearings, the DHHR presented evidence, but the circuit court denied R.S.'s requests to call witnesses and testify, then entered a disposition under § 49-4-604(b)(5). The Supreme Court of Appeals reversed and remanded for a new dispositional hearing.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The circuit court must conduct a dispositional hearing that provides R.S. a full and complete opportunity to testify and present witnesses. The DHHR need not repeat its prior testimony and may rely on the existing hearing transcripts, but the court must permit rebuttal evidence from the DHHR or guardian ad litem if R.S.'s presentation creates a need for it.

CASES CITED

- In re Tiffany Marie S., 196 W. Va. 223, 470 S.E.2d 177 (1996)
- Chrystal R.M. v. Charlie A.L., 194 W. Va. 138, 459 S.E.2d 415 (1995)
- In re Willis, 157 W. Va. 225, 207 S.E.2d 129 (1973)
- In re Samantha M., 205 W. Va. 383, 518 S.E.2d 387 (1999)
- In re Sutton, 132 W. Va. 875, 53 S.E.2d 839 (1949)
- State ex rel. H.S. v. Beane, 240 W. Va. 643, 814 S.E.2d 660 (2018)
- State ex rel. C.H. v. Faircloth, 240 W. Va. 729, 815 S.E.2d 540 (2018)
- In re Jonathon G., 198 W. Va. 716, 482 S.E.2d 893 (1996)
- State ex rel. W. Va. Dep't of Human Servs. v. Cheryl M., 177 W. Va. 688, 356 S.E.2d 181 (1987)