State of West Virginia
Supreme Court of Appeals

In Re: S.M.A.:

No. 101524
(Fayette County 09-JA-68)

FILED
February 14, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

This appeal arises from the Circuit Court of Fayette County, wherein the Petitioners were denied placement of S.M.A. The appeal was timely perfected by counsel, with the complete record from the circuit court accompanying the Petition. The Guardian-ad-litem has filed his response on behalf of the child, S.M.A. The DHHR has filed its response. The Intervenors, the foster parents of S.M.A., have filed a response.

This Court has considered the parties' briefs and the record on appeal. Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this case is appropriate for consideration under the Revised Rules. The facts and legal arguments are adequately presented in the parties' written briefs and the record on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules.

The Petitioners, maternal relatives who are the adoptive parents of S.M.A.'s biological half-brother, challenge the Circuit Court's decision denying placement of S.M.A. in their home and allowing S.M.A.'s permanent placement to be adoption by her foster parents. S.M.A. was initially placed in the care of the Intervenors, her foster parents, on October 7, 2009 when she was removed from her Mother's custody at approximately 6 months old. On December 11, 2009, DHHR requested that the Circuit Court order the removal of S.M.A. from her foster parents and her placement with the Petitioners, arguing that the "sibling preference" of W.Va. Code § 49-2-14 required the change. The Guardian-ad-litem and the Mother objected to this request for change of S.M.A.'s placement. The Circuit Court denied the request to change S.M.A.'s placement to the Petitioners' home, noting that the change was not in her

best interests and that the "sibling preference" was not applicable as S.M.A's biological half-brother had been adopted by the Petitioners and no longer constituted S.M.A.'s sibling for the purpose of the "sibling preference." The underlying action continued with S.M.A. remaining in the care of her foster parents throughout its pendency. Ultimately, in July 2010, the Circuit Court terminated the parental rights of S.M.A.'s Mother and her Unknown Father. On October 4, 2010, the Circuit Court made a final decision as to permanent placement of S.M.A., placing her with her foster parents with the goal of adoption and denying Petitioners placement.

In the current appeal, the Petitioners, joined by DHHR, argue that the Circuit Court misinterpreted the "sibling preference" which they argue mandates S.M.A.'s placement with the Petitioners. See W.Va. Code § 49-2-14. Contrary to their position, relying upon this Court's decision in *State ex. rel Treadway v. McCoy*, 189 W.Va. 210, 429 S.E. 2d 492 (1993), the Guardian-ad-litem argues in favor of affirmance of the Circuit Court's decision. The Guardian-ad-litem asserts that adoption by the Intervenors, her foster parents, is in the best interests of S.M.A. as she has lived with them for most of her young life and is well-bonded to them. The Guardian-ad-litem expressed concerns about placing S.M.A. with the Petitioners given their lack of bonding with her and the lack of bonding between S.M.A and her biological half-brother.

This Court has repeatedly held that in a contest involving the custody of an infant where there is no biological parent involved, the best interests of the child are the polar star by which the discretion of the court will be guided. See Syl. Pt. 1, *State ex. rel Treadway v. McCoy*, 189 W.Va. 210, 429 S.E. 2d 492 (1993) Although this Court sympathizes with the plight of the Petitioners, the Court must look to the best interests of S.M.A. today, not as her best interests might have been when the Petitioners first requested change in her placement. The best interests of a child are served by preserving important relationships in that child's life. Often, but not always, those relationships are with family members, such as a parent, a sibling or an aunt. However, in this case the most meaningful, stable relationship that S.M.A. has is with the foster parents. Accordingly, as asserted by the Guardian-ad-litem, S.M.A.'s best interests will be served by preserving that relationship and allowing the foster parents to adopt her.

For the foregoing reasons, we find no error in the final placement decision of the circuit court and such decision is hereby affirmed.

Affirmed.

ISSUED: February 14, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Menis E. Ketchum
Justice Thomas E. McHugh