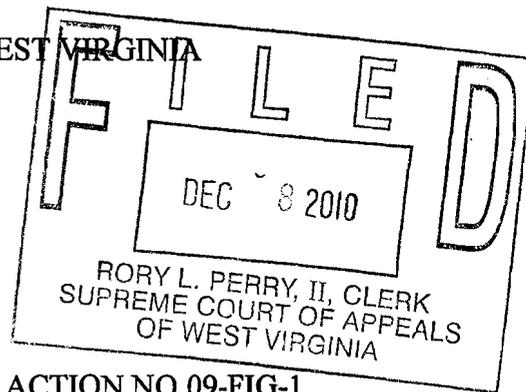


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Docket No. _____

IN RE THE MATTER OF:
ANTONIO ROBERT AGUILAR,

a minor under the age of eighteen.



CIVIL ACTION NO 09-FIG-1
(HARRISON COUNTY)

**JOINT PETITION FOR APPEAL ON BEHALF OF
PETITIONER, CAROL GOLDEN, AND GUARDIAN AD LITEM**

FILED IN 15TH
COURT ROOM
NOV 10 11:54 AM '10
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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Docket No. _____

IN RE THE MATTER OF:
ANTONIO ROBERT AGUILAR,

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CIVIL ACTION NO 09-FIG-1
(HARRISON COUNTY)

**JOINT PETITION FOR APPEAL ON BEHALF OF
PETITIONER, CAROL GOLDEN, AND GUARDIAN AD LITEM**

By this Petition, Carol Golden and the Guardian ad Litem, Amy L. Lanham, appeal the decision of the Honorable Thomas A. Bedell, Judge of the Circuit Court of Harrison County, West Virginia, in an infant guardianship case.

I. THE KIND OF PROCEEDING AND NATURE OF THE RULING OF THE CIRCUIT COURT.

The Petitioner, Carol Golden, filed a "Petition for Permanent Guardianship and Emergency Temporary Guardianship" on October 29, 2009. At that time, the minor child, Antonio Robert Aguilar, also filed an Affidavit nominating Carol Golden as his guardian. A hearing was held before the Honorable Beth Longo, Special Family Court Judge of Harrison County. At that time, the Family Court appointed a Guardian ad Litem to represent the best interests of the minor child and for the Guardian to prepare a Report and Recommendation. During the pendency of the action, the minor child resided with the Petitioner. Thereafter, the Guardian ad Litem recommended that the Court approve the appointment of Carol Golden as the Guardian for Antonio Robert Aguilar. A hearing was conducted to review the Guardian ad Litem's Report and Recommendation. At that hearing, the Court allowed the parties to brief the issue. The parties and the Guardian ad litem

submitted briefs to the Court. Thereafter, the Family Court entered an Order Denying the Petition entered on May 6, 2010.

The Petitioner and the Guardian ad Litem filed an appeal to the Circuit Court of Harrison County. The Circuit Court granted a Stay to the Family Court Order and the minor child continued to reside with the Petitioner pending the appeal. An Order Denying Petition for Appeal was entered July 8, 2010, by the Honorable Thomas A. Bedell, Judge of the Circuit Court of Harrison County. It is from this Order that the Petitioner and Guardian ad Litem appeal.

Pursuant to West Virginia Rules of Appellate Procedure, Rule 4A, the Petitioner and Guardian ad Litem are filing their appeal without a transcript. They further assert that no evidentiary hearing was conducted on the underlying Petition and no oral arguments were heard before the Circuit Court of Harrison County, West Virginia.

II

STATEMENT OF FACTS

The Petitioner, Carol Lee Golden, is the maternal grandmother of the child, Antonio Robert ("Tony") Aguilar. Tony is the sixteen year old son of Gina Huffman and Jorge Aguilar. Mr. Aguilar resides in Silver Spring, Maryland. Ms. Huffman resides in Buckhannon, West Virginia with her current husband, Sidney Huffman. Ms. Golden resides in Lost Creek, Harrison County. Prior to Ms. Huffman's most recent marriage that being to Mr. Huffman, approximately three years ago, and for the majority of Tony's life (from three years of age), the child resided with Ms. Golden. At times, Ms. Huffman resided in a trailer on Ms. Golden's property, however the child, Tony resided in the home of Ms. Golden. Tony speaks to his father

on the telephone and visits with him regularly, however, Mr. Aguilar does not exercise any set parenting time schedule.

When Ms. Huffman married Mr. Huffman, she moved Tony and his two half-siblings with her to Buckhannon. Tony is enrolled in Buckhannon Upshur High School, where he is an active member of the Jazz Band and also involved in drama. Tony enjoys his musical activities a great deal.

