

# SUPREME COURT OF APPEALS OF WEST VIRGINIA

## In re S.H.

No. 16-1126 (W. Va. June 9, 2017) · No. No. 16-1126 · Decided June 9, 2017

### SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the denial of a father’s motion challenging his voluntary relinquishment of parental rights. The court held that the record supported the circuit court’s finding that the relinquishment was made voluntarily and without fraud or duress.

### 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               | June 9, 2017                                                                                                                                                                                                                                                                            |
| DOCKET                | No. 16-1126                                                                                                                                                                                                                                                                             |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                |
| PROCEDURAL POSTURE    | Petitioner father appealed the Circuit Court of Marion County's order denying his motion for reconsideration of the order accepting his voluntary relinquishment of parental rights.                                                                                                    |
| 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 a definite and firm conviction that a mistake has been made. |
| PRECEDENTIAL VALUE    | nonprecedential memorandum decision                                                                                                                                                                                                                                                     |
| PARTIES               | J.H., petitioner father v. West Virginia Department of Health and Human Resources, S.H., through guardian ad litem                                                                                                                                                                      |

### TOPICS

[termination of parental rights](#) [parental rights](#) [domestic violence](#) [appellate procedure](#) [standard of review](#)

### PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether the circuit court properly treated petitioner's motion for reconsideration as a motion under State ex rel. Rose L. v. Pancake to determine whether his voluntary relinquishment of parental rights was procured by fraud or duress.
2. Whether the circuit court clearly erred in finding that petitioner's voluntary relinquishment of parental rights was free from fraud and duress.

## HOLDINGS

1. A circuit court may conduct a hearing to determine whether a parent's agreement relinquishing parental rights was entered into free from fraud and duress; because no authorized motion for reconsideration applied in this abuse and neglect proceeding, the court properly treated petitioner's filing as a motion under State ex rel. Rose L. v. Pancake.
2. The circuit court did not clearly err in finding that petitioner's voluntary relinquishment of parental rights was free from fraud and duress.

## KEY QUOTATIONS

*“Upon our review, we find no error in the circuit court’s ruling that petitioner’s relinquishment of parental rights was free from duress and fraud.” (3)*

*“We agree with the circuit court that there is simply no evidence of fraud or duress in the record.” (4)*

## FACTUAL BACKGROUND

The DHHR alleged that petitioner neglected S.H. through substance abuse and repeated domestic violence in the home. Petitioner stipulated to neglect, received improvement periods, and failed to comply consistently with drug screening and other services; he later tested positive for multiple substances and was arrested for heroin possession and obstructing an officer. At a January 2016 dispositional hearing, petitioner stated under oath that he understood the consequences of voluntarily relinquishing his parental rights, including that visitation was not guaranteed and that he had no control over the child's eventual adoptive placement. He later claimed that the relinquishment was induced by fraud or duress based on an expectation concerning visitation and adoption by the maternal grandmother.

## PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition in 2014 alleging substance abuse and repeated domestic violence. After petitioner stipulated to neglect, received and failed to comply with improvement periods, and experienced additional drug-related incidents, the circuit court accepted his voluntary relinquishment of parental rights by order entered March 11, 2016. Petitioner later sought reconsideration based on alleged fraud and duress, but the circuit court denied the motion on November 18, 2016. 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. Rose L. v. Pancake, 209 W. Va. 188, 544 S.E.2d 403 (2001)