

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re M.K. & C.K.

No. 14-1117 (W. Va. Mar. 16, 2015) · No. No. 14-1117 · Decided March 16, 2015

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the termination of a father's parental rights in an abuse and neglect proceeding. The father argued that the circuit court lacked personal jurisdiction because he was not personally served with the abuse and neglect petition. The Court held that he made a general appearance, participated in the proceedings, and did not demonstrate prejudice from the lack of personal service.

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 Brent D. Benjamin; Justice Menis E. Ketchum; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	March 16, 2015
DOCKET	No. 14-1117
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner Father appealed an order of the Circuit Court of Wood County terminating his parental rights in an abuse and neglect proceeding.
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 has been made.
PRECEDENTIAL VALUE	Unpublished memorandum decision; limited precedential value under the West Virginia Rules of Appellate Procedure.
PARTIES	Petitioner Father v. West Virginia Department of Health and Human Resources, M.K. and C.K., by guardian ad litem

TOPICS

termination of parental rights

personal jurisdiction

service of process

appellate procedure

parental rights

PRACTICE AREAS

family law

juvenile abuse and neglect

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court lacked personal jurisdiction and therefore erred by proceeding to a dispositional hearing because Father was not personally served with the abuse and neglect petition.
2. Whether the circuit court's failure to personally serve Father required reversal where he made a general appearance and conceded that he suffered no prejudice.

HOLDINGS

1. The circuit court properly exercised personal jurisdiction because Father made a general appearance in the underlying proceedings despite the lack of personal service.
2. Reversal was not appropriate because Father made a general appearance and failed to demonstrate prejudice from the lack of personal service.

KEY QUOTATIONS

“A court acquires personal jurisdiction over a defendant only by service of its process upon him summoning him to appear, or by his voluntary general appearance in the absence of service.” (2)

“A ‘general appearance’ must be express or arise by implication from the defendant's seeking, taking, or agreeing to some step or proceeding in the cause beneficial to himself or detrimental to the plaintiff, other than one contesting the jurisdiction only.” (2)

“when substantial rights are not affected, reversal is not appropriate.” (2)

FACTUAL BACKGROUND

The DHHR alleged that Father operated a clandestine methamphetamine drug laboratory in his residence and failed to provide his two children with proper nutrition and hygiene. Father was not personally served with the abuse and neglect petition, but he appeared with counsel at the preliminary hearing, waived his right to that hearing, participated in multidisciplinary team meetings, attended visits with the children, and was represented throughout the proceedings. He did not attend the adjudicatory hearings but was represented by counsel, and the circuit court ultimately terminated his parental rights.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition alleging that Father operated a clandestine methamphetamine laboratory and failed to provide the children proper nutrition and hygiene. Father appeared with counsel at the preliminary hearing, participated in portions of the proceedings, and was represented by counsel at the adjudicatory and dispositional hearings, although he was not personally served with the petition. The circuit

court adjudicated him an abusive and neglectful parent and terminated his parental rights; 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)
- Patton v. Eicher, 85 W. Va. 465, 102 S.E. 124, 126 (1920)
- Fulton v. Ramsey, 67 W. Va. 321, 68 S.E. 381 (1910)
- Tennant v. Marion Health Care Found., 194 W. Va. 97, 459 S.E.2d 374 (1995)

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