

# SUPREME COURT OF APPEALS OF WEST VIRGINIA

## In re C.W., A.W., & K.W.

No. 14-1164 (W. Va. Apr. 13, 2015) · No. No. 14-1164 · Decided April 13, 2015

### SUMMARY

The West Virginia Supreme Court of Appeals affirmed the denial of a mother's motion to reinstate her parental rights after she voluntarily relinquished them in an abuse and neglect proceeding. The court held that the record supported the circuit court's finding that the relinquishment was free from fraud and duress, resolving conflicting testimony in favor of the mother's former attorney.

### CASE DETAILS

|                       |                                                                                                                                                                                                                                                        |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Appeals of West Virginia                                                                                                                                                                                                              |
| WRITING FOR THE COURT | 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               | April 13, 2015                                                                                                                                                                                                                                         |
| DOCKET                | No. 14-1164                                                                                                                                                                                                                                            |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                               |
| PROCEDURAL POSTURE    | Petitioner Mother appealed the Circuit Court of Mingo County's order denying her motion to reinstate her parental rights after she voluntarily relinquished those rights in an abuse and neglect proceeding.                                           |
| STANDARD OF REVIEW    | Conclusions of law are reviewed de novo; factual findings in a bench-tried abuse and neglect case are reviewed for clear error and will not be overturned when the circuit court's account of the evidence is plausible in light of the entire record. |
| PRECEDENTIAL VALUE    | memorandum decision; no substantial question of law identified                                                                                                                                                                                         |
| PARTIES               | M.M., Petitioner Mother v. West Virginia Department of Health and Human Resources, C.W., A.W., and K.W., by guardian ad litem                                                                                                                          |

### TOPICS

termination of parental rights

parental rights

family law procedure

appellate procedure

standard of review

## PRACTICE AREAS

juvenile law

abuse and neglect

termination of parental rights

appellate procedure

## QUESTIONS PRESENTED

1. Whether the circuit court erred in denying petitioner's motion to reinstate her parental rights on the ground that her voluntary relinquishment had been obtained through fraud or duress.
2. Whether the circuit court's factual findings concerning fraud, duress, and witness credibility were clearly erroneous.

## HOLDINGS

1. Under West Virginia Code § 49-6-7, a circuit court may conduct a hearing to determine whether a parent's agreement relinquishing parental rights was entered into free from duress and fraud.
2. The circuit court properly denied petitioner's motion to reinstate her parental rights because petitioner failed to establish that her voluntary relinquishment was obtained through fraud or duress.
3. The circuit court's findings that the relinquishment was free from fraud and duress were not clearly erroneous.

## KEY QUOTATIONS

*“Whether there has been fraud or duress is a question of fact that must be determined by the circuit court judge.” (2)*

*“Accordingly, we hold that under the provisions of W.Va.Code [§] 49–6–7, a circuit court may conduct a hearing to determine whether the signing by a parent of an agreement relinquishing parental rights was free from duress and fraud.” (2)*

*“A reviewing court cannot assess witness credibility through a record. The trier of fact is uniquely situated to make such determinations and this Court is not in a position to, and will not, second guess such determinations.” (3)*

## FACTUAL BACKGROUND

The DHHR alleged that petitioner neglected the children, including permitting them to remain in a home containing dog feces, garbage, spoiled food, and scattered clothing, while using an electric oven as a primary heat source. The circuit court adjudicated petitioner an abusing parent and granted her a post-adjudicatory improvement period. At disposition, petitioner voluntarily relinquished her parental rights after a recess during which the paperwork was completed and the court questioned her about the relinquishment. She later claimed that the relinquishment was procured by fraud and duress, but her former attorney testified that petitioner had initiated discussions about relinquishment, understood the proceeding, and had been advised about the relinquishment form and dispositional hearing.

## PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition in March 2013. After adjudication as an abusing parent and the grant of a post-adjudicatory improvement period, petitioner voluntarily relinquished her parental rights at a dispositional hearing in October 2013. She later moved to reinstate her rights, alleging that the relinquishment was obtained through fraud and duress. Following an evidentiary hearing, the circuit court denied the motion, and the Supreme Court of Appeals affirmed.

