

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re the Adoption of William Albert B., Katy Ann B., and Sierra Nicole B., 216 W. Va. 425

607 S.E.2d 531 (2004) · No. No. 31728 · Decided December 8, 2004

SUMMARY

The Supreme Court of Appeals of West Virginia reversed orders terminating a father's parental rights and permitting the maternal grandparents to adopt his three children. The court held that the evidence did not establish statutory or common-law abandonment by clear, cogent, and convincing proof, noting that the father had attempted to support and contact the children and that the grandparents had interfered with visitation. The case was remanded for further proceedings concerning temporary custody and coordination with the pending family-court proceedings.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam
JURISDICTION	West Virginia
DECIDED	December 8, 2004
DOCKET	No. 31728
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The biological father appealed the Circuit Court of Tyler County's orders finding that he had abandoned his three children, terminating his parental rights, and granting adoption of the children to their maternal grandparents.
STANDARD OF REVIEW	The circuit court's final order and ultimate disposition are reviewed for abuse of discretion; findings of fact are reviewed under a clearly erroneous standard; and conclusions of law are reviewed de novo.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Clyde Dewayne B. v. Charles B., Patricia B.

TOPICS

- adoption
- termination of parental rights
- child custody
- family law procedure
- appellate procedure

PRACTICE AREAS

Family law

Adoption

Termination of parental rights

Child custody

Appellate procedure

QUESTIONS PRESENTED

1. Whether the evidence established that the father abandoned his three children so as to support termination of his parental rights and adoption by the maternal grandparents.
2. Whether the father's failure to provide support or communicate with the children could establish abandonment when support was withheld from his wages and the grandparents prevented visitation and communication.
3. What disposition was appropriate in light of competing adoption and custody proceedings in different West Virginia courts.

HOLDINGS

1. The evidence did not support a presumption that the father abandoned the children because he met his legal obligation to attempt financial support within his means through wage withholding and attempted to visit or communicate with the children but was prevented from doing so by the grandparents.
2. The record did not contain clear, cogent, and convincing proof that the father had a settled purpose to forego all parental duties and relinquish all parental responsibilities; therefore, termination of his parental rights and the adoption could not stand.
3. The circuit court erred in finding abandonment, terminating the father's parental rights, and permitting the grandparents to adopt the children.

KEY QUOTATIONS

“A parent has the natural right to the custody of his or her infant child and, unless the parent is an unfit person because of misconduct, neglect, immorality, abandonment, or other dereliction of duty, or has waived such right, or by agreement or otherwise has permanently transferred, relinquished or surrendered such custody, the right of the parent to the custody of his or her infant child will be recognized and enforced by the courts.” (216 W. Va. 425, 433)

“Abandonment” means any conduct ... that demonstrates a settled purpose to forego all duties and relinquish all parental claims to the child.” (216 W. Va. 425, 434)

“We do not believe that clear, cogent and convincing proof exists in the record establishing that the appellant had a settled purpose to forego all parental duties, and to relinquish all parental responsibilities toward his children.” (216 W. Va. 425, 435)

FACTUAL BACKGROUND

Clyde Dewayne B. and Sarah Jo M. were the parents of three children and were divorced under a parenting plan that provided the father regular weekend and holiday parenting time. The children spent much of their time with their maternal grandparents, who prevented the father from exercising visitation and refused to deliver his correspondence to the children. During the six months before the adoption petition, the father's child-support

obligation was withheld from his wages, and he pursued enforcement of the parenting plan through the family court. The grandparents nevertheless filed an adoption petition alleging abandonment, and the circuit court terminated the father's parental rights and approved the adoption.

PROCEDURAL HISTORY

The parents were divorced in the Family Court of Ritchie County, which adopted a parenting plan granting the father regular visitation. The maternal grandparents later sought custodial responsibility in the Family Court of Tyler County, which dismissed their petition for lack of jurisdiction and venue. The grandparents then filed an adoption petition in the Circuit Court of Tyler County; after hearings, that court found abandonment, terminated the father's parental rights, and granted the adoption. The Supreme Court of Appeals reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The orders of the Circuit Court of Tyler County dated September 4 and September 17, 2003 were reversed, and the adoptions were set aside. The matter was remanded for further proceedings to determine temporary custody pending action by the Family Court of Ritchie County. The circuit court was instructed to consider the children's best interests, minimize the impact of future orders on the children, and communicate and coordinate with the Family Court of Ritchie County.

CASES CITED

- Burgess v. Porterfield, 196 W. Va. 178, 469 S.E.2d 114 (1996)
- State ex rel. Kiger v. Hancock, 153 W. Va. 404, 168 S.E.2d 798 (1969)
- Hammack v. Wise, 158 W. Va. 343, 211 S.E.2d 118 (1975)
- Honaker v. Burnside, 182 W. Va. 448, 388 S.E.2d 322 (1989)
- Matter of Adoption of Schoffstall, 179 W. Va. 350, 368 S.E.2d 720 (1988)
- In re Harris, 160 W. Va. 422, 236 S.E.2d 426 (1977)
- In re Willis, 157 W. Va. 225, 207 S.E.2d 129 (1973)
- In the Matter of Jonathan P., 182 W. Va. 302, 387 S.E.2d 537 (1989)