

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re B.C., D.C., & B.C.

No. 14-1174 (W. Va. June 15, 2015) · No. No. 14-1174 · Decided June 15, 2015

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the circuit court's order denying J.C. appointed counsel and recognizing her as a psychological parent to the children in an abuse and neglect proceeding. The court held that any failure to appoint counsel was not reversible because J.C. did not qualify for appointed representation, and it upheld the finding that her role was primarily that of a nanny rather than a psychological parent.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; Chief Justice Margaret L. Workman; Justice Brent D. Benjamin; Justice Menis E. Ketchum; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	June 15, 2015
DOCKET	No. 14-1174
DISPOSITION	affirmed
PROCEDURAL POSTURE	J.C. appealed the Braxton County Circuit Court's dispositional order denying her court-appointed counsel and determining that she was not a psychological parent to the children in abuse and neglect proceedings.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo. In abuse and neglect cases tried without a jury, factual findings 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 was made.
PRECEDENTIAL VALUE	Unpublished memorandum decision; the court found no substantial question of law and affirmed under West Virginia Rule of Appellate Procedure 21.
PARTIES	J.C. v. West Virginia Department of Health and Human Resources, Guardian ad litem for B.C.-1, D.C., and B.C.-2

TOPICS

family law procedure

parental rights

appellate procedure

standard of review

civil procedure

PRACTICE AREAS

family law

juvenile law

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court erred by not appointing counsel for J.C. in the abuse and neglect proceedings.
2. Whether the circuit court erred in finding that J.C. was not a psychological parent to the children.

HOLDINGS

1. Although counsel ordinarily should be appointed for parents and custodians required to be named as respondents when an abuse and neglect petition is filed, no reversible error occurred because J.C. did not qualify for appointed counsel after submitting her financial affidavit and therefore would have been required either to retain counsel or proceed pro se.
2. The circuit court correctly found that J.C. was not a psychological parent because the record showed only that she served as a nanny and did not establish a continuing, substantial parent-like relationship that fulfilled the children's psychological and physical needs.

KEY QUOTATIONS

“A psychological parent is a person who, on a continuing day-to-day basis, through interaction, companionship, interplay, and mutuality, fulfills a child’s psychological and physical needs for a parent and provides for the child’s emotional and financial support.” (4)

FACTUAL BACKGROUND

The DHHR initiated abuse and neglect proceedings after one child reported that his mother had physically abused him, and the children disclosed additional physical abuse and domestic violence in the home. J.C. lived in the home and was named as a custodian, but the record contained no allegations that she abused or neglected the children. The circuit court found that J.C. functioned primarily as a nanny, rather than as a psychological parent, and that she failed to present evidence establishing the required parental relationship.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition in May 2014 and later amended it. J.C., who lived in the home, was named as a custodian and requested appointed counsel; after submitting a financial affidavit, she did not qualify for appointed representation and proceeded without counsel. Following adjudicatory and dispositional hearings, the circuit court denied her psychological-parent claim and found that she had no legal right to the children. The Supreme Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- 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 the Matter of Lindsey C., 196 W. Va. 395, 473 S.E.2d 110 (1995)
- In re Emily G., 224 W. Va. 390, 686 S.E.2d 41 (2009)
- In re Edward B., 210 W. Va. 621, 558 S.E.2d 620 (2001)
- In re Clifford K., 217 W. Va. 625, 619 S.E.2d 138 (2005)
- In re Brandon L.E., 183 W. Va. 113, 394 S.E.2d 515 (1990)

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