ENTERED 4-12-10

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IN THE FAMILY COURT OF BOONE COUNTY, WEST VIRGINIA

IN RE: THE CHILD OF:

SHEILA WILSON,

Petitioner,

v. Case Number: 06-D-342

ROBERT HICKMAN,

Respondent.

ORDER DENYING APPEAL

On the 3rd day of February, 2010, came the respondent, Robert Hickman, by counsel, Tim C. Carrico, Esq.; the petitioner, Sheila C. Wilson, by counsel, Maureen Conley, Esq.; and the child's guardian ad litem, Peter A. Hendrick's, Esq., pursuant to the petitioner's appeal of the final child custody determination this matter entered on August 12, 2009. The respondents, Mathew E. Perdue and Sarah B. Perdue did not appear or file any responsive pleading. The Court after due consideration of petitioner's appeal, the guardian ad litem's response to the petition for appeal, the record below, and the arguments of counsel hereby FINDS, and ORDERS as follows:

1. That the respondent, Robert Hickman, is Hailey L. Wilson's biological father. Mr. Hickman lives in Angier, North Carolina.

2. That the petitioner, Sheila Wilson, is Hailey L. Wilson's biological mother. Ms. Wilson is a bonafide citizen and resident of the State of North Carolina.

3. That the respondent's below, Mathew and Sarah Perdue, are not biologically related to Hailey L. Wilson. Mr. Perdue and Sheila Wilson are related to each other by the marriage of their parents. They are stepbrother and stepsister. The Perdue's are bonafide

citizens and residents of Boone County, W. Va..

4. That the Hailey L. Wilson was born on February 20, 2002, and the State of West Virginia is her home state.

5. That the respondent, Robert Hickman, was judicially determined to be Hailey Wilson's biological father by virtue of a paternity order entered by the Family Court of Fayette County, W. Va. on June 1, 2004. By virtue of this Order, he was designated Hailey Wilson's father on her birth certificate.

6. That Hailey Wilson had been living with the respondents below, Mathew and Sarah Perdue, in Boone County, West Virginia, on a full-time basis since about July 2005.

7. On September 13, 2005, the petitioner, Sheila Wilson, executed a document consenting to the adoption of Hailey Wilson by the respondents below, Mathew and Sarah Perdue. This adoption was never consummated.

8. Subsequent to the petitioner, Sheila Wilson's, execution of the aforementioned consent to adopt form, the respondent's below, Mathew and Sarah Perdue, presented the respondent, Robert Hickman, with the same paperwork. However, Mr. Hickman refused to sign the paperwork, and refused to consent to Hailey Wilson's adoption by the respondents below, Mathew and Sarah Perdue.

9. That the respondent, Robert Hickman, instituted this custody action in the Family Court of Fayette County, West Virginia, on March 8, 2006, seeking custody of his daughter, Hailey L. Wilson.

10. That the Family Court of Fayette County, West Virginia, refused to take any action on the respondent, Robert Hickman's, petition for custody of Hailey other than changing the payee of his monthly child support obligation from the petitioner, Sheila Wilson, to the

respondents below, Mathew and Sarah Perdue.

11. That the Family Court of Fayette County, West Virginia, on October 17, 2006, informed the parties that it was transferring the matter to the Family Court in Boone County, West Virginia. The Family Court of Fayette County, West Virginia, then entered and Order transferring the respondent, Robert Hickman's, custody petition to the Family Court of Boone County, West Virginia.

12. That during the pendency of this action in the Family Court of Boone County, West Virginia, the respondents below, Mathew and Sarah Perdue, obtained temporary guardianship over Hailey Wilson, from the Circuit Court of Boone County, West Virginia. The Family Court of Boone County, West Virginia, then entered a temporary order in this matter terminating the temporary guardianship and designating the respondents below, Mathew and Sarah Perdue, as Hailey Wilson's temporary legal custodians until further order of the Court.

13. That on March 16, 2008, the petitioner, Sheila Wilson, executed a rescission of consent to adopt.

14. That that each party in this action requested to be identified as Hailey Wilson's, legal custodian and primary residential parent (caregiver).

15. For the first three and a half years of her life, Hailey Wilson, lived primarily with her mother, the petitioner, Sheila Wilson.

16. The petitioner, Sheila Wilson, and the child's biological father, the respondent, Robert Hickman, had a very brief relationship.

17. The petitioner, Sheila Wilson, became pregnant, as a result of her brief relationship with the respondent, Robert Hickman.

18. That paternity testing wasn't established or concluded until approximately May

2004. At this time, Mr. Hickman was legally determined to be Hailey Wilson's, biological father. Child support was established and he began paying child support on a consistent basis from that point.

19. On or about September 2005, the petitioner, Sheila Wilson, voluntarily signed a consent to adopt and relinquishment of her rights form as to Hailey Wilson. This document was prepared by the attorney for the respondents, Mathew and Sarah Perdue.

20. This same consent to adopt form was given to the respondent, Robert Hickman, during the same time period.

21. However, the respondent, Robert Hickman, refused to sign.

22. The respondent, Robert Hickman, consulted with an attorney, and in March of 2006 he initiated these proceedings by filing his petition seeking custody of Hailey Wilson in the Family Court of Fayette County, West Virginia.

23. After filing his petition seeking custody of Hailey Wilson, the respondent, Robert Hickman, was met with court delays in the Family Court of Fayette County, West Virginia. Additionally, he was met with delays as to the transition of his custody petition from the Family Court in Fayette County, West Virginia, to the Family Court in Boone County, West Virginia. Furthermore, he was met with delays additional delays in the Family Court of Boone County Family Court given the Court's docket. In sum, there have been many delays in the litigation of this action.

