

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re K.D.

No. 20-0753 (Barbour County 20-CIG-1) (W. Va. Aug. 27, 2021) · No. No. 20-0753 · Decided August 27, 2021

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the dismissal of C.D.'s petition to be appointed guardian of her granddaughter, K.D. The court held that the guardianship petition constituted an improper collateral attack on the prior child abuse and neglect proceedings and found no abuse of discretion in the circuit court's dismissal.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per curiam; Chief Justice Evan H. Jenkins; Justice Elizabeth D. Walker; Justice Tim Armstead; Justice John A. Hutchison; Justice William R. Wooton
JURISDICTION	West Virginia
DECIDED	August 27, 2021
DOCKET	No. 20-0753
DISPOSITION	affirmed
PROCEDURAL POSTURE	C.D. appealed the Circuit Court of Barbour County's dismissal of her petition to be appointed guardian of her granddaughter, K.D., a minor child.
STANDARD OF REVIEW	The dismissal of the guardianship petition was reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Unpublished memorandum decision; nonprecedential value not expressly stated in the opinion.
PARTIES	C.D. v. West Virginia Department of Health and Human Resources

TOPICS

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QUESTIONS PRESENTED

1. Whether the circuit court abused its discretion by dismissing C.D.'s petition to be appointed K.D.'s guardian as an improper collateral attack on the prior abuse and neglect and parental-rights-termination proceedings.
2. Whether C.D.'s arguments regarding the care she provided to K.D. and the circumstances of her prior criminal conviction established error in the dismissal.

HOLDINGS

1. The circuit court did not abuse its discretion by dismissing C.D.'s petition for guardianship. Under Rule 15 of the West Virginia Rules of Procedure for Child Abuse and Neglect Proceedings, the petition could not be used to circumvent the consequences of the prior termination-of-parental-rights proceeding, and C.D. did not demonstrate that the circuit court's collateral-attack ruling was erroneous.

KEY QUOTATIONS

“The effect of entry of an order of termination of parental rights shall be . . . to prohibit all contact and visitation between the child who is the subject of the petition and the parent who is the subject of the order and the respective grandparents, unless the Court finds . . . it is in the best interest of the child to retain a right of visitation.” (3)

FACTUAL BACKGROUND

The West Virginia Department of Health and Human Resources removed K.D. from her mother's custody in August 2015 and initially placed her with C.D. as a kinship placement. K.D. was later removed from C.D.'s home after a criminal-record check disclosed a 1995 conviction relating to injuries to a one-year-old child in her home. K.D.'s mother's parental rights were subsequently terminated, with adoption by the foster family identified as the permanency plan. In June 2020, C.D. petitioned to be appointed K.D.'s guardian.

PROCEDURAL HISTORY

C.D. filed a guardianship petition on June 24, 2020. The Circuit Court of Barbour County dismissed it on September 1, 2020, concluding that the petition was an improper collateral attack on the prior abuse and neglect proceedings and termination of parental rights. C.D. appealed, and the Supreme Court of Appeals of West Virginia affirmed by memorandum decision.

DISPOSITION

affirmed

CASES CITED

- In re K.H., 235 W. Va. 254, 773 S.E.2d 20 (2015)
- In re Jeffrey R.L., 190 W. Va. 24, 435 S.E.2d 162 (1993)
- State v. Edward Charles L., 183 W. Va. 641, 398 S.E.2d 123 (1990)

- State v. Julius, 185 W. Va. 422, 408 S.E.2d 1 (1991)
- In re K.D., No. 16-0913, 2017 WL 1102802 (W. Va. Mar. 24, 2017)
- In re K.D., No. 17-0927, 2018 WL 1251843 (W. Va. Mar. 12, 2018)
- In re Richard P., 227 W. Va. 285, 708 S.E.2d 479 (2010)

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