

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Tevya W. v. Elias Trad V., 227 W. Va. 618

712 S.E.2d 786 (2011) · No. No. 35760 · Decided June 21, 2011

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the denial of a mother's petition to modify the custody arrangements for her son. The court held that the mother had not established both a material change in circumstances and that changing custody would materially promote the child's welfare. The court emphasized the child's stability, continuity, and best interests, while recognizing the mother's successful rehabilitation from drug addiction.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per curiam
JURISDICTION	West Virginia
DECIDED	June 21, 2011
DOCKET	No. 35760
DISPOSITION	affirmed
PROCEDURAL POSTURE	The mother appealed from the Circuit Court of Hardy County's order affirming the Family Court of Hardy County's denial of her third petition to modify the child-custody arrangement.
STANDARD OF REVIEW	Findings of fact made by the family court are reviewed for clear error; application of law to the facts is reviewed for abuse of discretion; questions of law are reviewed de novo. Custody determinations are not disturbed absent a clear abuse of discretion.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Tevya W. v. Elias Trad V.

TOPICS

- child custody
- family law procedure
- standard of review
- appellate procedure
- preservation of error

PRACTICE AREAS

- family law
- child custody
- appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court erred in affirming the family court's denial of the mother's petition to modify custody.
2. Whether the evidence established both a material change in circumstances and that changing custody would materially promote the child's welfare.
3. Whether the mother's failure to appeal earlier custody-modification denials prevented reconsideration of matters previously litigated.

HOLDINGS

1. A change in child custody requires proof of both a change in the parties' circumstances and that the proposed change would materially promote the child's welfare.
2. The child's best interests, including stability and continuity, are the paramount considerations in custody and visitation decisions.
3. An appellate court must respect the family court's fact findings and discretionary custody determinations when supported by a plausible view of the record and may not reverse merely because it would have decided the case differently.
4. The mother's unappealed prior custody-modification denials became final and unappealable, and the Court could not use the present appeal to alter those determinations.

KEY QUOTATIONS

“To justify a change of child custody, in addition to a change in circumstances of the parties, it must be shown that such change would materially promote the welfare of the child.” (227 W. Va. at 623)

“While this Court acknowledges the mother's significant achievement in drug rehabilitation, the best interests of Elias must take priority in this custody determination.” (227 W. Va. at 626)

FACTUAL BACKGROUND

The parties' son, Elias, primarily resided with his father after the family court transferred custody in 2005 because of the mother's drug use. The mother later maintained that she had achieved sobriety and alleged that the father was using illegal drugs, but the family court found insufficient evidence of changed circumstances and found that the child was thriving in the father's stable home. The child continued to have substantial visitation with the mother, including most weekends and significant summer time.

PROCEDURAL HISTORY

The parties divorced in 2003 under a shared-parenting plan. In 2005, the family court transferred primary and then full custody to the father because of the mother's drug use. The mother unsuccessfully sought custody modifications in 2006 and 2008, and those orders were not appealed. After a third petition in 2010 alleging the father's drug use and changed circumstances, the family court denied modification, the circuit court affirmed, and the Supreme Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Carr v. Hancock, 216 W. Va. 474, 607 S.E.2d 803 (2004)
- Nichols v. Nichols, 160 W. Va. 514, 236 S.E.2d 36 (1977)
- In re Tiffany Marie S., 196 W. Va. 223, 470 S.E.2d 177 (1996)
- Allen v. Allen, 173 W. Va. 740, 320 S.E.2d 112 (1984)
- Murredu v. Murredu, 160 W. Va. 610, 236 S.E.2d 452 (1977)
- Carter v. Carter, 196 W. Va. 239, 470 S.E.2d 193 (1996)
- Cloud v. Cloud, 161 W. Va. 45, 239 S.E.2d 669 (1977)
- Waller v. Waller, 166 W. Va. 142, 272 S.E.2d 671 (1980)
- Skidmore v. Rogers, W. Va. (2011)
- Honaker v. Burnside, 182 W. Va. 448, 388 S.E.2d 322 (1989)
- In re Katie S., 198 W. Va. 79, 479 S.E.2d 589 (1996)
- Holstein v. Holstein, 152 W. Va. 119, 160 S.E.2d 177 (1968)
- Storrie v. Simmons, 225 W. Va. 317, 693 S.E.2d 70 (2010)
- White v. Williamson, 192 W. Va. 683, 453 S.E.2d 666 (1994)
- Liller v. West Virginia Human Rights Commission, 180 W. Va. 433, 376 S.E.2d 639 (1988)
- Conley v. Spillers, 171 W. Va. 584, 301 S.E.2d 216 (1983)
- State v. Miller, 194 W. Va. 3, 459 S.E.2d 114 (1995)
- In re Clifford K., 217 W. Va. 625, 619 S.E.2d 138 (2005)