

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Jamie G. v. Billy B.

Jamie G. · No. No. 15-0106 · Decided April 15, 2016

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the circuit court's refusal to review family court orders dismissing a contempt petition for lack of service and modifying the parties' parenting plan. The court held that the petitioner's due process allegations were unsupported and that the family court did not abuse its discretion in making the children's contact with the petitioner subject to the children's discretion. The decision emphasizes the best interests of the children and deference to family court factual findings.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Menis E. Ketchum; Robin Jean Davis; Brent D. Benjamin; Margaret L. Workman; Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	April 15, 2016
DOCKET	No. 15-0106
DISPOSITION	affirmed
PROCEDURAL POSTURE	Jamie G. appealed the Circuit Court of Clay County's refusal to review two Family Court of Clay County orders. The family court had dismissed her contempt petition for failure to serve Billy B. and denied her modification petition while modifying the parenting plan to make contact with the children discretionary at the children's request.
STANDARD OF REVIEW	Final orders entered by a circuit court upon review of, or refusal to review, a final family court order are reviewed by examining the family court's factual findings under the clearly erroneous standard, application of law to the facts under an abuse-of-discretion standard, and questions of law de novo.
PRECEDENTIAL VALUE	Memorandum decision; the source identifies the opinion as published, but the text does not state a separate precedential designation.
PARTIES	Jamie G. v. Billy B.

TOPICS

family law procedure

child custody

visitation

standard of review

appellate procedure

PRACTICE AREAS

family law

appellate procedure

civil procedure

QUESTIONS PRESENTED

1. Whether the family court properly dismissed Jamie G.'s contempt petition for failure to serve Billy B.
2. Whether Jamie G. was denied due process because of an alleged guardian ad litem conflict, lack of appointed counsel in an earlier proceeding, and alleged judicial prejudice.
3. Whether the family court abused its discretion by modifying the parenting plan to provide that the children could contact Jamie G. only if they wished to spend time with her.

HOLDINGS

1. The family court did not abuse its discretion by dismissing the contempt petition because Jamie G. did not dispute that she failed to serve Billy B. with the petition.
2. Jamie G. failed to establish a due-process violation based on the alleged guardian ad litem conflict, the earlier lack of counsel, or alleged judicial prejudice.
3. The family court did not abuse its discretion by modifying the parenting plan to provide that the children could contact Jamie G. if they wished to spend time with her.

KEY QUOTATIONS

“Due process of law is synonymous with fundamental fairness.” (3)

“Although parents have substantial rights that must be protected, the primary goal . . . in all family law matters . . . must be the health and welfare of the children.” (3)

“An appellate court may not decide the credibility of witnesses or weigh evidence as that is the exclusive function and task of the trier of fact.” (4)

FACTUAL BACKGROUND

The parties were divorced and had three children, two of whom were minors at the time of the family court proceedings. Jamie G. alleged that Billy B. failed to comply with the parenting plan and sought contempt relief, custody of the daughter, alternating custody of the son, overnight visitation, and additional summer parenting time. The family court found that Jamie created conflict, filed allegedly fraudulent domestic-violence or child-abuse reports, had an altercation with Billy's wife, and caused unnecessary stress to the children; it therefore made contact with Jamie dependent on the children's wishes.

PROCEDURAL HISTORY

Jamie G. filed a contempt petition and a petition to modify the parenting plan in the Family Court of Clay County. After a November 19, 2014 hearing, the family court dismissed the contempt petition for lack of service and denied the modification petition while granting respondent's requested parenting-plan modification. The circuit court refused Jamie G.'s appeal on January 12, 2015, 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)
- In re Jeffrey R.L., 190 W.Va. 24, 435 S.E.2d 162 (1993)
- State v. Edward Charles L., 183 W.Va. 641, 398 S.E.2d 123 (1990)
- State v. Julius, 185 W.Va. 422, 408 S.E.2d 1 (1991)
- Carr v. Hancock, 216 W.Va. 474, 607 S.E.2d 803 (2004)
- State ex rel. Peck v. Goshorn, 162 W.Va. 420, 422, 249 S.E.2d 765, 766 (1978)
- 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, 405, 387 S.E.2d 866, 872 (1989)
- State v. Guthrie, 194 W.Va. 657, 669 n. 9, 461 S.E.2d 163, 175 n. 9 (1995)