

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

KATHRYN KUTIL and
CHERYL HESS,

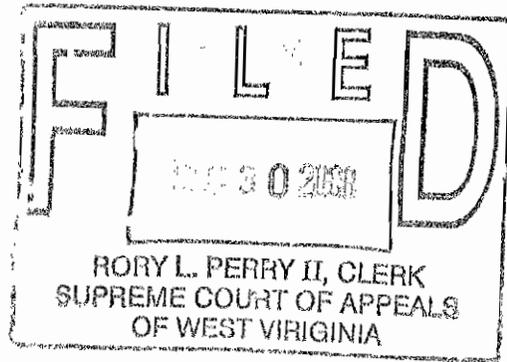
Petitioners,

vs.

FAYETTE COUNTY
CIVIL ACTION NO. 07-JA-72

THE HONORABLE PAUL M. BLAKE, JR.,
CIRCUIT COURT, TWELFTH JUDICIAL
CIRCUIT, and WEST VIRGINIA DEPARTMENT
OF HEALTH AND HUMAN RESOURCES,
MARTHA YEAGER WALKER, SECRETARY,

Respondents.



**ANSWER OF WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES TO
AMENDED PETITION FOR WRIT OF PROHIBITION**

To the Honorable Justices of the West Virginia Supreme Court of Appeals.

The Respondent, West Virginia Department of Health and Human Resources ("WVDHHR"), respectfully answers the Amended Petition for Writ of Prohibition against WVDHHR as follows:

1. In response to Paragraph 1 of the Amended Petition for Writ of Prohibition, Respondent states that no response is necessary.
2. In response to Paragraph 2 of the Amended Petition for Writ of Prohibition, Respondent states that the Court's December 2, 2008, Order speaks for itself.
3. In response to Paragraph 3 of the Amended Petition for Writ of Prohibition, WVDHHR states that the change in its position had only to do with the overcrowding at

Petitioners' home and the ready availability of a foster home that was willing and capable at the time to accept the infant, Baby Girl C., a/k/a Brailey TiCasey C., ("B.T.C.") as a foster child. WVDHHR did not at that time have a placement available for the children who were most recently placed in the Petitioners' home. Nowhere has WVDHHR indicated that the home provided by Petitioners was anything other than loving and nurturing.

4. In response to Paragraph 4 of the Amended Petition for Writ of Prohibition, a WVDHHR supervisor discovered on November 20, 2008, that the Petitioners' home was over-capacity. Any WVDHHR worker who indicated that the Petitioners would receive a waiver for the home to exceed the maximum capacity was acting beyond the scope of that worker's authority and without the knowledge of a supervisor. Waivers are only available for situations involving a sibling group.

5. In response to Paragraph 5 of the Amended Petition for Writ of Prohibition, Respondent states that the Court's December 2, 2008, Order speaks for itself.

6. In response to Paragraph 6 of the Amended Petition for Writ of Prohibition, Respondent states that the Court's December 2, 2008, Order speaks for itself. An alternate foster care placement was available for B.T.C. at the time of the order.

7. In response to Paragraph 7 of the Amended Petition for Writ of Prohibition, Respondent states that the Court's December 2, 2008, Order speaks for itself.

8. In response to Paragraph 8 of the Amended Petition for Writ of Prohibition, Respondent states that the Court's December 2, 2008, Order speaks for itself.

9. In response to Paragraph 9 of the Amended Petition for Writ of Prohibition, Respondent states that the transcript speaks for itself.

10. In response to Paragraph 10 of the Amended Petition for Writ of Prohibition, Respondent states that the transcript speaks for itself.

11. In response to Paragraph 11 of the Amended Petition for Writ of Prohibition, Respondent states that the transcript speaks for itself.

12. In response to Paragraph 12 of the Amended Petition for Writ of Prohibition, Respondent states that the transcript speaks for itself.

13. In response to Paragraph 13 of the Amended Petition for Writ of Prohibition, Respondent states that the transcript speaks for itself.

14. In response to Paragraph 14 of the Amended Petition for Writ of Prohibition, Respondent states that the transcript speaks for itself.

15. In response to Paragraph 15 of the Amended Petition for Writ of Prohibition, Respondent states that the transcript speaks for itself.

