

#34752

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BEFORE THE WEST VIRGINIA SUPREME COURT OF APPEALS

IN RE:
EMILY G. _____

ROBY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

WOOD COUNTY JUVENILE &
DELINQUENCY NO: 08-JA-64

RESPONSE OF GUARDIAN AD LITEM TO NOVEMBER 20, 2008 PETITION
FOR APPEAL FILED BY DONNA AND JOHN M. _____

Comes now Emily G _____, by and through her Guardian Ad Litem,
Michael D. Farnsworth, Jr., and in response to the previously filed petition for appeal
says as follows:

The Guardian Ad Litem does not have any first hand information regarding any
abuse or neglect that led to the filing of the underlying Abuse and Neglect Petition and
was not a party to that action. The Guardian has no first hand information regarding
emotional abuse that Emily may or may not be experiencing at this time due to any
failure of her parents to follow the family court's ruling and take the steps necessary to
develop healthy relationships with her. The Guardian did not request or direct that the
underlying Abuse and Neglect Petition be filed nor did he review said petition prior to
it being filed. In his report to the Family Court, the Guardian sought to make it clear to
the maternal grandparents and custodians of Emily that they have an ongoing duty to
protect Emily from the actions of her parents, including their daughter, if those actions
were harmful to Emily. The Guardian specifically noted that they should avail
themselves of the relief provided by the abuse and neglect statutes if their obligation to
care for their daughter came into conflict with their obligation to care for Emily and
they could not longer protect her from her mother in their home.

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Emily is a young child who is going to turn three (3) years old later this year. Emily's parents are young, immature, impulsive and not self-sufficient. The Guardian Ad Litem also has great reservations regarding the mental capacity of the parents to actually care for Emily on their own. The primary concern for the Guardian Ad Litem in the family court has been to balance Emily's need for stability and safety with the potential benefit that she could some day realize if healthy relationships can be developed between her and her natural parents.

In child abuse and neglect proceedings as well as custody proceedings one part of the best interest of the child evaluation often involves determining where the case falls on the continuum between the need to protect the child from harm and the recognition that a child benefits from having loving, caring and supportive parents in the child's life. It is extremely likely that, if she continues to live with her maternal grandparents, over time Emily will gain information about her natural parents and establish some type of relationship with them. Given the fact that Emily will have knowledge of her parents as she grows and matures and may desire to know her parents personally, it seems in the child's best interest to allow the meager relationship between the parents and the child to remain intact until such time as the disorder of her parents lives causes or is likely to cause Emily to suffer harm.

Although her parents are very immature and sometimes violent towards each other at this time, it is the hope of the Guardian Ad Litem that, with time and assistance, the parents may gain a greater level of maturity and be able to contribute

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significantly to the life of this child. To the extent that there is hope that Emily's parents can become persons who contribute significantly to her life, it is in Emily's best interest at this time to allow the legal relationship between her and her biological parents to remain. However, if at any time this relationship causes or is likely to cause emotional or physical suffering for Emily it should be terminated.

The Guardian remains of the opinion that circumstances could arise in the future where the limited contact by the parents with Emily and/or the parents continued failure to provide Emily with proper supervision and emotional support could cause emotional injury to Emily, interfere with permanency, or otherwise warrant the termination of parental rights. In such a situation the necessity for the protection of Emily would outweigh any potential benefit that Emily might have by leaving open the possibility for contact between her and her parents.

As previously stated, the Guardian does not have any direct information with regards to abuse or neglect that Emily may be suffering at this time. Given her young age, the fact that neither parent has ever maintained a consistent relationship with the child since the child's birth, and given the fact that the child has been and remains living in a stable and permanent placement with her maternal grandparents, the Guardian is of the opinion that she can be adequately shielded from the immature and violent actions of her parents for now. The Guardian hopes for Emily that her parents will avail themselves of any form of assistance available to them from the West Virginia Department of Health and Human Resources or other agencies to comply with the

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recommendations made by the Guardian in the prior report to the Family Court so that these relatively young and immature parents will mature into supportive individuals who can contribute to the life of Emily even if they are never able to become her primary caretakers.

Your Guardian further prays that nothing be done to prejudice the interests of Emily and that the Court consider any and all other forms of relief necessary to protect and promote the best interests of said child.

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CERTIFICATE OF SERVICE

I, Michael D. Farnsworth, Jr., do hereby certify that, on the 13th day of January 2009, I have caused to have served a true and accurate copy of the attached **RESPONSE OF GUARDIAN AD LITEM TO NOVEMBER 20, 2008 PETITION FOR APPEAL FILED BY DONNA AND JOHN M** to the parties herein by facsimile transmission and by depositing the same with the United States Postal Service, First-Class Postage Prepaid, and addressed to the last known address of counsel for parties as follows:

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