

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re R.S. and G.S.-1

No. 19-0258 (W. Va. Sept. 13, 2019) (memorandum decision) · No. 19-0258 · Decided September 13, 2019

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the denial of paternal grandparents' motions to intervene and request placement of two children in an abuse and neglect proceeding. The court held that the grandparent placement preference was not absolute and that placement with the grandparents was contrary to the children's best interests given their prior stated disinterest, criminal history concerns, and the children's bonds with their foster families. The court also concluded that the grandparents were not entitled to a meaningful opportunity to be heard under West Virginia Code § 49-4-601(h), although the record showed that hearings were held on their motions.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; Chief Justice Elizabeth D. Walker; Justice Margaret L. Workman; Justice Tim Armstead; Justice Evan H. Jenkins; Justice John A. Hutchison
JURISDICTION	West Virginia
DECIDED	September 13, 2019
DOCKET	19-0258
DISPOSITION	affirmed
PROCEDURAL POSTURE	Paternal grandparents appealed the Circuit Court of Mingo County's order denying their motion to intervene and their request for placement of the children in an abuse and neglect proceeding.
STANDARD OF REVIEW	Conclusions of law are reviewed de novo. In an abuse and neglect case tried upon the facts without a jury, factual findings are reviewed for clear error and will not be set aside unless the reviewing court is left with the definite and firm conviction that a mistake has been made.
PRECEDENTIAL VALUE	Nonprecedential memorandum decision
PARTIES	S.S., G.S.-2 v. West Virginia Department of Health and Human Resources, Guardian ad litem for R.S. and G.S.-1

TOPICS

grandparent rights

parental rights

termination of parental rights

family law procedure

appellate procedure

PRACTICE AREAS

Juvenile law

Family law

Abuse and neglect

QUESTIONS PRESENTED

1. Whether the circuit court erred by denying the paternal grandparents' motions to intervene in the abuse and neglect proceedings.
2. Whether the statutory grandparent preference required the DHHR or circuit court to consider the grandparents for placement or adoption despite their prior refusal of placement and the children's best interests.
3. Whether the grandparents were entitled to a meaningful opportunity to be heard under West Virginia Code § 49-4-601(h).

HOLDINGS

1. The statutory grandparent preference is not absolute and must be considered together with the children's best interests; placement with the grandparents was properly denied because the record showed that it would be contrary to the children's best interests.
2. The grandparents were not entitled to a meaningful opportunity to be heard under West Virginia Code § 49-4-601(h) because they did not have custodial or other parental rights or responsibilities and were not relative caregivers; in any event, they received hearings and opportunities to present their arguments.
3. The circuit court did not err in denying the grandparents' motions to intervene.

KEY QUOTATIONS

“The preference is just that—a preference. It is not absolute . . . the child’s best interest remains paramount.”
(at 3)

“The grandparent preference must be considered in conjunction with our long standing jurisprudence that ‘the primary goal in cases involving abuse and neglect . . . must be the health and welfare of the children.’”
(at 3)

“Because petitioners did not have custodial rights to the children, nor were they relative caregivers, they were not entitled to be heard under this statute.” (at 4)

FACTUAL BACKGROUND

The DHHR removed G.S.-1 and R.S. from their parents' custody and placed them in foster care after allegations of abuse and neglect, including G.S.-1's positive test for illegal substances at birth. When the paternal grandparents contacted the DHHR, they declined interest in becoming a placement for G.S.-1 and instead advocated returning the child to the father. They did not seek to intervene until the children had spent most of their lives in foster care and had bonded with their respective foster families. The DHHR and guardian ad litem

opposed placement with the grandparents based on the grandparents' prior disinterest, the children's need for stability, and G.S.-2's criminal history.

PROCEDURAL HISTORY

The DHHR filed an abuse and neglect petition in September 2016 after G.S.-1 tested positive for illegal substances at birth. The children were placed in foster care, and the parents' parental rights were later terminated. The grandparents, who had declined placement when contacted by the DHHR, eventually moved to intervene in June 2018. The circuit court denied their motions and their motion for reconsideration and placement request; the Supreme Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- In re K.H., 235 W. Va. 254, 773 S.E.2d 20 (2015)
- Melinda H. v. William R. II, 230 W. Va. 731, 742 S.E.2d 419 (2013)
- State v. Brandon B., 218 W. Va. 324, 624 S.E.2d 761 (2005)
- State v. Edward Charles L., 183 W. Va. 641, 398 S.E.2d 123 (1990)
- 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 re K.E., 240 W. Va. 220, 225, 809 S.E.2d 531, 536 (2018)
- In re Hunter H., 227 W. Va. 699, 703, 715 S.E.2d 397, 401 (2011)
- In re Katie S., 198 W. Va. 79, 479 S.E.2d 589 (1996)