

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re: S.S.

No. 16-0748 (Taylor County 15-JA-27) · No. No. 16-0748 · Decided May 22, 2017

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the termination of a father's parental rights to S.S. The court held that incarceration, the father's failure to participate in rehabilitative efforts, and evidence that S.S. lived in the same residence where another child was physically abused supported termination without a less-restrictive alternative. The court also found no error in conducting the dispositional hearing without the incarcerated father's presence because he had not requested permission to attend.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; Chief Justice Allen H. Loughry II; Justice Robin Jean Davis; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Elizabeth D. Walker
JURISDICTION	West Virginia
DECIDED	May 22, 2017
DOCKET	No. 16-0748
DISPOSITION	affirmed
PROCEDURAL POSTURE	Father appealed the Circuit Court of Taylor County's order terminating his parental rights to S.S., arguing that the dispositional hearing was improperly conducted in his absence and that termination was improper.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo, while factual findings in a bench-tried abuse-and-neglect case are reviewed for clear error. Whether an incarcerated parent may attend a dispositional hearing concerning possible termination of parental rights is committed to the circuit court's sound discretion.
PRECEDENTIAL VALUE	Memorandum decision under West Virginia Rule of Appellate Procedure 21; no substantial question of law was presented.
PARTIES	Petitioner Father C.A. v. West Virginia Department of Health and Human Resources, S.S., by guardian ad litem

TOPICS

termination of parental rights

parental rights

family law procedure

appellate procedure

standard of review

PRACTICE AREAS

family law

juvenile law

termination of parental rights

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court erred by terminating Father's parental rights without imposing a less-restrictive dispositional alternative.
2. Whether the evidence supported termination of Father's parental rights to S.S. even though S.S. was not shown to have been directly abused.
3. Whether the circuit court erred by conducting the dispositional hearing without Father's presence while he was incarcerated.

HOLDINGS

1. Termination of parental rights may be ordered without intervening less-restrictive alternatives when there is no reasonable likelihood that the conditions of abuse or neglect can be substantially corrected in the near future and termination is necessary for the child's welfare. Father's continued incarceration prevented him from completing or participating in the terms of an improvement period, so the termination was not error.
2. The DHHR was not required to show that S.S. herself was directly abused before seeking termination of Father's parental rights. Because S.S. lived in the same residence while A.B. suffered extensive physical abuse and Father failed to provide a plausible explanation, termination of Father's parental rights to S.S. was not error.
3. Whether an incarcerated parent may attend a dispositional hearing concerning possible termination of parental rights is committed to the sound discretion of the circuit court. An incarcerated parent must inform the circuit court of the incarceration and request permission to attend; because the record contained no evidence that Father made such a request, the circuit court did not err by proceeding without him.

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.” (2)

“Whether an incarcerated parent may attend a dispositional hearing addressing the possible termination of his or her parental rights is a matter committed to the sound discretion of the circuit court.” (3)

FACTUAL BACKGROUND

The DHHR investigated after A.B., a child in Father's custody and household, was observed with multiple bruises in various stages of healing. Medical testing and testimony indicated that A.B. did not have a medical

condition or medication side effect explaining the bruising, and A.B. told CPS workers that Father had whipped him. Father denied physically abusing A.B. and did not provide a plausible explanation for the injuries; he was later incarcerated for grand larceny and unable to participate in an improvement period.

PROCEDURAL HISTORY

The DHHR filed an abuse-and-neglect petition after A.B., a child in Father's custody and household, was found with extensive unexplained bruising. Following adjudicatory hearings, the circuit court adjudicated Father as an abusing parent. After a dispositional hearing, during which Father was incarcerated for grand larceny, the circuit court terminated his parental rights to S.S. Father appealed, and the Supreme Court of Appeals 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)
- In re Katie S., 198 W. Va. 79, 479 S.E.2d 589 (1996)
- In re Christina L., 194 W. Va. 446, 460 S.E.2d 692 (1995)
- State ex rel. Jeanette H. v. Pancake, 207 W. Va. 154, 529 S.E.2d 865 (2000)
- In re Stephen Tyler R., 213 W. Va. 725, 584 S.E.2d 581 (2003)