

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re E.H., J.S., E.K., and C.K.

No. 22-0067 (W. Va. Nov. 17, 2022) · No. No. 22-0067 · Decided November 17, 2022

SUMMARY

The Supreme Court of Appeals of West Virginia vacated and remanded a dispositional order terminating a father’s parental rights because the order lacked sufficient findings of fact and conclusions of law required to support termination under West Virginia Code § 49-4-604(c)(6) and Rule 36(a) of the West Virginia Rules of Procedure for Child Abuse and Neglect Proceedings. The Court directed the circuit court to conduct any necessary further proceedings and enter an appropriate order addressing the statutory requirements, including sibling visitation.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Justice Walker; Justice Armstead
JURISDICTION	West Virginia
DECIDED	November 17, 2022
DOCKET	No. 22-0067
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	R.H. appealed the Mercer County Circuit Court's dispositional order terminating his parental rights to E.H. and J.S. in a child abuse and neglect proceeding.
STANDARD OF REVIEW	The Court reviews the final order and ultimate disposition for abuse of discretion and reviews the circuit court's underlying factual findings under a clearly erroneous standard.
PRECEDENTIAL VALUE	Published opinion; precedential under West Virginia law
PARTIES	R.H., petitioner-father v. State of West Virginia, Department of Health and Human Resources

TOPICS

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

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the circuit court's dispositional order adequately stated findings of fact and conclusions of law supporting termination of R.H.'s parental rights under West Virginia Code § 49-4-604(c)(6).
2. What standard of review applies to challenges to findings and conclusions in a child abuse and neglect dispositional order.
3. Whether the inadequate dispositional order required vacation and remand for compliance with the governing statute and procedural rule.

HOLDINGS

1. A dispositional order terminating parental rights under West Virginia Code § 49-4-604(c)(6) must contain factual findings and conclusions of law addressing both the absence of a reasonable likelihood that the conditions of abuse and neglect can be substantially corrected in the near future and the necessity of termination for the child's welfare.
2. When the disposition process established by the Rules of Procedure for Child Abuse and Neglect Proceedings and related statutes has been substantially disregarded or frustrated, the resulting dispositional order must be vacated and the case remanded for compliance with that process and entry of an appropriate order.
3. Challenges to findings and conclusions in a child abuse and neglect case are reviewed under a two-prong deferential standard: the final order and ultimate disposition for abuse of discretion, and underlying factual findings for clear error.

KEY QUOTATIONS

“Those are “distinct requirements” that must be “afforded their proper significance” under § 49-4-604(c)(6).” (7)

“Here, the order simply states that termination was necessary due to “aggravated circumstances,” with no further discussion.” (8)

“Where it appears from the record that the process established by the Rules of Procedure for Child Abuse and Neglect Proceedings and related statutes for the disposition of cases involving children adjudicated to be abused or neglected has been substantially disregarded or frustrated, the resulting order of disposition will be vacated and the case remanded for compliance with that process and entry of an appropriate dispositional order.” (9)

FACTUAL BACKGROUND

The Department alleged that R.H. engaged in domestic violence against B.H. and sexually abused B.H.'s child, C.K., while residing with the children. R.H. admitted exposing the children to domestic violence but denied sexually abusing C.K.; the circuit court nevertheless adjudicated him an abusing parent and later found by clear and convincing evidence that he had sexually abused C.K. At disposition, the circuit court terminated R.H.'s

parental rights to E.H. and J.S., but its written order merely cited aggravated circumstances and did not identify evidence supporting the statutory findings required for termination.

PROCEDURAL HISTORY

The Department of Health and Human Resources filed an abuse and neglect petition in January 2021. R.H. was adjudicated an abusing parent in September 2021, and the circuit court later found that he had sexually abused C.K. Following a December 13, 2021, dispositional hearing, the circuit court terminated R.H.'s parental rights under West Virginia Code § 49-4-604(c)(6) and entered a written order on December 27, 2021. The Supreme Court of Appeals vacated that order and remanded for further proceedings and entry of a compliant dispositional order.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Vacate the December 27, 2021 dispositional order and conduct any further proceedings necessary to permit the circuit court to enter a dispositional order containing the requisite findings of fact and conclusions of law under West Virginia Code § 49-4-604 and Rule 36(a). The circuit court should also formally address sibling visitation.

CASES CITED

- McCormick v. Allstate Ins. Co., 197 W. Va. 415, 475 S.E.2d 507 (1996)
- In re S.W., 236 W. Va. 309, 779 S.E.2d 577 (2015)
- In re Edward B., 210 W. Va. 621, 558 S.E.2d 620 (2001)
- In re K. S., 246 W. Va. 517, 874 S.E.2d 319 (2022)
- In re A. P., 245 W. Va. 248, 858 S.E.2d 873 (2021)
- State v. C.N.S., 173 W. Va. 651, 319 S.E.2d 775 (1984)
- James M. v. Maynard, 185 W. Va. 648, 408 S.E.2d 400 (1991)
- 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)
- Nicpon v. Nicpon, 157 N.W.2d 464 (Mich. Ct. App. 1968)