

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re L.L.-1, L.L.-2, and L.L.-3

No. 17-0917 (W. Va. Apr. 9, 2018) · No. No. 17-0917 · Decided April 9, 2018

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the denial of a grandmother's request for placement of three children in an abuse and neglect proceeding. The court held that the Department of Health and Human Resources had considered the grandmother as required by the grandparent-placement statute, but that the circuit court properly determined placement was not in the children's best interests based on the record. The court also found no error in relying on existing evidence concerning the grandmother's awareness of the conditions in the home, despite the guardian ad litem's failure to interview her.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; Chief Justice Margaret L. Workman; Justice Robin Jean Davis; Justice Allen H. Loughry II; Justice Elizabeth D. Walker; Justice Menis E. Ketchum
JURISDICTION	West Virginia
DECIDED	April 9, 2018
DOCKET	No. 17-0917
DISPOSITION	affirmed
PROCEDURAL POSTURE	The grandmother appealed the Kanawha County Circuit Court's order denying her motion to intervene and her request for placement of three children in an abuse and neglect proceeding.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo. Findings of fact in an abuse and neglect case 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PRECEDENTIAL VALUE	nonprecedential memorandum decision
PARTIES	L.D., petitioner grandmother v. L.L.-1, L.L.-2, and L.L.-3, through the guardian ad litem, West Virginia Department of Health and Human Resources

TOPICS

grandparent rights

parental rights

family law procedure

appellate procedure

standard of review

PRACTICE AREAS

family law

juvenile abuse and neglect

child placement

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court failed to consider the grandmother for placement under West Virginia Code § 49-4-114(a)(3).
2. Whether the circuit court erred in denying the grandmother permanent placement despite her passing a home study and being certified to foster children.
3. Whether the guardian ad litem was required to interview the grandmother before recommending against placement.
4. Whether the grandmother's inadequately supported assignments of error concerning intervention and imputation of the father's conduct were preserved for appellate review.

HOLDINGS

1. The circuit court did not fail to consider the grandmother for placement. The statute requires the DHHR to consider known grandparents and conduct a home study, but it does not require the circuit court to adopt the DHHR's recommendation.
2. The statutory preference for grandparent placement does not require permanent placement with a grandparent when the record shows that such placement is not in the children's best interests.
3. Under the limited facts of this case, the guardian ad litem's failure to interview the grandmother did not require reversal because the existing record supplied sufficient evidence concerning the grandmother's suitability and awareness of the neglectful conditions.
4. The court would not address the grandmother's assignments concerning denial of intervention and imputation of the father's conduct because the brief failed to comply with the requirement to provide developed legal argument and appropriate authority and record citations.

KEY QUOTATIONS

“This statute, setting forth a preference for placement of children with their grandparents, imposes a duty on the DHHR to consider grandparents for placement. Petitioner admits that the DHHR complied with this requirement. The statute does not, however, require the circuit court to agree with the DHHR’s recommendation outright.” (3)

“Indeed, we have held that ‘[i]n a contest involving the custody of an infant the welfare of the child is the polar star by which the discretion of the court will be guided.’ Syl. Pt. 2, State ex rel. Lipscomb v. Joplin, 131 W.Va. 302, 47 S.E.2d 221 (1948).” Syl. Pt. 3, In re S.W., 233 W.Va. 91, 755 S.E.2d 8 (2014).” (5)

FACTUAL BACKGROUND

The children's father was charged after fleeing from a police officer at a high rate of speed with two children in the vehicle, and the abuse and neglect petition also alleged domestic violence and failure to obtain appropriate medical care. Evidence showed severe medical neglect, domestic violence, inadequate clothing, developmental and nutritional concerns, and other unsafe conditions in the home. The grandmother owned the home, visited the children daily, and provided supplies, but the circuit court found that she should have been aware of the conditions and failed to protect the children. Although she passed a home study and was certified to foster children, the circuit court found that placement with her was not in the children's best interests.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition against the children's parents in January 2017. The grandmother sought to intervene and obtain placement; the circuit court denied intervention but directed a home study. After hearings concerning the children's best interests, the circuit court denied the grandmother's placement request and ultimately terminated the parents' parental rights. The grandmother appealed the circuit court's September 14, 2017 order, and the Supreme Court of Appeals of West Virginia 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)
- Napoleon S. v. Walker, 217 W. Va. 254, 617 S.E.2d 801 (2005)
- In re Carol B., 209 W. Va. 658, 550 S.E.2d 636 (2001)
- State ex rel. Lipscomb v. Joplin, 131 W. Va. 302, 47 S.E.2d 221 (1948)
- In re S.W., 233 W. Va. 91, 755 S.E.2d 8 (2014)