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IN THE WEST VIRGINIA SUPREME COURT OF APPEALS

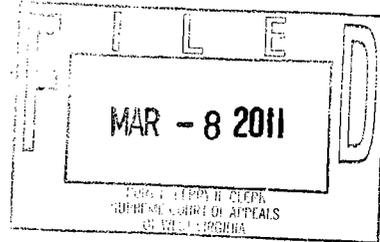
SHEILA CAROL WILSON,

Petitioner,

v.

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

Respondents.



REPLY TO SUMMARY RESPONSE

Comes now Petitioner Sheila Wilson, by counsel, and files this Reply to Summary Response in this custody/guardianship proceeding.

Petitioner Sheila Wilson notes that the Introduction to Respondent's Summary (sic) Response contains an error in that Hailey Belle Wilson did not begin residing with Robert Hickman in August, 2008, but in August, 2009. (See Summary Response page 1, second paragraph.) By August, 2008, she had only spent a few weeks with Mr. Hickman during summer vacation and a few weekends. The Final Order transferring custody to Mr. Hickman was actually not entered until August 12, 2009. This Order was affirmed by the Circuit Court on April, 2010.

1 Reply to Statement of Facts

Mr. Hickman attempts to impugn Sheila Wilson's integrity as a parent by saying that she moved to different locations and had children by different fathers. However, before Mr. Hickman

was awarded custody of Hailey, his fiancée had disappeared along with her children, he has had at least three unsuccessful relationships with women. Mr. Hickman has at least two children by two different mothers, neither of whom he married. (RH Deposition, p. 68)

Mr. Hickman suggests that he should not be held accountable for the first three years of Hailey's life because Sheila Wilson moved around. However, Mr. Hickman remained in contact with Sheila Wilson's mother in West Virginia. (RH Deposition, p. 12) Robert Hickman knew where her mother lived and knew her mother's phone number. (RH Deposition, p.9-11, 64; SW Deposition, p. 25, 26, 30) Mr. Hickman admitted several times that he did not attempt to run Sheila down before or after paternity was established. (RH Deposition, p. 12, 16, 49) When asked by his counsel why he did not make any affirmative attempts to try and seek time with Hailey, Mr. Hickman said he couldn't give a reason. (RH Deposition, p. 18)

Although Mr. Hickman *says* that the Court left parenting issues up to the parents at the 2004 paternity hearing, the fact is that Mr. Hickman *did not request* any specific custodial time with Hailey and did not seek any custodial time with her for a full two years after this hearing. At the time of the paternity hearing, Hailey was two years old. He had never seen her.

Mr. Hickman's quote from the Consent for *adoption* of Hailey Wilson states that "*the adoption of HAILEY LYNN BELLE WILSON....*will forever terminate all of my parental rights..." (Emphasis added.) The *adoption* never took place. Ms. Wilson does not dispute the fact that if Mr. Hickman had also signed the Consent, an adoption would have taken place and the parents' parental rights would have been terminated. However, Sheila Wilson's parental rights were not terminated because the adoption did not take place. Sheila Wilson continued to have a relationship with Hailey throughout the time that Hailey was staying with the Perdues.

Mr. Hickman was not “entitled to custody” of Hailey in the summer of 2006, as Mr. Hickman asserts. He had no custody order. Sheila Wilson’s parental rights were not terminated. Clearly, the Perdues had physical custody of Hailey because Ms. Wilson had given permission for her to be there. But, this does not mean that Mr. Hickman had the right to waltz into the child’s life and take her, without a court order and without having a relationship with her.

Petitioner asserts that Peter Hendricks was appointed Guardian Ad Litem for Hailey Wilson in July 20, 2007, not July, 2008 (as stated on page 8 of the Summary Response).

2. Reply to Abandonment Argument

Mr. Hickman was aware that Sheila Wilson thought there was a good chance the child was his, because Sheila Wilson called him from the hospital when Hailey was born. (RH Deposition, p.9) He knew that it was either his child or one other man’s, who also lived in North Carolina. His statement that he did not actually know that the child was his until June, 2006¹ (see Response page 9, paragraph 1), when paternity was established by the State of West Virginia, does not justify his failure to attempt to find out for himself, if this was the case. It also does not justify his lack of effort in trying to establish a relationship with the child until 2006.

The Guardian Ad Litem minimized Mr. Hickman’s obligation to establish paternity within the statutory adoption framework, by essentially answering “no” to the following question:

“Does Mr. Hickman have a duty to chase down, locate and prosecute the paternity of a child that he has been informed is his based upon one or two intimate encounters.” (Report and Recommendation of Guardian Ad Litem, p. 5)

¹Sheila Wilson assumes that Respondent Mr. Hickman means June, 2004, when paternity was established.

The answer to this question should be, “yes,” especially when he learned that a child was actually born. From Mr. Hickman’s vantage point, he knew that he had a 50-50 chance of being her father. The paternity case was filed in Fayette County in 2003. Clearly, if he was interested in having a relationship with the child, he could have used this civil action to achieve that goal *in 2003*. He did not.

3. Reply to Allocation of Custodial Responsibility Argument

Mr. Hickman asserts that the facts of this case did not warrant a 48-9-206 analysis.² Mr. Hickman appears to be saying that this analysis is not needed because Sheila Wilson failed to provide any parenting for the minor child. This is factually inaccurate and unsupported by the record. The 48-9-206 analysis is required when the custody dispute is between two parents. Once the Court determined that the Guardians were not Hailey’s psychological parents, the Court was required to go through this analysis. Although Hailey spent most of her time with the Guardians in the years this suit was pending, she had a basic connection to her mother and sisters which was reinforced several times per year in person and by telephone contact.

The purpose of going through the statutory analysis is to determine the child’s emotional ties to her respective parents *and to her siblings*. It was clear, however, that Hailey Wilson’s half-sisters were the only reason the Guardian Ad Litem felt Sheila Wilson had any role in Hailey’s future life:

²Mr. Hickman asserts that Sheila Wilson did not raise this issue until filing the appeal in **Circuit Court**. Sheila Wilson agrees that she did, in fact, address this issue in her Petition for Appeal to the Circuit Court but notes that Mr. Hickman **did not file a Response to her Petition for Appeal** to Circuit Court. Even if he had filed a Response, this analysis is not optional for the Court.

“From the Guardian’s perspective, Miss Wilson’s rights are easily dealt with; her only “props” which she has to continue contacts with Hailey are the two siblings [whom] Hailey grew up and bonded with and wants to continue to see...your Guardian sees no basis in the facts of this case or the law herein addressed that will allow Miss Wilson to regain custody of Hailey.” (Report and Recommendation of Guardian Ad Litem, p. 6)

But, in fact, Sheila Wilson does continue to be a part of the analysis if there is no adoption. The Guardian Ad Litem was pretending that Sheila Wilson did not exist in her daughter’s life, when in fact Robert Hickman was the parent who did not exist for this child, because she spent no time with him the first three years of her life and very little time with him for the next three years of her life.

4. Reply to Award of Custody to Father Argument

Mr. Hickman suggests that Hailey’s placement with her father was a “gradual” placement with the ability to monitor her situation. This simply is not the case. Hailey went to her father’s home for several weeks in the summer, 2009, and was then placed there permanently in August, 2009. There was no mechanism for finding out how Hailey was doing, except through Mr. Hickman and her school work. No one asked Hailey, either before or after she went to North Carolina to live with her father, if she felt comfortable with that idea.

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.



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CERTIFICATE OF SERVICE

Service of the foregoing Motion and Reply 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
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on the 8th day of March, 2011.



MAUREEN CONLEY (SB) #4239