

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re Adoption of L.A.

No. 21-0372 (W. Va. Feb. 1, 2022) (memorandum decision) · No. 21-0372 · Decided February 1, 2022

SUMMARY

The West Virginia Supreme Court of Appeals reviewed an order granting biological maternal grandparents ongoing visitation after the child's adoption by a stepmother. The court held that the circuit court failed to give special weight to the adoptive parents' wishes and failed to make specific findings addressing the factors required by West Virginia Code § 48-10-502. It vacated the visitation ruling in part and remanded for a new order containing detailed findings, while leaving the adoption and termination-of-parental-rights rulings undisturbed.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice John A. Hutchison; Justice Elizabeth D. Walker; Justice Tim Armstead; Justice Evan H. Jenkins; Justice William R. Wooton
JURISDICTION	West Virginia
DECIDED	February 1, 2022
DOCKET	21-0372
DISPOSITION	remanded
PROCEDURAL POSTURE	Petitioners appealed the circuit court's order granting the biological maternal grandparents ongoing visitation with the child after petitioner mother adopted the child.
STANDARD OF REVIEW	The final order and ultimate disposition are reviewed for abuse of discretion, underlying factual findings for clear error, and questions of law or statutory interpretation de novo.
PRECEDENTIAL VALUE	Unpublished memorandum decision; limited precedential value under West Virginia appellate practice.
PARTIES	Father J.A., Mother N.W. v. B.M.-1, B.M.-2

TOPICS

grandparent rights

visitation

adoption

appellate procedure

standard of review

PRACTICE AREAS

family law

adoption

grandparent visitation

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court erred by granting continued grandparent visitation without according special weight to the adoptive parents' stated opposition.
2. Whether the circuit court erred by failing to make specific, detailed findings addressing the thirteen factors in West Virginia Code § 48-10-502.
3. Whether the Court should overrule *Petition of Nearhoof and State ex rel. Brandon L. v. Moats* to hold that a grandparent's visitation automatically terminates when the grandparent's child has parental rights terminated.

HOLDINGS

1. A court must accord at least some special weight to a fit parent's determination concerning grandparent visitation, and the circuit court erred by failing to make findings showing that it gave any weight, much less special weight, to petitioners' opposition.
2. A court deciding a grandparent-visitation request must consider the factors listed in West Virginia Code § 48-10-502 and make specific, detailed findings explaining its ruling; conclusory findings are insufficient.
3. The Court declined to overrule *Petition of Nearhoof and State ex rel. Brandon L.* or adopt a rule automatically vacating all prior grandparent visitation upon termination of the grandparent's child's parental rights.

KEY QUOTATIONS

“in light of the Troxel decision it is clear that ‘the court must accord at least some special weight to the parent’s own determination’ provided that the parent has not been shown to be unfit.” (4)

“when a . . . court is presented with a petition for grandparent visitation, it must consider a number of factors and make specific, detailed findings explaining its ruling.” (6)

“failure to make specific findings of fact regarding the grandparent visitation factors in W. Va. Code § 48-10-502 [is] clear error” (6)

FACTUAL BACKGROUND

The child had previously been awarded monthly visitation with her maternal grandparents while the child's biological mother had restricted visitation. During the adoption proceedings, evidence showed that the child experienced anxiety, behavioral problems, and concerns about secrecy and disparaging statements during grandparent visits, while her behavior improved after visitation ceased. Despite this evidence and the petitioners' objection, the circuit court awarded the grandparents continuing monthly visitation based primarily on the child's bond with the grandmother and the guardian's recommendation.

PROCEDURAL HISTORY

The circuit court granted the stepmother's adoption petition, terminated the biological mother's parental rights, and awarded the maternal grandparents one weekend of visitation per month subject to restrictions. Petitioners appealed the continued grandparent visitation. The Supreme Court of Appeals of West Virginia vacated that portion of the order and remanded for detailed findings and conclusions concerning the statutory grandparent-visitation factors and the weight accorded to the parents' wishes.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The circuit court must issue, within thirty days, a new order containing detailed findings of fact and conclusions of law addressing the specific factors in West Virginia Code § 48-10-502 and explaining the special weight accorded to the parents' stated position that visitation be terminated. The adoption and termination-of-parental-rights rulings were not disturbed.

CASES CITED

- In re K.H., 235 W. Va. 254, 773 S.E.2d 20 (2015)
- Melinda H. v. William R. II, 230 W. Va. 731, 742 S.E.2d 419 (2013)
- State v. Brandon B., 218 W. Va. 324, 624 S.E.2d 761 (2005)
- State v. Edward Charles L., 183 W. Va. 641, 398 S.E.2d 123 (1990)
- Walker v. West Virginia Ethics Commission, 201 W. Va. 108, 492 S.E.2d 167 (1997)
- In re the Adoption of Jon. L., 218 W. Va. 489, 625 S.E.2d 251 (2005)
- In re Visitation of A.P., 231 W. Va. 38, 743 S.E.2d 346 (2013)
- Troxel v. Granville, 530 U.S. 57 (2000)
- State ex rel. Brandon L. v. Moats, 209 W. Va. 752, 551 S.E.2d 674 (2001)
- Meagan S. v. Terry S., 242 W. Va. 452, 836 S.E.2d 419 (2019)
- Turley v. Keesee, 218 W. Va. 231, 624 S.E.2d 578 (2005)
- Province v. Province, 196 W. Va. 473, 473 S.E.2d 894 (1996)
- Petition of Nearhoof, 178 W. Va. 359, 359 S.E.2d 587 (1987)