

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
AT CHARLESTON

Freddie E. M. [REDACTED] Jr.,

Petitioner,

v.

No. _____

HONORABLE N. EDWARD EAGLOSKI, III,
Judge of the Circuit Court of Putnam County,
West Virginia,

Respondent.

RESPONSE OF KARI THOMAS TO PETITION FOR WRIT OF PROHIBITION

1. Kari T. [REDACTED] is the natural mother of Kaitlyn R., Lyllian M., Sydnee M. and Blaine T. Ms. T. [REDACTED] was previously married to the Petitioner, Freddie M. [REDACTED] from 2000 to September 29, 2005. That the abuse and neglect petition was filed in the Circuit Court of Putnam County on May 23, 2008 alleging that Kari T. [REDACTED] had neglected and abused Blaine T., an infant child born on November 2, 2007.

2. That Kari T. [REDACTED] noticed that her son, Blaine T. appeared to be unhealthy and contacted the child's primary care physician Chris Bowman, MD, and made all appointments with him in regards to her son's care. Dr. Bowman referred her to Dr. Fereydoun Zangeneh for an endocrine study to determine if there was a problem with Blaine T.'s thyroid system. From soon after birth, until Blaine T.'s admission to Women and Children's Hospital on May 9, 2008, Ms. T. [REDACTED] sought out services with Birth to Three and faithfully kept all appointments with her son's care providers.

3. That Blaine T. was hospitalized from May 9, 2008 to June 17, 2008 at

which time different courses of medical treatment attempted to rule out and to determine the cause of the child's failure to thrive. That ultimately, during the time period of May 14, 2008 to May 17, 2008 a period of 72 hours, Kari T [REDACTED] was videotaped because of the suspicion that she was not feeding her son properly.

4. That Kari T [REDACTED] at one point, did squirt out small amounts of the formula to make sure that the nipple on the bottle was unobstructed. Also, she dumped a bottle of formula and replaced it with Pedialyte out of frustration, she believed her son needed to take the nutrients from the Pedialyte if he would not take the formula. The Petitioner fails to state in his Petition that during the 72 hours of videotaping of Kari T [REDACTED], these are the only incidents of any conduct, that has been construed to be improper. These two incidents occur in one day within an hour of each other.

5. That on the basis of this videotape, Kari T [REDACTED] was arrested by the Hurricane Police Department. The criminal matter came on for preliminary hearing on the 25th day of June, 2008. Ms. T [REDACTED] requested a preliminary hearing, and when the matter was called, the State of West Virginia dismissed the warrant because of a need for further investigation. As of this date, this matter has remained dismissed and Kari T [REDACTED]'s bond has been returned. Counsel would assert that the reason the matter was dismissed at the preliminary hearing was that State of West Virginia knew there was not sufficient evidence for a criminal prosecution.

6. That at the preliminary hearing held n May 29, 2008, and the adjudicatory hearings held on June 24, 2008 ant August 20, 2008, Judge Eagloski was present and heard the direct testimony and the cross-examination testimony of the witnesses called by

the State of West Virginia. Based on that, counsel for the Respondent, Kari T [REDACTED], would assert that the Circuit Court Judge made a reasonable and learned decision in granting a post adjudicatory improvement period. What was derived from the cross-examination of the State's witnesses is that Dr. Melissa Fox admitted that the Failure to Thrive Syndrome is not a specific illness, but a catchall diagnosis, and is sometimes used by medical professionals when a specific causation cannot be diagnosed. And, that failure to thrive can have prenatal and postnatal causes, organic and non-organic causes.

7. Specifically, counsel for Ms. T [REDACTED] would assert that the cause of Blaine T.'s inability to thrive is an organic postnatal cause. Specifically, Blaine T. suffers from Patent Ductus Arteriosus (PDA). PDA is a heart problem that usually is noted within the first few weeks or months after birth in a baby. Sometimes PDA is referred to as a "hole" in the heart. And, the "hole" usually closes within 72 hours after birth. PDA is the sixth most common congenital heart defect. PDA occurs twice as often in girls as in boys. There is no known reason for the cause of PDA and some would assert that there may be a genetic link. A symptom of PDA is a disinterest in feeding or tiring while feeding. In fact, Blaine T. was diagnosed with three holes in his heart and one was of such a severe nature that surgery was required on or about October 21, 2008 to correct and close the hole. The other holes closed naturally, but not within the normal time range.

8. Counsel for Ms. T [REDACTED] used in his cross-examination of Dr. Fox the attached report from the Lucile Packard Children's Hospital. Dr. Fox conceded that PDA can cause failure to thrive, that at the time Dr. Fox testified, in fairness, she was not aware of the severity of Blaine T.'s heart PDA disorder. Counsel would assert that if

these facts were presented to her she may reconsider some of her testimony. (The article on PDA is attached and also an article on the Failure to Thrive prepared by Reda W. Bassali, MBChB for web medicines is attached regarding the background and history of failure to thrive. The articles are labeled as Exhibit Nos. 1 and 2).

9. That the court order permitting Ms. T [REDACTED] to appear for her son's surgery is attached as Exhibit No. 3 and the State's response to the previously filed motion is attached as Exhibit No. 4.

10. That on November 13, 2008, counsel for Ms. T [REDACTED] made a motion for post adjudicatory improvement period. The motion was made orally which was not objected to by Petitioner's counsel. After hearing the proffer of counsel, the prosecuting attorney, the guardian ad litem and CASA volunteer, the Court granted Ms. T [REDACTED] motion. Ms. T [REDACTED] had already attended an MDT and agreed to all terms and agreed to have a psychological evaluation. The assertion that she suffers from Munchausen Syndrome By Proxy has no basis at all from any evidence introduced by the State of West Virginia at the preliminary or adjudicatory hearing.

