

**DOCKET NO. 07-130  
IN THE WEST VIRGINIA SUPREME COURT OF APPEALS  
AT CHARLESTON**

**STATE OF WEST VIRGINIA,**

**Petitioner,**

**(Underlying Juvenile Case Nos.: 05-JN-8,9  
Mingo County, West Virginia)**

**FAYE ANN S.  
JOE S.,**

**Respondents.**

**IN THE INTEREST OF THESE MINOR CHILDREN:**

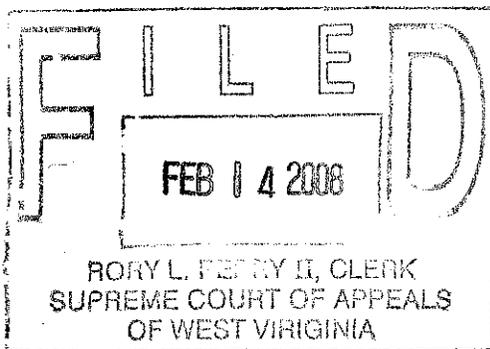
**SAMANTHA ANN S.  
HOPE S.**

**DOB: 01-06-2000  
DOB: 06-05-2001**

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**RESPONSE OF THE WEST VIRGINIA DEPARTMENT OF  
HEALTH AND HUMAN RESOURCES  
TO APPEAL BY PETITIONERS, LARRY S. AND DEBRA S.**

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**Dated: February 11, 2008**

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Comes now the Petitioner, the West Virginia Department of Health and Human Resources ("the Department"), by counsel, Michael L. Jackson, Assistant Attorney General, and files this Response of the West Virginia Department of Health and Human Resources to Appeal by Petitioners, Larry S. and Debra S.

**I. STATEMENT OF THE CASE**

By Order of the Circuit Court of Mingo County, West Virginia, the parental rights of Faye S. and Joe S. to Samantha S. and Hope S. were terminated on July 18, 2005 based upon evidence of abuse and neglect. At that same hearing, both grandparents expressed a desire to have custody of the children. The Circuit Court placed the

children in the physical custody of the paternal grandparents, Larry S. and Debra S., with supervised post-termination visitation being ordered for the maternal grandparents John T. and Mabel T. Later, the Circuit Court permitted John T. and Mabel T. to have unsupervised visitation with the children. (See August 1, 2005, Final Dispositional Order from Hearing of July 18, 2005.)

On May 8, 2006, the West Virginia Department of Health and Human Resources moved to terminate unsupervised visitation with John T. and Mabel T. based upon the children's maladaptive behaviors following visits with John T. and Mabel T. and based upon the report of the family psychologist that the behaviors were linked to the unsupervised visitation. After an evidentiary hearing on May 10, 2006, the Court ordered that unsupervised visitation would end, but that visitation could continue under supervision. Additional psychological evaluations of the grandparents and children were ordered to determine what visitation would be in the best interest of the children. After review of the alternative psychological evaluations, the Mingo County Circuit Court ordered, plainly against the recommendations made in the evaluations, that unsupervised visitation of the children with John T. and Mabel T. could resume, explaining that such visitation was not clearly harmful to the children. (See, May 10, 2006, Order.) This appeal is predicated upon the order granting unsupervised visitation to John T. and Mabel T., as well as a belief in a lack of permanency being implemented for these children.

On September 24, 2007, the Circuit Court reversed its prior order and terminated all visitation of the children with John T. and Mabel T., who were allegedly

choosing not to exercise visitation because they felt that it was not enough and because they felt it was confusing the children and disruptive. Citing that it was not in the best interest of the children to continue with visitation with John T. and Mabel T., the judge terminated all visitation. Larry S. and Debra S. retained custody of the children prior to the petition to adopt them. The Circuit Court has halted adoption proceedings pending the outcome of this appeal.

