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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

IN THE WEST VIRGINIA SUPREME COURT OF APPEALS, WEST VIRGINIA

SHEILA CAROL WILSON,

Petitioner,

v.

ROBERT HICKMAN,
MATTHEW EARL PERDUE, and
SARAH BETH PERDUE,

Respondents.

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PETITION FOR APPEAL

KIND OF PROCEEDING AND NATURE OF RULING

Comes now Petitioner Sheila Wilson, by counsel, and files this Petition for Appeal of the Final Order entered herein on April 12, 2010, in this custody/guardianship proceeding. The basic issue is how a biological parent should be considered in a custody proceeding, if that parent has signed a Consent for adoption but the adoption has never been consummated and the parent has maintained a relationship with the child. The Court transferred custody of seven year old Hailey Belle Wilson (dob: 2-12-02), from her guardians of three years (Matthew and Sarah Perdue) to her biological father (Robert Hickman), with whom she had never stayed for more than two weeks. Petitioner Sheila Wilson, the biological mother of Hailey Belle Wilson, was essentially overlooked in this process due to the fact that she had signed a Consent for the Perdues to adopt Hailey in 2005. Although some details are disputed, the basic facts of this case are undisputed and set out in depositions which are part of the Court file: Hailey's mother,

Sheila Wilson, was her primary caretaker for the first three and one-half years of her life. Robert Hickman was aware that Hailey was born at the time of her birth and aware that he was likely her father. Sheila Wilson transferred custody to her stepbrother and his wife in August, 2005. Robert Hickman refused to sign a Consent to Adopt and the adoption was never consummated. Robert Hickman later brought this action for custody and did not seek visitation with the child until 2006. Petitioner Sheila Wilson rescinded her Consent to Adopt and asked that custody of Hailey be restored to her. Sheila Wilson asserts that the Family Court Judge erred in granting primary custodial responsibility to Robert Hickman. This decision was upheld by the Circuit Judge on April 12, 2010.

STATEMENT OF FACTS

1. Petitioner Sheila Carol Wilson has four minor children, namely: Corey Kaylen Wilson, born 6-23-95, Raven Nicole Wilson, born 12-8-98, Hailey Lynn Belle Wilson, born 2-20-02, and Luke Joshua Wilson Hausenflock, born 6-26-08.

2. Sheila Wilson was residing in North Carolina when she became pregnant with Hailey Wilson, due to an act of non-consensual sexual intercourse with Robert Hickman; Sheila Wilson believes that Robert Hickman drugged her because she woke up without her clothes on, felt extremely dizzy, and had no memory of any sexual encounter. (SW Dep.[1], p.8-10, 24)

3. Sheila Wilson informed Robert Hickman that she was pregnant shortly after she discovered her pregnancy. (RH Dep., p.7-8; SW Dep., p.58) Sheila Wilson told Robert Hickman

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[1]Respondent Sheila Wilson will refer to the Depositions as follows: Robert Hickman's deposition taken 3-14-08 as RH Dep.; Monica Holden's deposition dated 3-14-08 as MH Dep.; Sheila Wilson's deposition dated 4-16-08 as SW Dep.; Sarah Perdue's deposition dated 4-24-08 as SP deposition)

that he was the father. (SW Dep., p.58)

4. Sheila Wilson decided to move back to West Virginia in August, 2001, after being sexually assaulted in North Carolina by a stranger. (SW Dep. 17-20, 25)

5. Robert Hickman helped her move some of her things back to her mother's home in Kanawha County, West Virginia. Robert Hickman knew where her mother lived and knew her mother's phone number. (RH Dep. p.9-11, 64; SW Dep., p. 25, 26, 30)

6. Hailey Wilson was born in Charleston, West Virginia, on February 20, 2002. Sheila Wilson called Robert Hickman to inform him of Hailey's birth on February 20, 2002. (RH Dep., p.9; SW Dep., p.27) Robert Hickman was not present at the hospital at her birth. (SW Dep., p.60)

7. Robert Hickman did not return phone calls made by Sheila Wilson to him after Hailey's birth. (SW Dep., p.27-28)

8. Hailey Wilson resided with her mother, Sheila Wilson, and her two sisters from her birth until on or about August, 2005. (SW Dep., p.43)

9. From the date of Hailey's birth until September, 2005, Robert Hickman never saw Hailey. (RH Dep., p. 17) From the date of Hailey's birth until July, 2004, Robert Hickman never paid any child support. Robert Hickman never once made the trip to see Hailey Wilson until on or about some time in 2007. From the date of Hailey's birth until some time in 2006, Robert Hickman never asked for visitation with Hailey Wilson.

10. Robert Hickman abandoned Hailey Wilson in that he did not attempt to visit, communicate, support or otherwise establish a parental relationship with her from the time of her birth until the spring/summer of 2007, except for the payment of child support which was

Ordered 6-1-04 and which he began paying. (RH Dep., p. 12, 14-16; SW Dep., p. 28, 29, 30, 42)

11. Robert Hickman relinquished custody of Hailey Wilson to Sheila Wilson and, through his nonfeasance, to Matthew and Sarah Perdue.

12. After her birth, Hailey Wilson resided primarily in West Virginia with her mother and sisters. During 2003, the State of West Virginia (significantly not Robert Hickman) initiated an action to determine paternity and child support in Fayette County, West Virginia.

13. At the final hearing on May 5, 2004, Robert Hickman did not participate in person (he was present by telephone) but did have an attorney. (RH. Dep., p.13 , 47) By Order entered June 1, 2004, in Fayette County, West Virginia, he was adjudicated the father of Hailey Belle Wilson (then age 2 ½), was ordered to pay child support of $420 per month and was not awarded any specific visitation with Hailey per his agreement. (See Order entered 6-1-04.)

