

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In Re: R.S.

In re R.S. · No. 15-0017 · Decided June 15, 2015

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the termination of a grandfather’s custodial rights to R.S. in an abuse and neglect proceeding. The court held that the grandfather’s prior sexual abuse of two older children constituted aggravated circumstances and supported termination without requiring rehabilitative services.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; Chief Justice Margaret L. Workman; Justice Robin Jean Davis; Justice Brent D. Benjamin; Justice Menis E. Ketchum; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	June 15, 2015
DOCKET	15-0017
DISPOSITION	affirmed
PROCEDURAL POSTURE	Grandfather B.S. appealed the Mercer County Circuit Court's order terminating his custodial rights to R.S. in an abuse and neglect proceeding.
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	Memorandum decision; the opinion states that it is issued under West Virginia Rule of Appellate Procedure 21.
PARTIES	B.S., grandfather v. West Virginia Department of Health and Human Resources, R.S., by guardian ad litem

TOPICS

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

PRACTICE AREAS

Family law

Juvenile abuse and neglect

Termination of custodial rights

QUESTIONS PRESENTED

1. Whether the circuit court erred by relying on B.S.'s prior sexual abuse of his now-adult children as a basis for terminating his custodial rights to R.S., despite the remoteness of that abuse and the absence of an allegation that B.S. sexually abused R.S.
2. Whether the circuit court's findings that B.S. could not substantially correct the conditions of abuse in the near future and that termination was necessary for R.S.'s welfare were supported by the evidence.

HOLDINGS

1. Under West Virginia Code § 49-6-5(a)(7)(A), a parent's sexual abuse of another child constitutes an aggravated circumstance and the DHHR is not required to offer rehabilitative or reunification services when the parent has subjected another child to sexual abuse.
2. The circuit court properly terminated B.S.'s custodial rights because substantial evidence supported its findings that B.S. could not substantially correct the conditions of abuse in the near future and that termination was necessary for R.S.'s welfare.

KEY QUOTATIONS

“Simply put, it is clear that petitioner is not a fit caretaker for R.S.” (at 2)

“Clear from this statute is the fact that sexual abuse against a child is among the most egregious forms of abuse, such that the DHHR is not required to attempt to reunify the family in these instances.” (at 2)

FACTUAL BACKGROUND

R.S. lived with his grandfather, B.S., when the DHHR filed an abuse and neglect petition alleging that B.S. threw a remote control at R.S., causing a black eye, and had hit and thrown things at him. B.S.'s adult daughters testified that he had sexually abused them while they were in his custody, and the circuit court credited their testimony. A psychological evaluation did not recommend returning R.S. to B.S.'s care, and the circuit court found that B.S. could not substantially correct the conditions of abuse in the near future and that termination was necessary for R.S.'s welfare.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition in April 2014 after allegations that B.S. physically abused R.S. and had previously sexually abused two older children. Following adjudicatory hearings, a psychological evaluation, and a dispositional hearing, the circuit court terminated B.S.'s custodial rights on November 6, 2014. The Supreme Court of Appeals of West Virginia affirmed by memorandum decision.

DISPOSITION

affirmed

CASES CITED

- 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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