

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re Tiffany P., 215 W. Va. 622

600 S.E.2d 334 (2004) · No. No. 31608 · Decided June 25, 2004

SUMMARY

The Supreme Court of Appeals of West Virginia reviewed the termination of Bobby F.'s parental rights to Alexandria F. and Cheyenne F. The court held that the evidence did not warrant termination because Bobby F. was no longer a custodial parent and the record did not establish that he abused the children. It reversed and remanded for supervised visitation, requiring that visitation be strictly supervised.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; Justice Starcher; Justice McGraw
JURISDICTION	West Virginia
DECIDED	June 25, 2004
DOCKET	No. 31608
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Bobby F. appealed a final order terminating his parental rights to Alexandria F. and Cheyenne F. and denying post-termination visitation.
STANDARD OF REVIEW	In abuse and neglect appeals, conclusions of law are reviewed de novo, while factual findings are reviewed for clear error. A reviewing court may not reverse a plausible factual account merely because it would have decided the case differently.
PRECEDENTIAL VALUE	Published and precedential opinion of the Supreme Court of Appeals of West Virginia
PARTIES	Bobby F. v. West Virginia Department of Health and Human Resources

TOPICS

- termination of parental rights
- parental rights
- family law procedure
- child custody
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the evidence supported termination of Bobby F.'s parental rights.
2. Whether Bobby F. was entitled to supervised visitation with his children after the circuit court declined to terminate his parental rights.

HOLDINGS

1. Termination of Bobby F.'s parental rights was not warranted because the record did not show that termination was the least restrictive alternative or that the children's welfare would be seriously threatened without termination.
2. Because termination was inappropriate, Bobby F.'s visitation with the children had to be closely, strictly, and constantly supervised.

KEY QUOTATIONS

"A natural parent of an infant child does not forfeit his or her parental right to the custody of the child merely by reason of having been convicted of one or more charges of criminal offenses." (215 W. Va. at 627)

"For that reason, his visitation with the children must be closely, strictly, and constantly supervised." (215 W. Va. at 628-29)

FACTUAL BACKGROUND

The DHHR removed the children from a home where Bobby F. and Christine P. lived amid concerns about poor conditions, inadequate supervision, bruises and bites, domestic violence, Bobby F.'s untreated paranoid schizophrenia, and criminal conduct. The children were later returned to Christine P.'s custody, and the DHHR did not recommend termination of Bobby F.'s parental rights; instead, it recommended supervised visitation. Although Bobby F. was not suitable to serve as a custodial parent, the record did not establish that he had abused Alexandria F. or Cheyenne F., and he maintained a strong bond with them.

PROCEDURAL HISTORY

The DHHR obtained emergency custody of four children after concerns regarding the home, supervision, domestic violence, Bobby F.'s mental illness and medication compliance, and related criminal conduct. After an adjudicatory hearing, the circuit court found the children abused and neglected but returned them to Christine P.'s custody. The circuit court later terminated Bobby F.'s parental rights and denied post-termination visitation, and Bobby F. appealed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The circuit court was directed to enter an order consistent with the opinion providing that any visitation by Bobby F. with Alexandria F. and Cheyenne F. must be strictly supervised.

CASES CITED

- In re Emily, 208 W. Va. 325, 540 S.E.2d 542 (2000)
- In the Interest of Tiffany Marie S., 196 W. Va. 223, 470 S.E.2d 177 (1996)
- In re R.J.M., 164 W. Va. 496, 266 S.E.2d 114 (1980)
- In re Aaron Thomas M., 212 W. Va. 604, 575 S.E.2d 214 (2002)
- State ex rel. Acton v. Flowers, 154 W. Va. 209, 174 S.E.2d 742 (1970)
- Michael K.T. v. Tina L.T., 182 W. Va. 399, 387 S.E.2d 866 (1989)
- State ex rel. Cash v. Lively, 155 W. Va. 801, 187 S.E.2d 601 (1972)
- State ex rel. Lipscomb v. Joplin, 131 W. Va. 302, 47 S.E.2d 221 (1948)