14. On or about February, 2005, Hailey Wilson moved to Mansfield, Ohio, with her mother and sisters. (SW Dep., p. 32)[2]

15. In August, 2005, Sheila Wilson decided to move back to North Carolina. (SW Dep, p. 32) All three of her children went to her mother's home in West Virginia, while she went to look for a new home in North Carolina. (SW Dep., p. 30-35, 74)

16. Prior to leaving Ohio in August, 2005, a CPS report was made against Sheila Wilson in Ohio. (SW Dep., p. 107-108)

17. Shortly after Sheila Wilson left for North Carolina, Hailey Wilson began staying with

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[2]In Petitioner's brief, he states several times that Sheila Wilson and Hailey Wilson moved to Ohio shortly after her birth and lived in Ohio until August, 2005. This is incorrect. Sheila Wilson and Hailey Wilson did not move to Ohio until February, 2005 and stayed there until August 1, 2005. (See SW Dep., p. 32)

Matthew and Sarah Perdue. (SW Dep., p. 35, 74) On August 26, 2005, Sheila Wilson signed a document allowing Matthew and Sarah Perdue to authorize medical and educational treatment for Hailey Wilson. (SW Dep., Ex. #1)

18. On or about early September, 2005, Sheila's mother informed her that Child Protective Services had called and said that, unless she signed over her rights, within a short time, to Hailey Wilson, Hailey would be placed in foster care. (SW Dep., p.37)

19. On or about September 13, 2005, Matthew and Sarah Perdue traveled to North Carolina with Hailey Wilson with Consents to Adopt for Sheila Wilson and Robert Hickman to sign. Sheila Wilson signed the Consent. (SW Dep., p. 40-42)

20. On or about September 13, 2005, Sheila Wilson took Matthew and Sarah Perdue and Hailey Wilson to Robert Hickman so that he could sign the Consent. (SW Dep. p. 40, Ex. #3) Robert Hickman saw Hailey Wilson for the first time and did not sign the Consent. (RH Dep., p. 17) [3]

21. Robert Hickman stated that the reason he decided he wanted custody of Hailey Wilson was that she was a beautiful little girl. (RH Dep., p.59)

22. Sheila Wilson did not attempt to get Hailey back earlier because she was informed that there was nothing she could do after signing the Consent. (SW Dep., p. 44, p.70)

23. Sheila Wilson's other two daughters came back to reside with her in North Carolina; Raven in 2005 and Corey in June, 2006. (SW Dep., p. 109-110)

24. Sheila Wilson's Consent to Adopt Hailey Wilson was nullified due to the fact that the

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[3]Robert Hickman places the date of this meeting in June or July, 2005. However, it appears to have been the same day that Sheila Wilson signed the Consent to Adopt, which would make it September 13, 2005, by the date of the Consent. (See RH Dep., p.17, 40, Ex. #3)

adoption was never consummated.

25. Sheila Wilson was and is a poor person and could not afford to hire an attorney.

26. Sheila Wilson and her two older daughters continued to see Hailey Wilson, when she came to West Virginia for holidays, etc. (SW Dep., p. 44)

27. Robert Hickman waited approximately six months (until March 9, 2006) before filing any type of Petition in Fayette County, West Virginia regarding visitation or custody of Hailey Wilson. (RH Dep., p.19) The Fayette County Family Court subsequently transferred the case to Boone County, West Virginia, where Hailey Wilson was residing with Matthew and Sarah Perdue.

28. Boone County Family Court Judge Cynthia Jarrell appointed Peter Hendricks as Guardian Ad Litem for the minor child. Peter Hendricks spoke with Sheila Wilson as part of his investigation and referred Sheila Wilson to Legal Aid of West Virginia for assistance in early 2008.

29. Many hearings and depositions were conducted from 2007-2009. Most of the testimony was taken by deposition.

30. Peter Hendricks did not speak with the minor child until January 12, 2009, at the Courthouse immediately before a hearing.

31. A Final Order was entered by Family Court Judge Cynthia Jarrell on August 12, 2009.

32. Petitioner filed a Petition for Appeal to the Circuit Court on September 11, 2009.

33. The Circuit Court entered its final Order on April 12, 2010.

ASSIGNMENTS OF ERROR

I. **WHETHER THE COURT WAS CLEARLY ERRONEOUS AND ABUSED ITS DISCRETION IN FAILING TO DETERMINE THAT ROBERT HICKMAN ABANDONED HAILEY BELLE WILSON?**

II. **WHETHER THE COURT WAS CLEARLY ERRONEOUS AND ABUSED ITS DISCRETION IN FAILING TO ALLOCATE CUSTODIAL RESPONSIBILITY AND DECISION-MAKING IN ACCORDANCE WITH WEST VIRGINIA CODE §§48-9-206, 48-9-207; AND IN FAILING TO SPECIFY WHY SHEILA WILSON WAS NOT DESIGNATED AS THE PRIMARY CUSTODIAN?**

III. **WHETHER THE COURT WAS CLEARLY ERRONEOUS AND ABUSED ITS DISCRETION IN RELYING ON THE RECOMMENDATION OF THE GUARDIAN AD LITEM, WHEN HE ONLY HAD ONE APPROXIMATELY 15 MINUTE INTERVIEW WITH THE CHILD AT THE COURTHOUSE IMMEDIATELY PRIOR TO A HEARING?**

IV. **WHETHER THE COURT WAS CLEARLY ERRONEOUS AND ABUSED ITS DISCRETION IN ALLOWING THE MINOR CHILD TO BE PLACED IN A NEW HOME, IN A NEW COMMUNITY, WITHOUT ANY SUPPORT SYSTEMS, AND WITHOUT ANY MECHANISM FOR FEEDBACK AS TO HOW THE CHILD WAS DOING?**

POINTS AND AUTHORITIES

Clifford K. and Tina B. v. Paul S., 217 W. Va. 625, 619 S.E.2d 138 (2005).

