

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

FILED

In re Adoption of L.A.

November 8, 2023

No. 22-0254 (Hampshire County CC-14-2020-A-14)

released at 3:00 p.m.
EDYTHE NASH GAISER, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioners, N.W.¹ and J.A., by their counsel, Jeremy B. Cooper, appeal the Circuit Court of Hampshire County’s award of grandparent visitation to Respondents B.M.-1 and B.M.-2 (collectively, “Grandparents”), who appeared by their counsel Christopher D. Janelle. The guardian ad litem for L.A., Lauren M. Wilson, appeared on her behalf. On October 18, 2023, this Court held oral argument pursuant to Rule 19 of the West Virginia Rules of Appellate Procedure.

This Court has considered the parties’ briefs, the guardian ad litem’s brief, the record on appeal, and the oral argument of the parties. From that review, the Court finds that there was no substantial error of law, and we concur with the circuit court’s award of grandparent visitation to Grandparents. Accordingly, this case is appropriate for affirmance by memorandum decision in accordance with Rule 21(c) of the West Virginia Rules of Appellate Procedure.

I. FACTUAL AND PROCEDURAL BACKGROUND

This matter was previously before this Court after the circuit court granted limited grandparent visitation to Grandparents. *See In re Adoption of L.A.* (“*L.A.-I*”), No. 21-0372, 2022 WL 293224 (W. Va. Feb. 1, 2022) (memorandum decision). We reversed and remanded, in a memorandum decision, on the grounds that the circuit court had not “accord[ed] any weight[,] let alone special weight as required by *Troxel v. Granville*, 530 U.S. 57 (2000),” *L.A.-I*, at *1, to N.W. and J.A.’s objection to grandparent visitation continuing and had not considered the factors contained in “[t]he Grandparent Visitation Act, W. Va. Code §[§] 48-10-101[- 1101, as] the exclusive means through which a grandparent may seek visitation with a grandchild.” *L.A.-I*, at *1 *quoting* Syl. Pt. 3, *In re Visitation of A.P.*, 231 W. Va. 38, 743 S.E.2d 346 (2013).

On remand, we did not require the circuit court to take any additional evidence, merely to reexamine the evidence in light of our mandate and issue a new order

¹ Because this case involves sensitive facts, we follow our long-standing practice of using initials where necessary to protect the identities of those involved in the case. *See* W. Va. R. App. P. 40(e)(1); *State v. Edward Charles L.*, 183 W. Va. 641, 645 n.1, 398 S.E.2d 123, 127 n.1 (1990).

within thirty days. *See L.A.-I*, at *6. Because the facts have not changed, we will set out a brief summary of the salient facts and make reference to our prior decision for a more detailed discussion of the underlying facts. *See id.*

J.A. is the father of L.A. and is married to N.W.² J.A. fathered L.A. in a previous relationship with J.T., who is the mother of L.A. J.A. and J.T. were never married. J.A. was granted primary custody of L.A. and J.T. was ordered to provide child support for L.A. J.T.'s parents are L.A.'s Grandparents. In March 2017, Grandparents were granted one weekend per month of grandparent visitation with L.A. The visitation was voluntarily suspended by the parties due to COVID-19 from March 2020 through May 2020.

In June 2020, N.W. petitioned the circuit court to adopt L.A. J.A. consented to the adoption. J.T. did not. Grandparents intervened in the adoption, seeking grandparent visitation with L.A. Petitioners opposed Grandparents' petition. After appointing a guardian ad litem for L.A. and hearing evidence, by order entered on April 9, 2021, the circuit court terminated J.T.'s parental rights, granted the adoption by N.W., and awarded Grandparents visitation of one day a month. Thereafter, Petitioners appealed the April 9, 2021 order to this Court in *L.A.-I* and this Court reversed and remanded to the circuit court for additional findings.

