

SUPREME COURT OF APPEALS OF WEST VIRGINIA

K.W. v. C.W.

K.W. v. C.W. · No. No. 12-1197 · Decided October 4, 2013

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the denial of K.W.'s appeal concerning child-support accounting and responsibility for funeral and grave expenses. The court held that K.W. could not challenge issues to which he or his counsel had acquiesced or that were established by prior orders not timely appealed. The decision was issued as a memorandum decision under Rule 21 of the West Virginia Rules of Appellate Procedure.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Brent D. Benjamin; Justice Robin Jean Davis; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	October 4, 2013
DOCKET	No. 12-1197
DISPOSITION	affirmed
PROCEDURAL POSTURE	K.W. appealed the Circuit Court of Boone County's denial of his appeal from a Family Court of Boone County order concerning a child-support accounting and disposition of an overpayment.
STANDARD OF REVIEW	Under Carr v. Hancock, findings of fact made by the family court are reviewed for clear error, the application of law to the facts is reviewed for abuse of discretion, and questions of law are reviewed de novo.
PRECEDENTIAL VALUE	Published memorandum decision; the source does not state a separate precedential designation beyond its issuance as a memorandum decision under West Virginia Rule of Appellate Procedure 21.
PARTIES	K.W. v. C.W., Bureau of Child Support Enforcement

TOPICS

child support family law procedure appellate procedure waiver standard of review

PRACTICE AREAS

Family law

Appellate procedure

Child support

QUESTIONS PRESENTED

1. Whether K.W. could challenge the amount of past-due child support after failing to timely appeal the prior orders establishing that amount.
2. Whether K.W. could challenge the direction that any child-support overpayment be sent to the funeral home after his counsel expressly agreed to that disposition.
3. Whether K.W. could challenge the allocation of funeral and grave expenses in a later appeal after failing to appeal the prior order making that allocation.
4. Whether the family court had authority to reconsider its earlier determination concerning K.W.'s responsibility for funeral expenses.

HOLDINGS

1. K.W. could not dispute the amount of past-due child support in this appeal because the amount had been established by prior orders that he did not appeal, and his counsel affirmatively accepted the revised accounting.
2. K.W. could not challenge the order directing that any overpayment be sent to the funeral home because he expressly agreed to that disposition through counsel.
3. K.W. could not challenge the 83-percent allocation of funeral and grave expenses because he failed to appeal the prior order establishing that allocation.
4. The family court had plenary authority to reconsider its earlier determination concerning responsibility for the funeral expenses because the 2009 order was not shown to be final.

KEY QUOTATIONS

“In reviewing a final order entered by a circuit court judge upon a review of, or upon a refusal to review, a final order of a family court judge, we review the findings of fact made by the family court judge under the clearly erroneous standard, and the application of law to the facts under an abuse of discretion standard. We review questions of law de novo.” (at 2)

“A litigant may not silently acquiesce to an alleged error, or actively contribute to such error, and then raise that error as a reason for reversal on appeal.” (at 3)

“Although our doctrine of law of the case generally refers to issues that have previously been reviewed at the appellate level, the doctrine is equally applicable to issues that have been fully litigated in the [trial] court and as to which no timely appeal has been made.” (at 3)

FACTUAL BACKGROUND

The parties were divorced. Their minor son was adopted by K.W.'s parents in 2008, and their minor daughter died in 2009. The family court had previously determined that K.W. owed past-due child support and was

responsible for 83 percent of the daughter's funeral and grave expenses. A revised child-support accounting later credited K.W. with a \$628.05 overpayment, and K.W.'s counsel expressly agreed that the accounting was correct and twice stated that K.W. was willing to have any overpayment sent to the funeral home.

PROCEDURAL HISTORY

The family court previously entered orders establishing past-due child support and allocating responsibility for the deceased child's funeral and grave expenses. K.W. did not timely appeal those orders to the Supreme Court of Appeals. After the Bureau of Child Support Enforcement submitted a revised accounting showing a \$628.05 overpayment, the family court credited the payments and directed that any overpayment be sent to the funeral home. The circuit court denied K.W.'s appeal, and the Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State ex rel. West Virginia Department of Human Services v. Cheryl M., 177 W. Va. 688, 356 S.E.2d 181 (1987)
- Carr v. Hancock, 216 W. Va. 474, 607 S.E.2d 803 (2004)
- Maples v. West Virginia Department of Commerce, Division of Parks and Recreation, 197 W. Va. 318, 475 S.E.2d 410 (1996)
- Noland v. Virginia Insurance Reciprocal, 224 W. Va. 372, 686 S.E.2d 23 (2009)
- Taylor v. Elkins Home Show, Inc., 210 W. Va. 612, 558 S.E.2d 611 (2001)