

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re A.A.-1 and A.A.-2

No. 16-0622 (W. Va. Nov. 14, 2016) · No. No. 16-0622 · Decided November 14, 2016

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the termination of M.A.'s parental rights to A.A.-1 and A.A.-2. The court held that his continued relationship with a person previously found to be an inappropriate caretaker, despite court orders and warnings, supported adjudication as an abusing parent and demonstrated that the conditions of neglect were not reasonably likely to be corrected.

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	November 14, 2016
DOCKET	No. 16-0622
DISPOSITION	affirmed
PROCEDURAL POSTURE	Father appealed an order of the Circuit Court of Marion County adjudicating him as an abusing parent and terminating his parental rights to A.A.-1 and A.A.-2.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo. Factual findings in an abuse and neglect case tried without a jury are reviewed for clear error and will not be overturned unless the reviewing court is left with a definite and firm conviction that a mistake was made. The circuit court's credibility determinations are given deference.
PRECEDENTIAL VALUE	memorandum decision; no substantial question of law and no prejudicial error
PARTIES	M.A., Petitioner Father v. West Virginia Department of Health and Human Resources, Guardian ad litem for A.A.-1 and A.A.-2

TOPICS

termination of parental rights

parental rights

family law procedure

standard of review

appellate procedure

PRACTICE AREAS

family law

juvenile law

child welfare

QUESTIONS PRESENTED

1. Whether the circuit court properly adjudicated Father as an abusing parent based on his continued relationship with and proposed exposure of the children to P.B., despite orders and evidence indicating that P.B. was an inappropriate caretaker.
2. Whether the circuit court properly terminated Father's parental rights based on the absence of a reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future and the children's welfare requiring termination.

HOLDINGS

1. A parent's lack of physical custody does not alone foreclose an adjudication of neglect; a parent without physical custody may still fail to provide proper supervision when the totality of the circumstances shows that the child's mental health is threatened.
2. The evidence supported adjudicating Father as an abusing parent because his continued relationship with P.B., despite knowledge of her prior involuntary terminations and court orders prohibiting her contact with the children, threatened the children's welfare.
3. Termination was proper because Father had not corrected the conditions of neglect, there was no reasonable likelihood that those conditions could be substantially corrected in the near future, and the children's welfare required termination.

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.” (3)

“Under that definition, while lack of physical custody may not alone constitute neglect, it does not foreclose such a finding given the totality of the circumstances.” (4)

“Therefore, a parent’s refusal to comply with the requirement that the parent sever a relationship with a person deemed inappropriate to have around children may be sufficient to support a finding as to the reasonable likelihood that the conditions of abuse or neglect may be corrected.” (5)

FACTUAL BACKGROUND

Father continued a relationship and cohabitation with P.B., despite knowing that P.B. had previously suffered multiple involuntary terminations of parental rights and that court orders prohibited her from contacting his children. Evidence showed that at least one child was afraid of P.B. and trembled when P.B.'s name was

mentioned. Father continued to defend P.B. as an appropriate caretaker, failed to attend therapy and other rehabilitative efforts, and traveled to Arizona to be with P.B. instead of attending a later adjudicatory hearing.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition in June 2015 and amended it in March 2016 to allege that Father continued to live with and defend P.B., whom prior courts had determined to be an inappropriate caretaker and who was subject to orders prohibiting contact with the children. After adjudicatory and dispositional hearings, the circuit court found that Father was an abusing parent, that the conditions of abuse and neglect could not be substantially corrected in the near future, and that termination was required. The Supreme Court of Appeals of West Virginia affirmed the June 1, 2016 termination order 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 Emily, 208 W. Va. 325, 339, 540 S.E.2d 542, 556 (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, 388, 497 S.E.2d 531, 538 (1997)
- In re A.T. & A.P., No. 12-0054, 2012 WL 3155779, at *6 (W. Va. June 25, 2012)

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