

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re V.R. and A.V.

In re V.R. and A.V. · No. 17-0933 · Decided March 12, 2018

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the termination of petitioner mother E.R.'s parental rights to V.R. and A.V. The court held that the children were properly adjudicated abused and neglected, that the delayed filing of the DHHR case plan did not warrant reversal, and that termination was supported by the evidence and was in the children's best interests.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; Chief Justice Margaret L. Workman; Justice Robin Jean Davis; Justice Menis E. Ketchum; Justice Allen H. Loughry II; Justice Elizabeth D. Walker
JURISDICTION	West Virginia
DECIDED	March 12, 2018
DOCKET	17-0933
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner Mother appealed the Circuit Court of Wetzel County's order terminating her parental rights to V.R. and A.V. The Supreme Court of Appeals of West Virginia affirmed by memorandum decision.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo. Factual findings in a bench-tried abuse and neglect case 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 was made.
PRECEDENTIAL VALUE	Published memorandum decision; the Court stated that no substantial question of law was presented and that no prejudicial error occurred.
PARTIES	E.R., Petitioner Mother v. West Virginia Department of Health and Human Resources, V.R. and A.V., through guardian ad litem

TOPICS

termination of parental rights

parental rights

family law procedure

standard of review

appellate procedure

PRACTICE AREAS

family law

child welfare

termination of parental rights

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court properly adjudicated petitioner as an abusing parent as to V.R. and A.V. when the petition alleged physical abuse of their sibling and that the children lived in the home.
2. Whether the circuit court erred by proceeding to disposition despite the DHHR's failure to file a family case plan at least five days before the dispositional hearing.
3. Whether the circuit court abused its discretion by rejecting petitioner's proposed voluntary relinquishment of her parental rights and proceeding to an involuntary termination determination.
4. Whether the circuit court erred by terminating petitioner's parental rights rather than imposing a less restrictive disposition under West Virginia Code § 49-4-604(b)(5).
5. Whether the circuit court and DHHR were required to take additional steps to secure a legally compliant permanent placement for V.R. and A.V.

HOLDINGS

1. A petition sufficiently alleged abuse of V.R. and A.V. because it alleged that petitioner physically abused their sibling while all three children resided in the home and were thereby at risk of abuse. The circuit court properly adjudicated petitioner as an abusing parent as to all three children.
2. The DHHR's failure to submit the family case plan at least five days before disposition did not require vacation of the dispositional order because petitioner was not prejudiced and the circuit court received and considered the case plan before entering the final order.
3. The circuit court acted within its discretion when it rejected petitioner's proposed voluntary relinquishment of parental rights and proceeded to an involuntary termination determination.
4. Termination of petitioner's parental rights was proper because the circuit court found no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future and found termination necessary for the children's welfare.
5. The circuit court and DHHR were required to analyze and secure a permanent placement for the children consistent with the governing rules, including periodic placement review and completion of permanent placement within twelve months of the dispositional order absent extraordinary circumstances.

KEY QUOTATIONS

“These findings shall not be set aside by a reviewing court unless clearly erroneous.” (3)

“A circuit court has discretion in an abuse and neglect proceeding to accept a proffered voluntary termination of parental rights, or to reject it and proceed to a decision on involuntary termination.” (4)

“Termination of parental rights, the most drastic remedy under the statutory provision covering the disposition of neglected children, W. Va.Code [§] 49-6-5 [now West Virginia Code § 49-4-604] . . . may be employed without the use of intervening less restrictive alternatives when it is found that there is no

reasonable likelihood under W. Va.Code [§] 49-6-5(b) [now West Virginia Code § 49-4-604(c)] . . . that conditions of neglect or abuse can be substantially corrected.” (5)

“The [twelve]-month period provided in Rule 43 of the West Virginia Rules of Procedures for Child Abuse and Neglect Proceedings for permanent placement of an abused and neglected child following the final dispositional order must be strictly followed except in the most extraordinary circumstances which are fully substantiated in the record.” (6)

FACTUAL BACKGROUND

The DHHR alleged that petitioner physically abused her son J.R., causing multiple contusions and a concussion, while V.R. and A.V. lived in the home and were exposed to the risk of abuse. Petitioner stipulated to the abuse of J.R., and the circuit court adjudicated her as an abusing parent as to all three children. Psychological and parental fitness evaluations identified concerning personality traits, a personality disorder, failure to accept responsibility, lack of a bond with the daughters, and a poor or nonexistent prognosis for parental improvement. The circuit court found no reasonable likelihood that the conditions of abuse and neglect could be corrected in the near future and terminated petitioner's parental rights.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition in January 2016 alleging that petitioner physically abused J.R. and that all three children were at imminent risk. In May 2016, petitioner stipulated to abusing J.R., and the circuit court adjudicated her as an abusing parent as to all three children; she later received a post-adjudicatory improvement period. After psychological evaluations, the circuit court denied or declined to continue rehabilitation, rejected petitioner's proposed voluntary relinquishment of her parental rights, conducted a dispositional hearing, and terminated her parental rights in an order entered July 11, 2017. Petitioner appealed, challenging adjudication, the untimely case plan, the rejection of relinquishment, and termination.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

Although affirming the dispositional order, the Court ordered the DHHR and circuit court to analyze the children's current placement for compliance with the definition of permanent out-of-home placement and to take further steps, including filing an abuse and neglect petition against Z.B. if deemed necessary. The circuit court was reminded to conduct placement review conferences at least every three months, achieve permanent placement within twelve months of the dispositional order absent extraordinary circumstances, prioritize adoption where appropriate, and maintain the guardian ad litem's involvement until permanent placement.

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 Christina L., 194 W. Va. 446, 460 S.E.2d 692 (1995)
- In re Edward B., 210 W. Va. 621, 624, 558 S.E.2d 620, 623 (2001)
- In re James G., 211 W. Va. 339, 566 S.E.2d 226 (2002)
- In re R.J.M., 164 W. Va. 496, 266 S.E.2d 114 (1980)
- In re Kristin Y., 227 W. Va. 558, 712 S.E.2d 55 (2011)
- State v. Michael M., 202 W. Va. 350, 504 S.E.2d 177 (1998)
- James M. v. Maynard, 185 W. Va. 648, 408 S.E.2d 400 (1991)