In Re: Custody and Visitation of Senturi N.S.V., 221 W. Va. 159, 652 S.E.2d 490 (2007)

In Re Jeffrey R. L., 190 W. Va. 24, 435 S.E.2d 162, at 175.

In re: Petition of Robert Jeffries and Judy Jeffries for Adoption of Rebecca L. Jeffries, 204 W. Va. 360, at 366, 512 S.E.2d 873, at 879 (1998)

Lemley v. Barr, 176 W. Va. 378, 343 S. E.2d 101, 1986 W. Va. LEXIS 426 (1986),

Overfield v. Collins, 199 W. Va. 27, 483 S.E.2d 27 (1996)

State ex rel. Roy Allen S. v. Stone, 196 W. Va. 624, 474 S.E.2d 554 (1996).

W. Va. Code §48-9-103(b)

West Virginia Code §48-9-206

West Virginia Code §48-9-207

West Virginia Code §48-22-306

West Virginia Constitution, Section 10, Article III

ARGUMENT

I. WHETHER THE COURT WAS CLEARLY ERRONEOUS AND ABUSED ITS DISCRETION IN FAILING TO DETERMINE THAT ROBERT HICKMAN ABANDONED HAILEY BELLE WILSON?

The Court was clearly erroneous and abused its discretion in failing to determine that Robert Hickman abandoned Hailey Belle Wilson as an infant. Prior to the establishment of Hailey's paternity, it is clear that Robert Hickman had abandoned Hailey Wilson.[4] After entry of the 6-1-04 Order, Robert Hickman began to pay child support, thus preventing a legal conclusion of abandonment in an adoption. He still, however, took no action to develop a relationship with Hailey Wilson. He did not visit or communicate with her; he did not attempt to get a visitation order–in essence, he abdicated all parental responsibilities except child support. Mr. Hickman admitted that he was notified of her birth by a call from Sheila Wilson (RH Dep., p. 9) Mr. Hickman admitted he did not try to locate Sheila Wilson after her mother said she went to Ohio. (RH Dep., p. 12) Mr. Hickman admitted he did not try to find her after the establishment of paternity. (RH Dep., p. 16, 18) Even though he was able to avoid an outright determination of abandonment by his payment of child support from July, 2004 to March, 2006, he cannot now assert that he should be on the same or better footing as an active parent or custodian.

> "To preserve his parental interest vis-a-vis his newborn child, an unwed biological father must, upon learning of the existence of his child, demonstrate his commitment to assume the responsibilities

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[4]Robert Hickman had admittedly not visited, communicated, or paid child support from birth until the court Order entered 6-1-04 directed him to pay child support. (RH Dep., p.12, 16, 17, 18; SW Dep. 28, 29, 42) Per *West Virginia Code* §48-22-306, his failure to visit, communicate or pay support would have permitted an adoption on the basis of abandonment up until the entry of the June, 2004 Order, when Hailey was 2 ½ years old.

> of parenthood by coming forward to participate in the care, rearing, and support of his newborn child and by commencing to establish a meaningful parent-child relationship with his child." *In re: Petition of Robert Jeffries and Judy Jeffries for Adoption of Rebecca L. Jeffries,* 204 W. Va. 360, at 366, 512 S.E.2d 873, at 879 (1998)

This Mr. Hickman did not do. *Jeffries* also makes clear that a father's protection under the Due Process Clause in Section 10 of Article III of the West Virginia Constitution does not kick in until an "unwed father demonstrates a full commitment to the responsibilities of parenthood..." *Jeffries (*Id.) *quoting* Syllabus Point 2, *State ex rel. Roy Allen S. v. Stone, 196 W. Va. 624, 474* S.E.2d 554 (1996).

The Guardian Ad Litem accepted, and the Court adopted, Robert Hickman's argument that he did not abandon Hailey and that he should get custody of Hailey as a biological parent, since her mother signed a Consent to Adopt and her custodians are not natural parents. But, Mr. Hickman *permitted* and *encouraged* Hailey Wilson to bond with other individuals by his willful absence. He did not come into this litigation with clean hands. Moreover, the Court failed to look at the child's emotional attachments in granting primary custody to Mr. Hickman. Mr. Hickman had only spent a few weeks for a few years with Hailey Wilson before being awarded custody. In *Lemley v. Barr*, 176 W. Va. 378, 343 S. E.2d 101, 1986 W. Va. LEXIS 426 (1986), the West Virginia Supreme Court refused to restore custody of a 5 year old child to the natural mother even though the adoption had been set aside and even though the mother had been fighting the adoption, virtually since the child's infancy, for 5 years. Syllabus point 6 of this decision provided that:

> "In a proceeding in habeas corpus involving the right to the custody of an infant, the vital and controlling question is the

> welfare of the child and its determination rests in the sound discretion of the court. The law does not recognize any absolute right in any person or claimant to the custody of a child." Id.

