

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re: B.R.-2

In re B.R.-2 · No. No. 16-1230 · Decided June 19, 2017

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the termination of petitioner mother J.R.'s parental rights to B.R.-2. The court held that clear and convincing evidence supported her adjudication as an abusing parent based on continued controlled-substance use and failure to remedy conditions underlying a prior involuntary termination of parental rights.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per curiam; 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. 16-1230
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner Mother J.R. appealed the Webster County Circuit Court's order terminating her parental rights to B.R.-2. She challenged the adjudication that she was an abusing parent, arguing that the evidence did not establish that she failed to correct the conditions underlying the prior involuntary termination of her parental rights to older children.
STANDARD OF REVIEW	Conclusions of law in an abuse and neglect case are reviewed de novo. Factual findings 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; findings must be affirmed when the circuit court's account of the evidence is plausible in light of the record viewed in its entirety.
PRECEDENTIAL VALUE	Memorandum decision affirming the circuit court; the opinion states that it is issued under West Virginia Rule of Appellate Procedure 21.
PARTIES	Petitioner Mother J.R. v. West Virginia Department of Health and Human Resources, Guardian ad litem for B.R.-2

TOPICS

termination of parental rights

parental rights

family law procedure

appellate procedure

standard of review

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the circuit court properly adjudicated petitioner as an abusing parent based on clear and convincing evidence that she continued to use controlled substances and failed to correct the conditions that led to the prior involuntary termination of her parental rights.
2. Whether the circuit court's adjudication was sufficiently supported by evidence concerning the prior involuntary termination and petitioner's efforts, or lack of efforts, to remedy the conditions underlying that termination.

HOLDINGS

1. The circuit court properly adjudicated petitioner as an abusing parent because clear and convincing evidence showed that she continued to use controlled substances, including Xanax, and failed to correct the conditions that led to the prior abuse and neglect proceeding.
2. When a parent previously had parental rights to a sibling involuntarily terminated, the court must review whether the parent remedied the problems leading to that termination, and the prior termination lowers the minimum evidentiary threshold for termination when a statutory factor is present; the prior termination does not itself mandate termination.
3. The circuit court's findings were not clearly erroneous because its account of the evidence was plausible in light of the record as a whole.

KEY QUOTATIONS

"These findings shall not be set aside by a reviewing court unless clearly erroneous." (3)

"Where there has been a prior involuntary termination of parental rights to a sibling, the issue of whether the parent has remedied the problems which led to the prior involuntary termination sufficient to parent a subsequently-born child must, at minimum, be reviewed by a court" (3)

FACTUAL BACKGROUND

Petitioner previously lost her parental rights to two older children after the DHHR alleged that she operated a methamphetamine laboratory in their presence, and the prior dispositional order required her to remain drug- and alcohol-free and submit to random screening. After petitioner gave birth to B.R.-2 in October 2015, both petitioner and the child tested positive for Xanax and hydrocodone. The obstetrician testified that he prescribed hydrocodone but did not recall prescribing Xanax and believed the child had been habituated to medication and would experience withdrawal. Petitioner admitted continued use of controlled substances and did not recall the prior court order prohibiting such use.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition after B.R.-2 and petitioner tested positive for Xanax and hydrocodone at the child's birth, citing petitioner's prior involuntary termination of parental rights. The circuit court denied petitioner a pre-adjudicatory improvement period, adjudicated her an abusing parent on March 7, 2016, and terminated her parental rights by order entered November 23, 2016. 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)
- Brown v. Gobble, 196 W. Va. 559, 474 S.E.2d 489 (1996)
- In re F.S. and Z.S., 233 W. Va. 538, 759 S.E.2d 769 (2014)
- In re George Glen B. Jr., 205 W. Va. 435, 518 S.E.2d 865 (1999)

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