

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

September 2022 Term

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No. 22-0081

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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

In Re K. L.

Appeal from the Circuit Court of Ohio County
The Honorable Jason A. Cuomo, Judge
Case No. 20-CJA-91 JAC

VACATED AND REMANDED

Submitted: November 1, 2022

Filed: November 16, 2022

John M. Jurco, Esq.
St. Clairsville, Ohio
Attorney for Petitioner-Father K. L.

David A. Mascio, Esq.
Weirton, West Virginia
Guardian ad Litem for Infant K. L.

Patrick Morrissey, Esq.
Attorney General
Andrea Nease Proper, Esq.
Assistant Attorney General
Charleston, West Virginia
Attorneys for West Virginia
Department of Health and Human
Resources

JUSTICE WOOTON delivered the Opinion of the Court.
JUSTICE ARMSTEAD dissents and reserves the right to file a separate opinion.

SYLLABUS BY THE COURT

1. “When this Court reviews challenges to the findings and conclusions of the circuit court, a two-prong deferential standard of review is applied. We review the final order and the ultimate disposition under an abuse of discretion standard, and we review the circuit court’s underlying factual findings under a clearly erroneous standard.’ Syl. [Pt. 1], *McCormick v. Allstate Ins. Co.*, 197 W. Va. 415, 475 S.E.2d 507 (1996).” Syl. Pt. 1, *In re S. W.*, 236 W. Va. 309, 779 S.E.2d 577 (2015).

2. “Where it appears from the record that the process established by the Rules of Procedure for Child Abuse and Neglect Proceedings and related statutes for the disposition of cases involving children adjudicated to be abused or neglected has been substantially disregarded or frustrated, the resulting order of disposition will be vacated and the case remanded for compliance with that process and entry of an appropriate dispositional order.” Syl. Pt. 5, *In re Edward B.*, 210 W. Va. 621, 558 S.E.2d 620 (2001).

WOOTON, Justice:

This is an appeal from the Circuit Court of Ohio County’s January 4, 2022, order terminating petitioner-father K. L.’s (hereinafter “petitioner”) parental rights to infant K. L.¹ Upon the filing of an abuse and neglect petition alleging medical neglect, educational neglect, and substance abuse, petitioner stipulated to medical and educational neglect and was adjudicated neglectful on that sole basis. During the underlying proceedings, petitioner either tested negative for illegal substances or refused to drug screen, denying any substance abuse disorder. He maintained this denial throughout the proceedings despite having admitted to prior occasional use, being arrested in possession of methamphetamine, and being twice found in possession of synthetic urine subsequent to adjudication—once during a drug screening.

At disposition, after finding that the Department of Health and Human Resources (hereinafter “DHHR”) had not established that petitioner had a substance abuse disorder, the circuit court ordered a post-dispositional improvement period. Petitioner continued to refuse to drug screen, purportedly on the basis that no court order yet required him to do so. The circuit court terminated petitioner’s parental rights, citing his failure to

¹ Because this case involves minors and sensitive matters, we follow our longstanding practice of using initials to refer to the children and the parties. *See, e.g., State v. Edward Charles L.*, 183 W. Va. 641, 645 n.1, 398 S.E.2d 123, 127 n.1 (1990). All references to “K. L.” refer to the subject infant, as petitioner-father is referred to as “petitioner” herein.

participate in the post-dispositional improvement period and finding that there was no reasonable likelihood the conditions of abuse and neglect could be substantially corrected. Petitioner appeals, citing a litany of errors but arguing primarily that the circuit court erred by terminating his parental rights on a basis—presumed substance abuse—upon which he was not adjudicated.

Upon careful review of the briefs, the appendix record, the arguments of the parties, and the applicable legal authority, we conclude that the circuit court’s termination of petitioner’s parental rights is erroneously based upon a condition of abuse and neglect upon which petitioner was never adjudicated. We further find that the circuit court’s purported reliance on petitioner’s violation of his post-dispositional improvement period likewise fails to support termination because the implementation of the improvement period did not comport with West Virginia Code § 49-4-610(3) (2015). We therefore vacate that portion of the dispositional order terminating petitioner’s parental rights and remand for further proceedings consistent with this opinion.

I. FACTS AND PROCEDURAL HISTORY

In August 2020, DHHR received a referral regarding K. L. which alleged that petitioner and K. L.’s mother, D. L., were using and selling drugs, as well as failing to send K. L. to school. An in-home safety plan was initiated requiring drug screening and adult life skills and parenting classes. Petitioner and D. L. failed to comply with the safety plan

and DHHR received yet another referral regarding continued drug use; the second referral also alleged that petitioner accidentally shot himself in the home. DHHR further discovered that K. L. suffers from Russell-Silver Syndrome, a genetic growth disorder, and had not been regularly attending doctor's appointments.

On October 14, 2020, a petition was filed against both parents alleging medical and educational neglect, as well as substance abuse. The petition alleged that D. L. tested positive for methamphetamines and that both parents admitted to methamphetamine use but characterized themselves as merely "weekend users." Petitioner waived his preliminary hearing and multi-disciplinary team ("MDT") meetings ensued. During these meetings, petitioner denied having a substance abuse issue and admitted only to prior, infrequent use on weekends when playing in a band. Prior to adjudication, it appears that petitioner and D. L. drug screened four to five times a week and were negative, with one exception where D. L.'s screening returned a false positive.

At adjudication on January 20, 2021, the parents stipulated to medical and educational neglect, i.e. failure to schedule regular pediatrician and specialist visits and failure to enroll K. L. in school or take proper steps to undertake home schooling; D. L. also admitted to a single positive drug screen. DHHR "reserved the right to produce evidence at a future hearing of any matter not admitted," per the adjudicatory order and, during the adjudicatory hearing, discussed its desire that petitioner and D. L. continue to drug screen due to "concerns" about their "past history[.]" The circuit court directed the