

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re K. L.

In re K. L. · No. No. 22-0081 · Decided November 16, 2022

SUMMARY

The Supreme Court of Appeals of West Virginia reviewed the termination of a father's parental rights in an abuse and neglect proceeding. The court held that termination was improperly based on alleged substance abuse for which the father had not been adjudicated abusive or neglectful, and that the post-dispositional improvement period was not properly implemented. The termination portion of the dispositional order was vacated and the case was remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Justice Wooton; Justice Armstead
JURISDICTION	West Virginia
DECIDED	November 16, 2022
DOCKET	No. 22-0081
DISPOSITION	vacated_and_remanded
PROCEDURAL POSTURE	Petitioner-father appealed the Circuit Court of Ohio County's order terminating his parental rights in an abuse and neglect proceeding.
STANDARD OF REVIEW	The ultimate disposition and final order are reviewed for abuse of discretion, while the circuit court's underlying factual findings are reviewed under a clearly erroneous standard.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	K. L., petitioner-father v. West Virginia Department of Health and Human Resources, Guardian ad Litem for Infant K. L.

TOPICS

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

PRACTICE AREAS

- juvenile law
- child abuse and neglect
- termination of parental rights
- appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court could terminate the father's parental rights based principally on alleged substance abuse when he had not been adjudicated abusive or neglectful on that condition.
2. Whether the father's failure to drug screen could support termination for failure to participate in a post-dispositional improvement period that was not properly implemented under West Virginia Code § 49-4-610(3).
3. Whether alleged defects in the child's emergency removal and initial orders required reversal.
4. Whether the circuit court erred by failing to interview the child before termination.
5. Whether the circuit court erred by failing to impose a lesser disposition, including disposition five.

HOLDINGS

1. A circuit court may not fundamentally base termination of parental rights on a condition of abuse or neglect upon which the parent was never properly adjudicated.
2. A parent's failure to comply with an improvement-period requirement cannot support termination when the improvement period was not implemented with definite terms and a statutorily required individualized family case plan.
3. The alleged defects in the emergency removal and initial orders did not warrant relief in this appeal because the father waived or rendered those issues moot by failing to seek the child's return, consenting to the removal, and proceeding through adjudication.

KEY QUOTATIONS

“It was plain error for the circuit court to terminate[] the parental rights on the basis of allegations and issues which were never properly made subject of the adjudication.” (15)

“For the same reasons that we have established that disposition may not ensue absent an adjudication of abuse and/or neglect, termination of parental rights may not be fundamentally premised on conditions of abuse and/or neglect upon which a parent has not been properly adjudicated.” (18)

“The procedural and substantive requirements of West Virginia Code § 49-4-601 et seq., the Rules of Procedure for Child Abuse and Neglect, and our extensive body of caselaw are not mere guidelines.” (23-24)

“Without a family case plan, the individuals seeking to assist a parent are limited in their ability to formulate distinct goals, methods of achieving such goals, or means by which success will be judged.” (24)

FACTUAL BACKGROUND

The father and the child's mother were subject to an abuse and neglect petition involving medical and educational neglect and alleged substance abuse. The father stipulated only to medical and educational neglect and was adjudicated neglectful on that basis; he denied having a substance abuse disorder. Although the record included his methamphetamine-possession arrest, possession of synthetic urine, and refusal to drug screen, the circuit court found that DHHR had not established a substance abuse disorder and ordered a post-dispositional improvement period. The court later terminated the father's parental rights for failing to participate in the

improvement period by refusing to drug screen, despite the absence of definite court-ordered terms and a required family case plan.

PROCEDURAL HISTORY

DHHR filed an abuse and neglect petition alleging medical neglect, educational neglect, and substance abuse. The father stipulated to medical and educational neglect but was not adjudicated on substance abuse. After the circuit court ordered a post-dispositional improvement period without establishing definite terms or requiring a statutorily compliant family case plan, it terminated the father's parental rights based principally on his failure to drug screen. The Supreme Court of Appeals vacated the termination of the father's parental rights and remanded for further proceedings.

DISPOSITION

vacated_and_remanded

REMAND INSTRUCTIONS

Vacate the January 4, 2022, dispositional order terminating the father's parental rights and conduct further proceedings consistent with the opinion, including, as appropriate, reopening adjudication, amending the petition, and/or implementing a post-dispositional improvement period that complies with West Virginia Code § 49-4-610(3). The circuit court may consider intervening developments under West Virginia Rule of Appellate Procedure 11(j). The decision does not affect termination of the mother's parental rights.

CASES CITED

- McCormick v. Allstate Ins. Co., 197 W. Va. 415, 475 S.E.2d 507 (1996)
- In re S. W., 236 W. Va. 309, 779 S.E.2d 577 (2015)
- In re Edward B., 210 W. Va. 621, 558 S.E.2d 620 (2001)
- State v. Edward Charles L., 183 W. Va. 641, 398 S.E.2d 123 (1990)
- In re B. N., No. 16-1098, 2017 WL 2230138 (W. Va. May 22, 2017)
- In re R. Y., No. 16-1125, 2017 WL 5037071 (W. Va. Nov. 2, 2017)
- In re Lilith H., 231 W. Va. 170, 744 S.E.2d 280 (2013)
- In re A. P.-1, 241 W. Va. 688, 827 S.E.2d 830 (2019)
- In re Charity H., 215 W. Va. 208, 599 S.E.2d 631 (2004)
- W. Va. Dep't of Health and Human Res. ex rel. Wright v. Doris S., 197 W. Va. 489, 475 S.E.2d 865 (1996)
- State v. T. C., 172 W. Va. 47, 303 S.E.2d 685 (1983)
- In re J. G., 240 W. Va. 194, 809 S.E.2d 453 (2018)
- In re Desarae M., 214 W. Va. 657, 591 S.E.2d 215 (2003)
- State ex rel. W. Va. Dep't of Hum. Servs. v. Cheryl M., 177 W. Va. 688, 356 S.E.2d 181 (1987)
- State ex rel. Virginia M. v. Virgil Eugene S. II, 197 W. Va. 456, 475 S.E.2d 548 (1996)
- In re K. B., No. 18-0255, 2018 WL 6119921 (W. Va. Nov. 21, 2018)

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