On remand, the circuit court reexamined its prior order and issued another order, once again awarding Grandparents limited visitation. Petitioners appeal that order and argue that the circuit court's findings were clearly erroneous on the issues of the best interest of L.A. and on their parental preference to not allow Grandparents to have visitation.

II. STANDARD OF REVIEW

The standard of review in this matter is the same as it was in *L.A.-I*:

“In reviewing challenges to the findings and conclusions of the circuit court, we apply a two-prong deferential standard of review. We review the final order and the ultimate disposition under an abuse of discretion standard, and we review the circuit court's underlying factual findings under a clearly erroneous standard. Questions of law are subject to a *de novo* review.” Syllabus point 2, *Walker v. West Virginia Ethics Commission*, 201 W.Va. 108, 492 S.E.2d 167 (1997).

² In *L.A.-I* we referred to N.W. as “N.W.” Following her marriage, N.W. is now known as N.A. For the sake of clarity, we refer to her as N.W. herein.

Syl. Pt. 1, *In re the Adoption of Jon. L.*, 218 W. Va. 489, 625 S.E.2d 251 (2005). Further, “[w]here the issue on an appeal from the circuit court is clearly a question of law or involving an interpretation of a statute, we apply a *de novo* standard of review.” Syl. Pt. 2, *In re Visitation of A.P.*, 231 W. Va. 38, 743 S.E.2d 346 (2013) (citation omitted).

L.A.-I, at *4.

III. ANALYSIS

A circuit court must consider the following factors outlined in The Grandparent Visitation Act when weighing a petition for grandparent visitation:

- (1) The age of the child;
- (2) The relationship between the child and the grandparent;
- (3) The relationship between each of the child’s parents or the person with whom the child is residing and the grandparent;
- (4) The time which has elapsed since the child last had contact with the grandparent;
- (5) The effect that such visitation will have on the relationship between the child and the child’s parents or the person with whom the child is residing;
- (6) If the parents are divorced or separated, the custody and visitation arrangement which exists between the parents with regard to the child;
- (7) The time available to the child and his or her parents, giving consideration to such matters as each parent’s employment schedule, the child’s schedule for home, school and community activities, and the child’s and parents’ holiday and vacation schedule;
- (8) The good faith of the grandparent in filing the motion or petition;

(9) Any history of physical, emotional or sexual abuse or neglect being performed, procured, assisted or condoned by the grandparent;

(10) Whether the child has, in the past, resided with the grandparent for a significant period or periods of time, with or without the child's parent or parents;

(11) Whether the grandparent has, in the past, been a significant caretaker for the child, regardless of whether the child resided inside or outside of the grandparent's residence;

(12) The preference of the parents with regard to the requested visitation; and

(13) Any other factor relevant to the best interests of the child.

W. Va. Code § 48-10-502 (2001). Upon consideration of these factors, the "circuit court . . . shall grant reasonable visitation to a grandparent upon a finding that visitation would be in the best interests of the child and would not substantially interfere with the parent-child relationship." W. Va. Code § 48-10-501 (2001). Additionally, the circuit court is required to place special weight upon a fit parent's preference regarding grandparent visitation. The United States Supreme Court has held, "if a fit parent's decision of the kind at issue here becomes subject to judicial review, the court must accord at least some special weight to the parent's own determination." *A.P.*, 231 W. Va. at 42, 743 S.E.2d at 350, quoting *Troxel*, 530 U.S. at 70. With regard to the thirteen factors in The Grandparent Visitation Act, "[t]his Court has held that those provisions contemplate the special weight that is constitutionally afforded a fit parent's wishes in its twelfth factor." *In re Visitation of L.M.*, 245 W. Va. at 337, 859 S.E.2d at 280.

Petitioners do not challenge the circuit court's findings as to all of the thirteen factors. Instead, Petitioners focus their argument on: (1) that the circuit court erred in not properly affording Petitioners' preference the special weight required by *Troxel* and (2) that the circuit court erred in finding the grandparental visitation was in L.A.'s best interest. Because Petitioners do not challenge the findings under each factor of The Grandparent Visitation Act, we only briefly note them here.

