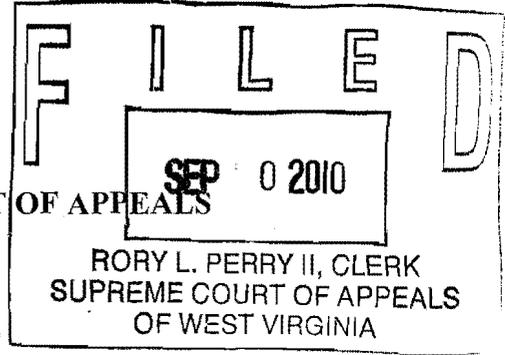


**BEFORE THE WEST VIRGINIA SUPREME COURT OF APPEALS  
AT CHARLESTON**



**IN RE: CECIL T.**

**DOCKET NO.: 35659**

**UNDERLYING CASE  
LOGAN COUNTY CIRCUIT COURT  
DOCKET NO. 09-JA-21**

**APPELLANT'S REPLY TO  
BRIEF OF RESPONDENT  
CECIL T.**

**Jane Moran, Esq.  
Counsel for Appellants  
WV State Bar No. 2615  
JANE MORAN LAW OFFICE  
P. O. Box 221  
Williamson, WV 25661  
(304) 235-3509**

**PETITIONERS' REPLY TO  
RESPONDENT CECIL T. I<sup>1</sup> BRIEF**

**Respondent Cecil T. I Has Been  
Selective In His Use Of The Facts**

Respondent's description of the circumstances which led to the first of two<sup>2</sup> Emergency Petitions which were filed against him in less than one year, excludes the fact that the action was taken because the parental rights of the mother of Cecil T. II had been involuntarily terminated on two previous occasions.

Neither does Respondent include in his Statement of Facts that the valium which he admittedly ingested the night of his son's birth was not obtained by prescription. This arguably links to the State drug charges against him which were pending at that time. These Magistrate Court charges were, as reported in Respondent's Brief, dismissed. The charges were then presented to the Logan County Grand Jury. Cecil T. I was indicted on the drug related charges and pled guilty of the crimes. He is presently serving his sentence on these convictions concurrently with his Federal sentence.<sup>3</sup>

Over the concerns expressed by DHHR and the Guardian ad Litem, the Court granted the Respondent a Post Adjudication Improvement Period which included in-home visitation by the child in Respondent's home. The concerns expressed included: lack of any approved support system of family and friends for Respondent, the drug charges pending against the Respondent and the lack of any willing relative to accept

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<sup>1</sup> In order to avoid confusion between the parties, Appellant's refer to Cecil T., the father, as Cecil T. I and Cecil T. the child, as Cecil T. II

<sup>2</sup> The second Emergency Petition was filed after custody of his son was returned to Cecil T. I.

<sup>3</sup> See below for description of Federal conviction.

custody if Respondent was incarcerated on these charges;<sup>4</sup> and continuing positive results from drug screens of the Respondent.

The Court's show of faith in the Respondent appears to have been predicated on his assurance that he and the mother of Cecil T. II were no longer a couple. Her parental rights to her son were involuntarily terminated during the initial stage of the Improvement Period of Cecil T. I. Yet on December 16, 2008, approximately one half way through the Improvement Period, Respondent admitted to the Court that he had allowed Cecil T.'s mother to stay in his home.

A Dispositional Hearing was conducted at the conclusion of the Improvement Period on February 9, 2009. Evidence of the pending indictment; Respondent's continuing relationship with the mother of Cecil T., II, Respondent's abnormal drug/alcohol screens taken on days when his son was in his home for visitation were again argued by DHHR and the Guardian ad Litem. With apparent disregard for these indicators of future threats to the safety and welfare of Cecil T. II, the Court found that the Respondent had substantially complied with the terms of the plan. Cecil T. II was placed in his father's legal and physical custody. The Court also Ordered 90 days of services for the Respondent and his child.

Twenty-six days later, Respondent Cecil T., as a convicted felon, was arrested when he attempted to sell guns to undercover Federal agents. His son was in Respondent's home at this time of the attempted sale. Respondent Cecil T. I failed to keep his son safe from the inherent dangers in gun dealing,.

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<sup>4</sup> There was one exception – the child's grandmother. DHHR representatives interviewed her and found they could not approve her for placement because of her multiple serious health problems. She has since died.

At the time of his arrest Respondent predictably placed his son in the physical custody of the child's grandmother, a placement DHHR had previously found to be unsafe because of the women's deteriorating condition. A second Emergency Petition was filed. The infant Cecil T., I was found three days later in the woman's home. He was laying in a playpen in a urine soaked diaper. There was no appropriate bedding for the child in the house.

These events occurred during the time the Respondent was receiving services from WVDHHR.

Cecil T. II was placed in the care of Appellants at the time he left the hospital after his birth on September 8, 2008. He was removed from their home on February 9, 2009 when the Court briefly returned legal and physical custody of the child to Respondent. Subsequent to their discovery of the child in the unapproved care of his grandmother following Respondent's arrest DHHR returned Cecil T. II to the foster care of the Appellants. Cecil T., II turned two years old in September, 2010. He has spent all of his life with the Appellants, but for three and one-half weeks he was Ordered into his father's custody. The child has bonded with the Appellants. He barely knows his biological father.

