

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re A.R.

No. 22-0032 (W. Va. Oct. 26, 2022) · No. No. 22-0032 · Decided October 26, 2022

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the denial of a paternal grandmother’s request for permanent placement of A.R. The court held that the grandparent and sibling preferences were not absolute and that the child’s best interests supported placement with the foster parents. The court found no clear error in the circuit court’s factual findings concerning delayed placement efforts, the child’s medical needs, smoking in the grandparents’ home, and the grandparents’ judgment regarding potentially unsafe family contacts.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice John A. Hutchison; Justice Elizabeth D. Walker; Justice Tim Armstead; Justice William R. Wooton; Justice C. Haley Bunn
JURISDICTION	West Virginia
DECIDED	October 26, 2022
DOCKET	No. 22-0032
DISPOSITION	affirmed
PROCEDURAL POSTURE	Paternal grandmother appealed the Circuit Court of McDowell County's order denying her request for permanent placement of A.R. after the parents' parental rights were terminated. The Supreme Court of Appeals reviewed the final order in an abuse and neglect proceeding.
STANDARD OF REVIEW	In an appeal from a final order in an abuse and neglect proceeding, factual findings are reviewed for clear error and conclusions of law are reviewed de novo.
PRECEDENTIAL VALUE	limited
PARTIES	P.V., petitioner grandmother v. West Virginia Department of Health and Human Resources, Intervening Foster Parents C.J. and K.J., A.R., through guardian ad litem

TOPICS

adoption

grandparent rights

parental rights

family law procedure

appellate procedure

PRACTICE AREAS

juvenile law

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QUESTIONS PRESENTED

1. Whether the circuit court erred in denying the paternal grandmother's request for permanent placement and adoption of A.R. with his half-sibling.
2. Whether the circuit court properly applied West Virginia's grandparent preference and sibling preference in light of the child's best interests.
3. Whether the circuit court's factual findings supporting the placement decision were clearly erroneous.

HOLDINGS

1. The grandparent preference is not absolute; it must be considered together with the child's best interests, and the preference may be overcome when the record establishes that placement with the grandparent is not in the child's best interests.
2. The sibling preference does not require placement with a relative when the record establishes that the proposed placement is not in the child's best interests.
3. The circuit court's findings supporting placement with the foster parents were not clearly erroneous.

KEY QUOTATIONS

"The [grandparent] preference is just that—a preference. It is not absolute. As this Court has emphasized, the child's best interest remains paramount." (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

A.R. was born after his mother abused controlled substances during pregnancy and required hospitalization for withdrawal symptoms. The paternal grandmother initially declined temporary placement, later sought placement after paternity was established, and was granted visitation. The circuit court found that the grandmother's delay, smoking, lack of experience with A.R.'s medical needs, willingness to allow contact with the child's father despite his history of violence and substance abuse, and the child's bond with the foster family outweighed the grandparent and sibling preferences.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition after A.R.'s mother used controlled substances during pregnancy. After paternity was established, the paternal grandmother sought placement and later intervened. Following contested permanency hearings, the circuit court found that placement with the foster parents, rather than the

grandmother, was in A.R.'s best interests and denied the grandmother's request. The Supreme Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- In re Cecil T., 228 W. Va. 89, 717 S.E.2d 873 (2011)
- In re K.E., 240 W. Va. 220, 809 S.E.2d 531 (2018)
- In re Hunter H., 227 W. Va. 699, 715 S.E.2d 397 (2011)
- Michael D.C. v. Wanda L.C., 201 W. Va. 381, 497 S.E.2d 531 (1997)

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