## **II. STATEMENT OF THE FACTS**

The Department of Health and Human Resource, Mingo County, filed an Emergency Petition seeking immediate removal of Samantha S. and Hope S. from the custody of their parents, Faye S. and Joe S. on March 10, 2005. (See, March 10, 2005, Petition for Immediate Custody of Minor Children in Imminent Danger.) The family had been opened in December, 2004, as a case by the Department upon a request from Martin County, Kentucky, after the family relocated to Mingo County. The Petition seeking emergency custody alleged that the young children in the home could not protect themselves from the negative behaviors of the parents, which included repeated domestic violence incidents between the parents, drug use by the parents in front of the children, and failure by the parents to cooperate with recommended community services to remedy these problematic behaviors. Upon review of the Petition, the Circuit Court of Mingo County, removed the children from the custody of their parents and placed them in the home of their maternal

grandparents, Mabel T. and John T., in North Matewan, West Virginia, pending a preliminary hearing. (*Id.*)

A preliminary hearing was held on March 15, 2005 where the Circuit Court found probable cause to support the allegations of abuse and neglect. (*See Order from March 15, 2005, Preliminary Hearing.*) Specifically, the Circuit Court found the following: that the Kentucky Cabinet for Families and Children had an open case with the family and had referred the family for services to the Department after the family had declared their wish to move from Martin County to Mingo County; that Kentucky had asked the Department to provide courtesy visits and to arrange for the mother to receive domestic violence counseling and drug counseling; that the Department had received a referral of domestic violence and drug abuse occurring in the home in December of 2004, at which time the father was arrested and the children taken to the home of Mabel T. and John T; that on January 4, 2005 the mother had admitted using drugs and to the presence of domestic violence in the home, at which time she took a drug screen that was positive; that the children reported to the Department on January 14, 2005, that the parents used drugs and fought often in their presence; and that the mother had gone to live with her parents and her children after the domestic violence incident with the father in December, 2005, only to have her father report her for suspected drug use and for engaging in a physical altercation with him. (*See Order from March 16, 2005, Preliminary Hearing, Findings of Fact.*) The Court also found that the father had very little contact with the children during this time. (*Id.*, Findings of Fact 11.) The Court found continued physical custody with Mabel T.

and John T. to be in the best interest of the children, ordered a sixty (60) day preadjudicatory improvement period for both parents, and scheduled an adjudicatory hearing for May 16, 2007. (*Id.*)

At the adjudicatory hearing on May 16, 2007, the Circuit Court, upon review of the case and at the request of the Department extended the improvement period previously granted to both parents, citing their compliance with the terms of the improvement period, and rescheduled the adjudicatory hearing for June 14, 2005, with the further directive that the parents undergo a substance abuse evaluation. (*See* Order from May 16, 2005, Status Hearing 1-5.)

The adjudicatory hearing was conducted on June 14, 2005. At the hearing, the Circuit Court determined that the parents had been incarcerated again, had been noncompliant with services, and that their pre-adjudicatory improvement period should be revoked. (*See* June 14, 2005, Order 2.) Upon hearing all evidence, the Circuit Court made a finding by clear and convincing evidence that the parents had engaged in domestic violence and substance abuse such that the children were at risk of abuse and neglect. (*Id.*, Conclusions of Law 1-4.) At the conclusion of evidence, the Circuit Court permitted the maternal grandparents, Mabel T. and John T., to relinquish physical custody of the children to the Department for placement in the physical custody of the paternal grandparents, Larry S. and Debra S. A disposition hearing was scheduled for July 18, 2005. (*Id.*, Findings of Fact 22 and Conclusions of Law 7.)

The disposition hearing was conducted on July 18, 2005. During the hearing, the father voluntarily relinquished his parental rights, resulting in permanent

termination of his parental rights. (*Id.*, Conclusions of Law 17.) He did not seek post-termination visitation and did not receive it. (*Id.*, Conclusions of Law 18.) The mother, who was incarcerated again at the time of the hearing awaiting action on pending charges, had her parental rights terminated as well. (*Id.*, Conclusions of Law 19.) The Circuit Court, in awarding post-termination visitation to her, noted that prior to her incarceration she had demonstrated attempts to comply with services and exhibited, by all accounts, a bond with her children. (*Id.*, Conclusions of Law 20, 22.)

Additionally, the Circuit Court awarded Larry S. and Debra S. legal and physical custody of the children in consideration of how well the children were doing in their home, and in recognition of the recommendations of the Department and the Guardian Ad Litem that the children remain there due to the stable structure Larry S. and Debra S. provided. (*Id.*, Conclusions of Law 24.)

