

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Julie M. v. Michael M.

No. 20-0993 (Marion County CC-24-2020-D-AP-5) · No. No. 20-0993 · Decided January 12, 2022

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the circuit court’s denial of Julie M.’s appeal from a family court order finding her relocation from West Virginia to Florida unreasonable. The court addressed relocation, custodial responsibility, the presumption of reasonableness under West Virginia Code § 48-9-403, and the inadequacy of the appellate record and briefing. The court concluded that the family court’s finding was dispositive and that no abuse of discretion or prejudicial error had been shown.

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 Evan H. Jenkins; Justice William R. Wooton
JURISDICTION	West Virginia
DECIDED	January 12, 2022
DOCKET	No. 20-0993
DISPOSITION	affirmed
PROCEDURAL POSTURE	Julie M. appealed the Circuit Court of Marion County's denial of her petition for appeal from a family court order finding her relocation to Florida unreasonable and declining to modify the parties' parenting arrangement.
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PRECEDENTIAL VALUE	unpublished memorandum decision
PARTIES	Julie M. v. Michael M.

TOPICS

- relocation
- child custody
- appellate procedure
- standard of review
- preservation of error

PRACTICE AREAS

family law

appellate procedure

QUESTIONS PRESENTED

1. Whether the lower courts properly determined the parties' relative custodial responsibility for purposes of applying the statutory presumption that a proposed relocation is reasonable.
2. Whether the family court failed to consider all relevant best-interest factors in evaluating the proposed relocation and potential modification of the parenting plan.
3. Whether the finding that Julie's relocation to Florida was unreasonable was clearly erroneous and whether the circuit court abused its discretion in refusing to disturb the family court's order.
4. Whether the incomplete appellate record and Julie's failure to provide specific record citations supported disregarding her factual arguments under West Virginia Rule of Appellate Procedure 10(c)(7).

HOLDINGS

1. A purported 50/50 physical-custody arrangement does not necessarily establish that neither parent exercises a significant majority of custodial responsibility; custodial responsibility includes more than providing shelter for overnight visits.
2. The family court did not clearly err in finding that Julie's proposed relocation to Florida was unreasonable because substantially similar employment could have been obtained much closer to the children's established community.
3. Any error by the family court in withholding or analyzing the relocation presumption did not affect the outcome because the court independently found that the proposed relocation was unreasonable.
4. The Court could disregard Julie's factual arguments because the appendix lacked the family court hearing transcript and her brief did not provide the required specific citations to the record supporting her claims.

KEY QUOTATIONS

“While the parties purported to have an equal amount of custodial responsibility because they were exercising 50/50 split physical custody under their parenting plan, this Court recently observed that ‘custodial responsibility consists of much more than merely providing a shelter for overnight visits.’” (at 2)

“The family court made a key finding that Ms. M.’s proposed relocation was not reasonable, in light of the otherwise good faith purpose of securing an employment opportunity, because Ms. M. could have secured a substantially similar opportunity “much closer” to the area where her children’s lives are established.” (at 3)

FACTUAL BACKGROUND

Julie and Michael were divorced in 2017, and their decree incorporated a 50/50 parenting arrangement for their two minor children. Julie lived in Fairmont, later lost her employment, accepted a new job in Florida, and relocated there with her boyfriend without taking the children and without filing a relocation notice. The family court found that the move was made for a good-faith employment purpose but was unreasonable because

substantially similar employment could have been obtained much closer to the area where the children's lives were established.

PROCEDURAL HISTORY

The parties divorced in 2017 under a parenting plan providing for 50/50 custody of their two children. After Julie relocated to Florida without filing a relocation notice, Michael filed a contempt petition, which the family court converted into an objection to relocation. Following an August 2020 hearing, the family court found the relocation neither reasonable nor in the children's best interests. The circuit court denied Julie's petition for appeal on November 16, 2020, and the Supreme Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Carr v. Hancock, 216 W. Va. 474, 607 S.E.2d 803 (2004)
- Nicole L. v. Steven W., 241 W. Va. 466, 825 S.E.2d 794 (2019)
- Stacey J. v. Henry A., 243 W. Va. 150, 842 S.E.2d 703 (2020)
- Cloud v. Cloud, 161 W. Va. 45, 239 S.E.2d 669 (1977)
- In re K.H., 235 W. Va. 254, 773 S.E.2d 20 (2015)
- In re Jeffrey R.L., 190 W. Va. 24, 435 S.E.2d 162 (1993)
- State v. Edward Charles L., 183 W. Va. 641, 398 S.E.2d 123 (1990)