

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re A.P.-1, A.P.-2, A.P.-3, 241 W. Va. 688

827 S.E.2d 830 (2019) · No. No. 18-0448 · Decided March 14, 2019

SUMMARY

This document is Justice Workman’s opinion concurring in part and dissenting in part in a West Virginia child abuse and neglect proceeding. The opinion addresses whether adjudication and disposition should occur in separate hearings, whether a circuit court retains jurisdiction to revisit an adjudication, and whether lengthy parental incarceration may constitute abandonment or neglect. It also discusses the application of the factors identified in *In re Cecil T.* and the children’s best interests and need for permanency.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Justice Workman
JURISDICTION	West Virginia
DECIDED	March 14, 2019
DOCKET	No. 18-0448
DISPOSITION	remanded
PROCEDURAL POSTURE	Separate opinion concurring in part and dissenting in part from the Supreme Court of Appeals' decision in a child abuse and neglect proceeding involving an incarcerated parent, adjudication, disposition, and termination of parental rights.
PRECEDENTIAL VALUE	Separate opinion; nonbinding dissenting and concurring opinion
PARTIES	D.P. v. West Virginia Department of Health and Human Resources, J.B., T.W.

TOPICS

termination of parental rights parental rights statutory interpretation family law procedure
appellate procedure

PRACTICE AREAS

family law juvenile law child welfare

QUESTIONS PRESENTED

1. Whether a parent's lengthy incarceration may constitute neglect or abandonment under West Virginia Code § 49-1-201 when the incarceration prevents the parent from supplying the child with basic necessities and parental care.
2. Whether the circuit court retained jurisdiction and inherent authority to revisit its initial adjudicatory ruling before final judgment.
3. Whether adjudication and disposition in a child abuse and neglect proceeding must occur in separate hearings absent the parties' agreement to proceed immediately to disposition.
4. Whether the factors identified in *In re Cecil T.* may be considered at both the adjudicatory and dispositional stages.

HOLDINGS

1. Justice Workman concluded that, when the statutory definitions of abandonment and neglect are construed together, a lengthy incarceration that prevents a parent from meeting even minimal parental duties may support an adjudication or disposition of abandonment or neglect and termination of parental rights.
2. Justice Workman concluded that the circuit court retained jurisdiction and inherent authority to revisit its earlier adjudicatory decision before judgment and that no new petition was required because no new allegations had arisen.
3. Justice Workman agreed that the adjudication and disposition determinations should have been made in separate hearings and that the case should be remanded for a separate dispositional hearing, unless the parties agreed to proceed immediately to disposition.
4. Justice Workman concluded that the factors identified in *In re Cecil T.* are relevant at both adjudication and disposition when the statutory criteria are met, and that incarceration may support a finding of neglect at adjudication.

KEY QUOTATIONS

"I vehemently disagree, however, with several other points of the majority opinion" (at 1)

"A court 'has inherent power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction.'" (at 8)

"The welfare of the infant is the polar star by which the discretion of the court is to be guided" (at 12)

FACTUAL BACKGROUND

The petitioner father was incarcerated for murder and would not be eligible for parole consideration until 2029, meaning the children would be approximately nineteen, seventeen, and fourteen at that time. The mother's parental rights had been terminated, and the children were placed with a relative who had an amicable relationship with the father. The Department alleged abuse, neglect, and abandonment, and the circuit court considered the father's lengthy incarceration and inability to provide the children's daily necessities.

PROCEDURAL HISTORY

The circuit court initially declined to adjudicate the petitioner father as having abandoned the children because he had demonstrated continued interest in them after his incarceration. The circuit court later revisited that determination and effectively adjudicated the father based on the effects of his lengthy incarceration, then proceeded to disposition and terminated parental rights without a separate dispositional hearing. The majority held that the circuit court lacked continuing jurisdiction after the initial refusal to adjudicate abandonment and remanded with the option for the Department to file a new petition; Justice Workman agreed that adjudication and disposition should have occurred in separate hearings but disagreed with the majority's jurisdictional ruling and proposed a limited remand for a separate dispositional hearing.

DISPOSITION

remanded

REMAND INSTRUCTIONS

Justice Workman would remand only for a separate dispositional hearing, while allowing the existing abuse and neglect proceeding to continue. The separate hearing should comply with the procedural requirements governing adjudication and disposition and should consider the children's best interests.

CASES CITED

- In re Cecil T., 228 W. Va. 89, 717 S.E.2d 873 (2011)
- Smith v. State Workmen's Comp. Comm'r, 159 W. Va. 108, 219 S.E.2d 361 (1975)
- State ex rel. Graney v. Sims, 144 W. Va. 72, 105 S.E.2d 886 (1958)
- Beckley v. Kirk, 193 W. Va. 258, 455 S.E.2d 817 (1995)
- Fruehauf Corp. v. Huntington Moving & Storage Co., 159 W. Va. 14, 217 S.E.2d 907 (1975)
- State ex rel. Acton v. Flowers, 154 W. Va. 209, 174 S.E.2d 742 (1970)
- Shields v. Romine, 122 W. Va. 639, 13 S.E.2d 16 (1940)
- Daily Gazette v. Canady, 175 W. Va. 249, 332 S.E.2d 262 (1985)
- State v. Jarvis, 199 W. Va. 38, 483 S.E.2d 38 (1997)
- In re Timber M., 231 W. Va. 44, 743 S.E.2d 352 (2013)
- State ex rel. Diva P. v. Kaufman, 200 W. Va. 555, 490 S.E.2d 642 (1997)
- In re Katie S., 198 W. Va. 79, 479 S.E.2d 589 (1996)
- Cunningham v. Barnes, 37 W. Va. 746, 17 S.E. 308 (1893)
- Cariens v. Cariens, 50 W. Va. 113, 40 S.E. 335 (1901)
- Nestor v. Nestor, 83 W. Va. 590, 98 S.E. 807 (1919)
- Rierison v. Rierison, 107 W. Va. 321, 148 S.E. 203 (1929)
- Straughan v. Straughan, 115 W. Va. 639, 177 S.E. 771 (1934)
- Stout v. Massie, 140 W. Va. 731, 88 S.E.2d 51 (1955)
- Holstein v. Holstein, 152 W. Va. 119, 160 S.E.2d 177 (1968)

- State ex rel. Cash v. Lively, 155 W. Va. 801, 187 S.E.2d 601 (1972)
- David M. v. Margaret M., 182 W. Va. 57, 385 S.E.2d 912 (1989)
- Carter v. Carter, 196 W. Va. 239, 470 S.E.2d 193 (1996)
- State ex rel. Jeanette H. v. Pancake, 207 W. Va. 154, 529 S.E.2d 865 (2000)
- In re Kaitlyn P., 225 W. Va. 123, 690 S.E.2d 131 (2010)
- In re Christina L., 194 W. Va. 446, 460 S.E.2d 692 (1995)

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