

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re **K.T.**

No. 23-338 (Preston County 21-JA-29)

MEMORANDUM DECISION

Petitioner Grandmother N.L.¹ appeals the Circuit Court of Preston County’s May 10, 2023, order denying her request for visitation with the child, K.T., arguing that it was not in the child’s best interests to prohibit contact. Upon our review, we determine that oral argument is unnecessary and that a memorandum decision affirming the circuit court’s order is appropriate. *See* W. Va. R. App. P. 21.

At the outset of this memorandum decision, it is important to mention that the appellate record submitted to this Court by the petitioner was extremely disorganized and certain facts and procedures remain unclear.² According to the guardian’s appellate brief, the DHS filed an abuse and neglect petition in March 2021, making allegations against the child’s parents related to substance abuse. The child was thereafter placed with her paternal grandparents.³ In either April

¹ The petitioner is self-represented. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Lee Niezgoda. Counsel Kristen D. Antolini appears as the child’s guardian ad litem (“guardian”).

Additionally, pursuant to West Virginia Code § 5F-2-1a, the agency formerly known as the West Virginia Department of Health and Human Resources was terminated. It is now three separate agencies—the Department of Health Facilities, the Department of Health, and the Department of Human Services. *See* W. Va. Code § 5F-1-2. For purposes of abuse and neglect appeals, the agency is now the Department of Human Services (“DHS”).

² Although the record was not submitted in total compliance with the West Virginia Rules of Appellate Procedure, we recognize that pleadings filed by self-represented parties are to be construed liberally. *See Esposito v. Mastrantoni*, No. 19-1023, 2021 WL 195288, at *4 (W. Va. Jan. 20, 2021) (memorandum decision) (citing *Blair v. Maynard*, 174 W. Va. 247, 252-53, 324 S.E.2d 391, 396 (1984)); *but see* Syl. Pt. 1, *In re Lindsey C.*, 196 W. Va. 395, 473 S.E.2d 110 (1995) (“Any failure by litigants to observe carefully the requirements of our appellate rules is expressly disapproved; in appropriate circumstances an appeal may be dismissed by reason of a disregard of those rules.”).

³ The parents were later granted dispositions pursuant to West Virginia Code § 49-4-604(c)(4) & (5), and the permanency plan for the child is a legal guardianship with the paternal grandparents.

or May 2021, the petitioner, the child's maternal grandmother, filed a motion to intervene and for visitation.⁴

A hearing was held in September 2021, during which the circuit court denied the motion to intervene but granted the petitioner grandparent visitation pursuant to a certain schedule. At some point thereafter, the guardian and counsel for the paternal grandparents expressed concerns with the petitioner's visitation; therefore, the court suspended visitation. In July 2022, the petitioner filed a second motion requesting visitation.⁵ The court held a hearing that same month, during which the court permitted the petitioner to address the court regarding her request. The guardian reported that visits with the petitioner were stressful for the child and that the child did not want to visit the petitioner because the petitioner constantly questioned the child about her parents and paternal grandparents. A DHS worker confirmed that the child disclosed not wanting to visit the petitioner because the petitioner asked "too many questions" about the child's father and "about what's going on at her other grandma's house." The DHS worker explained that, in the child's words, "she just doesn't want to be questioned." Counsel for the paternal grandparents proffered that the petitioner had been harassing the paternal grandparents with excessive phone calls and text messages, as well as approaching them and the child in public. When permitted the opportunity to respond, the petitioner denied these allegations and insisted that the child was coerced into saying she did not want to see the petitioner. The court held its ruling in abeyance and scheduled an in camera interview with the child, who was seven years old at the time.

At a hearing in August 2022, the circuit court noted receipt of a letter from the petitioner with pictures and text messages attached. The court then discussed the in camera interview with the child, stating that, "[the child's] big concern and problem right now is basically when she sees [the petitioner] she doesn't like [the petitioner] questioning her about what goes on. However, she did express a desire to see [the petitioner]." Therefore, the court granted the petitioner supervised visitation for two hours one Saturday per month. The court specifically instructed the petitioner that, "you need to concentrate on your time with [the child] and foster that relationship instead of trying to be concerned about what goes on other places" and indicated that visitation may cease "if there has been one infraction where . . . the minor child has been questioned."

