



IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
CHARLESTON, WEST VIRGINIA

DOCKET NUMBER 13-0486

IN THE INTEREST OF:

H.S.;

A CHILD UNDER THE AGE OF EIGHTEEN YEARS

(IN THE INTEREST OF H.S.,
A CHILD UNDER THE AGE OF EIGHTEEN YEARS,
KANAWHA COUNTY CIRCUIT COURT NUMBER 12-JA-159).

PETITION FOR APPEAL

BY C.S., RESPONDENT FATHER BELOW

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I.

ASSIGNMENT OF ERROR

The Kanawha County Circuit Court erred in terminating the Respondent Father's parental rights.

II.

STATEMENT OF THE CASE

On July 3, 2012, the Kanawha County Division of the West Virginia Department of Health and Human Resources (hereinafter, "the DHHR") filed a child abuse and neglect petition alleging abuse and neglect of the minor child, H.S., at the hands of the Respondent Father, C.S. (hereinafter, "the Petitioner"). The allegations against the biological mother, V.S., were limited to her alleged lack of motivation and organization to "provide for the needs of the infant child on the ongoing basis." Appendix Record (hereinafter "AR") p. 4. The ill-willed Respondent Mother, V.S., was the driving force behind the termination of the Petitioner's parental rights; however, her own parental rights were restored by the Circuit Court at the conclusion of the current proceedings and H.S. was placed in V.S.'s legal and physical custody.

At the time of the filing of the instant petition, in addition to the unsubstantiated abuse claim filed by V.S. with the DHHR, AR 256, the identical allegations against the Petitioner have already been initiated by V.S. and twice litigated in two (2) separate Kanawha County Courts. The first petition was adjudicated by the Kanawha County Family Court, AR 65, and the child was returned to the Petitioner. The second petition was, indeed, a child abuse and neglect action, Kanawha County Circuit Court case

number 11-JA-50, filed before the same Judge with the same parties and counsel, except for the undersigned counsel. AR 5, 65.

The allegations in 11-JA-50 deserve a closer scrutiny. V.S., in her continuous quest for H.S.'s custody, subjected H.S. to "invasive medical evaluations in the hopes of proving that C(...) S(...) had molested H(...) S(...). All of the evaluations have yielded normal results." AR 303. Moreover, "V(...) S(...) has repeatedly made allegations of sexual abuse against C... S.... During this custody dispute, V(...) S(...) has asked several people how she could go about getting C(...) S(...)’s parental rights terminated" "V(...) S(...) has also personally, physically examined H(...) S(...)’s vagina in the hopes of proving that C(...) S(...) has molested H(...) S(...). Ms. S(...) has also conducted her own recorded interviews of H(...) in the hopes of proving that C(...) S(...) has molested H(...) S(...)." AR 303-304. The child has also been subjected to "a number of forensic evaluations and she has made no disclosures of sexual abuse.... V(...) S(...) also told H. to say "Daddy touches me" in the presence of daycare workers ... (and) has taken pictures of H(...) S(...)’s vagina and showed them to police in the hopes of proving that C(...) S(...) molested H(...) S(...)." AR 303-304. Throughout that time V.S. was believed to abuse marijuana and methamphetamine. AR 304.

The second petition, case number 11-JA-50, was dismissed on April 19, 2012, and H.S. was returned to her father, the Petitioner herein. AR 65-69. But the legal inaction involving V.S. and the Petitioner did not last long.

For the third time in so many years, V.S. managed to convince the members of the Kanawha County judicial system that the Petitioner sexually molested the parties' infant child, who, by the way, stayed with the Petitioner all of her six-(6)-year life. While the

allegations in the instant petition were nothing new, the DHHR alleged that during the V.S.-sponsored child's "therapy" with an unknown service provider, H.S. "disclosed ... that her father touches her "pee pee." AR 5. H.S. allegedly did not "like going to her father's house." AR 5.

Initially, the Kanawha County Circuit Court found probable cause to believe that the child was abused and/or neglected, in part due to the Guardian-ad-Litem's impassioned "begging the Court to find probable cause." AR 102. The Circuit Court declined to place H.S. in the physical custody of the DHHR and, against the Guardian-ad-Litem's recommendation, sent the child home with her mother. AR 109.