Finally, the Circuit Court granted Mabel T. and John T. grandparent visitation, noting that they were initially uncooperative with the Department; that Mabel T. had failed to complete her psychological evaluation; and that their current home was small and raised safety concerns; but also highlighting that the Court believed they had been more cooperative by providing requested financial information to the Department, acknowledging that they were building a new home that would address the safety concerns; and noting that John T., who had previously allowed the children to contact their mother by phone, against court order, stated he would not permit inappropriate contact again. (*Id.*, Conclusions of Law 25-28.) The visitation of John T. and Mabel T. was ordered to be supervised at the home of Larry S. and Debra S., until

John T. and Mabel T. completed their new home, at which time it was to be for two full weekends a month, overnight and unsupervised. (*Id.*, Conclusions of Law 29.) John T. and Mabel T. were not to permit contact by the mother with the children until further order of the court. (*Id.*, Conclusions of Law 32.) A visitation schedule for the mother was not to be implemented until she was released from jail, although phone contact was allowed. (*Id.*, Conclusions of Law 29.) A judicial review was scheduled for November 7, 2005. (Final Dispositional Order from Hearing of July 18, 2005.)

On November 7, 2005 the Circuit Court conducted a judicial review of the case. The Circuit Court learned that John T. and Mabel T. had not exercised supervised visitation, preferring instead to wait until they were permitted unsupervised visitation upon completion of their new home. (See Order from November 7, 2005, Judicial Review Hearing and Re-Advisement of Appeal Rights.)

At a judicial review conducted on February 6, 2006, the Guardian Ad Litem advised that the children were told by John T. and Mabel T. that they would not be permitted to return to Larry S. and Debra S. after visitation with John T. and Mabel T. if the children did not behave. (See Order from February 6, 2006, Judicial Review Hearing.)

At the review hearing held on May 8, 2006 the Department made a motion to terminate the unsupervised visitation of John T. and Mabel T. on the ground that the children were experiencing significant difficulty and behavioral problems following visits with John T. and Mabel T. (See Order from May 10, 2006, Evidentiary Hearing, Findings of Fact 9.)

At an evidentiary hearing held on May 10, 2006, in response to the Department's motion to terminate the unsupervised visitation of John T. and Mabel T. made on May 8, 2006, the Circuit Court took notice of the previous record of the case and proceeded to hear testimony of Psychologist, Dr. Pam Ryan, who testified that unsupervised visitation with John T. and Mabel T. should stop. (*Id.*, Findings of Fact 11.) Dr. Pam Ryan explained that she believed the behavioral problems of the children occurred immediately after unsupervised visitation with John T. and Mabel T., with one child becoming lethargic, the other becoming aggressive and defiant, and that this visitation was the direct stressor leading to the problem behaviors.

Dr. Ryan elaborated on specific factual events as well that gave her cause for concern about the children. Dr. Ryan commented on the disclosure by Hope S. that she did not want to visit John T. and Mabel T. because a boy in the neighborhood was repeatedly exposing himself to her, and that she had told Mabel T. who had done nothing. (*Id.*, Findings of Fact 14.) Dr. Ryan noted as well that John T. and Mabel T. had permitted phone contact by Faye S. with the children against court order. (*Id.*, Findings of Fact 16.) Dr. Ryan reported that the children reported being spanked by John T. and Mabel T. for saying they did not want to visit in the home anymore (*Id.*, Findings of Fact 13.). Dr. Ryan reported that Samantha was hospitalized at Highland Hospital for seven days after she purposefully killed a kitten by throwing it against a wall. (*Id.*, Findings of Fact 17.)

The Court then heard the testimony of CPS worker Vicki Fields who stated that she had investigated the allegation of the neighborhood child exposing himself to

Samantha S. and Hope S., and that she had prepared a protection plan which John T. had refused to sign. (*Id.*, Findings of Fact 19.) CPS worker Fields recommended that unsupervised visitation stop.

Mabel T. testified at the hearing and denied speaking negatively to the children or ever spanking them. (*Id.*, Findings of Fact 22.) Mabel T. explained that the child who reportedly exposed himself was their grandson, and that Samantha S. (*Id.*, Findings of Fact 23.) and Hope S. had never reported any problem with him to her. Mabel maintained that any problems with the children were the result of the incarceration of Faye S. (*Id.*, Findings of Fact 24.)

John T. testified at the hearing as well. He denied allowing the children to talk to Faye S. when she called. (*Id.*, Findings of Fact 26.) He explained he believed the children were over-medicated. (*Id.*, Findings of Fact 27.) John T. expressed his belief that the children were being manipulated by Larry S. and Debra S. to say negative things, such as that his grandson had exposed himself. (*Id.*, Findings of Fact 28.) John T. opined that the death of the kitten must have been an accident, as he had numerous animals at his property, none of which had been mistreated by Samantha S. (*Id.*, Findings of Fact 29.)