#### 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)
- State ex rel. Rose L. v. Pancake, 209 W. Va. 188, 544 S.E.2d 403 (2001)
- Michael D.C. v. Wanda L.C., 201 W. Va. 381, 497 S.E.2d 531 (1997)

#### OPINION

In Re: C.W., A.W. and K.W.

PER CURIAM.

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

In Re: C.W., A.W., & K.W. April 13, 2015

RORY L. PERRY II, CLERK

SUPREME COURT OF APPEALS

No. 14-1164 (Mingo County 13-JA-23 through 13-JA-25) OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Mother M.M., by counsel Stacey Kohari, appeals the Circuit Court of Mingo County's October 10, 2014, order denying her motion to reinstate her parental rights to C.W., A.W., and K.W. The West Virginia Department of Health and Human Resources ("DHHR"), by counsel S.L. Evans, filed its response in support of the circuit court's order. The guardian ad litem, Diana Carter Wiedel, filed a response on behalf of the children supporting the circuit court's order. Petitioner filed a reply. On appeal, petitioner alleges that the circuit court erred in denying her motion to reinstate her parental rights to the children because her voluntary relinquishment of parental rights was obtained by fraud and duress. This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision affirming the circuit court's order is appropriate

under Rule 21 of the Rules of Appellate Procedure. In March of 2013, the DHHR filed an abuse and neglect petition alleging that petitioner's neglect threatened the children's health and welfare. According to the petition, four days prior, Child Protective Services ("CPS") visited the home. Petitioner's oldest child, A.M., then an adult, stepped onto the porch and told CPS that the children were at church and that petitioner had been rushed to the hospital, although she was unable to say why. However, a CPS employee observed thirteen-year-old K.W. outside the home playing with a water hose in sub-freezing temperatures. Then another child, fifteen-year-old C.W., stepped outside and made excuses for why A.M. would not allow CPS into the home. While standing on the threshold, CPS observed the home to be in a state of complete neglect, with dog feces, garbage, spoiled food, and clothing scattered throughout. The family was further using the electric oven as a primary source of heat. Petitioner later told CPS that she worked long hours and that her daughter, A.M., cared for the children in her absence. The circuit court held a preliminary hearing the next month, which petitioner attended with appointed counsel. It was later determined that petitioner did not qualify for appointed counsel and her attorney, Joshua Ferrell, was permitted to withdraw. As such, petitioner proceeded pro se at the adjudicatory hearing held in April of 2013, at which the circuit court found petitioner to be an abusing parent. In May of 2013, the circuit court granted petitioner a post-adjudicatory improvement period. In September of 2013, the circuit court reappointed Mr. 1 Ferrell to represent petitioner because she had recently lost her job and, therefore, qualified for appointed counsel. Thereafter, in October of 2013, the circuit court held a dispositional hearing, at which time petitioner announced a desire to voluntarily relinquish her parental rights to the children. The circuit court called a two-hour recess so that the appropriate paperwork could be completed, after which the circuit court questioned petitioner regarding her desire to voluntarily relinquish her parental rights. Ultimately, the circuit court accepted petitioner's voluntary relinquishment. In February of 2014, petitioner, by new counsel Stacey Kohari, filed a motion seeking to reinstate her parental rights, alleging her relinquishment was not valid because it was obtained through fraud and duress. The circuit court held a hearing the following day and continued the matter to allow time to review transcripts and subpoena witnesses. In April of 2014, the circuit court held a hearing on petitioner's motion, during which her prior attorney testified. Ultimately, the circuit court entered an order denying petitioner's motion. Petitioner now appeals from the order denying her motion to reinstate parental rights. The Court has previously established the following standard of review: "Although conclusions of law reached by a circuit court are subject to de novo review, when an action, such as an abuse and neglect case, is tried upon the facts without a jury, the circuit court shall make a determination based upon the evidence and shall make findings of fact and conclusions of law as to whether such child is abused or neglected. These findings shall not be set aside by a reviewing court unless clearly erroneous. A finding is clearly erroneous when, although there is evidence to support the finding, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. However, a reviewing court may not overturn a finding simply