The Court remanded the case for a determination of "what physical custody arrangement [was] in Ryan's best interests." (Id., at 386, 109) The Court also noted that:

> "There is ample, recent authority in West Virginia and elsewhere justifying our placement of the equitable rights of Ryan above the legal rights of his mother. For example, in *W. Va. Department of Human Services v. La Rea Ann C.L., 175 W. Va. 330, 332 S.E.2d 632 (1985),* this Court said:
>
> 'While this Court heretofore has not specifically applied the best interest standard to relinquishment approval cases, a very close analogy may be drawn from this Court's treatment of child custody situations. We have repeatedly held that in contests involving the custody of infants the welfare of the child is of paramount and controlling importance and is the "polar star" by which the discretion of the court will be guided.'" (Id., at 637)[5]

Mr. Hickman cited *In Re: Custody and Visitation of Senturi N.S.V.,* 221 W. Va. 159, 652 S.E.2d 490 (2007) as support for an award of custody to him. However, *Senturi.* involved an action by a child's babysitters to intervene and obtain custody.[6] In *Senturi*, the mother had been awarded custody two years prior to the babysitters' attempt to get custody and the court found that the child had not even lived full-time with the intervenors. In that case, the mother was the primary caregiver for the child before being awarded custody and continued to have a

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[5]*Overfield v. Collins,* 199 W. Va. 27, 483 S.E.2d 27 (1996) *modified the holding in Lemley v. Barr*, 176 W. Va. 378, 343 S.E.2d 101 (1986) by distinguishing between temporary and permanent transfers to third parties. In *Overfield,* the Court said, "[t]he reformulation of the legal standards guiding the attempt to regain the custody of a child maintains the delicate balance between the best interests and equitable rights of a child and the rights of a natural parent to custody of the child vis-a-vis any other person." (*Id.,* at p.37)

[6]In *Senturi, supra,* the Court notes that any parent who uses childcare would be vulnerable if the 3rd parties in that case were permitted to retain custody of the child.

relationship with the child. *Senturi*[7], *supra*, in combination with *Clifford K.*[8], reiterates the primary rights of biological parents and, at the same time, explains how and when third parties may intervene in custody.

> "'A parent has the natural right to the custody of his or her infant child, unless the parent is an unfit person because of misconduct, neglect, immorality, abandonment or other dereliction of duty, or has waived such right, or by agreement or otherwise has transferred, relinquished or surrendered such custody, the right of the parent to the custody of his or her infant child will be recognized and enforced by the courts.' Syllabus point 1, *Whiteman v. Robinson,* 145 W. Va. 685, 116 S.E.2d 691 (1960)." *(Senturi, supra, at p. 500)*

These cases, applied to the biological father here, Robert Hickman, do not support an award of custody to him. Robert Hickman's decision not to develop a parent-child relationship with Hailey Wilson constitutes emotional abandonment of Hailey. He does not "jump to the head of the class" for primary custody by virtue of the failed adoption or the non-biological relationship of the Perdues. Although he may seek an award of custodial time with his child, his total abandonment early on, combined with his emotional abandonment later, preclude him from consideration as Hailey's primary caregiver when the person Hailey has already bonded with is a fit and proper person to have custody.

II. WHETHER THE COURT WAS CLEARLY ERRONEOUS AND ABUSED ITS DISCRETION IN FAILING TO ALLOCATE CUSTODIAL

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[7]*Senturi, supra*, Syl. Pt. 2, at 490, citing *In Re: Willis*, 157 W. Va. 225, 207 S.E. 2d 129 (1973).

[8]*Clifford K. and Tina B. v. Paul S.,* 217 W. Va. 625, 619 S.E.2d 138 (2005).

RESPONSIBILITY AND DECISION-MAKING IN ACCORDANCE WITH WEST VIRGINIA CODE §§48-9-206, 207; AND IN FAILING TO SPECIFY WHY SHEILA WILSON WAS NOT DESIGNATED AS THE PRIMARY CUSTODIAN?

The Court was clearly erroneous and abused its discretion in failing to allocate custodial responsibility and decision-making authority in accordance with West Virginia Code §§48-9-206, 207. The Court did not analyze or address the criteria set out in §48-9-206[9] finding that Robert Hickman should have primary custody of Hailey Belle Wilson. If the Court was to determine that the Perdues should not have custody of Hailey Belle Wilson, which it apparently did, then it should have gone through these criteria. It is clear that Robert Hickman did not meet the first criterion, to "perform a reasonable share of parenting functions" for Hailey Belle Wilson,

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[9]The Court is required to follow the criteria in West Virginia Code §48-9-206(a) in allocating custodial responsibility. These criteria include: (1) to permit the child to have a relationship with each parent who has performed a reasonable share of parenting functions; (2) to accommodate the firm and reasonable preferences of a child who is fourteen years of age or older, and with regard to a child under fourteen years of age, but sufficiently matured that he or she can intelligently express a voluntary preference for one parent, to give that preference such weight as circumstances warrant; (3) to keep siblings together when the court finds that doing so is necessary to their welfare; (4) To protect the child 's welfare when, under an otherwise appropriate allocation, the child would be harmed because of a gross disparity in the quality of the emotional attachments between each parent and the child or in each parent's demonstrated ability or availability to meet a child's needs; (5) to take into account any prior agreement of the parents that, under the circumstances as a whole including the reasonable expectations of the parents in the interest of the child, would be appropriate to consider; (6) to avoid an allocation of custodial responsibility that would be extremely impractical or that would interfere substantially with the child's need for stability in light of economic, physical or other circumstances, including the distance between the parents' residences, the cost and difficulty of transporting the child, the parents' and child's daily schedules, and the ability of the parents to cooperate in the arrangements; to apply the principles set forth in 9-403(d) [§ 48-9-403] of this article if one parent relocates or proposes to relocate at a distance that will impair the ability of a parent to exercise the amount of custodial responsibility that would otherwise be ordered under this section; and (8) to consider the stage of a child's development.

in that he did not even begin visiting with her until sometime in late 2006, when Hailey was -*4 ½ years old.

