

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re A.A.

In re A.A. · No. No. 21-0019 · Decided April 26, 2022

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the denial of a paternal grandmother’s motion to transfer custody of A.A. in an abuse and neglect proceeding. The court held that the circuit court properly exercised jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act and concluded that placement with the grandmother was not in the child’s best interests despite the statutory grandparent preference.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Justice Wooton; Justice Alan D. Moats, sitting by temporary assignment, not participating
JURISDICTION	West Virginia
DECIDED	April 26, 2022
DOCKET	No. 21-0019
DISPOSITION	affirmed
PROCEDURAL POSTURE	Paternal grandmother B.M., who had intervened in an abuse and neglect proceeding, appealed the Pleasants County Circuit Court's order denying her motion to transfer physical custody of A.A. from foster parents to her. She challenged the circuit court's UCCJEA jurisdiction, its failure to name her as a party at the outset, the handling of witness disclosure, and application of the statutory grandparent preference.
STANDARD OF REVIEW	Questions of law and statutory interpretation, including UCCJEA jurisdictional issues, are reviewed de novo. Factual findings in abuse and neglect proceedings tried without a jury are reviewed for clear error, while conclusions of law are reviewed de novo.
PRECEDENTIAL VALUE	published
PARTIES	B.M. v. West Virginia Department of Health and Human Resources, K.V. and N.V., A.A., through guardian ad litem

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the Pleasants County Circuit Court had subject matter jurisdiction under the UCCJEA when no state qualified as A.A.'s home state but A.A. and at least one parent had significant connections to West Virginia and substantial evidence concerning the child was located there.
2. Whether B.M. was a custodian who was required to be named as a party in the original abuse and neglect petition.
3. Whether the circuit court erred by admitting and relying on testimony from a witness whose expected testimony was not disclosed under Rule 30 of the Rules of Procedure for Child Abuse and Neglect Proceedings.
4. Whether the circuit court properly applied the statutory grandparent preference and determined that placement with B.M. was not in A.A.'s best interests.
5. Whether the circuit court's findings concerning delay in seeking custody, disruption to A.A., and possible contact with the terminated father were clearly erroneous.

HOLDINGS

1. The circuit court properly exercised significant-connection jurisdiction under West Virginia Code § 48-20-201(a)(2). No state qualified as A.A.'s home state under the six-month requirement, but A.A. and both parents had significant connections to West Virginia beyond mere physical presence, and substantial evidence concerning A.A.'s care, protection, training, and relationships was available there.
2. The circuit court did not err by failing to name B.M. as a party in the original abuse and neglect petition because the record did not establish that she shared actual physical possession, care, or custody of A.A. as a statutory custodian. She more readily fit the statutory definition of caregiver, and caregivers are not required to be named as parties under West Virginia Code § 49-4-601(b).
3. The circuit court did not err by admitting testimony from K.S. because Rule 30's enhanced disclosure requirements apply to dispositional hearings, not to the permanency hearing on B.M.'s motion to transfer custody. The general disclosure rule required disclosure of the witness's name and address, not a summary of the expected testimony, and the DHHR complied.
4. The circuit court properly applied West Virginia Code § 49-4-114(a)(3) and did not err in denying B.M.'s motion to transfer custody. The grandparent preference does not require placement with a grandparent when the grandparent was not initially willing or when the record as a whole establishes that placement would not be in the child's best interests.

KEY QUOTATIONS

“Accordingly, we conclude that A.A. and both of her parents have a significant connection to West Virginia, such that the courts of this state may properly exercise jurisdiction over custody matters concerning A.A pursuant to W. Va. Code § 48-20-201(a)(2).” (23)

“As such, under the plain language of the statute, the circuit court was under no obligation to order a home study of Petitioner’s place of residence because she was not a willing placement for the child.” (29)

“To the extent the circuit court considered evidence that Petitioner would facilitate contact between A.A. and her biological father, or that the child would be exposed to continuing negative influences in Petitioner’s home, it was justified in determining that it would not be in A.A.’s best interest to place the child with Petitioner.” (35)

FACTUAL BACKGROUND

A.A. was removed from a hotel room in St. Marys, West Virginia, after her father was arrested and the room contained drugs and drug paraphernalia. Although the abuse and neglect petition identified South Carolina as A.A.'s last known residence, the record showed that she had moved among several states and had lived in South Carolina for no more than approximately four months before the petition was filed. B.M. initially declined placement, later intervened after the parents' rights were being terminated, and sought custody from foster parents with whom A.A. had substantially improved developmentally. The circuit court found that B.M.'s proposed placement was not in A.A.'s best interests because of the disruption it would cause and concerns about exposure to negative influences and possible contact with the father.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition in Pleasants County after A.A. was removed from a West Virginia hotel room in June 2019. The circuit court adjudicated both parents abusive and neglectful and terminated their parental rights. B.M. intervened in April 2020 and later moved for transfer of physical custody. After an evidentiary permanency hearing, the circuit court denied the motion on December 3, 2020, finding that placement with B.M. was not in A.A.'s best interests. The Supreme Court of Appeals of West Virginia affirmed.

DISPOSITION

affirmed

CASES CITED

- Chrystal R.M. v. Charlie A.L., 194 W. Va. 138, 459 S.E.2d 415 (1995)
- In Interest of Tiffany Marie S., 196 W. Va. 223, 470 S.E.2d 177 (1996)
- In re Cecil T., 228 W. Va. 89, 717 S.E.2d 873 (2011)
- Rosen v. Rosen, 222 W. Va. 402, 664 S.E.2d 743 (2008)
- In re Z.H., 245 W. Va. 456, 859 S.E.2d 399 (2021)
- Charleston Apartments Corp. v. Appalachian Elec. Power Co., 118 W. Va. 694, 192 S.E. 294 (1937)
- Lewis v. Munic. of Masontown, 241 W. Va. 166, 820 S.E.2d 612 (2018)

- State ex rel. Universal Underwriters Ins. Co. v. Wilson, 239 W. Va. 338, 801 S.E.2d 216 (2017)
- In re K.R., 229 W. Va. 733, 735 S.E.2d 882 (2012)
- In re K.H., 235 W. Va. 254, 773 S.E.2d 20 (2015)
- Napoleon S. v. Walker, 217 W. Va. 254, 617 S.E.2d 801 (2005)
- In re Hunter H., 227 W. Va. 699, 715 S.E.2d 397 (2011)
- In re J.P., 243 W. Va. 394, 844 S.E.2d 165 (2020)
- In Interest of Carlita B., 185 W. Va. 613, 408 S.E.2d 365 (1991)
- In re K.E., 240 W. Va. 220, 809 S.E.2d 531 (2018)
- In re Elizabeth F., 225 W. Va. 780, 696 S.E.2d 296 (2010)
- In re T.R., No. 15-1235, 2016 WL 3165801 (W. Va. June 2, 2016) (memorandum decision)
- In re K.C., No. 18-0242, 2019 WL 480160 (W. Va. Feb. 7, 2019) (memorandum decision)

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