

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re A.W. and J.P.

No. 17-0717 · No. 17-0717 · Decided March 12, 2018

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the termination of petitioner father C.P.'s parental rights to A.W. and J.P. The court rejected challenges to the circuit court's credibility determination, its references to A.W. as a victim before the close of evidence, the filing of an amended petition, and the sufficiency of the evidence supporting termination. The court concluded that petitioner failed to comply with court-ordered alcohol restrictions and contact prohibitions, and that there was no reasonable likelihood that the conditions of abuse or neglect could be substantially corrected.

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	17-0717
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner Father C.P. appealed the circuit court's order terminating his parental rights in an abuse and neglect proceeding.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo. Factual findings in an abuse and neglect case are reviewed for clear error and will not be set aside unless the reviewing court is left with the definite and firm conviction that a mistake has been made.
PRECEDENTIAL VALUE	Published memorandum decision; precedential status is not otherwise specified in the opinion text.
PARTIES	Petitioner Father C.P. v. West Virginia Department of Health and Human Resources, A.W. and J.P., by guardian ad litem

TOPICS

termination of parental rights

parental rights

family law procedure

appellate procedure

harmless error

PRACTICE AREAS

juvenile law

family law

child welfare

QUESTIONS PRESENTED

1. Whether the circuit court clearly erred in finding that C.P. sexually propositioned A.W.
2. Whether the circuit court improperly referred to A.W. as a victim before the close of adjudicatory evidence.
3. Whether the circuit court erred in permitting the guardian ad litem to file an amended petition.
4. Whether any error in permitting the amended petition was prejudicial when C.P. was not adjudicated on the amended allegations.
5. Whether the evidence supported termination of C.P.'s parental rights.

HOLDINGS

1. The circuit court did not clearly err in finding A.W. credible and adjudicating C.P. an abusing parent based on his sexual propositions to A.W.
2. The circuit court's references to A.W. as a victim before the close of adjudicatory evidence did not constitute prejudicial error.
3. Any error in permitting the guardian ad litem to file the amended petition was harmless because the circuit court did not adjudicate C.P. based on the amended allegations.
4. The circuit court properly terminated C.P.'s parental rights because there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future and termination was necessary for the children's welfare.

KEY QUOTATIONS

“A reviewing court cannot assess witness credibility through a record. The trier of fact is uniquely situated to make such determinations and this Court is not in a position to, and will not, second guess such determinations.” (2)

“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)

FACTUAL BACKGROUND

A.W., who was nearly sixteen and had been placed in C.P.'s legal guardianship, reported that C.P. repeatedly propositioned her for sex, generally while intoxicated and when they were alone. C.P. denied the allegations, but

the circuit court found A.W. credible and adjudicated him an abusing parent. During the proceedings, C.P. repeatedly tested positive for alcohol and violated orders barring alcohol use and contact with J.P.'s mother, including through continued unwanted contact and alleged domestic-violence incidents. The circuit court concluded that the conditions of abuse and neglect were not reasonably likely to be corrected and terminated C.P.'s parental rights.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition in August 2016. After three adjudicatory hearings on the initial petition, the circuit court adjudicated C.P. an abusing parent based on his inappropriate sexual propositions to A.W. The court later permitted the guardian ad litem to file an amended petition, held additional adjudicatory hearings, and conducted a dispositional hearing. The circuit court denied C.P.'s request for an improvement period and terminated his parental rights. 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)
- Michael D.C. v. Wanda L.C., 201 W. Va. 381, 497 S.E.2d 531 (1997)
- State ex rel. Waldron v. Scott, 222 W. Va. 122, 663 S.E.2d 576 (2008)
- 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)

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