The Respondent's argument relies heavily on the Court's ruling in In Re: Brian James R., (550 S.E.2d 73 (2001))<sup>5</sup>. The cases can be distinguished.

At the time Brian was taken into State custody by DHHR, the sole charge in the Petition against his father was that he had not visited the child while he was in his mother's custody.

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<sup>5</sup> It is noteworthy that this case has not been cited in any opinion of the Court since it was handed down in 2001.

Brian's father was subsequently charged with delivery of marijuana – a charge which he admitted. He was adjudicated in the lower Court to have abused and neglected his son by exposing him to the dangers of drug trafficking. The Court appointed psychologist reported Brian's father had no “diagnosable psychiatric condition,” but he denied the seriousness of his situation.

The psychologist observed that all the random drug tests taken from Brian's father during the term Brian had been in State custody were negative for drugs and their assessments did not indicate drug or alcohol questions.

Brian's father pled guilty to the marijuana charges against him and was sentenced to one year of home confinement and five years of probation, all under the supervision of the state. He was, unlike Cecil T. I, available to provide care for his son at the time, as he served his sentence. He was virtually a captive audience for counseling and services, which he participated in as Ordered by the Court. He successfully appealed the Order terminating his parental rights.

Few of the elements which arguably caused this Court to set aside the termination Order in Brian's case are found in the case of Cecil T. I.

Although under indictment herself for a drug related crimes, Brian's mother was available to support Brian's father in parenting at the time his rights were terminated. Cecil T. I had no one.

More important, Brian's father was available to parent at the time his rights were terminated. He was available for counseling and services. Cecil T. I was incarcerated and unavailable for an indefinite period of time at the time the Court refused to terminate

his parental rights. His son had already spent all but three and one-half weeks of his 24 month life in the care of the Appellants.

Reports of the Court psychologist found no evidence that Brian's father had drug/alcohol problems. The negative screens of Cecil T., I, on the very days he had custody of his son have not been explained and are indicators of problems that will threaten the future safety of the child Cecil T. II.

There are several reasons the case of In Re: Brian James T. should not control the Court's decision in this case. The most significant was that the Brian Court clearly hoped to end the cycle of foster care which had placed the child in six different foster homes before he was two years old. All of the placements occurred while the child was in his mother's custody.

The infant Cecil T. II has bonded with Appellants because he has spent his entire life, but for three and one-half weeks, in their care. He views them as his parental figures. Cecil T. I was given the opportunity of full legal and physical custody of his son, unfettered by DHHR. He immediately resumed illegal behavior, which has been a pattern throughout his adult life. This put his infant son at risk.

Appellant's presented their argument in their opening Brief that guardianship with the option for Cecil T. I to take his case before a new Judge in Family Court, at the time of his choice, was not a meaningful permanency plan. One need only compare the certainty of an adoption to the uncertainty of guardianship to realize one Court is simply passing the final decision to another Court.

Wherefore, Appellants reassert the arguments in their opening brief and pray that this Court reverses the Order of the Logan County Circuit Court entered on January 29,

2010 and Order that the lower Court grant the joint Motion of DHHR, the Guardian ad Litem, and the Appellants to terminate the parental rights of Cecil T. I to his son, Cecil T. II, thus freeing the child for permanency through adoption.

**APPELLANTS  
BRETT B.  
SUSAN B.**

**BY COUNSEL**

Jane Moran, Esq.  
WV State Bar No. 2615  
JANE MORAN LAW OFFICE  
P. O. Box 221  
Williamson, WV 25661  
(304) 235-3509 fax (304) 235-3509  
[janemoran3@hotmail.com](mailto:janemoran3@hotmail.com)

**CERTIFICATE OF ATTORNEY**

I, Jane Moran, counsel for Brett B. and Susan B., certify that the facts alleged in this Reply are presented accurately to the best of my ability.

  
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JANE MORAN

**CERTIFICATE OF SERVICE**

I hereby certify that on this 29<sup>th</sup> day of September, 2010, the required copies of the foregoing Brief of Appellant were filed with the Clerk of The West Virginia Supreme Court of Appeals via First Class U. S. Mail, postage pre-paid. I hereby certify that a true and accurate copy of the Brief of Appellant was mailed, via First Class, postage pre-paid, this 29<sup>th</sup> day of September, 2010.

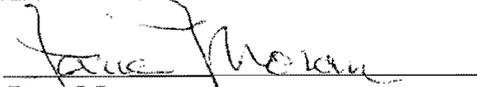
Sabrina Mick, Asst. Pros. Attorney  
Asst. Prosecuting Attorney  
Judicial Annex  
420 Main Street, Suite 300  
Logan, WV 25601

Donna Pratt, Esq.  
P. O. Box 1047  
Logan, WV 25601

Joel Baker, Esq.  
Cook & Cook  
62 Avenue C  
Madison, WV 25130

David Wandling, Esq.  
Avis, Witten & Wandling, L.C.  
511 Dingess Street  
P. O. Box 420  
Logan, WV 25601

*/s/Jane Moran*

  
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**Jane Moran**