Upon the conclusion of evidence, the Circuit Court ordered that unsupervised visitation be terminated pending further order of the court and further psychological testing of the grandparents. (*Id.*, Judgment A 3.) However, the Circuit Court also ordered a schedule of **supervised** visitation to commence and ordered additional psychological evaluations of Samantha S. and Hope S. (*Id.*, Judgment A 2 & 3.) The

Circuit Court ordered the Department to have legal custody to effectuate the adoption of the children by Larry S. and Debra S. (*Id.*, Judgment 6.) Finally, the Circuit Court ordered the parties to return at a later date after further evaluation of the children for further discussion of what type or amount of visitation would be in the best interest of the children. (*Id.*, Judgment 7.)

The evaluation of Samantha S., conducted by supervised psychologist Heather M. Fouch, M.A., concluded that Samantha exhibited seriously concerning behaviors that might be reactive to the upheavals in her life and were likely to escalate if she was not provided appropriate structure, counseling, and psychiatric treatment. (See, Report of Psychologist Heather Fouch, M.A., Page 14, Petitioners' Exhibit 1.)

In describing the different parenting approaches taken by the grandparents, the psychologist noted that John T. and Mabel T. seemed to minimize maladaptive behaviors of the children often, while Larry S. and Debra S. voiced concern and attempted to obtain mental health treatment for the children. The psychologist described Larry S. and Debra S. as having "displayed a greater sense of awareness and sincere appreciation of their granddaughter's problematic issues." (*Id.* 17.)

The evaluation of Hope S. conducted by supervised psychologist Heather M. Fouch, M.A. concluded that Hope, like her sister, exhibited maladaptive behaviors that were likely to escalate if not attended to in a structured home with immediate consequences and consistent support. (Exhibit 2, p.16 of Petition for Appeal). The psychologist recommended continued counseling for Hope as a treatment and noted

again that John T. and Mabel T. minimized the children's behavior problems, while Larry S. and Debra S. expressed concerns. (*Id.* pp.15 & 16.)

Additionally, the psychologist concluded in the reports that the children were confused by their living arrangements and were vacillating in their desired living arrangement. (*Id.* 12.) The psychologist noted that fluctuations in their custody and conflicts between the grandparents were hindering the custodial grandparent's attempts to get the children to conform their behavior to appropriate expectations. (*Id.*)

The evaluation of John T., conducted by Kimberly P. Parson, M.A., concluded, "The problems that currently exist between the grandparents are likely to continue as Mr. T. believes that his way of raising the grandchildren is correct and he speaks of the paternal grandparents in very negative terms. He would be very likely to continue to engage in these types of behaviors without supervision during visitations as he fails to appreciate the way in which he presents to others. (*Id.* 15.) Derogatory comments by Mr T. towards the S.'s will perpetuate continued confusion in his granddaughters. (*Id.*) Mr. T. also appears to be the dominate member of his marriage, as he was much more outspoken than Mrs. T. (*Id.* 14.)

Another judicial review was conducted on June 28, 2007 to review the placement of the children and discuss the findings of the psychological reports. (See Order from June 28, 2007, Judicial Review.) Based upon its review of all reports, including the new psychological reports, and the history of the case, the Circuit Court found that continued placement of the children in the home of Larry S. and Debra S.

Court reversed its prior position and concluded that John T. and Mabel T. should have **unsupervised** visitation with the children every other Friday from 6:00 p.m. until 1:00 p.m. Saturday. (*Id.* 11.) Another judicial review was scheduled for September 24, 2007. (*Id.* at 13.)

At the judicial review conducted on September 24, 2007, the Court inquired into the status of the case and was informed that the children continued to do well with Larry S. and Debra S. but that John T. and Mabel T. had refused to exercise any visitation because it had to be supervised, which they believed was not sufficient and was confusing to the children. (See Order from September 27, 2007, Judicial Review.) John T. and Mabel T. were reported to have not seen the children from the first part of June 2007 through the date of the review hearing on September 24, 2007. (*Id.*)

Upon motion of the Department, the Circuit Court **terminated all visitation** due to lack of participation of John T. and Mabel T. **The Circuit Court also ordered continued placement of the children in the home of Larry S. and Debra S. for finalization of the adoption. By order of the Circuit Court, the finalization of the adoption awaits the finalization of this appeal.** (*Id.*)

### III. STANDARD OF REVIEW

"For appeals resulting from abuse and neglect proceedings, such as the case sub-judice, we employ a compound standard of review: conclusions of law are subject

to *de novo* review, while findings of fact are weighted against a clearly erroneous standard." *In Re: Emily*, 208 W. Va. 325, 332, 540 S.E.2d 542, 549 (2000).

