

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re E.C., D.C., and G.S.-1

No. 17-1046 · No. No. 17-1046 · Decided April 13, 2018

SUMMARY

The West Virginia Supreme Court of Appeals vacated a dispositional order terminating the father's parental rights because the circuit court failed to properly adjudicate him as an abusing or neglecting parent before proceeding to disposition. The Court held that this procedural failure constituted plain error affecting substantial rights and remanded for an adjudicatory hearing and further proceedings under applicable West Virginia law and rules.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Margaret L. Workman; Justice Robin Jean Davis; Justice Menis E. Ketchum; Justice Allen H. Loughry II; Justice Elizabeth D. Walker
JURISDICTION	West Virginia
DECIDED	April 13, 2018
DOCKET	No. 17-1046
DISPOSITION	vacated
PROCEDURAL POSTURE	Father appealed the Circuit Court of Mingo County's order terminating his parental rights in an abuse and neglect proceeding, arguing that the court terminated his rights without first properly adjudicating him as an abusing or neglecting parent.
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. Because Father failed to preserve the adjudication issue, the court applied plain-error review, requiring an error that is plain, affects substantial rights, and seriously affects the fairness, integrity, or public reputation of the proceedings.
PRECEDENTIAL VALUE	limited
PARTIES	Petitioner Father G.S.-2 v. West Virginia Department of Health and Human Resources, E.C., D.C., G.S.-1, through guardian ad litem

TOPICS

termination of parental rights

parental rights

family law procedure

appellate procedure

standard of review

PRACTICE AREAS

juvenile law

family law

child abuse and neglect

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court plainly erred by terminating Father's parental rights without first conducting an adjudicatory hearing and determining, based on clear and convincing evidence, that the children were abused or neglected and that Father was an abusing or neglecting parent.
2. Whether the dispositional order should be vacated and the case remanded for compliance with the statutory and procedural requirements governing child abuse and neglect proceedings.

HOLDINGS

1. A circuit court may not proceed to dispositional alternatives, including termination of parental rights, until it conducts an adjudicatory hearing and determines from clear and convincing evidence whether the child is abused or neglected and whether the respondent is an abusing or neglecting parent.
2. The court may review the unpreserved issue under the plain-error doctrine, and the failure to adjudicate Father satisfied the plain-error standard because it was an error that was plain, affected substantial rights, and seriously affected the fairness, integrity, and public reputation of the proceedings.
3. When the statutory and rule-based process for disposing of cases involving children adjudicated as abused or neglected is substantially disregarded or frustrated, the resulting dispositional order must be vacated and the case remanded for compliance with that process and entry of an appropriate order.

KEY QUOTATIONS

"Simply put, the DHHR must be required to satisfy its burden of proof in all child abuse and neglect proceedings and parents must be afforded the right to meet such evidence." (3)

"Where it appears from the record that the process established by the Rules of Procedure for Child Abuse and Neglect Proceedings and related statutes for the disposition of cases involving children adjudicated to be abused or neglected has been substantially disregarded or frustrated, the resulting order of disposition will be vacated and the case remanded for compliance with that process and entry of an appropriate dispositional order." (3)

FACTUAL BACKGROUND

The DHHR alleged that G.S.-1 was born prematurely and tested positive at birth for benzodiazepines and marijuana. Father waived the preliminary hearing and was granted a pre-adjudicatory improvement period. The circuit court scheduled an adjudicatory hearing, but no evidence was presented and no adjudicatory findings were made. The DHHR first presented testimonial evidence at the later dispositional hearing, after which the circuit court terminated Father's parental rights to the three children.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition on September 30, 2016. Father waived the preliminary hearing and received a pre-adjudicatory improvement period. Although an adjudicatory hearing was scheduled, the November 16, 2016 hearing produced no evidence or adjudicatory findings. The circuit court later held a dispositional hearing and terminated Father's parental rights, entering its order on October 25, 2017. The Supreme Court of Appeals of West Virginia vacated the dispositional order and remanded for an adjudicatory hearing and further proceedings.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The circuit court must forthwith hold an adjudicatory hearing regarding Father and conduct further proceedings consistent with the West Virginia Rules of Procedure for Child Abuse and Neglect Proceedings and Chapter 49 of the West Virginia Code. The circuit court must maintain the children's current temporary placement until it determines an appropriate permanent placement. The circuit court must conclude the matter by entry of a final order within sixty days of issuance of the Supreme Court's mandate.

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)
- State v. T.C., 172 W. Va. 47, 303 S.E.2d 685 (1983)
- In re Edward B., 210 W. Va. 621, 624, 558 S.E.2d 620, 623 (2001)