

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Howell v. Goode, 223 W. Va. 387

674 S.E.2d 248 (2009) · No. No. 34145 · Decided February 6, 2009

SUMMARY

The Supreme Court of Appeals of West Virginia held that child support could continue beyond a child's eighteenth birthday where the child remained unmarried, lived with a parent, attended high school full time, and made substantial progress toward a diploma through an individualized education program. The court reversed and remanded with directions to extend the support obligation until the child's twentieth birthday, the statutory termination date.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; Thomas E. McHugh, Senior Status Justice
JURISDICTION	West Virginia
DECIDED	February 6, 2009
DOCKET	No. 34145
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Ulissa Howell appealed the Circuit Court of Tyler County's refusal to disturb a Family Court of Tyler County order denying her petition to extend her former husband's child-support obligation while their son remained enrolled in high school.
STANDARD OF REVIEW	Findings of fact made by a family court are reviewed for clear error; application of law to the facts is reviewed for abuse of discretion; and questions of law, including statutory interpretation, are reviewed de novo.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Ulissa Howell v. John Goode

TOPICS

- child support
- family law procedure
- statutory interpretation
- standard of review
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether West Virginia Code § 48-11-103 permitted continuation of child support after the child completed the minimum educational requirements for graduation but remained enrolled full-time in high school, had not received a diploma, and was making substantial progress toward a diploma through an individualized education plan.
2. Whether the lower courts abused their discretion by finding no good cause to continue child support under the statute.

HOLDINGS

1. Under West Virginia Code § 48-11-103, a child may be making substantial progress toward a diploma even after completing the minimum requirements for graduation, so long as the child remains unmarried, resides with a parent, guardian, or custodian, is enrolled full-time in a secondary or vocational program, and continues progressing toward a diploma. Completion of minimum educational requirements does not itself terminate support before the child receives a diploma or reaches age twenty.
2. The lower court abused its discretion by failing to find good cause for continuation of child support because the evidence established that R.J. met the statutory conditions for continued support.

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.” (251)

“A statutory provision which is clear and unambiguous and plainly expresses the legislative intent will not be interpreted by the courts but will be given full force and effect.” (252)

“Although he had satisfied the minimum requirements for graduation by May 2006, he was retained in high school pursuant to the education administration's decision that he required additional education in furtherance of the objectives of his IEP, and he had not yet received his diploma.” (254)

FACTUAL BACKGROUND

The parties' son, R.J., had a learning disability and was enrolled full-time in high school under an individualized education plan. Although he had completed the minimum courses required for graduation, school personnel determined that he needed additional education and transition services before he could be employed without substantial assistance, and he had not yet received a diploma. The family court concluded that child support ended when R.J. completed the minimum graduation requirements in May 2006.

PROCEDURAL HISTORY

The parties divorced in 1995, and John Goode was ordered to pay child support. After the family court denied Howell's petition to continue support beyond the child's eighteenth birthday, the Circuit Court of Tyler County affirmed or refused the appeal by order dated September 24, 2007. The Supreme Court of Appeals of West Virginia granted review and reversed, remanding with directions to extend support through the child's twentieth birthday.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Enter an order extending John Goode's child-support obligation through October 16, 2007, the date R.J. attained age twenty.

CASES CITED

- Carr v. Hancock, 216 W. Va. 474, 607 S.E.2d 803 (2004)
- Chrystal R.M. v. Charlie A.L., 194 W. Va. 138, 459 S.E.2d 415 (1995)
- Appalachian Power Co. v. State Tax Department of West Virginia, 195 W. Va. 573, 466 S.E.2d 424 (1995)
- In re Stephen Tyler R., 213 W. Va. 725, 584 S.E.2d 581 (2003)
- Wyatt v. Wyatt, 185 W. Va. 472, 408 S.E.2d 51 (1991)
- Carter v. Carter, 198 W. Va. 171, 479 S.E.2d 681 (1996)
- State v. Epperly, 135 W. Va. 877, 65 S.E.2d 488 (1951)
- Shaffer v. Stanley, 215 W. Va. 58, 593 S.E.2d 629 (2003)
- Albright v. White, 202 W. Va. 292, 503 S.E.2d 860 (1998)
- State v. Jarvis, 199 W. Va. 635, 487 S.E.2d 293 (1997)
- Tug Valley Recovery Center, Inc. v. Mingo County Commission, 164 W. Va. 94, 261 S.E.2d 165 (1979)
- Smith v. State Workmen's Compensation Commissioner, 159 W. Va. 108, 219 S.E.2d 361 (1975)
- DeVane v. Kennedy, 205 W. Va. 519, 519 S.E.2d 622 (1999)
- State v. General Daniel Morgan Post No. 548, V.F.W., 144 W. Va. 137, 107 S.E.2d 353 (1959)
- Sturm v. Board of Education of Kanawha County, 223 W. Va. 277, 672 S.E.2d 606 (2008)
- Leak v. Leak, 129 N.C. App. 142, 497 S.E.2d 702 (1998)
- Hendricks v. Sanks, 143 N.C. App. 544, 545 S.E.2d 779 (2001)
- Mrs. B. v. Milford Board of Education, 103 F.3d 1114 (2d Cir. 1997)
- Todd D. by Robert D. v. Andrews, 933 F.2d 1576 (11th Cir. 1991)
- Jefferson County Board of Education v. Breen, 853 F.2d 853 (11th Cir. 1988)
- In re Cesar L., 221 W. Va. 249, 654 S.E.2d 373 (2007)