

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re J.B. II

No. 19-0798 (Harrison County 17-JA-45-3) · No. No. 19-0798 · Decided June 25, 2020

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the denial of a father’s petition for a writ of habeas corpus challenging the termination of his parental rights. The court declined to recognize an ineffective-assistance-of-counsel claim in the abuse and neglect proceeding and held that the father lacked standing to challenge the failure to place the child with the paternal grandmother. The decision was issued as a memorandum decision under Rule 21 of the West Virginia Rules of Appellate Procedure.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; Chief Justice Tim Armstead; Justice Margaret L. Workman; Justice Elizabeth D. Walker; Justice Evan H. Jenkins; Justice John A. Hutchison
JURISDICTION	West Virginia
DECIDED	June 25, 2020
DOCKET	No. 19-0798
DISPOSITION	affirmed
PROCEDURAL POSTURE	Father appealed the Circuit Court of Harrison County's denial of his petition for a writ of habeas corpus challenging termination of his parental rights and asserting ineffective assistance of counsel and standing to advocate for placement with the child's paternal grandmother.
STANDARD OF REVIEW	In reviewing a habeas corpus action, the final order and ultimate disposition are reviewed for abuse of discretion, underlying factual findings are reviewed for clear error, and questions of law are reviewed de novo.
PRECEDENTIAL VALUE	published memorandum decision
PARTIES	J.B. Sr., Petitioner Father v. West Virginia Department of Health and Human Resources, J.B. II, by guardian ad litem

TOPICS

termination of parental rights

child custody

writ of certiorari

appellate procedure

standing

PRACTICE AREAS

family law

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QUESTIONS PRESENTED

1. Whether the circuit court erred by denying a habeas corpus petition challenging termination of parental rights and asserting ineffective assistance of counsel.
2. Whether the father had standing to challenge the DHHR's failure to place the child with the paternal grandmother.
3. Whether the child's guardian ad litem provided ineffective assistance by advocating for termination of the father's parental rights.

HOLDINGS

1. The court declined to recognize a claim of ineffective assistance of counsel in an abuse and neglect proceeding through habeas corpus, direct appeal, or otherwise, absent a compelling argument to do so; therefore, denial of the father's habeas petition was proper.
2. The father lacked standing to advocate for the paternal grandmother's preferred placement of the child because the alleged placement right belonged to the grandmother, who had not moved to intervene.
3. Under the circumstances of this case, the guardian ad litem provided effective assistance by advocating for termination of the father's parental rights.

KEY QUOTATIONS

"Absent a compelling argument to do so, we decline to recognize a claim for ineffective assistance of counsel in this case and find that the circuit court did not err in denying petitioner relief." (3)

"Permanent placement of the child in the grandmother's home is a privilege that she would enjoy, not petitioner, and it is she who must advocate for that position." (4)

FACTUAL BACKGROUND

The DHHR filed an abuse and neglect petition after the child and mother were found in a motel room containing drug paraphernalia within the child's reach, while the mother appeared to be under the influence. The father stipulated that he subjected the child to unsafe living conditions and that the child had excessive school absences. He remained incarcerated during his post-adjudicatory improvement period and was unable to participate in recommended services, leading the circuit court to terminate his parental and custodial rights. The child remained in a foster placement, and the father later sought habeas relief and advocated placement with the paternal grandmother.

PROCEDURAL HISTORY

The circuit court adjudicated petitioner as an abusing parent after he stipulated to allegations that he subjected the child to unsafe living conditions and excessive school absences. After petitioner remained incarcerated and failed to participate in his improvement period, the circuit court terminated his parental and custodial rights by order entered April 24, 2018. Petitioner did not appeal that order. He later filed a habeas corpus petition challenging the termination and related placement decisions, which the circuit court denied on August 7, 2019. The Supreme Court of Appeals of West Virginia 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 re J.B., No. 18-0774, 2019 WL 181498 (Jan. 14, 2019) (memorandum decision)
- Mathena v. Haines, 219 W. Va. 417, 633 S.E.2d 771 (2006)
- Anstey v. Ballard, 237 W. Va. 411, 787 S.E.2d 864 (2016)
- Snyder v. Callaghan, 168 W. Va. 265, 279, 284 S.E.2d 241, 250 (1981)
- Kanawha Cty. Pub. Library Bd. v. Bd. of Educ. of Cty. of Kanawha, 231 W. Va. 386, 398, 745 S.E.2d 424, 436 (2013)
- In re J.G., No. 16-0337, 2016 WL 4611246, at *3 (W. Va. Sept. 6, 2016) (memorandum decision)
- In re B.H., 233 W. Va. 57, 754 S.E.2d 743 (2014)

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