

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re: A.S.-1, L.S., A.S.-2, B.C., B.R., C.R., I.S., D.S., and M.S.

In re A.S.-1 · No. No. 16-1215 · Decided June 19, 2017

SUMMARY

The West Virginia Supreme Court of Appeals reviewed a father’s appeal from an order terminating his parental, custodial, and guardianship rights in an abuse and neglect proceeding. The court affirmed the termination as to six children, concluding that the father received a meaningful improvement period and failed to comply with its terms. The matter was remanded for findings of fact and conclusions of law concerning three additional children.

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	June 19, 2017
DOCKET	No. 16-1215
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Petitioner Father A.S.-3 appealed the Mercer County Circuit Court's amended dispositional order terminating his parental, custodial, and guardianship rights to four children and his custodial rights to two other children. He argued that the circuit court erred by terminating his rights without providing a meaningful improvement period.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo. In an abuse and neglect case tried upon the facts without a jury, findings of fact 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PRECEDENTIAL VALUE	nonprecedential memorandum decision
PARTIES	A.S.-3, Petitioner Father v. West Virginia Department of Health and Human Resources, The children, through 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

child welfare appellate practice

QUESTIONS PRESENTED

1. Whether the circuit court erred by terminating petitioner's parental, custodial, and guardianship rights without providing him a meaningful improvement period.
2. Whether the circuit court's dispositional order was legally sufficient when it failed to include findings of fact and conclusions of law concerning I.S., D.S., and M.S.

HOLDINGS

1. Petitioner was provided a meaningful improvement period, and the circuit court properly terminated his rights after he understood the clearly defined requirements, violated those requirements through alcohol-related conduct, and failed to demonstrate the ability to correct the conditions of abuse and neglect.
2. The matter must be remanded for the circuit court to enter an amended order containing findings of fact and conclusions of law regarding the dispositions of I.S., D.S., and M.S.
3. Legal conclusions are reviewed de novo, while factual findings are reviewed for clear error and will be upheld if plausible in light of the record viewed as a whole.

KEY QUOTATIONS

“In this case, we do not find that petitioner was denied a meaningful improvement period.” (4)

“However, because no dispositional findings of fact or conclusions of law were made on the record or in the written dispositional order as to I.S., D.S., and M.S., we remand this matter to the circuit court for the entry of an amended order making dispositional findings of fact and conclusions of law as to those three children” (5)

“Affirmed and remanded.” (6)

FACTUAL BACKGROUND

The DHHR alleged that petitioner abused alcohol, engaged in violence in the presence of children, permitted excessive school absences, and while intoxicated gave one child a knife with instructions to cut the other children. Petitioner stipulated to the allegations and later received an improvement period requiring, among other things, sobriety, drug screening, batterer's intervention, parenting classes, and compliance with criminal proceedings. He repeatedly violated home incarceration through alcohol-related conduct, was incarcerated, and was later found by his psychologist to be unfit to parent, with a poor prognosis and extensive treatment needs.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition in July 2015. Petitioner stipulated to the allegations at an October 2015 adjudicatory hearing and was adjudicated an abusing parent. The circuit court granted him a post-adjudicatory improvement period in February 2016, but he violated its terms and the conditions of home

incarceration through repeated alcohol-related conduct and was incarcerated. Following dispositional hearings in August and October 2016, the circuit court entered an order terminating his rights; an amended order was entered on December 5, 2016. The Supreme Court affirmed the termination rulings concerning six children but remanded for findings of fact and conclusions of law concerning three children.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Mercer County Circuit Court must enter an amended dispositional order containing findings of fact and conclusions of law regarding I.S., D.S., and M.S., as required by West Virginia Code § 49-4-604(b) and Rule 36 of the West Virginia Rules of Procedure for Child Abuse and Neglect Proceedings. The termination and custody rulings concerning A.S.-1, L.S., A.S.-2, B.C., B.R., and C.R. were 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)
- State ex rel. W.Va. Dept. of Human Serv. v. Cheryl M., 177 W.Va. 688, 356 S.E.2d 181 (1987)
- State ex rel. Virginia M. v. Virgil Eugene S., 197 W.Va. 456, 475 S.E.2d 548 (1996)
- In re Timber M., 231 W.Va. 44, 743 S.E.2d 352 (2013)
- In re Jonathan Michael D., 194 W.Va. 20, 459 S.E.2d 131 (1995)
- In re Jamie Nicole H., 205 W.Va. 176, 517 S.E.2d 41 (1999)
- In re K.R., 229 W.Va. 733, 735 S.E.2d 882 (2012)
- Cartwright v. McComas, 223 W.Va. 161, 672 S.E.2d 297 (2008)
- State v. Myers, 204 W.Va. 449, 513 S.E.2d 676 (1998)
- Ringer v. John, 230 W.Va. 687, 742 S.E.2d 103 (2013)