With respect to 48-9-206(a)(2), the child's preference was never ascertained. Objective (3) was obviously not considered because the Court did not place Hailey Wilson with her siblings. (Her siblings reside with her mother.) Objective (4) was not met because the child did not have a strong emotional attachment with Robert Hickman. The child's emotional attachments were to the Perdues and Sheila Wilson, because they had all been her primary caregivers. The Court did not consider the stage of Hailey Wilson's development in reaching its conclusion or the other statutory factors. The Court should have taken testimony from an expert about the impact of removing this child from all of her primary caregivers at this age before doing so. In fact, the Court ignored its prescribed mandate. The Court also ignored the fact that Mr. Hickman had an erratic employment history, had not established a relationship with a teenage daughter of his and had not seen her in many years, and had recently broken up with his live-in girlfriend. Although Sheila Wilson and Robert Hickman reside in North Carolina and both have limited incomes, no assessment was made of either parent's home. The Family Court Judge failed to address placement of Hailey Belle Wilson with Sheila Wilson in her Final Order. She made no findings as to why Sheila Wilson was not considered as the primary custodian.

Sheila Wilson asked her mother to take care of her three children in August, 2005, while she set up a new home in North Carolina. (S.W. Dep., p. 30-35, 74) Sheila Wilson signed a Consent to Adopt Hailey naming Matthew Perdue (her step-brother) and his wife, Sarah Perdue as prospective adoptive parents. (S.W. Dep., Ex. #3) Sheila Wilson did not sign a Consent to Adopt for her two older daughters. She signed a Consent to Adopt Hailey, based on

misrepresentations made by her mother regarding Child Protective Services.[10] But for the material misrepresentations of Sheila Wilson's mother, the Consent would never have been signed. Robert Hickman subsequently refused to sign a Consent for Hailey's adoption, and the adoption was never consummated. Sheila Wilson's initial placement of Hailey with the Perdues was clearly a temporary transfer of custody. This is evidenced by the fact that she subsequently did get both of her other daughters back. Had she not believed that Hailey was going to end up in foster care, Sheila Wilson would have gotten Hailey back as well. Although she signed a Consent for Hailey's adoption, she did this out of a belief that she was keeping her daughter in the family. The Court appears to be suggesting that, because she signed a Consent to Adopt, she was not entitled to be considered as custodial parent. Sheila Wilson was Hailey's primary caretaker parent until August, 2005. She continued to have a relationship with Hailey after she signed the Consent. Hailey still knew Sheila Wilson as her mother and saw her. She did not know her father.

Sheila Wilson should have been awarded decision-making authority under West Virginia Code §48-9-207, because the Court made no findings of limiting or other factors which would have deprived Sheila Wilson of this ability.[11]

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[10]Sheila Wilson believed that her daughter Hailey was about to be placed in foster care, based on a conversation with her mother. (SW Dep. , p.37)

[11]*West Virginia Code* §48-9-207(b) provides that, "If each of the child's legal parents has been exercising a reasonable share of parenting functions for the child, the court shall presume that an allocation of decision-making responsibility to both parents jointly is in the child's best interests. "

III. WHETHER THE COURT WAS CLEARLY ERRONEOUS AND ABUSED ITS DISCRETION IN RELYING ON THE RECOMMENDATION OF THE GUARDIAN AD LITEM, WHEN HE ONLY HAD ONE APPROXIMATELY 15 MINUTE INTERVIEW WITH THE CHILD AT THE COURTHOUSE IMMEDIATELY PRIOR TO A HEARING?

Guardian Ad Litem Peter Hendricks spent a lot of time and energy on this case, and helped to move the case along in the Court. However, the GAL met with Hailey Belle Wilson on only one occasion. This occasion was immediately before a hearing and took place at the Family Court on January 12, 2009. He spoke to her in one of the offices. Many other people were at the courthouse and it was not a relaxed setting. He had never met her before and spoke to her for about fifteen minutes.[12] A GAL is required to meet with the child he or she is representing.[13] Moreover the GAL is required to consider the child's wishes, even though the GAL is not bound by the child's wishes.[14] In this case, the GAL never learned the child's wishes because he never spent more than fifteen minutes with her. The child's emotional attachments were essentially ignored by the Court because no one spent time with the child. No one assumed the role of determining the child's emotional attachments prior to the custody decision. It is of paramount importance in determining the best interests of the child, that enough time be spent *with the child* to be able to make a recommendation that so profoundly affects her.

The parties discussed having an independent psychologist talk to Hailey Belle Wilson but

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[12]See testimony of Peter Hendricks from hearing held 1-12-09.

[13]*In Re Jeffrey R. L.,* 190 W. Va. 24, 435 S.E.2d 162, at 175.