Prior to adjudication the parties were informed that the child recanted her accusation, and the State's expert, the only person (other than her mother) in contact with the child, so confirmed. AR 127, 129, 130, 132, 145. Throughout the adjudication, the parties vigorously litigated the promptness of the child's recantation of her initial accusation of her father, and the subsequent "I don't know," phrase in response to the therapist's queries, H.S.'s tone of voice, and the minutiae of the alleged meeting between the State's expert and the child.

Throughout the proceedings, the Circuit Court Judge never spoke to the child in camera, the Petitioner did not have access to the child, and the child did not testify in court, despite her apparent intelligence and capability to relate what may have happened. AR 129. No other expert examined the child and the Guardian-ad-Litem could not contribute any insight into the child's mysterious statement. The child "clammed up" and refused to say anything else concerning "Daddy." The sum total of the State's case was that on one occasion the Petitioner "touched her while (the child) was fully clothed," AR

128, by pointing in the direction of her vaginal area, without addressing the context of that alleged “touch.” AR 128-129.

By the time of the disposition hearing in the child abuse case, the Guardian-ad-Litem changed his mind, and begged the Court not to terminate the Petitioner’s parental rights. AR 207. The Guardian-ad-Litem was “really bothered by the fact that we want to terminate his parental rights solely on the basis of this “iffy” statement.” AR 207. The Guardian-ad-Litem recommended the Petitioner’s development of a “plan,” the child’s independent counseling, and decried V.S.’s “additional opportunity to influence this child.” AR 207. The Circuit Court disregarded all such arguments.

Following the disposition hearing, at the conclusion of the case, the Kanawha County Circuit Court terminated the Petitioner’s parental rights. AR 218-219. The Order reflecting the Circuit Court’s ruling was entered on April 26, 2013.

It is from that Order that the Petitioner now seeks an appeal to this Honorable Court.

III.

SUMMARY OF ARGUMENT

The Kanawha County Circuit Court erred by terminating the Petitioner’s parental rights. Against the backdrop of the overwhelming evidence of V.S.’s continuous misdeeds in coaching the child to implicate the Petitioner in criminal conduct, the DHHR presented the evidence of the child’s one recanted statement arguably not indicative of any sexual misconduct. In the absence of any credible evidence refuting the overwhelming evidence of improper influence over the child, the Circuit Court’s decision

to terminate the Petitioner's parental rights upon the existing record constitutes reversible error.

IV.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

The Petitioner believes that oral argument is necessary in this case unless this Honorable Court determines otherwise. At stake is not only this Petitioner's parental right, but also an overarching goal of establishing the quantum of evidence in child abuse and neglect proceedings to terminate parental rights.

V.

ARGUMENT

The Due Process Clause of the Fourteenth Amendment to the United States Constitution protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children. "So long as a parent adequately cares for his or her children, there will be normally no reason for the state to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children." Troxel v. Granville, 530 U.S. 57, 68-69 (2000).

Undoubtedly, the State of West Virginia has yet again injected itself into the private realm of the Petitioner's household and his ability to raise his daughter. The DHHR's intervention in this case followed its involvement in Case Number 11-JA-50 which itself followed protracted litigation in the Kanawha County Family Court, the DHHR's

separate investigation and review, of unsubstantiated allegations against the Petitioner, AR 256, the Family Court's appointment of the Guardian-ad-Litem (the same Guardian-ad-Litem throughout the parties' close-to-five-year-old litigation), and the Family Court's return of the child to the Petitioner. At the time of the DHHR's filing of this petition, the DHHR knew enough of unsubstantiated claims against the Petitioner, the malevolence of V.S. towards the Petitioner and the scope of V.S.'s misdeed in attempt to remove H.S. from the Petitioner's custody to be duped into believing the story of the Petitioner's alleged sexual touching of his daughter.

Yet the DHHR proceeded now and in 2011, even though its allegation focused, at least in 2011, upon the ill-willed V.S. who not only subjected H.S. to torturous gynecological examinations, but who was not too subtle about her motives and unscrupulous methods. In 2012, the same Circuit Court dismissed the Petition and returned H.S. to the Petitioner's custody. Now, sadly, the Circuit Court terminated the Petitioner's parental rights upon the same allegations against him, the allegations unsupported by any existing evidence.

