

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re T.R.

In re T.R. · No. 15-1235 · Decided June 6, 2016

SUMMARY

The West Virginia Supreme Court of Appeals affirmed an order terminating the petitioner mother's parental rights to T.R. The court held that the Department of Health and Human Resources had considered the maternal grandparents as a potential relative placement and that the omission of specific relative-placement information from the case plan did not substantially disregard or frustrate applicable abuse and neglect procedures.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Menis E. Ketchum; Justice Robin Jean Davis; Justice Brent D. Benjamin; Justice Margaret L. Workman; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	June 6, 2016
DOCKET	15-1235
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner mother appealed the Randolph County Circuit Court's order terminating her parental rights to T.R., arguing that the circuit court improperly proceeded to disposition because the DHHR failed to properly consider the child's maternal grandparents as a relative placement.
STANDARD OF REVIEW	Conclusions of law in an abuse and neglect case are reviewed de novo. Findings of fact 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. The circuit court's credibility determinations are afforded deference.
PRECEDENTIAL VALUE	Unpublished memorandum decision; the opinion states that it is issued under Rule 21.
PARTIES	J.R., petitioner mother v. West Virginia Department of Health and Human Resources, T.R., by guardian ad litem

TOPICS

termination of parental rights

parental rights

family law procedure

appellate procedure

standard of review

PRACTICE AREAS

juvenile abuse and neglect

termination of parental rights

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court erred by proceeding to disposition when the DHHR's case plan did not specifically identify the maternal grandparents as relatives contacted for potential placement.
2. Whether the DHHR's failure to include specific relative-placement information in the case plan substantially disregarded or frustrated the child abuse and neglect statutes and rules so as to require vacatur and remand.

HOLDINGS

1. The record did not support petitioner's claim that the DHHR failed to consider the maternal grandparents; the DHHR had considered them and found them unsuitable based on the circumstances of their residence and relationship with petitioner.
2. Although the DHHR failed to include in the case plan the relatives contacted for suitable placement as required by Rule 28(c)(2), the omission did not substantially disregard or frustrate the applicable abuse and neglect statutes and rules; therefore, the circuit court did not reversibly err by proceeding to disposition.
3. Legal conclusions are reviewed de novo, while factual findings are reviewed for clear error and credibility determinations are left primarily to the circuit court.

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." (2)

"Rule 28(c)(2) of the West Virginia Rules of Procedure for Child Abuse and Neglect Proceedings provides that a child's case plan shall identify relatives contacted to provide suitable placement for the child." (3)

"Given the narrow issue before us on appeal and our review of the record in this case, we find no merit to petitioner's claim that the circuit court erred in proceeding to disposition in this matter." (4)

FACTUAL BACKGROUND

The DHHR alleged that petitioner's parental rights to several older siblings had been involuntarily terminated in 2012 and that petitioner had not corrected the circumstances underlying those terminations. During the 2015 proceedings, petitioner identified the child's maternal grandparents as willing relative-placement options. The DHHR had visited the grandparents' home but concluded that placement was unsuitable because the

grandparents lived on the same family compound as petitioner, maintained close contact with her, and had asked the caseworker to leave and not return. The case plan stated that no kinship or relative options were available but did not specifically identify the grandparents.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition in March 2014, alleging that petitioner's parental rights to several older siblings had previously been involuntarily terminated and that the circumstances leading to those terminations had not changed. After the circuit court set aside a 2014 termination order because the burden had been illegally shifted to petitioner, it held new adjudicatory and dispositional proceedings in 2015. The court adjudicated petitioner an abusing parent, approved proceeding to disposition despite the case plan's lack of specificity regarding relative placement, and entered a November 18, 2015 order terminating petitioner's parental rights. The Supreme Court of Appeals 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)
- In re Emily, 208 W. Va. 325, 540 S.E.2d 542 (2000)
- In re Travis W., 206 W. Va. 478, 525 S.E.2d 669 (1999)
- Michael D.C. v. Wanda L.C., 201 W. Va. 381, 497 S.E.2d 531 (1997)
- In re Hunter H., 227 W. Va. 699, 715 S.E.2d 397 (2011)
- In re Emily G., 224 W. Va. 390, 686 S.E.2d 41 (2009)