

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re: A.C. and O.C.

No. 15-0475 (W. Va. Apr. 12, 2016) · No. No. 15-0475 · Decided April 12, 2016

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the termination of petitioner father W.C.'s custodial rights to A.C. and O.C. in an abuse and neglect proceeding. The court upheld the circuit court's finding that W.C. physically abused O.C. and concluded that he failed to substantially comply with improvement-period services, supporting termination under West Virginia law. The court also declined to address one assignment of error that lacked adequate legal authority.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; Chief Justice Menis E. Ketchum; Justice Robin Jean Davis; Justice Margaret L. Workman; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	April 12, 2016
DOCKET	No. 15-0475
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner Father W.C. appealed the Clay County Circuit Court's order terminating his custodial and parental rights to his children following abuse and neglect proceedings.
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. The reviewing court must affirm when the circuit court's account of the evidence is plausible in light of the record viewed in its entirety.
PRECEDENTIAL VALUE	Published memorandum decision; the opinion states that disposition by memorandum decision is appropriate under West Virginia Rule of Appellate Procedure 21.
PARTIES	W.C., Petitioner Father v. West Virginia Department of Health and Human Resources, Guardian ad litem for A.C. and O.C.

TOPICS

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

PRACTICE AREAS

family law juvenile abuse and neglect termination of parental rights appellate procedure evidence

QUESTIONS PRESENTED

1. Whether the circuit court clearly erred in finding that W.C. physically abused O.C.
2. Whether the circuit court erred by terminating W.C.'s custodial and parental rights when he claimed to have complied with the terms of his improvement periods.
3. Whether the circuit court erred by refusing to recognize that its physical-abuse finding was incorrect because O.C. had autism.

HOLDINGS

1. The circuit court did not clearly err in finding that W.C. physically abused O.C.; the eyewitness testimony, corroborated by the DHHR worker's observation of redness and bruising, was sufficient to establish abuse.
2. Termination was proper because W.C. failed to comply with the terms of his improvement periods, there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future, and termination was in the children's best interests.
3. The court declined to address the issue as inadequately developed because W.C. failed to cite legal authority as required by Rule 10(c)(7) of the West Virginia Rules of Appellate Procedure. In any event, the record supported the circuit court's physical-abuse finding.

KEY QUOTATIONS

“The evidence was clearly sufficient to establish a finding of abuse, and the circuit court was uniquely situated to determine which version of events was credible.” (at 3)

“Based on petitioner’s failure to maintain compliance with the terms of his improvement periods and the violent nature of the underlying incident, the circuit court properly found that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future and termination was in the children’s best interests.” (at 4)

FACTUAL BACKGROUND

The DHHR alleged that W.C. struck his six-year-old son O.C. multiple times, causing facial bruising. An eyewitness testified that W.C. beat O.C. about the head and body and pushed him to the ground, and a DHHR worker observed redness and bruising on O.C.'s face the same day. W.C. denied intentionally harming O.C. and claimed he was restraining his autistic son. Although W.C. initially participated in some services during his improvement periods, he discontinued services after moving out of state, stopped submitting to drug and alcohol screens, and had not visited the children in person for several months by the final dispositional hearing.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition alleging that W.C. physically abused O.C. After preliminary and adjudicatory hearings, the circuit court adjudicated W.C. an abusing parent and granted successive improvement periods. Following a final dispositional hearing, the circuit court found no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected and terminated W.C.'s custodial rights, with post-termination visitation available upon request. The Supreme Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- 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 Emily, 208 W. Va. 325, 339, 540 S.E.2d 542, 556 (2000)
- In re Travis W., 206 W. Va. 478, 525 S.E.2d 669 (1999)
- Michael D.C. v. Wanda L.C., 201 W. Va. 381, 388, 497 S.E.2d 531, 538 (1997)
- In re Katie S., 198 W. Va. 79, 479 S.E.2d 589 (1996)
- In re B.H., 233 W. Va. 57, 754 S.E.2d 743 (2014)