It is well settled in West Virginia jurisprudence that termination of parental rights is the most drastic remedy available under the statutory provisions governing the disposition of cases involving child abuse and neglect. In re Emily, 208 W.Va. 325, 540 S.E.2d 542 (2000). It is also axiomatic that the allegations of child abuse and neglect must be proven by clear and convincing evidence. In re Samantha M., 205 W.Va. 383, 518 S.E.2d 387 (1999). Yet the Circuit Court terminated the Petitioner's parental rights not only having previously presided over a case where the motives and malevolence of V.S. in bringing allegations against the Petitioner have been clearly exposed, but also by

being presented with the evidence which, by any standard of review, cannot be said to have been clear, let alone convincing.

In this appeal, the Petitioner will restate his position argued before the Court below. Without examining the State's expert's questionable qualifications and methods of interviewing child abuse victims, it is far from clear that the expert's reporting of the child's statement pertains to any sexual abuse or neglect. In fact, contrary seems true and there is little evidence, if any, to suggest any sexual touch. Aside from the absence of "where," "when," "how," and "in what context," the State failed to demonstrate that the Petitioner, in fact "touched," H.S. on her vagina, and whether such a touch, if it, indeed, occurred, was prompted by any pedophilic or sexual animus. After all, the child had lived with the Petitioner for the vast majority of her six (6) years and there was never any evidence to suggest that the Petitioner exhibited any deviant tendencies. The "touch" itself, even if it occurred could have been explained by medical or hygienic necessity, although, as already mentioned the child was, apparently, fully clothed during "the touch." AR 128. Prior allegations against the Petitioner brought to the attention of the DHHR were found to be false by that agency. The Petitioner has no record of arrests, let alone convictions, of any nature, and, most importantly, of sexual nature. The accusations leveled against him in court by the malevolent V.S. also proved to be false, spurious, and unsubstantiated. Two Courts have already decided to return H.S. to him after the harrowing Kanawha County Family Court and Circuit Court proceedings. The child recanted her one and only mysterious statement, and neither the Court, nor the Guardian-ad-Litem undertook the task of interviewing the child or presenting her to an independent expert or therapist for further forensic evaluations.

There was no physical/medical evidence of any sexual assault or abuse; however, there was plenty of evidence of the Respondent Mother's continuous ill will towards the Petitioner. After one unsubstantiated report to the DHHR, in this "third round" of the court proceedings, V.S. decided to yet again recruit the help of the same individuals who should have been, by then, well familiar with her true goal – depriving the Petitioner of H.S.'s custody. Soundly rejected by two (2) Kanawha County Courts and once by the DHHR, V.S. succeeded this time in taking H.S.'s custody from the Petitioner upon the evidence that fell woefully short of the standard needed for termination of parental rights. In re Katelyn T., 225 W.Va. 264, 692 S.E.2d 307 (2010).

After years of futile attempts to deprive the Petitioner, a hard-working individual with no criminal record, of his paternal rights; after years of subjecting the child to psychological, physical influence, abuse, as well as sexually explicit medical examinations; and after years of brainwashing the child to believe the Petitioner is a pedophilic monster, V.S. succeeded in convincing her counsel, the DHHR, the Guardian-ad-Litem, and sadly, the Circuit Court that H.S.'s continuing placement with the Petitioner was not in the child's best interest. Despite the lack of any (credible) evidence to trigger such a drastic ruling, the Circuit Court believed that the State of West Virginia proved its case by clear and convincing evidence. It is the Petitioner's contention and unshaken belief that, in so ruling, the trial court erred and committed a grave miscarriage of justice.

VI.

CONCLUSION

For the foregoing reasons, the Petitioner prays for a reversal of the lower court's decision and Order, and a remand to the Circuit Court of Kanawha County with directions to FORTHWITH reinstate the Petitioner's parental rights, and for any further relief this Court may deem fair, just, and appropriate.

Furthermore, the Petitioner prays for an ORDER directing the lower court to prohibit V.S. from filing any further child abuse and neglect actions in any Kanawha County courts unless and until a thorough, complete, and unbiased investigation of any allegations against the Petitioner leveled by V.S. is carried out by the West Virginia State Police.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I, Matthew A. Victor, counsel for the Petitioner, do hereby certify that on this 25th day of June, 2013, I served a true copy of the foregoing document by hand delivering the same to; and/or by placing the same in the U.S. Mail, postage prepaid, and addressed to; and by faxing the same to:

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