

IN THE WEST VIRGINIA SUPREME COURT OF APPEALS

DOCKET No. 35486

IN THE INTEREST OF:

**James M.
Elizabeth F.
Kyia F.
Jebadiah F.**

Lower Court Case Numbers:

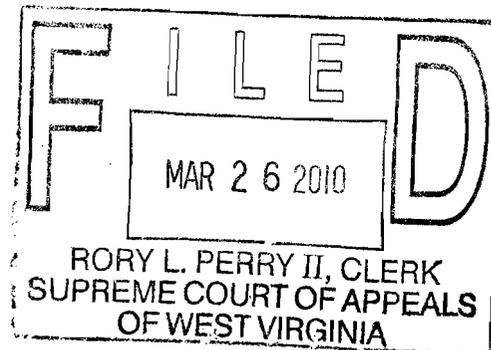
**08-JA-15
08-JA-16
08-JA-17
08-JA-40**

**Honorable Gary L. Johnson, Judge
23rd Judicial Circuit**

**RESPONSE BY STEPHEN O. CALLAGHAN GAURDIAN AD LITEM
FOR JAMES M. AND JEBADIAH F.**

Respectfully Submitted By:

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The undersigned is Guardian ad Litem (GAL) for James M. and Jebadiah F. and submits a response to the brief presented by the Cammie Chapman, Guardian ad Litem for Elizabeth F. and Kyia F. The lower Court previously appointed separate GAL's for the children because there were potential issues of sibling separation which have been resolved.

FACTS:

The undersigned fully supports the complete and accurate statement of facts as contained in the brief submitted by the petitioner's counsel, Cammie Chapman. Additional reference is made to attached "Exhibit A" which shows a diagram of the family relationships and some identifying information about family members.

ISSUE PRESENTED:

Whether the lower Court erred (after termination of all parental rights) by holding that the "Grandparent Preference" rule pursuant to Napoleon v. Walker, 196 W.Va. 178, 469 S.E.2d 114 (1996) required the four infant respondents to be placed with their maternal grandparents (the home of Janice B. and Holly B.) for adoption.

I. BEST INTEREST OF THE CHILDREN: For the reasons stated herein, it is in the best interest of the children for this Court to REVERSE the lower Court and Order that the appropriate permanent disposition is placement for adoption and not placement in the home of Janice B and Holly B., the grandparents.

II. STATUS OF THE PARENTS: *All parents have relinquished all parental rights to the four (4) infant respondents in this case.*

III. CURRENT LOCATION OF THE CHILDREN: The children are currently placed in foster care and are doing well. They previously received visits with the maternal grandmother, Janice B., until March 10, 2010, when the DHHR received an anonymous referral concerning the adoptive home. The allegations were serious enough for both GAL's and the Department to recommend terminating all visitation

in the potential adoptive home. The allegations are under investigation at the time this brief is submitted.

IV. PERMANENCY PLAN: The lower Court ordered at Disposition that the children be placed permanently with the maternal grandmother, Janice B. and Holly B. for adoption. The appellant GAL, the undersigned GAL, the State of West Virginia and the DHHR all objected. The appellant and the undersigned seek reversal of the lower Court's Order and placement of all four (4) children for adoption.

DISCUSSION

ISSUES OF LAW:

The appellant thoroughly distinguishes the Napoleon case and those arguments are not restated here.

ISSUES OF FACT:

Issues of fact are relevant because the lower Court held that the "Grandparent Preference" was not overcome by the evidence. The appellant's brief establishes facts that indeed do overcome the preference. Brief attention is given here to emphasize certain facts which support overcoming the grandparent preference.

These grandparents should not be considered an appropriate home for these four children because Janice B. has demonstrated a pattern of unwillingness to protect and sequester her adoptive children from her drug-using, criminally involved biological children. Two of her biological daughters have criminal and drug histories and have relinquished parental rights. Her son, Christopher M., has an extensive criminal and drug history and is currently under indictment for meth delivery. Janice B.'s daughter, Mary F., lived in Janice B.'s residence during times when she was abusing drugs.

The appellant addresses the "backyard trailer" where Janice B.'s drug-using, criminally involved children lived intermittently. Janice B. disingenuously testified at Disposition that she

did not know what went on in “the trailer.” However, she had reported her children to the DHHR because of potential abuse of her grandchildren occurring in the trailer.

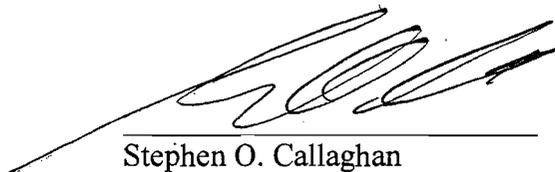
A more recent development in the case is that the DHHR worker testified that on December 21, 2009, a worker observed “an early Christmas dinner” at Janice B.’s home. Present were Amy (Janice B.’s daughter, who, facing penitentiary time relinquished parental rights to Christopher and Holly) and Christopher (Janice B.’s son, with a history of CPS involvement, drugs and currently under indictment for meth delivery). It is notable that adoptive children Christopher, Holly, Ashley and Shantee were also in the home. In addition, while Janice B. testifies that she can protect her adoptive children, she recently posted bond for her son Christopher, using the family home as collateral and allowed Christopher to be around her other adoptive children at a time when he is out on bond for meth delivery.

FACTS DEVELOPING SINCE DISPOSITION:

1. As noted, Janice B.’s two criminally involved children were in her home in December 2009 in the presence of her other adoptive children enjoying a family Christmas meal. This shows the continued pattern of Janice B. permitting contact with previously terminated/relinquished and troubled parents.
2. In November 2009, Janice B. pledged the adoptive home as collateral for bond for her son’s criminal charge of meth delivery.
3. The State and the two GAL’s have recently learned that from April 2009 to December 2009, Holly B. (Janice B.’s husband) was charged with five misdemeanors and one felony count involving bad checks in Clay, Jackson and Wood Counties.

Janice B.’s pattern of behavior has established that her own troubled children will always be a part of her home. The problem is that she has other adoptive children in the home and the

four infant respondents herein potentially to be in her home. The four infant respondents in this case deserve better. The undersigned moves the Court to REVERSE the lower Court and order that the "Grandparent Preference" in this case is not applicable because of the evidence.



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EXHIBITS

1. Order regarding permanent placement entered October 9, 2009.
2. Family Diagram
3. Arrest Warrant: Worthless Check – James Clay County Case
4. Arrest Warrant: Worthless Check – James , Clay County Case
5. Arrest Warrant: Worthless Check – James Clay County Case
6. Arrest Warrant: False Pretenses – James Holly Jackson County Case
7. Capias: Worthless Check – James H. Wood County Case

EXHIBITS

ON

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CLERK'S OFFICE