16. In response to Paragraph 16 of the Amended Petition for Writ of Prohibition, Respondent states that the transcript speaks for itself.

17. In response to Paragraph 17 of the Amended Petition for Writ of Prohibition, Respondent states that the transcript speaks for itself.

18. In response to Paragraph 18 of the Amended Petition for Writ of Prohibition, Respondent states that the transcript speaks for itself.

19. In response to Paragraph 19 of the Amended Petition for Writ of Prohibition, Respondent states that the transcript speaks for itself.

20. In response to Paragraph 20 of the Amended Petition for Writ of Prohibition, Respondent states that the transcript speaks for itself.

21. In response to Paragraph 21 of the Amended Petition for Writ of

Prohibition, Respondent states that the transcript speaks for itself.

22. In response to Paragraph 22 of the Amended Petition for Writ of Prohibition, Respondent states that the transcript speaks for itself.

23. In response to Paragraph 23 of the Amended Petition for Writ of Prohibition, Respondent states that the transcript speaks for itself.

24. In response to Paragraph 24 of the Amended Petition for Writ of Prohibition, Respondent states that the Order of December 2, 2008, and the transcript speak for themselves.

25. In response to Paragraph 25 of the Amended Petition for Writ of Prohibition, Respondent states that the Court's Order speaks for itself.

26. In response to Paragraph 26 of the Amended Petition for Writ of Prohibition, Respondent states that WVDHHR acted in compliance with the Court's Order.

27. In response to Paragraph 27 of the Amended Petition for Writ of Prohibition, Respondent states that WVDHHR is unable to respond.

28. In response to Paragraph 28 of the Amended Petition for Writ of Prohibition, Respondent states that the Petitioners' motion speaks for itself.

29. WVDHHR agrees with statements made in Paragraph 29.

30. In response to Paragraph 30 of the Amended Petition for Writ of Prohibition, Respondent states that the November 26, 2008, Order speaks for itself.

31. In response to Paragraph 31 of the Amended Petition for Writ of Prohibition, Respondent states that the primary concern of the WVDHHR is the well-being of the child, B.T.C. All appropriate placements for B.T.C. should be considered

and all appropriate avenues for placement and adoption should be pursued in serving the best interests of B.T.C.

32. The allegations contained in Paragraph 32 do not address any action/behavior of the WVDHHR and, therefore, no response is deemed necessary.

33. The allegations contained in Paragraph 33 do not address any action/behavior of the WVDHHR and, therefore, no response is deemed necessary.

34. In response to Paragraph 34 of the Amended Petition for Writ of Prohibition, Respondent states that the transcript speaks for itself.

35. In response to Paragraph 35 of the Amended Petition for Writ of Prohibition, WVDHHR deems that no response is necessary.

36. In response to Paragraph 36 of the Amended Petition for Writ of Prohibition, WVDHHR deems that no response is necessary.

37. The allegations contained in Paragraph 37 do not address any action/behavior of the WVDHHR and, therefore, no response is deemed necessary.

38. The allegations contained in Paragraph 38 do not address any action/behavior of the WVDHHR and, therefore, no response is deemed necessary.

39. The allegations contained in Paragraph 39 do not address any action/behavior of the WVDHHR and, therefore, no response is deemed necessary.

40. As to Paragraph 40 of the Amended Petition for Writ of Prohibition, WVDHHR agrees with the stated standard for a writ to issue.

41. As to Paragraph 41 of the Amended Petition for Writ of Prohibition, WVDHHR agrees with the stated standard for a writ to issue.

42. As to Paragraph 42 of the Amended Petition for Writ of Prohibition,

No. 34618

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CERTIFICATE OF SERVICE

I, Angela Alexander Ash, do hereby certify that on this 23rd day of
December, 2008, I have served a true and exact copy of the foregoing **Answer**
of the West Virginia Department of Health and Human Resources to
Amended Petition for Writ of Prohibition by first class mail, postage prepaid,
addressed to the following:

The Honorable Paul M. Blake, Jr.
Twelfth Judicial Circuit Judge
100 Church Street
Fayetteville, WV 25840

Thomas J. Steele, Jr.
Assistant Prosecuting Attorney
108 E. Maple Avenue
Fayetteville, WV 25840