11. That this is a difficult case in that several forces at work, Ms. T [REDACTED] is a single, working mother with four children. She is not the wealthiest women and does not have the greatest health insurance. It appears that her son Blaine T. has a genetic disorder in regards to a "hole" in his heart. His two sisters previously had been diagnosed years before with the same catchall diagnosis of a failure to thrive. However, as they matured, they are perfectly healthy children, when the petition was filed, and they were named, because they were brothers and sisters of the infant, Blaine T., as was an older sister,

Kaitlyn who is a perfectly healthy 13 year old.

12. Ms. T [REDACTED]'s only acts that were inconsistent with her son's medical providers is that out of frustration she attempted, based on her perceived knowledge, tried to administer Pedialyte to her son out of a need to provide for him, she dumped a formula bottle and replaced it with Pedialyte and kept checking the bottle and squeezing it and letting out some contents to make sure the nipple was unobstructed. Those are the only acts that appear during the 72 hours of continuous taping of her care while she was at the hospital. As counsel for the Petitioner states in his petition in regards to asserting Munchausen Syndrome By Proxy states "perhaps as suspected" but just as easily counsel for Ms. T [REDACTED] could assert "perhaps as suspected" that three of her children have a genetic defect in regards to their heart which is in essence a "hole" in the heart which causes them to be lethargic and have disinterest in eating, and tire while eating, and not have the energy to properly suck and absorb nutrients. The older children of Kari T [REDACTED] appeared to have overcome that problem, and thus they are perfectly healthy now and at the time of the petition. It is a fact that Blaine T. was in need of surgery to close the hole in his heart because it would not close on its own.

13. Counsel for the Petitioner tries to bootstrap an evidentiary weak case by asserting that the Respondent's house was dirty; however, Elizabeth Kennedy, a caseworker with the WVDHHR testified that Ms. T [REDACTED]'s house was clean and actually incredibly clean for a mother that worked fulltime and had four children under the age of 13.

14. That Petitioner's counsel also asserts that Ms. T [REDACTED] a medical

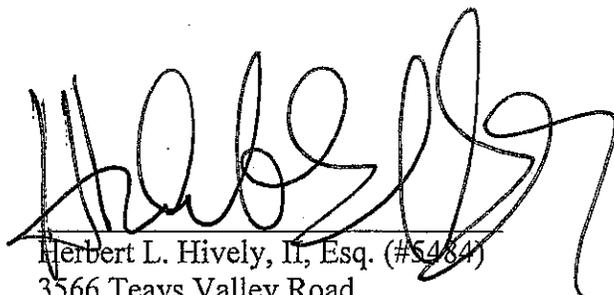
technician, and a mother of four, possesses great powers of persuasion and as a result of her suspected mental illness that she has been able to fool two other ex-husbands in addition to Mr. Meredith, who is a paramedic, and WVDHHR case workers, the CASA volunteer, the guardian ad litem, that she does not have Munchausen Syndrome By Proxy. That the most recent court summary attached as Exhibit No. 4. the CASA volunteer, a lawyer in her own right, requested that Kari T [REDACTED] receive increased visitation and requested that the visits be unsupervised and recommended reunification which has been agreed to by the guardian ad litem, and by the Assistant Prosecuting Attorney for the State of West Virginia as well.

15. Also, counsel fails to disclose that he has filed a petition for the change of custody for the two minor girls, Kaitlyn R. and Sydnee M. and that this Writ of Prohibition to prohibit the circuit court judge who heard all the evidence even before counsel entered the case on October 17, 2008 as substitute counsel for previously court appointed counsel, may be financially motivated in that Mr. Meredith pays approximately \$900.00 a month in child support by the parties' final divorce order. However, Mr. Meredith's concerns can still be raised in family court once this case is resolved and the State of West Virginia is out of the matter and the children are returned to her home, if Mr. Meredith believes that there is a material change of circumstance that would warrant the change of custody he could still pursue that matter in family court.

16. That the Circuit Court of Putnam County's decision to grant a post adjudicatory improvement period was reasonable and sound because he heard all the evidence from the preliminary hearing and the adjudicatory hearings and that the circuit

court has discretion to grant post adjudicatory improvement periods. See, In Re: Joseph A., 199 W. Va. 438 (1997), 485 S.E.2d 176 and State v. Virgil Eugene S., II, 197 W. Va. 456 (1996), 475 S.E.2d 548. This is a case where the child suffers from Patent Ductus Arteriosus, a "hole" in the heart, and that during her son's hospital stay, the natural mother made a mistake out of frustration and tried to provide care for her son in a manner inconsistent with what had been described by the medical professionals. It is a far cry from intentionally starving her son as asserted by counsel and is not an aggravating factor that would cause termination of her improvement period or her parental rights. This is a case where the parties should step back and communicate, try to find through the medical professionals if there is a genetic problem snaking through the parties' children's medical history in regards to their heart.

WHEREFORE, the Respondent, Kari T [REDACTED], requests that the Writ of Prohibition be denied, that this matter proceed through its normal course in the Circuit Court of Putnam County, West Virginia.



KARI T [REDACTED]
By Counsel

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CERTIFICATE OF SERVICE

I, Herbert L. Hively, II, counsel for the Respondent, Kari T [REDACTED], certify that I have served copies of the attached Response to Petition For a Writ of Prohibition upon the following by personal service and/or depositing true copies thereof in the United States Mail, postage pre-paid and addressed as follows on this 11th day of December, 2008:

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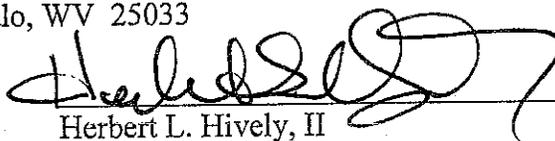
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