

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re D.R.

No. 22-0348 (W. Va. Feb. 7, 2023) · No. No. 22-0348 (Randolph County 21-JA-39) · Decided February 7, 2023

SUMMARY

The Supreme Court of Appeals of West Virginia vacated and remanded an order terminating a father’s parental rights in an abuse and neglect proceeding. The court held that the circuit court and the Department of Health and Human Resources failed to address the statutory requirement that there be no reasonable likelihood the adjudicated conditions of abuse or neglect could be substantially corrected. The court directed the circuit court to hold a new dispositional hearing and properly apply the applicable statutory standards.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Elizabeth D. Walker; John A. Hutchison; William R. Wooton
JURISDICTION	West Virginia
DECIDED	February 7, 2023
DOCKET	No. 22-0348 (Randolph County 21-JA-39)
DISPOSITION	vacated
PROCEDURAL POSTURE	Appeal from Circuit Court of Randolph County order terminating parental rights
STANDARD OF REVIEW	Findings of fact reviewed for clear error; conclusions of law reviewed de novo
PRECEDENTIAL VALUE	published
PARTIES	C.R. (Father) v. D.R. (Child); West Virginia Department of Health and Human Resources

TOPICS

- termination of parental rights
- child custody
- standard of review
- appellate procedure
- family law

PRACTICE AREAS

- family law
- appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court erred in terminating petitioner's parental rights by focusing on child's best interests rather than making required statutory finding of no reasonable likelihood of correction
2. Whether the circuit court's single finding regarding incarceration was sufficient to support termination
3. Whether evidence of trauma from unsubstantiated allegations could form basis for termination

HOLDINGS

1. Termination was in error because the circuit court essentially ignored statutorily mandated findings required to terminate parental rights and focused almost entirely on child's best interests instead of first finding no reasonable likelihood conditions of abuse and neglect could be substantially corrected.
2. The circuit court's sole finding—that father was incarcerated with unclear circumstances—was insufficient because the court failed to perform required analysis of nature of offense, terms of confinement, and length of incarceration relative to child's best interests.
3. Evidence of trauma from disclosures of physical and sexual abuse for which father was not adjudicated cannot form the basis for finding father cannot correct conditions for which he was properly adjudicated.

KEY QUOTATIONS

“the order essentially ignored the statutorily mandated findings required to terminate parental rights and, instead, focused almost entirely on the child’s best interests” (at 2)

“The DHHR failed to meet its burden of proof because it willfully chose not to submit evidence as to whether there was no reasonable likelihood that petitioner could substantially correct the conditions of abuse and neglect at issue in this case” (at 2)

“the sole issue . . . before the [c]ourt today is . . . what is in the children’s best interest” (at 2)

“When no factors and circumstances other than incarceration are raised at a disposition hearing in a child abuse and neglect proceeding with regard to a parent’s ability to remedy the condition of abuse and neglect in the near future, the circuit court shall evaluate whether the best interests of a child are served by terminating the rights of the biological parent in light of the evidence before it. This would necessarily include but not be limited to consideration of the nature of the offense for which the parent is incarcerated, the terms of the confinement, and the length of the incarceration” (at 3)

FACTUAL BACKGROUND

Father had a long history of substance abuse including methamphetamine use, failed to provide adequate care, exposed child to inappropriate individuals, and allowed his mother to care for child despite her history of allowing sexual abuse of children. Father was incarcerated at times. Child displayed developmental delays, lack of hygiene, neglected education, and trauma. At dispositional hearing, DHHR presented disclosures of physical and sexual abuse but had not filed an amended petition regarding these allegations.

PROCEDURAL HISTORY

DHHR filed abuse and neglect petition in May 2021. Father stipulated to neglect in July 2021. At final dispositional hearing in March 2022, circuit court terminated father's parental rights. Father appealed.

DISPOSITION

vacated

REMAND INSTRUCTIONS

Circuit court to hold a new dispositional hearing during which DHHR must present evidence supporting its burden of proving no reasonable likelihood petitioner can substantially correct conditions of abuse and neglect for which petitioner was adjudicated, and for further proceedings consistent with applicable statutes and rules.

CASES CITED

- In re Cecil T., 228 W. Va. 89, 717 S.E.2d 873 (2011)
- State v. Carl B., 171 W. Va. 774, 301 S.E.2d 864 (1983)
- In re Willis, 157 W. Va. 225, 207 S.E.2d 129 (1973)
- State v. C.N.S., 173 W. Va. 651, 319 S.E.2d 775 (1984)
- In re S.W., 233 W. Va. 91, 755 S.E.2d 8 (2014)
- In re Edward B., 210 W. Va. 621, 558 S.E.2d 620 (2001)