

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Sean T. v. Florence T.

Sean T. · No. No. 13-0900 · Decided April 28, 2014

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the circuit court’s refusal to review a family court order denying Sean T.’s petition to modify visitation while he was incarcerated. The court held that the family court did not abuse its discretion in declining to order visitation over the respondent’s objection and noted that the record did not support the petitioner’s claim regarding correspondence with the children.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Robin Jean Davis; Justice Brent D. Benjamin; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	April 28, 2014
DOCKET	No. 13-0900
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner appealed the circuit court's refusal to review the family court's denial of his petition to modify child visitation while he was incarcerated.
STANDARD OF REVIEW	In reviewing a circuit court order reviewing or refusing to review a final family court order, factual findings are reviewed for clear error, application of law to facts for abuse of discretion, and questions of law de novo.
PRECEDENTIAL VALUE	Unpublished memorandum decision; no substantial question of law and no prejudicial error were found.
PARTIES	Sean T. v. Florence T.

TOPICS

- child custody
- visitation
- family law procedure
- appellate procedure
- standard of review

PRACTICE AREAS

Family law

Appellate procedure

QUESTIONS PRESENTED

1. Whether the family court abused its discretion by denying Sean T.'s petition to modify visitation while he remained incarcerated.
2. Whether the court should have ordered visitation at Sean T.'s correctional facility at least once every ninety days.
3. Whether the court should have ordered that Sean T. be allowed to correspond freely with the children.

HOLDINGS

1. The family court did not abuse its discretion in denying the petition to modify child visitation while Sean T. remained incarcerated and Florence T. objected to visitation.
2. The court properly declined to order unrestricted correspondence because the evidence allegedly showing that Florence T. prevented the children from receiving Sean T.'s letters was not included in the appellate record.

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.” (at 2)

FACTUAL BACKGROUND

The parties are divorced and have four children. Their 2009 final divorce order provided that Sean T., who was incarcerated, would have visitation at Florence T.'s sole discretion and could petition for a parenting plan after his release. While still incarcerated, Sean sought court-ordered visits at the correctional facility at least every ninety days and unrestricted correspondence with the children, but the record did not contain the alleged evidence that Florence was blocking his letters.

PROCEDURAL HISTORY

The parties' 2009 final divorce order granted Sean T. visitation at Florence T.'s sole discretion while he was incarcerated and provided that he could petition for a parenting plan after release. In April 2013, Sean petitioned for visitation at his correctional facility and permission to correspond freely with the children. The Family Court of Clay County denied the petition, and the Circuit Court of Clay County refused the appeal. The Supreme Court of Appeals of West Virginia affirmed the circuit court's order.

DISPOSITION

affirmed

CASES CITED

- State ex rel. West Virginia Dept. of Human Services v. Cheryl M., 177 W.Va. 688, 689 n. 1, 356 S.E.2d 181, 182 n. 1 (1987)
- State v. Julius, 185 W.Va. 422, 408 S.E.2d I (1991)
- Carr v. Hancock, 216 W.Va. 474, 607 S.E.2d 803 (2004)
- In re Katie S., 198 W.Va. 79, 479 S.E.2d 589 (1996)
- Michael K. T. v. Tina L. T., 182 W.Va. 399, 405, 387 S.E.2d 866, 872 (1989)
- O'Lone v. Estate of Shabazz, 482 U.S. 342, 349, 107 S. Ct. 2400, 2404-05, 96 L. Ed. 2d 282, 290 (1987)

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