

# SUPREME COURT OF APPEALS OF WEST VIRGINIA

## In re B.A.

In re B.A. · No. No. 19-0921 · Decided November 12, 2020

### SUMMARY

Chief Justice Armstead dissents from the majority’s decision to remand a matter concerning the placement of B.A. for consideration of the sibling preference. The dissent argues that the foster parents could not satisfy the statutory good-moral-character requirement because of substantial unpaid child support, liens, and judgments. It concludes that consideration of the sibling preference would not alter the circuit court’s determination and that the circuit court’s ruling should be affirmed.

### CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                         |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Appeals of West Virginia                                                                                                                                                                                                                                                                                               |
| WRITING FOR THE COURT | Armstead, Chief Justice                                                                                                                                                                                                                                                                                                                 |
| JURISDICTION          | West Virginia                                                                                                                                                                                                                                                                                                                           |
| DECIDED               | November 12, 2020                                                                                                                                                                                                                                                                                                                       |
| DOCKET                | No. 19-0921                                                                                                                                                                                                                                                                                                                             |
| DISPOSITION           | other                                                                                                                                                                                                                                                                                                                                   |
| PROCEDURAL POSTURE    | The foster parents sought continued placement and custody of B.A. The circuit court denied their motion after finding that they could not satisfy the statutory good-moral-character requirement for prospective adoptive parents. The dissent would affirm that ruling rather than remand for consideration of the sibling preference. |
| PRECEDENTIAL VALUE    | Separate dissenting opinion; nonbinding                                                                                                                                                                                                                                                                                                 |
| PARTIES               | Foster parents                                                                                                                                                                                                                                                                                                                          |

### TOPICS

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### PRACTICE AREAS

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### QUESTIONS PRESENTED

1. Whether the foster parents satisfied the good-moral-character requirement for prospective adoptive parents under W. Va. Code § 48-22-701(d).
2. Whether the circuit court's failure to discuss the sibling preference required remand when the court had already determined that the foster parents failed the good-moral-character requirement.
3. Whether the circuit court properly considered the foster father's gambling winnings in evaluating his good moral character.

## HOLDINGS

1. The foster parents could not satisfy the good-moral-character requirement because the foster father's knowing failure to pay substantial child-support obligations despite having the ability to pay, together with the financial judgments and liens, supported the circuit court's determination.
2. The sibling preference did not require remand because it could not alter the dispositive determination that the foster parents failed to satisfy the good-moral-character requirement.
3. The circuit court properly considered the foster father's gambling winnings as part of its inquiry into why he had substantial unpaid child-support obligations and whether he possessed good moral character.

## KEY QUOTATIONS

*“the Court does not believe that it can make a finding that a father who knowingly fails to pay child support for a child he acknowledges to be his when he has the financial ability to do [so] is of good moral character.”* (1)

*“the sibling preference simply has no bearing on the central issue in the instant case—whether the foster parents can satisfy the “good moral character” requirement contained in W. Va. Code § 48-22-701(d).”* (2)

*“The application of the sibling preference to this matter will not change that determination.”* (4)

## FACTUAL BACKGROUND

The foster father had failed to pay approximately \$46,000 in child support despite having the financial ability to do so. The guardian ad litem also identified more than \$65,000 in liens and judgments against the foster parents and the foster father's contracting business. The foster father had won \$16,000 gambling but had not used those winnings to satisfy his child-support obligations. Based on these facts, the circuit court found that the foster parents could not satisfy the statutory good-moral-character requirement and denied their request for continued placement of B.A.

## PROCEDURAL HISTORY

After an investigation by the guardian ad litem and a recommendation by the DHHR, the circuit court denied the foster parents' motion for continued placement of B.A. The majority of the Supreme Court of Appeals remanded the matter to the circuit court to consider the sibling preference. Chief Justice Armstead dissented and would have affirmed the circuit court.

## DISPOSITION

other

## REMAND INSTRUCTIONS

The dissent would affirm the circuit court's denial of the foster parents' motion for continued placement. The majority instead remanded for consideration of the sibling preference.

## CASES CITED

- In re Carol B., 209 W. Va. 658, 550 S.E.2d 636 (2001)
- State ex rel. Paul B. v. Hill, 201 W. Va. 248, 496 S.E.2d 198 (1997)
- James M. v. Maynard, 185 W. Va. 648, 408 S.E.2d 400 (1991)
- State ex rel. Lipscomb v. Joplin, 131 W. Va. 302, 47 S.E.2d 221 (1948)
- In re Katie S., 198 W. Va. 79, 479 S.E.2d 589 (1996)
- Carter v. Carter, 196 W. Va. 239, 470 S.E.2d 193 (1996)
- Dos Reis v. McCleary, 200 F. Supp. 3d 291 (D. Mass. 2016)
- In re Malaszenko, 204 F. Supp. 744 (D.N.J. 1962)
- United States v. Harrison, 180 F.2d 981 (9th Cir. 1950)