

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re J.E.-1 and Z.E.

No. 22-0039 (W. Va. Aug. 31, 2022) · No. No. 22-0039 · Decided August 31, 2022

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the termination of a father's parental rights in a child abuse and neglect proceeding. The court held that incarceration, considered together with the nature of the father's sex-offense convictions, lengthy sentence, inability to participate in services, and inability to provide suitable housing, supported termination. The court also rejected the father's claim that the circuit court was required to ascertain his competency because he had not presented sufficient evidence or authority supporting that argument.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice John A. Hutchison; Justice Elizabeth D. Walker; Justice Tim Armstead; Justice William R. Wooton; Justice C. Haley Bunn
JURISDICTION	West Virginia
DECIDED	August 31, 2022
DOCKET	No. 22-0039
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner father appealed the Circuit Court of Gilmer County's order terminating his parental rights in a child abuse and neglect proceeding.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo. Findings of fact in an abuse and neglect proceeding 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PRECEDENTIAL VALUE	Unpublished memorandum decision; no substantial question of law and no prejudicial error identified.
PARTIES	J.E.-2, petitioner father v. West Virginia Department of Health and Human Resources, Guardian ad litem for J.E.-1 and Z.E.

TOPICS

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

PRACTICE AREAS

juvenile law

family law

parental rights

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court improperly terminated petitioner's parental rights based solely on his incarceration.
2. Whether the circuit court was required to ascertain petitioner's competency or continue the dispositional hearing because a competency evaluation was being pursued in a separate habeas corpus proceeding.

HOLDINGS

1. Incarceration may be the sole basis for terminating parental rights, provided that the circuit court evaluates the child's best interests in light of the nature of the parent's offense, the terms and length of confinement, and the child's need for permanency, security, stability, and continuity.
2. Termination of parental rights may be ordered without first employing less-restrictive alternatives when there is no reasonable likelihood that the conditions of abuse or neglect can be substantially corrected.
3. Petitioner was not entitled to relief based on competency because he failed to identify authority imposing a competency-ascertainment duty in abuse and neglect proceedings, failed to request a competency evaluation in the case below, and failed to present evidence showing that he was incompetent or unable to understand the proceedings.

KEY QUOTATIONS

“this Court has never held that incarceration can not be the sole basis for terminating parental rights.” (3)

“Termination of parental rights, the most drastic remedy under the statutory provision covering the disposition of neglected children, [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 [West Virginia Code § 49-4-604(d)] that conditions of neglect or abuse can be substantially corrected.” (4)

FACTUAL BACKGROUND

Petitioner was convicted of two counts of incest, sexual abuse by a parent, and second-degree sexual assault involving his now-adult daughter, and received an aggregate sentence of thirty to seventy-five years in prison. The children were placed in their mother's custody, but a subsequent investigation found the mother's home in deplorable condition, with drugs, drug paraphernalia, insufficient food, dangerous conditions, and inadequate sanitation. The circuit court found that petitioner could not provide a suitable home or care for the children during his lengthy incarceration, and the mother's parental rights were also terminated.

PROCEDURAL HISTORY

The circuit court adjudicated petitioner as a neglectful parent after finding that he lacked a suitable home, had not provided for the children, and was serving a lengthy prison sentence following felony convictions. After a dispositional hearing, the 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. The Supreme Court of Appeals of West Virginia 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)
- In re S.W., 233 W. Va. 91, 755 S.E.2d 8 (2014)
- State ex rel. Lipscomb v. Joplin, 131 W. Va. 302, 47 S.E.2d 221 (1948)
- State v. Michael M., 202 W. Va. 350, 504 S.E.2d 177 (1998)
- 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. Myers, 229 W. Va. 238, 728 S.E.2d 112 (2012)