[14] *Id,* at 176.

could not afford to pay the psychologist's fee. There was no professional custody evaluation and no real assessment of "psychological parent" for Hailey Wilson. Monica Holden testified in a deposition that she had seen Hailey Wilson several times, starting in August, 2006,[15] initially for concerns about her adjustment to her biological father entering her life. Most of Ms. Holden's sessions with Hailey followed visits with her father, Robert Hickman. One of the sessions was with the Perdues only, not Hailey. One of the Perdues was usually present during Hailey's sessions with Monica.[16] She saw Hailey alone on August 22, 2006 and on August 16, 2007. (*Id.*) She did no testing of Hailey, but admitted that testing might be important. *(Id.)* She admitted that it might be important to conduct sessions without the Perdues present. *(Id., at 25)* She testified that it would be ideal for Hailey to be seen weekly to address issues. *(Id.)* She admitted that she had never discussed with Hailey issues of being fearful, withdrawn and wetting the bed. *(Id., at 26)* She stated that she had never been given information about visits with Hailey's sisters. *(Id., at 73)* Monica Holden clearly was not able to make an independent evaluation regarding Hailey's custody. No other psychologist talked to Hailey. Sheila Wilson does not know, the Guardian Ad Litem does not know, and the Court does not know who a psychologist would say has the primary emotional attachment with Hailey Wilson at this time. But, it could hardly be Robert Hickman, when he had not spent more than two weeks with her at a time, and had only seen her on a limited number of visits for the past few years.

In this case, there was no professional custody evaluation and no real assessment of

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[15]MH Dep, March 14, 2008, p.5- 6. Her subsequent sessions with Hailey were held on October 9, 2006 (p.9), Perdues only on May 3, 2007, (p.11), June 7, 2007, (p.14), August 16, 2007, (p. 15), and February 21, 2008, (p. 16).

[16]MC Dep., p.22.

"psychological parent" for Hailey Wilson. Monica Holden testified in a deposition that she had seen Hailey Wilson several times, starting in August, 2006,[17] initially for concerns about her adjustment to her biological father entering her life. Most of Ms. Holden's sessions with Hailey followed visits with her father, Robert Hickman. One of the sessions was with the Perdues only, not Hailey. One of the Perdues was usually present during Hailey's sessions with Monica.[18] She saw Hailey alone on August 22, 2006 and on August 16, 2007. (*Id.*) She did no testing of Hailey. (*Id.*) She admitted that testing might be important. (*Id.*) She admitted that it might be important to conduct sessions without the Perdues present. (*Id., at 25*) She testified that it would be ideal for Hailey to be seen weekly to address issues. (*Id.*) She admitted that she had never discussed with Hailey issues of being fearful, withdrawn and wetting the bed after talking with her mother. (*Id., at 26*) She stated that she had never been given information about visits with Hailey's sisters. (*Id., at 73*)

Because Hailey is old enough to talk about relationships, it is important to have a better idea of how Hailey thinks about her different relationships with each of the parties before the Court. It is not possible to determine the "psychological parent" based on Ms. Holden's treatment of Hailey or on the Guardian Ad Litem's fifteen minute interview. It is not possible to tell whether her relationship with the Perdues is "substantial" or "temporary". It is in Hailey's best interests to talk to an independent therapist who can test Hailey and talk with her about these relationships. If the parties cannot afford a full-fledged custody evaluation of the parents as well

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[17]MH Dep, March 14, 2008, p.5- 6. Her subsequent sessions with Hailey were held on October 9, 2006 (p.9), Perdues only on May 3, 2007, (p.11), June 7, 2007, (p.14), August 16, 2007, (p. 15), and February 21, 2008, (p. 16).

[18]MC Dep., p.22.

as the child, they probably can afford to have Hailey talk with a psychologist for 3 or 4 sessions. Absent a showing that the Perdues are clearly Hailey's "psychological parents," primary custody of Hailey Lynn Belle Wilson should be restored to Sheila Wilson.[19]

IV. WHETHER THE COURT WAS CLEARLY ERRONEOUS AND ABUSED ITS DISCRETION IN ALLOWING THE MINOR CHILD TO BE PLACED IN A NEW HOME, IN A NEW COMMUNITY, WITHOUT ANY SUPPORT SYSTEMS, AND WITHOUT ANY MECHANISM FOR FEEDBACK AS TO HOW THE CHILD WAS DOING?

In recommending that the Court transfer custody of Hailey to Robert Hickman, in North Carolina, the GAL chose to ignore the child's primary emotional attachments to Sheila Wilson and to the Perdues. The GAL indicated that he wanted to give the father a "shot at custody." However, the GAL failed to view the situation from the child's perspective: she had spent the first three and one-half years of her life bonded with her mother and sisters; she spent the next three and one-half years of her life with the Perdues, and with their extended family in Boone County, West Virginia. Her pediatrician was in West Virginia; she had started school in West Virginia, had friends and an active social life. She was then sent to North Carolina without any transition and without any specified contacts with either the Perdues or with Sheila Wilson.

---

[19].*Clifford K.* (supra, at p. 154-157, 641-644) recites the history of psychological parent cases, going back to 1978, including *In Re: Brandon L.E.,* 183 W. Va. 113, 394 S.E.2d 515 (1990), *Overfield v. Collins, 199 W. Va.* 27, 483 S.E.2d 27 (1996), et al.

The GAL stated that he wanted to get some feedback on how Hailey was doing during the summer of 2009. No mechanisms were set up in the Final Order to obtain feedback as to how Hailey Belle Wilson was adjusting to living with her father. Because the Court did not establish any method to obtain feedback in this situation, the only possible feedback had to come through Robert Hickman, obviously not an unbiased source of information.

It is hard to imagine that the best interests of Hailey Belle Wilson are served by an almost total severance of her life and contacts prior to June, 2009. West Virginia law regarding the custody of minor children has sought to maintain emotional attachments, not to ignore them. The *Clifford K.* and *Senturi* cases provide that Hailey should remain with the Perdues only if they are her psychological parents and only if that relationship serves the best interests of the child. Robert Hickman was neither a psychological parent nor an active parent in Hailey's life. If the Court determines that the Perdues are not Hailey's psychological parents, then Hailey should be restored to the primary custody of Sheila Wilson.