"Although conclusions of law reached by a circuit court are subject to *de novo* review, when an action, such as an abuse and neglect case, is tried upon the facts without a jury, the circuit court shall make a determination based upon the evidence and shall make findings of fact and conclusions of law as to whether such child is abused or neglected. These findings shall not be set aside by a reviewing court unless clearly erroneous. A finding is clearly erroneous when, although there is evidence to support the finding, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. However, a reviewing court may not overturn a finding simply because it would have decided the case differently, and it must affirm a finding if the circuit court's account of the evidence is plausible in light of the record viewed in its entirety." *In re Tiffany Marie S.*, 196 W. Va. 223, 470 S.E.2d 177 (1996).

In determining whether an appeal is moot this Court has stated "Moot questions or abstract propositions, the decision of which would avail nothing in the determination of controverted rights of persons or of property, are not properly cognizable by a court." *State ex rel. Lilly v. Carter*, 63 W. Va. 684, 60 S.E. 873 (1908).

#### IV. ARGUMENT

It is not in the best interests of Samantha S. and Hope S. to have unsupervised visitation with John T. and Mabel. T., the maternal grandparents, although the issue

is now moot by virtue of a recent review order terminating all visitation with John T. and Mabel T.

West Virginia case law, statutes, and procedural rules, reflect an overarching concern for doing what is in the best interest of the child when making custody decisions regarding children involved in abuse and neglect proceedings. This Court has repeatedly explained that “the welfare of the child is the polar star” by which courts should be guided in making custody determinations. See as example, *State ex rel. Rose L. v. Pancake*, 209 W. Va. 188, 544 S.E.2d 403 (W. Va. 2001). In child abuse and neglect cases, this Court has held that decisions must be in the best interest of the child, and that in weighing the child’s rights against the rights of the parent, the rights of the child are paramount. *In Re Katie S.*, 198 W. Va. 79, 479 S.E.2d 589 (1996). The West Virginia Code likewise reflects a concern for assuring that a child involved in abuse and neglect proceedings has “care safety and guidance” in such manner as will “serve the mental and physical welfare of the child.” W. Va. Code § 49-1-1 (2004). When the parental rights of a caretaker must be terminated, the West Virginia Code emphasizes maintaining a “continuity of care and caretakers” for the child and creating a “stable and permanent home environment” for the child. W. Va. Code § 49-6-5 (2004). Similarly, the West Virginia Rules for Procedure for Child Abuse and Neglect Proceedings provide that a goal of the procedural rules is to provide secure and permanent homes for abused and neglected children. West Virginia Rules for Procedure for Child Abuse and Neglect, Rule 2 (2007).

When weighing the rights of the child versus the rights of the parent, West Virginia case law and statutes express the pre-eminence of the rights of the child in custody proceedings. This Court has explained that in child abuse and neglect proceedings, the paramount importance of doing what is in the best interest of the child is superior to a parent's right to custody of a child. *In Re: Brian D.*, 194 W. Va. 623, 461 S.E.2d 129 (1975). This Court has further held that courts are not required to exhaust "every speculative possibility of parental improvement before terminating parental rights where it appears that the welfare of the child will be seriously threatened." Consistent with this application, the West Virginia Code provides that a court may terminate parental rights when there is no reasonable likelihood that the conditions of neglect and abuse can be substantially corrected. W. Va. Code § 49-6-5 (2004). The West Virginia Code goes on to provide that "no reasonable likelihood that conditions of abuse or neglect can be substantially corrected" includes, by definition, although is not limited to, instances where a parent is a drug addict or habitual drug abuser to the extent that parenting skills are seriously impaired and have not been able to follow through with appropriate treatment to improve parental function. (*Id.*) It also includes those instances where a parent has demonstrated failure to comply with rehabilitative efforts designed to reduce or prevent child abuse or neglect, as evidenced by continuation or minimal diminution of such threat. *Id.*

In this case, the parental rights of Faye Ann S. and Joe S. were terminated on just such basis. The Circuit Court found that the mother and father had used drugs in the home. Faye S., repeatedly tested positive for drugs throughout the case.

Faye S. did not meaningfully participate in services offered to remedy her drug problem. Faye S. exposed the children to domestic violence in her home and committed acts of domestic violence in their presence. At the time of the disposition hearing, Faye Ann S. was in prison awaiting the outcome of a variety of felony charges, including kidnaping, malicious wounding, and assault. Her parental rights were terminated. Joe S. chose to relinquish his parental rights, resulting in the termination of his parental rights as well. Neither parent appealed their termination.

