

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re: D.L.-1, D.L.-2, and G.L.

No. 16-1153 (W. Va. May 22, 2017) · No. No. 16-1153 · Decided May 22, 2017

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the termination of petitioner father L.W.'s parental rights to D.L.-1, D.L.-2, and G.L. The court rejected challenges to the adjudication, case plan, and termination, concluding that the petitioner stipulated to adjudication, failed to comply with improvement-period services, and was properly subject to termination. The decision is a memorandum decision issued per curiam.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	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	May 22, 2017
DOCKET	No. 16-1153
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner father appealed the Circuit Court of Jackson County's order terminating his parental rights in an abuse and neglect proceeding.
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 was made.
PRECEDENTIAL VALUE	Published memorandum decision
PARTIES	L.W., petitioner father v. West Virginia Department of Health and Human Resources, D.L.-1, D.L.-2, and G.L., 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

parental rights

termination of parental rights

appellate procedure

QUESTIONS PRESENTED

1. Whether petitioner could challenge the sufficiency of his adjudication as an abusing parent after voluntarily stipulating to the adjudication and failing to object below.
2. Whether the DHHR's family case plan adequately addressed the conditions of abuse and neglect, including substance abuse and domestic violence.
3. Whether the circuit court erred by conducting the dispositional hearing in petitioner's absence.
4. Whether the circuit court properly terminated petitioner's parental rights based on his failure to participate in the improvement period and the finding that there was no reasonable likelihood that the conditions of abuse or neglect could be substantially corrected.

HOLDINGS

1. Petitioner was not entitled to challenge the sufficiency of his adjudication on appeal because he voluntarily stipulated to the adjudication, failed to object, and thereby invited any alleged error.
2. The circuit court did not err in permitting the DHHR to file the family case plan because the plan included services reasonably designed to address the substance-abuse and domestic-violence conditions underlying the adjudication.
3. The circuit court did not violate petitioner's right to be heard by conducting the dispositional hearing in his absence because he had actual notice, failed to appear, did not request a continuance, and was represented by counsel at the hearing.
4. Termination of petitioner's parental rights was proper because he failed to participate in the improvement period, there was no reasonable likelihood that the conditions of abuse or neglect could be substantially corrected, and termination was necessary for the children's welfare.

KEY QUOTATIONS

“Although conclusions of law reached by a circuit court are subject to de novo review, when an action, such as an abuse and neglect case, is tried upon the facts without a jury, the circuit court shall make a determination based upon the evidence and shall make findings of fact and conclusions of law as to whether such child is abused or neglected.” (at 2)

“A litigant may not silently acquiesce to an alleged error, or actively contribute to such error, and then raise that error as a reason for reversal on appeal.” (at 3)

“The purpose of the family case plan . . . is to clearly set forth an organized, realistic method of identifying family problems and the logical steps to be used in resolving or lessening these problems.” (at 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.” (at 5)

FACTUAL BACKGROUND

The DHHR alleged that petitioner exposed the children to domestic violence and was involved in methamphetamine-related criminal conduct, including an indictment for exposing a child to methamphetamine. Petitioner stipulated to the domestic-violence allegations and admitted prior and pending drug-related offenses. During his post-adjudicatory improvement period, he completed only five of thirty-four required drug screens, failed to comply with parenting and adult life-skills services, and received a poor prognosis for improved parenting. The circuit court found that he was unwilling or unable to cooperate with the family case plan and terminated his parental rights as necessary for the children's welfare.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition in November 2015 based on allegations involving drug use and domestic violence. In February 2016, petitioner stipulated to allegations that he exposed the children to domestic violence and admitted prior and pending methamphetamine-related offenses. The circuit court granted him a post-adjudicatory improvement period, which he failed to complete. After a dispositional hearing at which petitioner did not appear but was represented by counsel, the circuit court terminated his parental rights on September 15, 2016. The Supreme Court of Appeals affirmed by memorandum decision.

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)
- Maples v. West Virginia Department of Commerce, 197 W. Va. 318, 475 S.E.2d 410 (1996)
- Hopkins v. DC Chapman Ventures, Inc., 228 W. Va. 213, 719 S.E.2d 381 (2011)
- State v. Riley, 151 W. Va. 364, 151 S.E.2d 308 (1966)
- Proudfoot v. Dan's Marine Service, Inc., 210 W. Va. 498, 558 S.E.2d 298 (2001)
- State ex rel. Department of Human Services v. Cheryl M., 177 W. Va. 688, 356 S.E.2d 181 (1987)
- In re Desarae M., 214 W. Va. 657, 591 S.E.2d 215 (2003)
- 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)

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/west-virginia-supreme-court-of-appeals-of-west-virginia/2017/in-re-d-l-1-d-l-2-and-g-l-f45ws7t8>