

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re Christina W., Sissy W., and Lisa W., 219 W. Va. 678

639 S.E.2d 770 (2006) · No. No. 33133 · Decided November 29, 2006

SUMMARY

The Supreme Court of Appeals of West Virginia considered whether a guardian ad litem in a child abuse and neglect proceeding owes an absolute duty of confidentiality to the child. The court held that confidentiality applies but is not absolute: disclosure to the court is required when necessary to protect the child from a high risk of probable harm. The court affirmed denial of the motion to remove the guardian ad litem because the abuse allegations had ultimately been brought to the court’s attention.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Davis, Chief Justice
JURISDICTION	West Virginia
DECIDED	November 29, 2006
DOCKET	No. 33133
DISPOSITION	affirmed
PROCEDURAL POSTURE	The West Virginia Department of Health and Human Resources appealed an order denying its motion to remove the children's guardian ad litem based on an alleged conflict arising from the guardian's failure to disclose Christina W.'s confidential report of sexual abuse.
STANDARD OF REVIEW	The court reviewed the legal determination de novo. It noted that ultimate dispositions ordinarily receive abuse-of-discretion review, underlying factual findings are reviewed for clear error, and questions of law are reviewed de novo.
PRECEDENTIAL VALUE	Published opinion; precedential West Virginia Supreme Court of Appeals decision announcing a rule governing guardian ad litem confidentiality in abuse and neglect proceedings.
PARTIES	State of West Virginia Department of Health and Human Resources v. Guardians ad Litem

TOPICS

guardian ad litem

guardianship procedure

attorney client privilege

family law procedure

mootness

PRACTICE AREAS

family law

child welfare

professional responsibility

evidence and privilege

appellate procedure

QUESTIONS PRESENTED

1. Whether a guardian ad litem appointed for a child in an abuse and neglect proceeding owes the child a duty of confidentiality.
2. Whether that duty of confidentiality is absolute or yields when disclosure is necessary to protect the child from a high risk of probable harm.
3. Whether the circuit court erred by denying DHHR's motion to remove the guardian ad litem after the court ultimately learned of the child's allegations.
4. Whether the technically moot issue should be addressed because it is capable of repetition yet evades review.

HOLDINGS

1. Because many aspects of a guardian ad litem's representation of a child in an abuse and neglect proceeding comprise duties performed by a lawyer for a client, the West Virginia Rules of Professional Conduct generally apply to that representation.
2. A guardian ad litem owes a duty of confidentiality to a child represented in an abuse and neglect proceeding, but the duty is not absolute. When honoring confidentiality would expose the child to a high risk of probable harm, the guardian ad litem must disclose the information to the presiding court to safeguard the child's best interests.
3. The circuit court did not err in denying DHHR's motion to remove the guardian ad litem because the confidential allegations had ultimately been brought to the court's attention, thereby eliminating the asserted conflict for purposes of the motion.

KEY QUOTATIONS

"Accordingly, we now hold that while a guardian ad litem owes a duty of confidentiality to the child[ren] he or she represents in child abuse and neglect proceedings, this duty is not absolute. Where honoring the duty of confidentiality would result in the child[ren]'s exposure to a high risk of probable harm, the guardian ad litem must make a disclosure to the presiding court in order to safeguard the best interests of the child[ren]." (at 778)

"Accordingly, we now hold that, because many aspects of a guardian ad litem's representation of a child in an abuse and neglect proceeding comprise duties that are performed by a lawyer on behalf of a client, the rules of professional conduct generally apply to that representation." (at 775)

FACTUAL BACKGROUND

During a domestic-violence altercation involving Linda H. and her boyfriend James B., Christina W. initially disclosed to a deputy and a service provider that James had touched her inappropriately, but later recanted. After the children were adjudged neglected and the parents received an improvement period with unsupervised visitation, Christina privately told her guardian ad litem that the sexual touching had occurred and asked that the information remain confidential. The guardian did not disclose the information to the court, and DHHR later learned of the disclosure from other sources and moved to remove the guardian ad litem.

PROCEDURAL HISTORY

The children were removed from their mother's home after a domestic-violence incident and allegations that the mother's boyfriend had sexually abused Christina. After the parents stipulated to domestic-violence allegations, the circuit court adjudged the children neglected and granted the parents an improvement period that included unsupervised visitation. Christina later disclosed the alleged sexual abuse privately to her guardian ad litem, but the guardian did not disclose it to the court. After the allegations were independently reported to DHHR and a foster-care worker, DHHR moved to remove the guardian ad litem. The Circuit Court of Mercer County denied the motion, and the Supreme Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Garlow v. Zakaib, 186 W. Va. 457, 413 S.E.2d 112 (1991)
- Musick v. Musick, 192 W. Va. 527, 453 S.E.2d 361 (1994)
- State ex rel. Michael A.P. v. Miller, 207 W. Va. 114, 529 S.E.2d 354 (2000)
- Walker v. West Virginia Ethics Comm'n, 201 W. Va. 108, 492 S.E.2d 167 (1997)
- Chrystal R.M. v. Charlie A.L., 194 W. Va. 138, 459 S.E.2d 415 (1995)
- In re Tyler D., 213 W. Va. 149, 578 S.E.2d 343 (2003)
- In re Christina L., 194 W. Va. 446, 460 S.E.2d 692 (1995)
- In re Scottie D., 185 W. Va. 191, 406 S.E.2d 214 (1991)
- In re Jeffrey R.L., 190 W. Va. 24, 435 S.E.2d 162 (1993)
- In re Amber Leigh J., 216 W. Va. 266, 607 S.E.2d 372 (2004) (per curiam)
- In re Katie S., 198 W. Va. 79, 479 S.E.2d 589 (1996)
- Michael K.T. v. Tina L.T., 182 W. Va. 399, 387 S.E.2d 866 (1989)
- In re Elizabeth A., 217 W. Va. 197, 617 S.E.2d 547 (2005) (per curiam)
- In re Lindsey C., 196 W. Va. 395, 473 S.E.2d 110 (1995)
- In re Emily, 208 W. Va. 325, 540 S.E.2d 542 (2000)
- Israel by Israel v. West Virginia Secondary Schs. Activities Comm'n, 182 W. Va. 454, 388 S.E.2d 480 (1989)
- State ex rel. M.C.H. v. Kinder, 173 W. Va. 387, 317 S.E.2d 150 (1984)
- State ex rel. Amy M. v. Kaufman, 196 W. Va. 251, 470 S.E.2d 205 (1996)

- Miners in Gen. Group v. Hix, 123 W. Va. 637, 17 S.E.2d 810 (1941)
- Lee-Norse Co. v. Rutledge, 170 W. Va. 162, 291 S.E.2d 477 (1982)
- Retail Designs, Inc. v. West Virginia Div. of Highways, 213 W. Va. 494, 583 S.E.2d 449 (2003)
- In re In re Emily, 208 W. Va. 325, 540 S.E.2d 542 (2000)

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