WHEREFORE, Respondent Sheila Wilson respectfully requests that this Court:

A. Accept this Petition for Appeal.

B. Set a hearing for oral presentation.

C. Reverse the Order of the Family Court and Circuit Court and enter an Order restoring primary custodial responsibility to Sheila Wilson.

D. In the alternative, remand this matter to determine custody pursuant to *West Virginia Code* §48-9-206-207, to determine the psychological parent of Hailey Belle Wilson, etc.

E. For such other and further relief as the Court may deem appropriate.

Sheila Wilson,
Petitioner,
By Counsel.

Maureen Conley (WVSB #4239)
LEGAL AID OF WEST VIRGINIA
922 Quarrier St., Suite 400
Charleston WV 25301
304-343-3013, x2119
Counsel for Sheila Wilson

STATE OF WEST VIRGINIA,

COUNTY OF Boone, to-wit:

VERIFICATION

The undersigned named in the foregoing pleading, after being first duly sworn, says that the facts and allegations therein contained are true, except insofar as they are therein stated to be on information and belief, and that insofar as they are therein stated, they are believed to be true.

Sheila C. Wilson

Taken, sworn to and subscribed before me this the 11 day of August, 2010.

My commission expires: February 12, 2014

James H Cheek
NOTARY PUBLIC

James H. Cheek
Notary Public
Durham County, NC
My Commission Expires Feb. 12, 2014

CERTIFICATE OF SERVICE

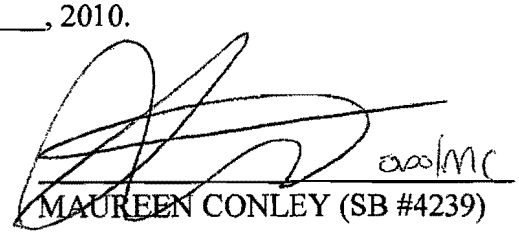
Service of the foregoing was hereby had upon the parties hereto by placing a true and exact copy thereof in the regular course of the United States Mail, postage prepaid, to the following address:

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)

Supreme Court of Appeals of West Virginia

DOCKETING STATEMENT

Style of Case (use style from final order)

IN RE THE CHILD OF:

ROBERT HICKMAN and SHEILA CAROL WILSON
ROBERT HICKMAN v. SHEILA CAROL WILSON, MATTHEW EARL PERDUE, SARAH BETH PERDUE
SHEILA WILSON

ROBERT HICKMAN

SHEILA CAROL WILSON, MATTHEW EARL PERDUE, SARAH BETH PERDUE

Type of Action:

Civil ☑
Criminal ☐

Petitioner(s):

Plaintiff(s) ☑
Defendant(s) ☑

Circuit Judge: William Thompson

County: Boone

Circuit Number: **25**

TIMELINESS OF APPEAL

Date of entry of judgment or order appealed from: **APRIL 12, 2010**

Filing date of any post-judgment motion filed by any party pursuant to R. Civ. P. 50(b), 52(b), or 59:

Date of entry of order deciding post-judgment motion:

Date of filing of petition for appeal: **AUGUST 10, 2010**

Date of entry of order extending appeal period:

Time extended to:

FILED
SEP 14 2010
RORY L. PERRY, II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

FINALITY OF ORDER OR JUDGMENT

Is the order or judgment appealed from a final decision on the merits as to all issues and parties?

☑ YES ☐ NO

If no, was the order or judgment entered pursuant to R. Civ. P. 54(b)?

☐ YES ☑ NO ☐ N/A

Has the defendant been convicted? ☐ YES ☐ NO ☑ N/A

Has a sentence been imposed? ☐ YES ☐ NO ☑ N/A

Is the defendant incarcerated? ☐ YES ☐ NO ☑ N/A

Has this case previously been appealed? ☐ YES ☑ NO

If yes, give the case name, docket number, and disposition of each prior appeal on a separate sheet.

Are there any related cases currently pending in the Supreme Court of Appeals or Circuit Court?

☐ YES ☑ NO

If yes, cite the case and the manner in which it is related on a separate sheet.

CASE INFORMATION

State generally the **nature of the suit**, the **relief sought**, and the **outcome below**. [Attach an additional sheet, if necessary.]

A final Order granting custody of a seven year old child, Hailey Belle Wilson, to her father Robert Hickman was entered on April 12, 2010. The minor child had lived for the previous three and one-half years with Guardians Matthew Perdue and Sarah Perdue. The child had lived with her mother, the Petitioner for the first three and one-half years of her life. Robert Hickman did not start seeing the child until 2007. Robert Hickman acknowledged that he knew of the child's existence since her birth, but took no action to establish a relationship with her until he filed a Petition in 2006. The Court determined that the Guardians should not be awarded permanent guardianship without determining the psychological parent. The Court awarded custodial responsibility without assessing custodial responsibility factors under West Virginia Code Section 48-9-206 and decision-making authority under West Virginia Code Section 48-9-207. In reaching this decision, the Court primarily relied on the fact that the mother had signed a Consent for her adoption in 2005. An adoption, however, was never consummated and Sheila Wilson continued to have a relationship with her daughter. Sheila Wilson has two older daughters and one younger son. Hailey Wilson also had an on-going relationship with her two half-sisters.

State the **issues to be raised on appeal**. [Attach an additional sheet, if necessary. Use carriage returns to number the issues in a manner corresponding with the petition for appeal.]

