

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re: J.S.

In re J.S. · No. No. 12-0567 · Decided February 11, 2013

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed a circuit court order adjudicating J.S. a status offender based on habitual truancy and placing the child on probation until age eighteen. The court held that, even accepting the mother's claim that the child had only five unexcused absences, the evidence supported a finding of truancy under West Virginia law. The court found no substantial question of law or prejudicial error and issued the decision as a memorandum decision.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Brent D. Benjamin; Justice Robin Jean Davis; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	February 11, 2013
DOCKET	No. 12-0567
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner Mother appealed the Circuit Court of Taylor County's order adjudicating J.S. a status offender based on truancy and placing him on probation until age eighteen.
STANDARD OF REVIEW	The final order and ultimate disposition are reviewed for abuse of discretion; underlying factual findings are reviewed for clear error; and questions of law are reviewed de novo.
PRECEDENTIAL VALUE	nonprecedential memorandum decision
PARTIES	Petitioner Mother v. State

TOPICS

[appellate procedure](#)[standard of review](#)[family law procedure](#)[family law](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the circuit court clearly erred or abused its discretion by finding J.S. truant and adjudicating him a status offender when the mother disputed the number of unexcused absences.
2. Whether the alleged lack of notice from the school or J.S.'s lack of disciplinary problems required reversal of the status-offender adjudication or probation order.

HOLDINGS

1. The circuit court did not err in finding J.S. truant and adjudicating him a status offender because the evidence showed at least five unexcused absences, which was sufficient under the cited statutes.
2. The mother's notice-related arguments and contention that J.S. was not a discipline problem did not establish reversible error in the status-offender adjudication or probation order.

KEY QUOTATIONS

““‘[s]tatus offender’ means a juvenile who has been adjudicated as one: . . . (C) [w]ho is habitually absent from school without good cause[.]”” (1)

“Even assuming petitioner’s contention that the child only missed five days is true, the circuit court did not err in finding that the minor child was truant.” (2)

FACTUAL BACKGROUND

The school alleged that J.S. had nine unexcused absences, while school records introduced at the hearing showed eight. The mother contended that only five days were unexcused and that some school records were erroneous. The circuit court adjudicated J.S. a status offender based on truancy and placed him on probation until age eighteen.

PROCEDURAL HISTORY

A petition alleged that J.S. had multiple unexcused absences during the 2011-2012 school year. After an adjudicatory hearing, the Circuit Court of Taylor County found J.S. to be a status offender based on truancy and ordered probation until his eighteenth birthday. The Supreme Court of Appeals of West Virginia affirmed in a memorandum decision.

DISPOSITION

affirmed

CASES CITED

- Walker v. W. Va. Ethics Comm’n, 201 W. Va. 108, 492 S.E.2d 167 (1997)

OPINION

In Re:J.S.

PER CURIAM.

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

In re: J.S. February 11, 2013

RORY L. PERRY II, CLERK

SUPREME COURT OF APPEALS

No. 12-0567 (Taylor County 12-JS-20) OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Mother's pro se appeal arises from the Circuit Court of Taylor County's order entered on April 4, 2012, wherein the circuit court found that the minor child is a status offender based on his truancy and ordered probation until the child turns eighteen. The State, by counsel Marland L. Turner, has filed its response. This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Rules of Appellate Procedure. A petition was filed alleging that J.S. had nine unexcused absences between the beginning of the 2011-2012 school year and January 30, 2012. A hearing was held, during which time Petitioner Mother claimed that the child had actually only missed five days of school unexcused, as three of the days claimed by the school were in error. The assistant principal of the school indicated that the records showed eight unexcused absences. After the adjudicatory hearing, the disposition order was entered finding that the child was a status offender based on his truancy, and ordered that the child be placed on probation until his eighteenth birthday. In reviewing challenges to the findings and conclusions of the circuit court, we apply a two-prong deferential standard of review. We review the final order and the ultimate disposition under an abuse of discretion standard, and we review the circuit court's underlying factual findings under a clearly erroneous standard. Questions of law are subject to a de novo review. *Syl. Pt. 2, Walker v. W.Va. Ethics Comm'n*, 201 W.Va. 108, 492 S.E.2d 167 (1997). Petitioner Mother argues on appeal that her son only had five total unexcused absences, not the eight alleged by the school. Further, she argues that she was not contacted by the school regarding the absences and argues that because her son is not a discipline problem he should not be placed on probation. The State responds, arguing that even assuming that Petitioner Mother was correct in her son only missing five days, he is still truant pursuant to West Virginia Code § 49-1-4(15). Moreover, the State argues that any notice issues are irrelevant on appeal and that the only relevant issue on appeal is whether the child was properly found to be a status offender. 1 Pursuant to West Virginia Code § 18-8-4(b), once a child misses five or more days of school with unexcused absences, a complaint is made to the local

magistrate. If a child is found to be truant after an adjudicatory hearing, he may be found to be a status offender pursuant to West Virginia Code § 49-1-4(15) which states that a “[s]tatus offender” means a juvenile who has been adjudicated as one: . . . (C) [w]ho is habitually absent from school without good cause[.]” In the present case, the school produced evidence that the minor child missed eight days of school unexcused. Even assuming petitioner’s contention that the child only missed five days is true, the circuit court did not err in finding that the minor child was truant. Therefore, this Court finds no error in the order of the circuit court. For the foregoing reasons, the circuit court’s order is hereby affirmed. Affirmed. ISSUED: February 11, 2013 CONCURRED IN BY: Chief Justice Brent D. Benjamin Justice Robin Jean Davis Justice Margaret L. Workman Justice Menis E. Ketchum Justice Allen H. Loughry II 2