

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re M.W.

No. 14-0633 (W. Va. Nov. 24, 2014) · No. 14-0633 · Decided November 24, 2014

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed a circuit court order placing four-year-old M.W. with his foster mother for adoption rather than with his paternal grandparents. The court held that the grandparent placement preference was subordinate to M.W.'s best interests and that the evidence supported maintaining the placement despite sibling separation. The court also upheld the circuit court's findings concerning the child's bond with the foster mother and the potential harm of relocation.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; 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	November 24, 2014
DOCKET	14-0633
DISPOSITION	affirmed
PROCEDURAL POSTURE	Paternal grandparents appealed the circuit court's permanent placement order placing four-year-old M.W. with his foster mother for adoption.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo; factual findings in an abuse and neglect case tried without a jury are reviewed for clear error and will not be set aside unless the reviewing court is left with a definite and firm conviction that a mistake was made.
PRECEDENTIAL VALUE	Memorandum decision; no substantial question of law and no prejudicial error found.
PARTIES	M.W.'s paternal grandparents v. West Virginia Department of Health and Human Resources, Guardian ad litem for M.W., M.W.'s foster mother

TOPICS

parental rights

adoption

family law procedure

appellate procedure

standard of review

PRACTICE AREAS

juvenile law

family law

child welfare

QUESTIONS PRESENTED

1. Whether the circuit court properly applied the statutory grandparent placement preference and correctly determined that placement with the paternal grandparents was not in M.W.'s best interests.
2. Whether the circuit court properly ordered permanent separation of M.W. from his siblings based on his best interests and made adequate findings and conclusions supporting that decision.

HOLDINGS

1. The grandparent placement preference remains subordinate to the child's best interests, and the circuit court did not err in denying placement with the paternal grandparents where the record overwhelmingly established that M.W.'s best interests were served by remaining with his foster mother.
2. The circuit court did not err in ordering sibling separation because sibling unity is subordinate to the child's best interests, and clear and convincing evidence supported keeping M.W. with his foster mother rather than placing him with his siblings and grandparents.

KEY QUOTATIONS

“Although conclusions of law reached by a circuit court are subject to de novo review, when an action, such as an abuse and neglect case, is tried upon the facts without a jury, the circuit court shall make a determination based upon the evidence and shall make findings of fact and conclusions of law as to whether such child is abused or neglected.” (2)

“The statute contemplates that placement with grandparents is presumptively in the best interests of the child, and the preference for grandparent placement may be overcome only where the record reviewed in its entirety establishes that such placement is not in the best interests of the child.” (3)

“The circuit court was in the best position to weigh witness credibility, and we find no error in the circuit court’s determination that it was in M.W.’s best interests to remain with his foster mother.” (4)

FACTUAL BACKGROUND

M.W. and his two older siblings were removed from their parents' care because of substance abuse and neglect of their basic needs. M.W. was placed with the foster mother at approximately age two and remained there continuously for more than two years, developing a strong bond and substantial stability. The paternal grandparents, who lived in North Carolina, later obtained an approved ICPC home study, but extensive testimony indicated that moving M.W. would harm him and that concerns existed regarding the grandparents' ability to parent and the safety of placement with them. The circuit court found that M.W.'s best interests required remaining with the foster mother and that sibling separation was warranted.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition against M.W.'s biological parents in April 2012. M.W. and his siblings were placed in foster care, and the parents' rights were later relinquished or terminated. After an initial unsuccessful ICPC home-study request and a second home study approved in June 2013, the grandparents sought placement. Following a two-day permanent-placement hearing, the Circuit Court of Wood County placed M.W. with his foster mother for adoption and ordered sibling separation. The Supreme Court of Appeals of West Virginia affirmed.

DISPOSITION

affirmed

CASES CITED

- In the 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)
- Napoleon S. v. Walker, 217 W. Va. 254, 617 S.E.2d 801 (2005)
- In re Aaron H., 229 W. Va. 677, 735 S.E.2d 274 (2012)
- In re Hunter, 227 W. Va. 699, 715 S.E.2d 397 (2011)
- In re Elizabeth F., 225 W. Va. 780, 696 S.E.2d 296 (2010)
- In re Willis, 157 W. Va. 225, 207 S.E.2d 129 (1973)
- Michael D.C. v. Wanda L.C., 201 W. Va. 381, 497 S.E.2d 531 (1997)
- In re Carol B., 209 W. Va. 658, 550 S.E.2d 636 (2001)
- Honaker v. Burnside, 182 W. Va. 448, 388 S.E.2d 322 (1989)
- James M. v. Maynard, 185 W. Va. 648, 408 S.E.2d 400 (1991)