Enter text here. Use carriage returns as necessary. Select and delete this text before continuing. Use "TAB" to move between fields in the form.

I. WHETHER THE COURT WAS CLEARLY ERRONEOUS AND ABUSED ITS DISCRETION IN FAILING TO DETERMINE THAT ROBERT HICKMAN ABANDONED HAILEY BELLE WILSON?

II. WHETHER THE COURT WAS CLEARLY ERRONEOUS AND ABUSED ITS DISCRETION IN FAILING TO ALLOCATE CUSTODIAL RESPONSIBILITY AND DECISION-MAKING IN ACCORDANCE WITH WEST VIRGINIA CODE §§48-9-206, 48-9-207; AND IN FAILING TO SPECIFY WHY SHEILA WILSON WAS NOT DESIGNATED AS THE PRIMARY CUSTODIAN?

III. WHETHER THE COURT WAS CLEARLY ERRONEOUS AND ABUSED ITS DISCRETION IN RELYING ON THE RECOMMENDATION OF THE GUARDIAN AD LITEM, WHEN HE ONLY HAD ONE APPROXIMATELY 15 MINUTE INTERVIEW WITH THE CHILD AT THE COURTHOUSE IMMEDIATELY PRIOR TO A HEARING?

IV. WHETHER THE COURT WAS CLEARLY ERRONEOUS AND ABUSED ITS DISCRETION IN ALLOWING THE MINOR CHILD TO BE PLACED IN A NEW HOME, IN A NEW COMMUNITY, WITHOUT ANY SUPPORT SYSTEMS, AND WITHOUT ANY MECHANISM FOR FEEDBACK AS TO HOW THE CHILD WAS DOING?

Continued: State the **issues to be raised on appeal**. [Attach an additional sheet, if necessary. Use carriage returns to number the issues in a manner corresponding with the petition for appeal.]

Enter text here. Use carriage returns as necessary. Select and delete this text before continuing. Use "TAB" to move between fields in the form.

CASE MANAGEMENT INFORMATION

Do you wish to make an oral presentation of the petition? ☑ YES ☐ NO

Has the entire or only portions of the record been designated? ☑ ENTIRE ☐ PORTION

If the appeal is granted,do you desire reproduction of the record or that the case be heard on the original record? ☑ REPRODUCED ☐ ORIGINAL

List counsel for each adverse party to the appeal. Include name, firm name, address, and telephone number. If unrepresented by counsel, provide the address and telephone number of the adverse party. Attach an additional sheet if necessary.

Enter text here. Use carriage returns as necessary. Select and delete this text before continuing. Use "TAB" to move between fields in the form.

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
602 Virginia St., E, Suite 300
Charleston WV 25301

List the Petitioner(s) name: Enter name here. Delete this text first.

If incarcerated, provide institutional address:

Name of attorney or pro se litigant filing Docketing Statement: Maureen Conley (WVSB #4239)

☑ ATTORNEY ☐ PRO SE

Will you be handling the appeal? ☑ YES ☐ NO

If so, provide firm name, address, and telephone number: LEGAL AID OF WEST VIRGINIA
922 Quarrier St., 4th floor
Charleston WV 25301
304-343-3013, x2119

If this is a joint statement by multiple petitioners, add the names and addresses of the other petitioners and counsel joining in this Docketing Statement on an additional sheet, accompanied by a certification that all petitioners concur in this filing.

Signature: _____

WV Bar No. 4239

Date: 8-9-10

Remember to Attach:

1. Additional pages, if any, containing extended answers to questions on this form.
2. A copy of the order or judgment from which the appeal is taken.
3. A Certificate of Service.

ENTERED 4-12-10

101147

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

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: William S. Thompson

Circuit Court Judge William S. Thompson

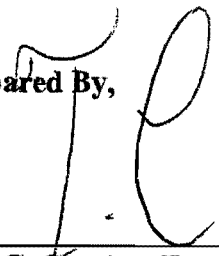
DATED: April 12, 2010

A COPY ATTEST

Susan Zickefoose

CIRCUIT COURT

Prepared By,



Tim C. Carrico, Esq., (WVSB # 6771)
CARRICO LAW OFFICES, LC
1412 Kanawha Blvd., East
Charleston, WV 25301
304-347-3800
304-347-3688 fax
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)

IN THE WEST VIRGINIA SUPREME COURT OF APPEALS, WEST VIRGINIA

SHEILA CAROL WILSON,

Petitioner,

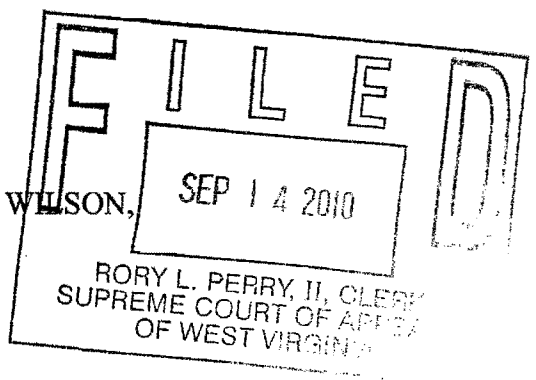
v.

ROBERT HICKMAN,
MATTHEW EARL PERDUE, and
SARAH BETH PERDUE,

Respondents.

DESIGNATION OF RECORD

Comes now the Petitioner herein, by counsel, and designates the entire record for appeal to the West Virginia Supreme Court of Appeals.



SHEILA CAROL WILSON,
Petitioner
By counsel.

Maureen Conley (WVSB #4239)
LEGAL AID OF WEST VIRGINIA
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