

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Nathan E. M. v. George H. A. and Sara G. A.

Nathan E. M. · No. No. 15-0231 · Decided November 23, 2015

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the circuit court’s refusal to review a family court order granting grandparents visitation with a minor child. The court held that the petitioner’s challenge to the respondents’ status as grandparents under West Virginia Code § 48-10-203 was more appropriately characterized as a standing issue, and concluded that the respondents’ status as foster parents who had custody of the child’s mother supported grandparent visitation. The court also determined that the family court had subject matter jurisdiction over the visitation proceeding.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Margaret L. Workman; Justice Robin Jean Davis; Justice Brent D. Benjamin; Justice Menis E. Ketchum; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	November 23, 2015
DOCKET	No. 15-0231
DISPOSITION	affirmed
PROCEDURAL POSTURE	Nathan E. M. appealed the Circuit Court of Harrison County's refusal to grant his petition for appeal from a Family Court of Harrison County order denying his motion to dismiss a grandparent-visitation proceeding and related contempt proceedings.
STANDARD OF REVIEW	In reviewing a final order entered by a circuit court upon review of, or refusal to review, a family court order, factual findings are reviewed for clear error, application of law to facts for abuse of discretion, and questions of law de novo.
PRECEDENTIAL VALUE	Unpublished memorandum decision; limited precedential value under the West Virginia Rules of Appellate Procedure.
PARTIES	Nathan E. M. v. George H. A., Sara G. A.

TOPICS

grandparent rights

family law procedure

appellate procedure

statutory interpretation

standard of review

PRACTICE AREAS

family law

grandparent visitation

appellate procedure

statutory interpretation

QUESTIONS PRESENTED

1. Whether the challenge to the respondents' ability to seek grandparent visitation was properly characterized as a standing issue rather than a subject-matter-jurisdiction issue.
2. Whether persons who had custody of a minor child's parent as foster parents may qualify as grandparents under West Virginia Code § 48-10-203.
3. Whether the circuit court erred in refusing Nathan's petition for appeal from the family court's orders.

HOLDINGS

1. The family court had subject-matter jurisdiction over the grandparent-visitation action; Nathan's argument that the respondents were not statutory grandparents was properly treated as a challenge to standing.
2. Under the specific facts of the case, the respondents' custody of Shannon M. as her foster parents for a substantial number of years through adulthood was sufficient to satisfy the statutory requirement that a grandparent be a person who had previously been granted custody of the parent of a minor child for whom visitation is sought.
3. The circuit court did not err in refusing the petition for appeal, and its February 12, 2015 order was affirmed.

KEY QUOTATIONS

“In reviewing a final order entered by a circuit court judge upon a review of, or upon a refusal to review, a final order of a family court judge, we review the findings of fact made by the family court judge under the clearly erroneous standard, and the application of law to the facts under an abuse of discretion standard. We review questions of law de novo.” (at 3)

“‘Grandparent’ means a biological grandparent, a person married or previously married to a biological grandparent, or a person who had previously been granted custody of the parent of a minor child with whom visitation is sought.” (at 3)

FACTUAL BACKGROUND

George H. A. and Sara G. A. had custody of Shannon M., F.D.M.'s biological mother, from approximately age seven through adulthood and raised her as their daughter. After Shannon's death, the respondents sought grandparent visitation with F.D.M., and the parties agreed to visitation terms that the family court adopted in an April 9, 2013 order. Nathan later denied visitation, was found in contempt, and then challenged the respondents' standing on the ground that foster parents had not been granted legal custody of Shannon.

PROCEDURAL HISTORY

George H. A. and Sara G. A. petitioned the Harrison County Family Court for grandparent visitation with F.D.M. The parties reached an agreement, and the family court entered an order granting visitation. After finding Nathan in contempt for denying visitation, the family court denied his motion to dismiss, in which he argued that the respondents lacked standing because they had been foster parents, rather than legal custodians, of F.D.M.'s mother. The circuit court refused Nathan's petition for appeal, and the Supreme Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- State ex rel. W.Va. Dept. of Human Servs. v. Cheryl M., 177 W. Va. 688, 356 S.E.2d 181 (1987)
- Carr v. Hancock, 216 W. Va. 474, 607 S.E.2d 803 (2004)
- Skidmore v. Skidmore, 225 W. Va. 235, 691 S.E.2d 830 (2010)
- In re Katie S., 198 W. Va. 79, 479 S.E.2d 589 (1996)
- State ex rel. Lipscomb v. Joplin, 131 W. Va. 302, 47 S.E.2d 221 (1948)