

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re J.P. and A.P.

No. 18-0171 (W. Va. Nov. 19, 2018) (memorandum decision) · No. No. 18-0171 · Decided November 19, 2018

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed a circuit court order reinstating and expanding visitation for the maternal grandparents of J.P. and A.P. The court rejected the father's arguments concerning the timing of the final order, denial of appointed counsel and the opportunity to defend himself, alleged conflicts of interest, and purportedly false statements in the order. The court held that the visitation-enforcement proceeding did not implicate the father's parental fitness and that several arguments were either meritless or unpreserved.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per curiam; Chief Justice Margaret L. Workman; Justice Elizabeth D. Walker; Justice Tim Armstead; Justice Evan H. Jenkins; Justice Paul T. Farrell, sitting by temporary assignment
JURISDICTION	West Virginia
DECIDED	November 19, 2018
DOCKET	No. 18-0171
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner father appealed the Nicholas County Circuit Court's January 9, 2018, final order reinstating and expanding grandparent visitation.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo; factual findings in an abuse and neglect proceeding tried without a jury are reviewed for clear error and will not be set aside unless the reviewing court is left with a definite and firm conviction that a mistake has been made.
PRECEDENTIAL VALUE	Unpublished memorandum decision; precedential effect not established by the source text.
PARTIES	V.P., petitioner father v. J.C. and B.C., intervenor maternal grandparents, West Virginia Department of Health and Human Resources, J.P. and A.P., through guardian ad litem

TOPICS

grandparent rights

visitation

family law procedure

appellate procedure

preservation of error

PRACTICE AREAS

family law

juvenile law

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court entered the January 9, 2018, final order before expiration of the five-day objection period.
2. Whether the circuit court violated the father's constitutional right to defend himself as a fit parent by preventing him from presenting a defense or failing to appoint counsel.
3. Whether alleged conflicts of interest and related allegations were preserved for appellate review.
4. Whether the circuit court's final order contained false or unsupported statements concerning the parties' agreement to grandparent visitation.

HOLDINGS

1. The circuit court did not err by entering the final order on January 9, 2018, because that date was the fifth business day after the proposed order was submitted on January 2, 2018.
2. The circuit court did not violate the father's right to defend himself, and he was not entitled to court-appointed counsel for enforcement of the prior visitation order after dismissal of the abuse and neglect proceeding.
3. The court would not address the alleged conflicts of interest because the father failed to preserve the nonjurisdictional issues and failed to provide record citations showing where the alleged errors occurred or were raised below.
4. The circuit court did not err in stating that the father agreed to grandparent visitation because the hearing transcript supported that finding, and the appellate court reviews the circuit court's order as the authoritative statement of its ruling.

KEY QUOTATIONS

“It is a paramount principle of jurisprudence that a court speaks only through its orders.” (4)

FACTUAL BACKGROUND

The father's abuse and neglect petition was dismissed in 2014, and he was granted care, custody, and control of the children. By agreement, the maternal grandparents received visitation of one weekend per month and one telephone call per week, but the father ceased contact between the grandparents and children in approximately July 2016. After the father unsuccessfully sought to terminate visitation and continued not to comply with visitation orders, the circuit court ordered visitation to resume and granted additional holiday and make-up visits.

PROCEDURAL HISTORY

The abuse and neglect petition against the father was dismissed in 2014, and he was awarded care, custody, and control of the children. The maternal grandparents received intervenor status and court-ordered visitation. After the father ceased facilitating visitation and unsuccessfully moved to terminate it, the circuit court held a final hearing and ordered visitation to resume, including additional holiday and make-up visits. The circuit court entered its final order on January 9, 2018, and the Supreme Court of Appeals affirmed.

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 Interest of Tiffany Marie S., 196 W. Va. 223, 470 S.E.2d 177 (1996)
- In re Cecil T., 228 W. Va. 89, 717 S.E.2d 873 (2011)
- In Interest of Z.D., 239 W. Va. 890, 806 S.E.2d 814, 817 (2017)
- Shaffer v. Acme Limestone Co., Inc., 206 W. Va. 333, 349 n.20, 524 S.E.2d 688, 704 n.20 (1999)
- Noble v. W. Va. Dep't of Motor Vehicles, 223 W. Va. 818, 821, 679 S.E.2d 650, 653 (2009)
- State v. White, 188 W. Va. 534, 536 n.2, 425 S.E.2d 210, 212 n.2 (1992)
- State ex rel. Erlewine v. Thompson, 156 W. Va. 714, 718, 207 S.E.2d 105, 107 (1973)
- Legg v. Felinton, 219 W. Va. 478, 483, 637 S.E.2d 576, 581 (2006)