As we directed the circuit court on remand, the circuit court made specific findings on the factors contained in The Grandparent Visitation Act. The circuit court found that during the entire proceeding, L.A. was represented by her guardian ad litem. L.A. had a significant bond with Grandparents, particularly with her grandmother, B.M.-2, having spent much time, including overnight stays, at Grandparents' home. The

frequency of these overnight stays demonstrated that Grandparents were significant caretakers of L.A.

The circuit court further found that Petitioners were fit parents and Grandparents acted in good faith in filing their petition for visitation. There were no issues with the time available to L.A. and Petitioners to allow the visitation. Likewise, the circuit court found the visitation made no impact on L.A.'s relationship with Petitioners. Finally, there was no evidence of impact on any existing custodial arrangements between Petitioners, and there was no evidence of physical, emotional, or sexual abuse of L.A. by Grandparents.

Plainly, the circuit court made findings of fact that satisfied all elements of The Grandparent Visitation Act.

Petitioners maintain, however, that the circuit court did not properly consider L.A.'s best interest in its award of grandparent visitation. On this issue, the circuit court first discussed the interplay between *Troxel* and the best interest analysis:

64. This Court understands that special weight should be given to a fit parent's decision regarding whom their child should associate or have contact. This Court also understands that the granting of grandparent visitation may not be premised solely on the best interest of the child analysis. *Troxel v. Granville*, 530 [U.S.] 57, 120 S.Ct. 2054 (2000). *In re Hunter H.*, 231 W. Va. 118, 124, 744 S.E.2d 228, 234 (2013).

65. "[T]he pronouncements of *Troxel* do not predispose every case to an ultimate determination favoring the natural parent in a complete and conclusive manner. An assessment of the specific circumstances of each case is still required, and while the reviewing court must accord special weight to the preferences of the parent, the best interest[s] of the child are not to be ignored and must be included as a critical component of the dialogue regarding visitation or custody." *In re K.H.*, 235 W. Va. 254, 265, 773 S.E.2d 20, 31 (2015). *In re Visitation of L.M.*, 245 W.Va. 328, [341], 859 S.E.2d 271, 284 (2021).

The circuit court concluded by finding that:

72. This Court further FINDS that it is in the best interest of the minor child, [L.A.] to have continued contact with her grandparents, [Grandparents].

Petitioners argue that the circuit court did not make sufficient findings that grandparent visitation was in the best interest of L.A. We have held that “[t]he best interests of the child are expressly incorporated into the Grandparent Visitation Act in W.Va. Code §§ 48–10–101, 48–10–501, and 48–10–502 (2001).” Syl. Pt. 2, *In re Hunter H.*, 231 W. Va. 118, 744 S.E.2d 228 (2013). The findings discussed above support the circuit court’s conclusion that the grandparent visitation was in L.A.’s best interest. We would also note that L.A.’s guardian ad litem, who was present to represent L.A.’s best interest, was strongly in support of grandparent visitation.³ We conclude that the circuit court properly considered the best interest of L.A. in awarding visitation to Grandparents.

Petitioners next argue that the circuit court did not properly afford the special weight required to be given to their preference to *not* grant grandparent visitation. On this issue, the circuit court made several findings:

45. The Court FINDS that it is clear from the record that [J.A.] no longer has a good relationship with [Grandparents], for reasons unknown to this Court; and, [Petitioners] desire for [L.A.] to no longer be able to maintain a relationship with her grandparents, to whom she does have a bond.

....

61. The Court FINDS that after [J.A.] ended [Grandparents’] visitation with [L.A.], [Grandparents] continued to make contact with [Petitioners] seeking to schedule visits and/or speak with [L.A.] on the telephone, all to no avail, despite there being an Order granting them visitation and telephone calls with [L.A.].

