

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re: C.A. and R.A.-1

In re C.A. and R.A.-1 · No. No. 16-0470 · Decided September 19, 2016

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the termination of a father's parental, custodial, and guardianship rights to two children. The court held that the delayed filing of the family case plan did not constitute reversible error because the father understood the conditions requiring correction and had participated in services. The court also held that he was not entitled to an extension of his post-dispositional improvement period because he had not substantially complied with the required services.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Menis E. Ketchum; Justice Robin Jean Davis; Justice Brent D. Benjamin; Justice Margaret L. Workman; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	September 19, 2016
DOCKET	No. 16-0470
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner Father appealed the Mercer County Circuit Court's order terminating his parental, custodial, and guardianship rights and denying his motion to extend his post-dispositional improvement period.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo. In an abuse and neglect case tried upon the facts without a jury, factual findings are reviewed for clear error and will not be set aside unless the reviewing court is left with the definite and firm conviction that a mistake has been committed.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	R.A.-2, Petitioner Father v. West Virginia Department of Health and Human Resources, C.A. and R.A.-1, by 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 welfare

parental rights

QUESTIONS PRESENTED

1. Whether the DHHR's delayed filing and later revision of the family case plan required vacation of the termination order because the statutory and procedural requirements were substantially disregarded or frustrated.
2. Whether the circuit court erred in denying petitioner's motion to extend his post-dispositional improvement period.
3. Whether the circuit court erred in terminating petitioner's parental, custodial, and guardianship rights.

HOLDINGS

1. The delayed filing and revision of the family case plan did not constitute reversible error because, under the specific circumstances, the process established by the applicable statutes and rules was not substantially disregarded or frustrated.
2. The circuit court did not err in denying an extension because petitioner had not substantially complied with the improvement period and had not made sufficient progress toward reunification.
3. The circuit court did not err in terminating petitioner's parental, custodial, and guardianship rights after finding that he had failed to make sufficient progress and that the children's best interests required termination.

KEY QUOTATIONS

"While petitioner is correct that West Virginia Code § 49-4-408(a) requires that a family case plan be filed within sixty days of the child coming into foster care or thirty days of an improvement period's inception, the Court does not find reversible error on that issue under the specific limited circumstances of this case." (3)

"The circuit court further based this finding on petitioner's failure to obtain suitable housing or stabilize his relationship with the children's mother." (4)

"Based on the foregoing, we find no error in the circuit court denying petitioner's motion to extend his post-dispositional improvement period in light of the extended nature of the proceedings and its finding that the children's best interest required termination of petitioner's parental, custodial, and guardianship rights." (5)

FACTUAL BACKGROUND

Petitioner initially participated in drug screens and parenting services, but the DHHR later alleged that he continued living in the mother's home despite being instructed to obtain separate housing and that he repeatedly tested positive for controlled substances. He stipulated to neglect and received multiple improvement periods, yet failed to complete required assessments, obtain suitable housing, stabilize his relationship with the children's

mother, and consistently address his substance abuse. Although he entered a treatment program, he left after surgery and the facility's inability to meet his medical needs; the circuit court ultimately found that he had made insufficient progress toward reunification.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition involving the children in January 2014 and later amended it in August 2014 to include allegations against petitioner concerning unsafe housing and substance abuse. Petitioner stipulated to neglect and received post-adjudicatory and post-dispositional improvement periods, but the circuit court later denied an additional extension and terminated his parental, custodial, and guardianship rights. The Supreme Court of Appeals of West Virginia affirmed.

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 ex rel. Dep't of Human Services v. Cheryl M., 177 W. Va. 688, 356 S.E.2d 181 (1987)
- In re Desarae M., 214 W. Va. 657, 591 S.E.2d 215 (2003)
- In re Edward B., 210 W. Va. 621, 558 S.E.2d 620 (2001)
- In re Emily G., 224 W. Va. 390, 686 S.E.2d 41 (2009)
- In re R.J.M., 164 W. Va. 496, 266 S.E.2d 114 (1980)