A review hearing was held in October 2022, at which time the guardian requested that visitation end. The guardian attended the child's most recent therapy session, during which the child told the therapist that she did not wish to visit the petitioner; however, the child did not provide a reason. The DHS worker stated the child disclosed the same wishes to her. Furthermore, counsel for the paternal grandparents stated that the petitioner continued to harass them as recently as the weekend before this hearing. The circuit court scheduled a second in camera hearing to "get to the bottom of what happened." In the meantime, the court suspended visitation.

A final hearing was held on the matter in January 2023, at which time the guardian and DHS maintained their position that visitation be denied. The guardian informed the circuit court of the petitioner's inappropriate social media postings regarding this proceeding and that the

⁴ The petitioner's motion is not included in the appellate record.

⁵ The petitioner's second motion is also not included in the appellate record.

petitioner had been protesting in front of the courthouse with signs that had the child's face and name on them. The court considered letters from the petitioner and recounted its interview with the child, advising that the child did not desire to have any contact with the petitioner. Specifically, the court stated,

basically, when she's there, she's questioned . . . she doesn't feel that relaxed there and basically this court is not going to put up with that . . . this court has informed [the petitioner] time after time about this . . . as long as these [social media] posts and this stuff continues, there will never be any contact.

Based on the evidence, the court ordered no contact between the petitioner and the child and denied the petitioner's pending motion. It is from this order that the petitioner appeals.

On appeal from a final order in an abuse and neglect proceeding, this Court reviews the circuit court's findings of fact for clear error and its conclusions of law de novo. Syl. Pt. 1, *In re Cecil T.*, 228 W. Va. 89, 717 S.E.2d 873 (2011). The petitioner argues that the circuit court erred in denying her request for grandparent visitation and that it was not in the child's best interests to prohibit contact. The petitioner cites to no legal authority in support of this argument. As we have stated, "[t]he decisions of this Court are quite clear. 'Although we liberally construe briefs in determining issues presented for review, issues . . . mentioned only in passing but . . . not supported with pertinent authority, are not considered on appeal.' *State v. LaRock*, 196 W. Va. 294, 302, 470 S.E.2d 613, 621 (1996)." *State v. Larry A.H.*, 230 W. Va. 709, 716, 742 S.E.2d 125, 132 (2013). Even so, our review of the record reveals the court's decision was in the child's best interests based on the petitioner's inappropriate conduct throughout the proceedings and the child's consistent expressed wishes. See Syl. Pt. 3, *In re Samantha S.*, 222 W. Va. 517, 667 S.E.2d 573 (2008) ("A trial court, in considering a petition of a grandparent for visitation rights with a grandchild or grandchildren . . . shall give paramount consideration to the best interests of the grandchild or grandchildren involved." Syllabus point 1, in part, *In re the Petition of Nearhoof*, 178 W. Va. 359, 359 S.E.2d 587 (1987)."). Therefore, we find no error in the circuit court's order denying visitation and prohibiting contact.

The petitioner further argues that the circuit court did not consider the evidence she presented or allow her the opportunity to be heard; however, our review of the record reveals the opposite. The petitioner submitted letters, photos, and text messages that the court specifically noted receiving and considering during hearings for which the petitioner was present. Even more importantly, the petitioner was permitted the opportunity to address the court, present her motion, and respond to counsels' arguments at several hearings regarding visitation with the child. Therefore, we do not find any error in this regard.

To the extent the petitioner argues the circuit court exhibited bias, we disagree. Canon 2.11(A)(1) of the West Virginia Code of Judicial Conduct requires a judge to disqualify himself or herself if "[t]he judge has a personal bias or prejudice concerning a party or a party's lawyer." The petitioner points to no evidence that the judge had any personal bias or prejudice, and our review of the record shows none. Moreover, the petitioner did not file a motion for disqualification below, as required by West Virginia Trial Court Rule 17.01. We, therefore, find that the petitioner is entitled to no relief.

For the foregoing reasons, we find no error in the decision of the circuit court, and its May 10, 2023, order is hereby affirmed.

Affirmed.

ISSUED: May 13, 2024

CONCURRED IN BY:

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