24. The Respondents, Mathew and Sarah Perdue, are not biologically related to Hailey. Mr. Perdue's biological father is now married to the Respondent, Sheila Wilson's, biological mother.

25. However, during the bulk of the time that Hailey resided with the respondents

below, Mathew and Sarah Perdue, the Petitioner, Robert Hickman continued to fight to gain custody of Hailey Wilson.

26. The court below concluded that the laws of the State of West Virginia protect the rights of biological parents who have not been proven to be unfit, who have not relinquished their rights as parents, and haven't lost their parental rights due to any type of delectation of duty.

27. Sheila Wilson continued to have a relationship with Hailey Belle Wilson after executing the consent to adopt in September, 2005. Hailey Belle Wilson also continued to have a relationship with her siblings.

28. The court below found that the Respondents, Mathew and Sarah Perdue, were very well situated. That they had more resources at their disposal to provide for Hailey Wilson as compared to the other parties. That they loved Hailey, and wanted the best for her. The Court below concluded that the caregiver with the most money or the best standing in the community is not a controlling factor under West Virginia law as to the best interests of the child.

29. The court below concluded that the Petitioner, Robert Hickman, was a fit parent capable of providing for Hailey Wilson's best interests.

30. The court below based on all of the evidence, courtroom testimony, evidentiary depositions, the memorandums of law filed by counsel, the testimony of the parties, the recommendation of the guardian ad litem, and the arguments of counsel, concluded that it is was in Hailey Wilson's best interests that the respondent, Robert Hickman, be designated as her legal custodian, and primary residential parent.

31. Consequently, the court below ORDERED, ADJUDGED, and DECREED, that the respondent, Robert Hickman, be designated Hailey Wilson's primary residential parent and

legal custodian. The court below ORDERED, DECREED, and ADJUDGED, that there shall be a gradual phase into the transition of the respondent, Robert Hickman's, residence becoming Hailey Wilson's primary residence.

32. The court below ORDERED, ADGUDGED, and DECREED, that the petitioner, Sheila Wilson, and the respondents, Mathew and Sarah Perdue, be granted parenting time with the child.

33. The court below further ORDERED, ADJUDGED, and DECREED, that the parties shall attempt to work out a gradual transition period as to the change of Hailey Wilson's primary residence to the Petitioner, Robert Hickman's, residence in the State of North Carolina. The parties shall also attempt to work out a visitation schedule for the Respondent, Sheila Wilson, and the Respondents, Mathew and Sarah Perdue.

34. That as of the date of this hearing on February 3, 2010, no visitation schedule has been entered affording the Purdue's and Ms. Wilson with visitation.

35. That the petitioner, Sheila Wilson, instituted her appeal. Her appeals sets forth separate allegations of error.

36. That the guardian ad litem filed his response thereto.

37. That this Court after due consideration of the petitioner's appeal hereby concludes as a matter of law that the family court did not commit any error.

38. That the family court did not abuse its discretion by determining that the respondent Robert Hickman did not abandon Hailey Wilson. In addition, the family court's findings of fact in support of this determination were not clearly erroneous.

39. That the family court did not abuse its discretion in any regard as to awarding custodial responsibility in accordance with W. Va. Code § 48-9-206. In addition, the Court's

findings of fact in support of its decision allocating custodial responsibility were not clearly erroneous.

40. That the family court did not abuse its discretion in relying upon the recommendation of the guardian ad litem in support of its decision allocating custodial responsibility. In addition, the family court's findings of fact in support of it reliance of the guardian ad litem's recommendation were not clearly erroneous.

41. That the family court did not abuse its discretion in any regard by allowing the child to be placed in the respondent, Robert Hickman's, home. That the family court's findings of fact in support of its decision to designating Mr. Hickman as the child's primary residential parent were not erroneous.

42. That within (10) days of entry of this Order the parties shall consult through counsel to schedule the petitioner, Sheila Wilson's, parenting time with the child until a final parenting plan is entered by the family court.

43. That the parties shall immediately contact the family court for the purpose of scheduling a hearing for the entry of a permanent parenting plan as required by the family court's final order entered on August 12, 2009.

44. That the petitioner, Sheila Wilson's, appeal is denied on all grounds.

All of which is ORDERED, ADJUDGED, and DECREED.

To all of which the petitioner, Sheila Wilson, objects and excepts.

The Clerk shall submit certified copies of this order to the attorney's of record.

ENTERED: Will S. Th

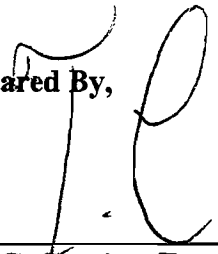
Circuit Court Judge William S. Thompson

DATED: April 12 2010

A COPY ATTEST

CIRCUIT COURT

Prepared By,



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COUNSEL FOR THE RESPONDENT ROBERT HICKMAN
Submitted under Rule 24.01(c) of the Rules of Practice and Procedure for Circuit Court

CERTIFICATE OF SERVICE

Service of the foregoing was hereby had upon the parties hereto by placing a true and exact copy thereof in the regular course of the United States Mail, postage prepaid, to the following address:

Peter Hendricks
Attorney at Law
P.O. Box 55
Madison WV 25130

James Cooper
Attorney at Law
108 Hills Plaza
Charleston WV 25312

Tim Carrico
Attorney at Law
1412 Kanawha Boulevard, E.
Charleston WV 25301

on the 11 day of August, 2010.

MAUREEN CONLEY (SB #4239)