³ Petitioners argue that the guardian ad litem’s report stated that she had concerns regarding visitation. Those concerns were in October 2020. As the petition for grandparent visitation progressed, the guardian ad litem was in full support of awarding visitation to Grandparents, both below and before this Court.

Additionally, Petitioners point to a recommendation prepared by L.A.’s therapist that they aver demonstrates that visitation with Grandparents should cease. This argument was raised below. The circuit court found that Petitioners mischaracterized this evidence. “The Court FINDS that the mischaracterization of Ms. Jackson’s [L.A.’s therapist] recommendation by [Petitioners] that visitation should cease was in furtherance of their desire to keep [L.A.] from visiting with her [Grandparents].” We will not disturb this finding.

62. The Court FINDS that [Petitioners] are not in agreement with [L.A.] having contact and/or visitation with [Grandparents] and/or her half-siblings.

63. The Court FINDS that there is no dispute that both [J.A.] and N.W. are fit parents.

64. This Court understands that special weight should be given to a fit parent's decision regarding [with] whom their child should associate or have contact. This Court also understands that the granting of grandparent visitation may not be premised solely on the best interest of the child analysis. *Troxel v. Granville*, 530 [U.S.] 57, 120 S.Ct. 2054 (2000). *In re Hunter H.*, 231 W. Va. 118, 124, 744 S.E.2d 228, 234 (2013).

65. “[T]he pronouncements of *Troxel* do not predispose every case to an ultimate determination favoring the natural parent in a complete and conclusive manner. An assessment of the specific circumstances of each case is still required, and while the reviewing court must accord special weight to the preferences of the parent, the best interest[s] of the child are not to be ignored and must be included as a critical component of the dialogue regarding visitation or custody.” *In re K.H.*, 235 W. Va. 254, 265, 773 S.E.2d 20, 31 (2015). *In re Visitation of L.M.*, 245 W.Va. 328, [341], 859 S.E.2d 271, 284 (2021).

66. The Court FINDS that [L.A.] knows her grandparents and has spent a significant amount of [time] with them throughout her life; and, [Petitioners] now seek to end that bond arguing that [Grandparents] do not comply with dietary restrictions of the child; that they do not want [L.A.] to have a relationship with her siblings; and, that they feel her behaviors had improved since ceasing visitation.

67. There is no evidence that [Grandparents] are unable to comply with the dietary restrictions of [L.A.]; rather, they have demonstrated the ability to understand her dietary restrictions during these proceedings, as was evidenced during their supervised visitations.

....

71. This Court has considered and given special weight to the parents' desires in this case. However, considering the factors set forth in West Virginia Code, *supra*, this Court FINDS that the same weigh in favor of granting grandparent visitation.

Petitioners do not want Grandparents to have visitation with L.A. However, the circuit court did exactly what we directed it to do on remand. The circuit court was required to "implement both the letter and the spirit of the mandate, taking into account the appellate court's opinion and the circumstances it embraces." Syl. Pt. 3, *State ex rel. Frazier & Oxley, L.C. v. Cummings*, 214 W. Va. 802, 591 S.E.2d 728 (2003). The circuit court did exactly that in its order. It provided an analysis of the factors contained in The Grandparent Visitation Act and addressed the special weight afforded the parental preference in its *Troxel* analysis. In so doing, despite Petitioners' protestations to the contrary, the circuit court awarded limited grandparental visitation to Grandparents. The grant of such visitation is in accord with our prior finding "that the objection of a parent would not serve to defeat a grandparent's attempt to seek visitation in every instance." *Visitation of Cathy L.(R.)M. v. Mark Brent R.*, 217 W. Va. 319, 328, 617 S.E.2d 866, 875 (2005). We thus find no error.

IV. CONCLUSION

For the foregoing reasons, we affirm the circuit court.

Affirmed.

ISSUED: November 8, 2023

CONCURRED IN BY:

Chief Justice Elizabeth D. Walker
Justice Tim Armstead
Justice John A. Hutchison
Justice William R. Wooton
Justice C. Haley Bunn