because it would have decided the case differently, and it must affirm a finding if the circuit court's account of the evidence is plausible in light of the record viewed in its entirety." Syl. Pt. 1, *In Interest of Tiffany Marie S.*, 196 W.Va. 223, 470 S.E.2d 177 (1996). Syl. Pt. 1, *In re Cecil T.*, 228 W.Va. 89, 717 S.E.2d 873 (2011). Moreover, pursuant to West Virginia Code § 49-6-7, "[a]n agreement of a natural parent in termination of parental rights shall be valid if made by a duly acknowledged writing, and entered into under circumstances free from duress and fraud." In discussing this statute, we have previously stated that [w]hile W.Va.Code [§] 49-6-7 specifically permits a relinquishment of parental rights, it clearly suggests that such an agreement may be invalid if it is not entered into under circumstances that are free of duress and fraud. Whether there has been fraud or duress is a question of fact that must be determined by the circuit court judge. Accordingly, we hold that under the provisions of W.Va.Code [§] 49-6-7, a circuit court may conduct a hearing to determine whether the signing by a parent of an agreement relinquishing parental rights was free from duress and fraud. 2 *State ex rel. Rose L. v. Pancake*, 209 W.Va. 188, 191, 544 S.E.2d 403, 406 (2001). Upon our review, we find no error in the circuit court denying petitioner's motion for reinstatement of parental rights because she failed to show that she voluntarily relinquished her parental rights due to fraud or duress. On appeal, petitioner argues that she testified to several factors that evidenced fraud or duress below, including the following: (1) that she believed she may have been charged criminally if she proceeded to disposition; (2) that she did not understand she had a right to a dispositional hearing; (3) that she would not have voluntarily relinquished if she had not been under the impression that her parental rights were going to be terminated; (4) that she was hurried into signing the dispositional order without being allowed to read it; (5) and that Mr. Ferrell advised her she may not be granted visitation with the children if her parental rights were terminated. However, the Court does not agree that this testimony established fraud or duress in obtaining petitioner's voluntary relinquishment because her argument on this issue wholly ignores the conflicting evidence introduced during testimony from her prior attorney. According to Mr. Ferrell's testimony, petitioner approached him with the idea to voluntarily relinquish her parental rights. The record shows that petitioner contacted Mr. Ferrell on several occasions to discuss voluntarily relinquishing her parental rights to the children because she wished to continue her employment as a truck driver, which required her to be away from home for extended periods. In response, Mr. Ferrell indicated to petitioner that he did not believe the DHHR would seek termination of her parental rights and would provide her with services if she were available. However, according to Mr. Ferrell, petitioner would become "irate and scream" at him that she had to continue working as a truck driver to support her children. Further, Mr. Ferrell testified that he advised petitioner this was not a criminal proceeding and that petitioner never indicated to him that she feared jail time or criminal charges as a result of proceeding to disposition. Additionally, Mr. Ferrell advised petitioner as to what typically occurs at dispositional hearings, discussed the contents of the voluntary relinquishment of parent rights form with petitioner, and advised her about the form. Based upon this evidence, the circuit court

found that petitioner's voluntary relinquishment of parental rights "was free from duress and fraud." Upon our review, the Court agrees. As noted above, the only evidence upon which petitioner relies is her own self-serving testimony that was contradicted by Mr. Ferrell's testimony. We have previously held that "[a] reviewing court cannot assess witness credibility through a record. The trier of fact is uniquely situated to make such determinations and this Court is not in a position to, and will not, second guess such determinations." *Michael D.C. v. Wanda L.C.*, 201 W.Va. 381, 388, 497 S.E.2d 531, 538 (1997). As such, the circuit court was free to make credibility determinations when presented with conflicting testimony from petitioner and her prior attorney, and the Court refuses to disturb these determinations. For the foregoing reasons, we find no error in the circuit court's decision and its October 10, 2014, order is hereby affirmed. 3 Affirmed. ISSUED: April 13, 2015 CONCURRED IN BY: Chief Justice Margaret L. Workman Justice Robin Jean Davis Justice Brent D. Benjamin Justice Menis E. Ketchum Justice Allen H. Loughry II 4