After terminating the parent's rights to custody of Samantha S. and Hope S., the Circuit Court placed them in the pre-adoptive custody of Larry S. and Debra S., the paternal grandparents. At the outset of the case, the children had been placed in the temporary custody of John T. and Mabel T. the maternal grandparents. However, John T. and Mabel T. relinquished custody at a review hearing, after which the children were placed with Larry S. and Debra S. The reason for their relinquishment is not clear from the Circuit Court orders, but John T. and Mabel T. did persist afterwards in seeking return of the children to their home and requested to be considered as prospective adoptive parents. Regardless, the children have resided with Larry S. and Debra S. since the time of that relinquishment with unsupervised visitation being reserved for John T. and Mabel T. During the course of the children taking unsupervised weekend visitation with John T. and Mabel T., they exhibited an escalation in behavioral problems. Dr. Pam Ryan, psychologist for the children, linked their behavior directly to confusion regarding the permanency of their placement created by the visitation arrangement and the difference in parenting styles and

conflicts between the two sets of grandparents. Based upon these observations, the Department requested termination of unsupervised visitation as not being in the best interest of the children.

At an evidentiary hearing to consider the Department's motion, the Circuit Court terminated unsupervised visitation upon hearing testimony that John T. and Mabel T. had continued to allow telephone contact by the children with their mother, that they had failed to cooperate with the Department in implementing the children's Case Plan, that they had allowed the children repeated contact with a child who was reportedly exposing himself to the children, and upon hearing the testimony of Dr. Ryan. Supervised visitation was ordered instead. Furthermore, the Circuit Court ordered further psychological evaluations to be conducted on all the parties to determine what type of visitation, if any, would be in the best interest of the children. Months later, after reviewing the additional psychological reports, all of which recommended, at the very least, that unsupervised visitation be ended, the Circuit Court inexplicably revised its prior order to permit, once again, unsupervised visitation.

The issue presented is whether the best interests of Samantha S. and Hope S. are served by permitting continued unsupervised visitation with John T. and Mabel T., the maternal grandparents. While the Department believes that it clearly is not in the best interest of the children for this visitation to continue, the Circuit Court has since conducted another regularly scheduled judicial review, and citing the fact that John T. and Mabel T. were not exercising their option of unsupervised visitation, the Circuit Court finally terminated all visitation with the maternal grandparents. The permanent

placement of Samantha S and Hope S. in the home of Larry S. and Debra S. by adoption awaits the outcome of this appeal.

At this point, the issue of unsupervised visitation is moot. This Court has said, "Moot questions or abstract propositions, the decision of which would avail nothing in the determination of controverted rights of persons or of property, are not properly cognizable by a court." *State ex rel. Lilly v. Carter*, 63 W. Va. 684, 60 S.E. 873 (1908). There is now no case or controversy presented to this Court surrounding continued unsupervised visitation, because there is an order of the Circuit Court terminating all visitation as not being in the best interest of these children. Furthermore, the issue of finalizing the permanent placement of Samantha S. and Hope S. with Larry S. and Debra S. through the adoption hearing merely awaits the outcome of this appeal, per the order of the Circuit Court.

## V. CONCLUSION

Wherefore, Appellee West Virginia Department of Health and Human Resources respectfully requests the Court to dismiss this appeal because it is moot and requests that this matter be returned to the Circuit Court for finalization of the adoption of Samantha S. and Hope S. into the home of Larry S. and Debra S.

Respectfully submitted,

West Virginia Department of  
Health and Human Resources

By Counsel

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A handwritten signature in black ink, appearing to read 'MJ', with a long horizontal stroke extending to the right.

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**CERTIFICATE OF SERVICE**

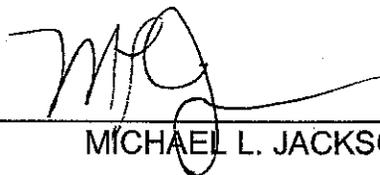
I, Michael L. Jackson, Assistant Attorney General, and counsel for the West Virginia Department of Health and Human Resources, do hereby certify that on this 14<sup>th</sup> day of February 2008, I filed a copy of the foregoing "RESPONSE OF THE WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES TO APPEAL BY PETITIONERS, LARRY S. AND DEBRA S.", upon the following individual(s) United States Mail, postage prepaid, and addressed as follows:

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