

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re A.N. and C.N.

In re A.N. and C.N. · No. 18-0446 · Decided March 4, 2019

SUMMARY

The Supreme Court of Appeals of West Virginia reviewed an abuse and neglect proceeding involving a father's parental rights to two children. The court affirmed termination of the father's parental rights as to A.N., but reversed the circuit court's decision to return C.N. to the father's care, custody, and control, remanding for further proceedings.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Justice Workman
JURISDICTION	West Virginia
DECIDED	March 4, 2019
DOCKET	18-0446
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The father appealed a circuit court order terminating his parental rights to A.N. while allowing him to retain parental rights to C.N. The Supreme Court of Appeals affirmed the termination as to A.N., but sua sponte reviewed the custodial disposition as to C.N., reversed that portion of the order, and remanded.
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 and will not be set aside unless the reviewing court is left with a definite and firm conviction that a mistake has been made. The Court is guided by the children's health and welfare and may sua sponte notice plain error when a custodial placement may place a child at risk.
PRECEDENTIAL VALUE	Published opinion; precedential under West Virginia law.
PARTIES	C.N., father of A.N. and C.N. v. West Virginia Department of Health and Human Resources, Guardian ad Litem

TOPICS

termination of parental rights

guardianships

guardian ad litem

appellate procedure

standard of review

PRACTICE AREAS

family law

juvenile law

child protection

QUESTIONS PRESENTED

1. Whether the circuit court erred by terminating the father's parental rights to A.N. despite allowing him to retain parental rights to C.N.
2. Whether the evidence established that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected and that termination of the father's parental rights to A.N. was necessary for her welfare.
3. Whether the circuit court erred by denying the father's request for a post-dispositional improvement period.
4. Whether the circuit court plainly erred by returning C.N. to the father's custody without adequately evaluating the father's parental fitness, the child's treatment needs, and the safety of the placement.

HOLDINGS

1. The circuit court properly terminated the father's parental rights to A.N. because clear and convincing evidence showed that A.N. suffered a nonaccidental injury while in the father's custody, the father failed to explain or accept responsibility for the injury, the conditions of abuse and neglect were not reasonably correctable, and termination was necessary for A.N.'s welfare.
2. The circuit court did not err by denying the father's request for a post-dispositional improvement period.
3. The circuit court plainly erred by allowing the father to retain full parental rights and by returning C.N. to his custody without adequately resolving the court's contradictory findings or developing evidence concerning the father's parental fitness and the child's safety.
4. On remand, the circuit court must immediately monitor the father's current custody of C.N., develop an intensive treatment plan, direct DHHR monitoring, and provide a gradual transition if C.N. is removed from the father's custody.

KEY QUOTATIONS

"We are befuddled by these conclusions which are totally inconsistent with the dispositions, with neither reasoning nor examination of relevant case law." (p. 22)

"Our review of the appendix record leads us to the inescapable conclusion that the circuit court's order terminating the petitioner's parental rights to A.N., but not to C.N., contains critical inconsistencies between specific factual findings and the dispositions ordered." (p. 28)

"Affirmed, in part; Reversed, in part, and remanded for further proceedings." (p. 30)

FACTUAL BACKGROUND

The father and mother were legally married but separated, and the mother had significant substance-abuse and parenting problems. The father stipulated that he failed to protect the children by leaving them in the mother's care despite knowing or having reason to know of her drug and alcohol abuse. After a period of services and reunification, A.N., a severely disabled child, sustained extensive dark bruising to her buttocks and thigh within a week of returning to the father's home; no one accepted responsibility for the injury, and the father's explanation was found not credible. C.N. exhibited troubling sexualized behaviors and required intensive supervision, while the record lacked a complete evaluation of the father's parental fitness after the children's second removal.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition after the children's mother crashed a vehicle while under the influence of drugs and the father allegedly failed to protect the children from her substance abuse. The father stipulated to abuse and neglect, received a post-adjudicatory improvement period, and was reunified with the children. After A.N. sustained extensive unexplained bruising within a week of reunification, both children were again removed. Following dispositional hearings, the circuit court terminated the father's parental rights to A.N. but ordered that C.N. be transitioned back to the father's custody. The father appealed the termination concerning A.N.; the Supreme Court also examined the disposition concerning C.N. under its authority to recognize plain error affecting child safety.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The termination of the father's parental rights to A.N. remains affirmed. The disposition concerning C.N. is reversed and remanded for expedited further proceedings. The circuit court must re-examine C.N.'s placement, immediately monitor the father's current custody, establish an intensive therapy plan for C.N., direct DHHR to monitor his progress, and adequately evaluate the father's parental fitness and the child's safety. If C.N. is removed, the court should provide a gradual transition whenever possible and determine whether any post-termination visitation should be supervised.

CASES CITED

- In re Tiffany Marie S., 196 W. Va. 223, 470 S.E.2d 177 (1996)
- In re Katie S., 198 W. Va. 79, 479 S.E.2d 589 (1996)
- In re Jeffrey R.L., 190 W. Va. 24, 435 S.E.2d 162 (1993)
- In re Taylor B., 201 W. Va. 60, 491 S.E.2d 607 (1997)
- In re R.J.M., 164 W. Va. 496, 266 S.E.2d 114 (1980)
- In re Cecil T., 228 W. Va. 89, 717 S.E.2d 873 (2011)
- In re Timber M., 231 W. Va. 44, 743 S.E.2d 352 (2013)
- In re Scottie D., 185 W. Va. 191, 406 S.E.2d 214 (1991)
- James M. v. Maynard, 185 W. Va. 648, 408 S.E.2d 400 (1991)

- In re Carol B., 209 W. Va. 658, 550 S.E.2d 636 (2001)
- In re Charity H., 215 W. Va. 208, 599 S.E.2d 631 (2004)
- W. Va. Dep't of Health & Human Res. v. Doris S., 197 W. Va. 489, 475 S.E.2d 865 (1996)
- In re K.L., 233 W. Va. 547, 759 S.E.2d 778 (2014)
- State v. Myers, 204 W. Va. 449, 513 S.E.2d 676 (1998)
- State v. Miller, 194 W. Va. 3, 459 S.E.2d 114 (1995)
- In re S.W., 233 W. Va. 91, 755 S.E.2d 8 (2014)
- In re J.F., 2013 WL 2631307 (W. Va. June 12, 2013)
- In re Isaiah, 228 W. Va. 176, 718 S.E.2d 775 (2010)
- In re Emily, 208 W. Va. 325, 540 S.E.2d 542 (2000)
- State ex rel. W. Va. Dep't of Human Servs. v. Cheryl M., 177 W. Va. 688, 356 S.E.2d 181 (1987)
- State ex rel. C.H. v. Faircloth, 240 W. Va. 729, 815 S.E.2d 540 (2018)
- In re Jonathan G., 198 W. Va. 716, 482 S.E.2d 893 (1996)
- State ex rel. Amy M. v. Kaufman, 196 W. Va. 251, 470 S.E.2d 205 (1996)
- In re Lilith H., 231 W. Va. 170, 744 S.E.2d 280 (2013)