

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re: B.A.

No. 15-0700 (Harrison County 14-JA-80-3 & 14-JA-81-3) · No. No. 15-0700 · Decided November 23, 2015

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the termination of petitioner father H.H.'s parental rights to B.A. The court rejected his due process, motion-to-dismiss, and evidentiary challenges, holding that he received adequate notice and an opportunity to defend against the abandonment allegations and that clear and convincing evidence supported the adjudication of abandonment.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	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	November 23, 2015
DOCKET	No. 15-0700
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner Father H.H. appealed the Circuit Court of Harrison County's order terminating his parental rights to B.A. after the circuit court adjudicated him as having abandoned the child.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo; findings of fact in a bench-tried abuse and neglect case are reviewed for clear error. The appellate court will not overturn a finding merely because it would have decided the case differently and must affirm if the circuit court's account of the evidence is plausible in light of the entire record.
PRECEDENTIAL VALUE	Unpublished memorandum decision; nonprecedential
PARTIES	H.H., Petitioner Father v. West Virginia Department of Health and Human Resources, B.A., by guardian ad litem

TOPICS

termination of parental rights

parental rights

due process

family law procedure

appellate procedure

PRACTICE AREAS

juvenile law

child welfare

parental rights

constitutional law

appellate procedure

QUESTIONS PRESENTED

1. Whether allowing the DHHR to amend the abuse and neglect petition to allege abandonment and reopening the adjudicatory hearing violated H.H.'s due process rights or denied him notice and an opportunity to be heard.
2. Whether the circuit court erred in denying H.H.'s motion to dismiss the first amended petition.
3. Whether the evidence was sufficient to support H.H.'s adjudication as having abandoned B.A.
4. Whether the circuit court erred in terminating H.H.'s parental rights.

HOLDINGS

1. The circuit court did not violate H.H.'s due process rights by permitting the DHHR to amend the petition to allege abandonment and reopening the adjudicatory hearing to address that allegation.
2. The circuit court properly denied H.H.'s motion to dismiss the first amended petition.
3. The evidence was sufficient to support H.H.'s adjudication as having abandoned B.A.
4. The Court affirmed the termination order and declined to address H.H.'s assertion that termination itself was improper because his brief did not adequately argue or support that assignment of error.

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.” (1-2)

“According to West Virginia Code § 49-6-2(c), a parent “shall be afforded a meaningful opportunity to be heard, including the opportunity to testify and to present and cross-examine witnesses.”” (2-3)

“If there is evidence . . . that the natural parent has both failed to financially support the child and failed to visit or otherwise communicate with the child in the [preceding] 6 months . . . , a circuit court shall presume the child has been abandoned.” (5-6)

FACTUAL BACKGROUND

B.A. suffered serious physical injuries, including burns and bruising, while in the care of his mother and stepfather. H.H. was B.A.'s biological father but had spent approximately twelve total hours visiting with the child during the child's four-year lifetime and had been incarcerated for substantial periods. The circuit court found that H.H. had not communicated with B.A. since at least March 2013, provided no financial support, and participated in no major medical, educational, or other life decisions concerning the child.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition in September 2014 and amended it in November 2014 to allege that H.H. failed to protect B.A. because of his incarceration. H.H. moved to dismiss the first amended petition. After evidence suggested abandonment, the DHHR filed a second amended petition, and the circuit court reopened the adjudicatory hearing and adjudicated H.H. as having abandoned B.A. Following a dispositional hearing, the circuit court terminated H.H.'s parental rights on June 18, 2015. 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)
- In Interest of S.C., 168 W. Va. 366, 284 S.E.2d 867 (1981)
- In re Joseph A., 199 W. Va. 438, 485 S.E.2d 176 (1997)
- Joshua D.R. v. David A.M., 231 W. Va. 545, 746 S.E.2d 536 (2013)
- In re Jeffries, 204 W. Va. 360, 512 S.E.2d 873 (1998)
- In re Carey L.B., 227 W. Va. 267, 708 S.E.2d 461 (2011)