

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In Re: The Marriage/Children of Roger M., Jr. v. Jennilea M.

No. 14-1318 (Kanawha County 11-D-2297) (W. Va. Sept. 11, 2015) · No. No. 14-1318 · Decided September 11, 2015

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the denial of Roger M., Jr.’s motion to restore his custodial rights, concluding that restoration was not in the children’s best interests given the parents’ substance-abuse histories and incomplete compliance with court-ordered requirements. The court reversed the requirement that indigent Father pay half of the guardian ad litem’s fees and remanded for consideration of whether a non-indigent party or the Supreme Court should pay those fees.

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	September 11, 2015
DOCKET	No. 14-1318
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Father appealed the circuit court's denial of his appeal from the family court's order denying restoration of his custodial rights and requiring him to pay one-half of the children's guardian ad litem fees.
STANDARD OF REVIEW	The Supreme Court reviews family-court findings of fact under the clearly erroneous standard, the application of law to the facts for abuse of discretion, and questions of law de novo.
PRECEDENTIAL VALUE	limited
PARTIES	Roger M., Jr. v. Jennilea M., Gary S., Carolyn S., D. Randall Clarke, guardian ad litem

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the family court abused its discretion by denying Father's motion to restore his custodial rights.
2. Whether the family court erred by requiring an indigent Father to pay one-half of the children's guardian ad litem fees.
3. Whether the alleged conflict of interest involving the guardian ad litem required reversal.

HOLDINGS

1. The family court did not abuse its discretion in denying Father's motion to restore custodial rights because restoration was not in the children's best interests.
2. The family court erred in requiring Father, whom the Court found to qualify as indigent, to pay one-half of the children's GAL fees; the fee allocation had to be reconsidered under West Virginia Trial Court Rule 21.05.
3. The Court did not reach the timeliness of Father's conflict-of-interest challenge because the alleged conflict did not form the basis for the custody ruling and the family court had an independent sufficient basis for denying restoration of custody.

KEY QUOTATIONS

"Although parents have substantial rights that must be protected, the primary goal . . . in all family law matters . . . must be the health and welfare of the children." (at 5)

"[T]he best interests of the child is the polar star by which decisions must be made which affect children." (at 5)

"in a domestic relations case the cost of . . . a [GAL] for an infant of the parties may be ordered to be paid by a non-indigent party or the Supreme Court regardless if one or both parties are indigent." (at 7)

FACTUAL BACKGROUND

The family court awarded custody of M.M. and L.M. to their maternal grandparents after Mother was arrested while the children were in her vehicle and after evidence showed parental drug use, unsafe conduct, and the children's strong bond with the grandparents. Both parents tested positive for marijuana, and later psychological evaluations diagnosed Father with a history of cannabis and cocaine dependence and described his parenting prognosis as guarded. Father sought restoration of custody after submitting negative drug screens and obtaining a parental fitness evaluation, but the family court found that he had not completed required substance-abuse treatment and that returning the children to his household was not in their best interests. Father had also been assessed one-half of the GAL's fees despite having an approved indigency waiver.

PROCEDURAL HISTORY

The family court awarded the children's legal custody to the maternal grandparents after Mother's drug-related arrest and subsequent evidence concerning the parents' substance abuse and parenting deficiencies. Father later moved to restore his custodial rights; following a hearing, the family court denied the motion and ordered him to pay one-half of the GAL's fees. The circuit court denied Father's appeal. The Supreme Court of Appeals of West Virginia reversed the circuit court, affirmed the denial of restoration of custody, reversed the fee allocation against Father, and remanded for reconsideration of payment of the GAL's fees.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded to the family court to determine whether a non-indigent party should pay the remaining GAL fees or whether the GAL should be paid by the Supreme Court pursuant to West Virginia Trial Court Rule 21.05. The denial of restoration of Father's custodial rights was affirmed.

CASES CITED

- State ex rel. W. Va. Dept. of Human Servs. v. Cheryl M., 177 W. Va. 688, 689 n. 1, 356 S.E.2d 181, 182 n. 1 (1987)
- Carr v. Hancock, 216 W. Va. 474, 475, 607 S.E.2d 803, 804 (2004)
- In re Katie S., 198 W. Va. 79, 82, 479 S.E.2d 589, 592 (1996)
- Michael K.T. v. Tina L.T., 182 W. Va. 399, 405, 387 S.E.2d 866, 872 (1989)
- State ex rel. Bay v. Marshall, 227 W. Va. 679, 683-84, 714 S.E.2d 331, 335-36 (2011)