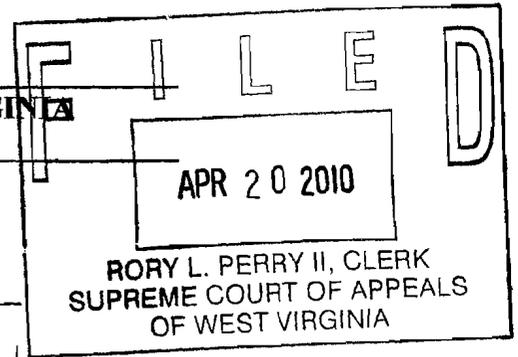


**BEFORE THE WEST VIRGINIA SUPREME COURT OF APPEALS**

in

CHARLESTON, WEST VIRGINIA

RECORD NO. 35486



IN THE INTEREST OF:

JAMES M., ELIZABETH F., KYIA F., and JEBADIA F.

~~RESPONSE TO PETITION FOR APPEAL~~

*Brief of Appellee*

Now comes the Intervener Grandparents, JANICE and JAMES , (hereafter referred to as "Grandparents"), by counsel, Jerome R. Novobilski, and offers the following Response to the Petition For Appeal filed herein:

**JURISDICTION**

The Circuit Court of Nicholas County had jurisdiction pursuant to W.V.R.Cr.P, Rule 1, and this Court has jurisdiction pursuant to W.V.R.A.P., Rule 1.

**DISCUSSION**

Mr. has two living children. Mrs. has four children. Together the 's adopted Mrs. B s daughter's two children. The s underwent an ICPC home study in 2005 at the request of the State of Ohio for the consideration of placing Tamika W , Ashley L and Shantee W . Ashley and Tamika subsequently were adopted during the pendency of the instant case before the Court below. (Exhibit 1)

For some time now the \_\_\_\_\_'s have become the adoptive parents of Christopher  
Hollie \_\_\_\_\_); Ashley ( \_\_\_\_\_) and Shantee ( \_\_\_\_\_  
\_\_\_\_\_).

Under a Foster Care Home Study dated 6 May 2009, dealing with the Infant Respondents who are the subject of this action, the DHHR, under the final section entitled "Evaluation and Recommendations," concluded:

*"The \_\_\_\_\_'s home is finished and has ample room to accommodate 8 children...Based on this information this home can be considered as a placement resource for the \_\_\_\_\_s above mentioned grandchildren."* (Exhibit 2)

At a hearing below, held 24 September 2009, among others, the following witnesses testified: Crystal Knight, a supervised psychologist; Janice \_\_\_\_\_; Misty McGlothlin; Lori Wilson, Adoption Specialist and Dr. Timothy Saar, a licensed psychologist since 1996.

All of these witnesses were aware of the concerns the Guardians Ad Litem are expressing in this Appeal.

Crystal Knight, who counselled the Infant Respondents, testified that her major concern was the \_\_\_\_\_ were too old to parent so many children. Janice \_\_\_\_\_ testified that all the children were doing well in school and that Holly had made the "honor roll." Mrs. \_\_\_\_\_ was extensively questioned by the Guardians Ad Litem about her biological children's past problems with law enforcement and with DHHR. Dr. Saar was present throughout all of Janice \_\_\_\_\_'s testimony. Misty McGlothlin testified that she never did anything in front of the children.

Lori Wilson of DHHR testified that the \_\_\_\_\_ income was sufficient to care for all the children in question; that the doctors concluded the \_\_\_\_\_ were physically capable of

caring for the children and the home study concluded the home was a safe environment for the Infant Respondents. Her only concern was the contact with Janice's biological children.

Dr. Timothy Saar finally testified, and it was his expert opinion, that the could adequately protect the Infant Respondents. His Forensic Evaluation Report dated 8 September 2009 on James concluded- "*The MMPI-2 did not reveal any significant psychopathology nor any other critical items.*" Dr. Timothy Saar, who conducted this evaluation, only expressed concern about Janice was her age and that four young people were already in the household. When Dr. Saar testified later that year in September before the Court below this concern evaporated. (Exhibit 3)

Dr. Saar had been present throughout all the direct and cross-examination of Mrs. Mrs. 's responses to all questions satisfied Dr. Saar that Mrs. could adequately care for and protect the Infant Respondents

Under a Forensic Evaluation dated 17 June 2009 of James McGlothlin; Elizabeth Fitzwater and Kyia Fitzwater. In addition an MMPI-2 was administered to Janice which showed "*...there was no significant psychopathology present.*" (Exhibit 4)

In essence, the Guardians Ad Litem concerns have not shown up in any of the children currently being parented by Mr. & Mrs. . Moreover, both concluded that Mrs. has twice reported her biological children to DHHR for child abuse issues. This fact clearly shows that the do not hold the happiness of their biological children above the concerns for the health, safety and welfare of their adoptive children, who are thriving in their home, nor for that of the Infant respondents who are the subject of this litigation.

#### **CONCLUSION & PRAYER**

WHEREFORE, in light of the above factors and in holding with this Court's opinion in *Napoleon S. v. Walker, 217 W.Va. 254, 617 S.E. 2d 801*, and *WV Code, Sub Section*

49-3-1, the Intervener Grandparents pray that their Response be filed and that the Court shall enter an Order which DISMISSES the Appeal filed herein and remands this matter back to the Circuit Court of Nicholas County for further proceedings because Appellants have failed to demonstrate by clear and convincing evidence that Appellees cannot adequately parent and protect the infants that are the subject of this Appeal and for such other and further relief this Court may find right and just under the facts and circumstances of this case.

Janice & James  
Grandparent Interveners,  
By Counsel.

  
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STATE OF WEST VIRGINIA;  
COUNTY OF CLAY; to wit:

## CERTIFICATE OF SERVICE

I, Jerome R. Novobilski, counsel for Intervenor Grandparent, JANICE do hereby certify that I have served a copy of the foregoing **RESPONSE** upon the Parties of Interest by mailing a copy of the same to the following addresses of record on this 7th day of April, 2010:

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