

DISTRICT OF COLUMBIA COURT OF APPEALS

In re D.B.

947 A.2d 443 (D.C. 2008) · Decided May 1, 2008

SUMMARY

The District of Columbia Court of Appeals affirmed an order prohibiting a father from visiting his daughter after finding clear and convincing evidence that he had sexually abused the daughter and her sister. The court held that hearsay was admissible in the visitation proceeding and rejected the father’s due process, prior-conviction, and missing-record arguments. The court concluded that no error warranted reversal.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Fisher, Associate Judge; Belson; Fisher; Thompson
JURISDICTION	District of Columbia
DECIDED	May 1, 2008
DISPOSITION	affirmed
PROCEDURAL POSTURE	M.W. appealed a Superior Court order continuing to prohibit him from visiting his daughter, D.B., after an evidentiary hearing concerning allegations that he sexually abused D.B. and her sister.
STANDARD OF REVIEW	An order denying a parent visitation is reviewed for abuse of discretion. Evidentiary rulings, including admission of hearsay and other-crimes evidence, are reviewed for abuse of discretion; preserved evidentiary error is subject to harmless-error review. Unpreserved constitutional claims are reviewed for plain error. The appellate court reviews the record for adequacy to permit meaningful appellate review and to exclude errors other than harmless error.
PRECEDENTIAL VALUE	published opinion
PARTIES	M.W. v. District of Columbia

TOPICS

- visitation
- family law procedure
- hearsay
- due process
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether hearsay evidence was admissible in a hearing determining the visitation rights of a noncustodial parent of a neglected child.
2. Whether reliance on hearsay to prohibit visitation violated M.W.'s procedural due process rights.
3. Whether the trial court improperly considered M.W.'s prior sodomy conviction, including an allegedly mistaken belief about the victim's age.
4. Whether the reconstructed appellate record was inadequate because the videotaped child interviews were missing.

HOLDINGS

1. Hearsay was admissible because the proceeding was not a statutory factfinding hearing concerning the neglect petition, and no applicable statute or court rule prohibited hearsay in the visitation inquiry.
2. The court did not reverse on M.W.'s due process claim because the claim was not preserved and M.W. could not establish plain error.
3. The trial court did not commit reversible error in allowing M.W.'s prior sodomy conviction to be used to test the character witness's knowledge, and any error in considering it substantively was harmless.
4. The reconstructed record was adequate to permit meaningful appellate review, and the missing videotapes did not warrant reversal.

KEY QUOTATIONS

“Having reviewed our statutes, rules, and controlling precedent, we conclude that the court did not err by admitting hearsay.” (447)

“Our opinion in Ko. W. apparently contemplates that hearsay evidence will be admitted, but it stresses that there must be adequate safeguards to ensure that the parent has the opportunity to rebut it.” (448)

“When evidence is “essentially uncontroverted ..., appellant cannot claim that fairness requires that he nonetheless be given a chance to contest it now.”” (450)

“For all these reasons, we are confident that this record is adequate to permit meaningful appellate review.” (455)

FACTUAL BACKGROUND

D.B. was born in 1996 and lived with her mother and sisters until the mother stipulated to neglect in 2001, after which D.B. entered foster care. M.W. had previously visited D.B. and her sister, but visitation was prohibited after allegations of sexual abuse arose. At the evidentiary hearing, the foster mother described the children's disclosures and eroticized behavior, a doctor testified about C.B.'s notched hymen and chlamydia, and the court considered recorded interviews and M.W.'s prior sodomy conviction. M.W. attended only the first day of the

four-day hearing, did not testify, did not call the children as witnesses, and did not otherwise substantially challenge the evidence.

PROCEDURAL HISTORY

D.B. was committed to the District of Columbia Child and Family Services Agency after her mother stipulated to neglect. The Superior Court initially prohibited M.W.'s visitation pending a criminal investigation, later held a four-day evidentiary hearing at which hearsay and other evidence were admitted, and found by clear and convincing evidence that M.W. had sexually abused both girls. The court continued the visitation prohibition, and the District of Columbia Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- In re D.M., 771 A.2d 360, 364-66 (D.C. 2001)
- In re Ko. W., 774 A.2d 296, 303, 305-06 (D.C. 2001)
- (James) Johnson v. United States, 398 A.2d 354, 362, 367 (D.C. 1979)
- In re Ty. B., 878 A.2d 1255, 1266-67 (D.C. 2005)
- In re Jam. J., 825 A.2d 902, 911, 915-19 (D.C. 2003)
- Santosky v. Kramer, 455 U.S. 745, 753 (1982)
- Mathews v. Eldridge, 424 U.S. 319, 334-35 (1976)
- Long v. United States, 940 A.2d 87, 91 (D.C. 2007)
- Marquez v. United States, 903 A.2d 815, 817 (D.C. 2006)
- Williamson v. United States, 445 A.2d 975, 980 n. 5 (D.C. 1982)
- In re J.W., 837 A.2d 40, 47-48 (D.C. 2003)
- Thomas v. United States, 914 A.2d 1, 8, 23 (D.C. 2006)
- United States v. Olano, 507 U.S. 725, 732 (1993)
- In re Antj. P., 812 A.2d 965, 971 (D.C. 2002)
- In re L.H., 634 A.2d 1230, 1234 (D.C. 1993)
- Mitchell v. United States, 526 U.S. 314, 328 (1999)
- Baxter v. Palmigiano, 425 U.S. 308, 318-19 (1976)
- Devore v. United States, 530 A.2d 1173, 1174 (D.C. 1987)
- Michelson v. United States, 335 U.S. 469 (1948)
- Pounds v. United States, 529 A.2d 791, 794 (D.C. 1987)
- Johnson v. United States, 610 A.2d 729, 730 (D.C. 1992)
- Sanders v. United States, 809 A.2d 584, 591 (D.C. 2002)
- (William) Johnson v. United States, 683 A.2d 1087, 1099 (D.C. 1996) (en banc)

- Flores v. United States, 698 A.2d 474, 482 (D.C. 1997)
- Cole v. United States, 478 A.2d 277, 285 (D.C. 1984)
- Williams v. United States, 927 A.2d 1064 (D.C. 2007)
- Lucas v. United States, 476 A.2d 1140, 1142-43 (D.C. 1984)

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