

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re S.S.-1, A.S., S.S.-2, and G.S.

No. 17-0460 (W. Va. Nov. 22, 2017) · No. No. 17-0460 · Decided November 22, 2017

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the termination of petitioner father's parental rights in an abuse and neglect proceeding. The court declined to recognize a claim of ineffective assistance of counsel in abuse and neglect proceedings and held that the alleged deficiencies did not warrant relief under the circumstances.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per curiam; Chief Justice Allen H. Loughry II; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Elizabeth D. Walker; Justice Robin Jean Davis
JURISDICTION	West Virginia
DECIDED	November 22, 2017
DOCKET	No. 17-0460
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner father appealed the Circuit Court of Mineral County's order terminating his parental rights following an abuse and neglect proceeding. On appeal, he argued that he received ineffective assistance of counsel.
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 set aside unless the reviewing court is left with a definite and firm conviction that a mistake was made.
PRECEDENTIAL VALUE	Nonprecedential memorandum decision under Rule 21 of the West Virginia Rules of Appellate Procedure
PARTIES	W.S., petitioner father v. West Virginia Department of Health and Human Resources, S.S.-1, A.S., S.S.-2, and G.S., through their guardian ad litem

TOPICS

termination of parental rights

parental rights

appellate procedure

standard of review

evidence

PRACTICE AREAS

juvenile abuse and neglect

parental rights

appellate procedure

ineffective assistance of counsel

evidence

QUESTIONS PRESENTED

1. Whether West Virginia recognizes a claim of ineffective assistance of counsel in an abuse and neglect proceeding.
2. Whether counsel's alleged failures to present evidence concerning prior CPS investigations, make an argument at the close of adjudicatory evidence, and challenge the sufficiency of the evidence constituted ineffective assistance requiring relief.

HOLDINGS

1. The court declined to recognize a claim of ineffective assistance of counsel in an abuse and neglect proceeding.
2. Petitioner was not entitled to relief because the asserted deficiencies did not establish ineffective assistance or prejudicial error.

KEY QUOTATIONS

"It is important to note that this Court has never recognized a claim of ineffective assistance of counsel in an abuse and neglect proceeding, and we decline to do so here, especially in light of the fact that, under the limited circumstances of this case, petitioner's counsel provided him with effective representation below." (2)

"For the foregoing reasons, we find no error in the decision of the circuit court, and its May 9, 2017, order is hereby affirmed." (3)

FACTUAL BACKGROUND

The DHHR alleged that petitioner sexually abused S.S.-2, watched pornography and masturbated in the child's presence, fondled her breasts, and used drugs during the incident. S.S.-2 consistently disclosed the abuse to five adults, while another child reported petitioner's drug use and G.S. reported that petitioner shouted at, kicked, and hit the children when angry. Petitioner admitted that he was addicted to drugs but denied that his addiction affected his parenting; the circuit court found that testimony not credible.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition in December 2016 after allegations that petitioner sexually abused S.S.-2 and abused drugs and physically mistreated the children. Following an adjudicatory hearing in April 2017, the circuit court found petitioner to be an abusing parent, and after a dispositional hearing in May 2017 terminated his parental rights. The Supreme Court of Appeals affirmed the May 9, 2017, dispositional order.

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)

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