

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re J.T. and C.H.

No. 21-0136 (W. Va. Nov. 15, 2021) (memorandum decision) · No. 21-0136 · Decided November 15, 2021

SUMMARY

The West Virginia Supreme Court of Appeals affirmed a circuit court order denying a grandmother and step-grandfather permanent placement of two children in an abuse and neglect proceeding. The Court held that the Department of Health and Human Resources was not required to complete a home study after determining that the petitioners were unsuitable based on prior CPS history and a felony conviction, and that placement with the foster mother was in the children's best interests.

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	November 15, 2021
DOCKET	21-0136
DISPOSITION	affirmed
PROCEDURAL POSTURE	Grandmother and step-grandfather appealed the Raleigh County Circuit Court's order denying them permanent placement of two children and granting permanent placement to the foster mother.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo; factual findings in an abuse-and-neglect case are reviewed for clear error, and the reviewing court must affirm findings that are plausible in light of the record viewed in its entirety.
PRECEDENTIAL VALUE	nonprecedential memorandum decision
PARTIES	S.D., grandmother, T.B., step-grandfather v. West Virginia Department of Health and Human Resources, J.T. and C.H., through their guardian ad litem, R.J., foster parent

TOPICS

grandparent rights

adoption

child custody

appellate procedure

standard of review

PRACTICE AREAS

family law

juvenile abuse and neglect

adoption placement

QUESTIONS PRESENTED

1. Whether the circuit court erred by accepting the DHHR's determination that the petitioners were unsuitable without requiring completion of a statutory home study.
2. Whether the circuit court erred in denying the petitioners permanent placement and finding that placement with the foster mother was in the children's best interests.

HOLDINGS

1. The DHHR was not required to complete a home study because it determined that the petitioners were unsuitable for placement and that placement with them was not in the children's best interests.
2. The circuit court did not err in determining that permanent placement with the foster mother was in the children's best interests.

KEY QUOTATIONS

“The preference is just that—a preference. It is not absolute . . . [T]he child’s best interest remains paramount.” (5)

“As such, petitioner’s home clearly was not suitable for the children, and, therefore, the circuit court did not abuse its discretion by not ordering the DHHR to conduct a home study.” (6)

FACTUAL BACKGROUND

The children were removed from their parents' care after allegations of serious drug abuse and violations of a DHHR safety plan. The grandmother and step-grandfather sought placement, but a foster-care agency's background checks identified a Florida CPS history for the grandmother and a felony conviction for the step-grandfather for DUI causing the deaths of two people; a requested waiver was not granted. The children had lived with the foster mother since November 2018, the younger child had been placed with her at birth, and the guardian testified that removal would be detrimental because of the children's bond, progress, and stability in the foster home.

PROCEDURAL HISTORY

The DHHR initiated an abuse-and-neglect proceeding against the children's parents in September 2018 based on significant drug abuse. The circuit court adjudicated the parents as abusing parents and terminated their parental rights. The petitioners intervened and sought permanent placement, but after a permanency hearing the circuit court found them unsuitable based on CPS and criminal histories, determined that removal from the foster mother's home would be detrimental, and denied their placement request. The Supreme Court of Appeals affirmed by memorandum decision.

DISPOSITION

affirmed

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)
- In re J.T., No. 20-0151, 2020 WL 5240655 (W. Va. Sept. 3, 2020) (memorandum decision)
- In Interest of Tiffany Marie S., 196 W. Va. 223, 470 S.E.2d 177 (1996), Syl. Pt. 1
- In re Cecil T., 228 W. Va. 89, 717 S.E.2d 873 (2011), Syl. Pt. 1
- In re L.M., 235 W. Va. 436, 774 S.E.2d 517 (2015), Syl. Pt. 10
- In re K.E., 240 W. Va. 220, 809 S.E.2d 531 (2018)
- In re Hunter H., 227 W. Va. 699, 715 S.E.2d 397 (2011)
- In re Katie S., 198 W. Va. 79, 479 S.E.2d 589 (1996), Syl. Pt. 3