Tony resumed living with his grandmother in the fall of 2009 , when his former step-father, Barry Burrows Jr., obtained an emergency protective order from the Magistrate Court of Harrison County on behalf of Tony and his half-siblings who are the natural children of Ms. Huffman. After the emergency protective order was granted, Tony expressed to Ms. Golden his firm desire to return to Ms. Golden's home and to have Ms. Golden become his legal guardian. Tony continues to be enrolled in Buckhannon Upshur High School, where he plans to continue until graduation.

Tony executed a written nomination of guardianship pursuant to West Virginia Code and the West Virginia Rule of Practice and Procedure for Minor Guardianship Procedures. The written, sworn nomination was attached as an exhibit to a Petition for Permanent Guardianship filed by Ms. Golden, in accord with the wishes of the child. Subsequent to the filing of the original Petition, Tony revealed to Ms. Golden information regarding incidents that occurred in Ms. Huffman's home, between Tony and Mr. Huffman, which contributed to Tony's firm desire to return to Ms. Golden's home. An amended petition revealing this additional information was then filed.

There have been no allegations that Ms. Golden is unfit or otherwise fails to meet the statutory requirements. Nor has there been an evidentiary hearing on this matter to date. Ms. Golden was named the temporary guardian of the child by the Family Court and a Guardian *Ad Litem*, Amy Lanham was appointed.

Ms. Lanham recommended that Ms. Golden be approved as Tony's guardian. Ms. Lanham further found it to be in Tony's best interest for the nomination to be approved. The Family Court refused to approve Ms. Golden as Tony's guardian, and the Circuit Court subsequently refused to disturb the Family Court's decision. Mr. Aguilar joined in Ms. Golden's Petition and Ms. Huffman opposed it.

III. ASSIGNMENTS OF ERROR

A. WAS IT AN ABUSE OF DISCRETION FOR THE CIRCUIT COURT TO FAIL TO ADHERE TO THE CLEAR AND UNAMBIGUOUS LAW WHICH MANDATES THAT THE COURT APPROVE THE NOMINATION OF A GUARDIAN BY A CHILD OVER THE AGE OF FOURTEEN YEARS?

B. WAS IT AN ERROR FOR THE CIRCUIT COURT TO INTERPRET THE GUARDIANSHIP STATUTE TO BE INAPPLICABLE TO MATTERS WHEREIN THE PARENTS OBJECT TO THE NOMINATION OF A GUARDIAN BY A CHILD OVER THE AGE OF FOURTEEN YEARS AND THE PARENTS HAVE NOT BEEN PROVEN TO BE UNFIT?

C. WAS IT AN ABUSE OF DISCRETION FOR THE CIRCUIT COURT TO FAIL TO ACKNOWLEDGE A DISTINCTION BETWEEN A CHILD UNDER THE AGE OF FOURTEEN YEARS AND A CHILD OVER THE AGE OF FOURTEEN YEARS?

D. WAS IT AN ABUSE OF DISCRETION FOR THE CIRCUIT COURT TO IGNORE THE POLAR STAR OF ALL MATTERS INVOLVING THE CUSTODY OF CHILDREN, THAT BEING THE BEST INTEREST OF THE CHILD?

IV. POINTS AND AUTHORITIES RELIED ON

1. Cases

- a. *S.H. v. R.L.H.*, 289 S.E.2d 169 (W.Va. 1982)
- b. *Garska v. McCoy*, 278 S.E.2d 357 (W.Va. 1981)
- c. *J.B. v. A.B.*, 242 S.E. 2d 248 (W.Va. 1978)
- d. *Worley v. Beckley Mech. Inc.*, 648 S.E. 2d 620 (W.Va. 2007)
- e. *Walker v. West Virginia Ethics Comm'n*, 492 S.E. 2d 167 (W.Va. 1997)
- f. *State v. Epperly*, 65 S.E.2d 488 (W.Va. 1951)
- g. *Johnson v. Comm'n of Motor Vehicles*, 363 S.E.2d 752 (W.Va. 1987)
- h. *Nelson v. West Virginia Public Employees Insurance Board*, 300 S.E. 2d 86 (W.Va. 1982)
- i. *State v. Hedrick*, 514 S.E. 2d 397 (W.Va. 1999)
- j. *Carter v. Carter*, 470 S.E. 2d 193 (W.Va. 1996)
- k. *State ex rel. David Allen B. v. Sommerville*, 459 S.E. 2d 363 (W.Va. 1995)
- l. *Michael K.T. v. Tina L.T.*, 387 S.E. 2d 866 (W.Va. 1989)
- m. *David M. v. Margaret M.*, 385 S.E. 2d 912 (W.Va. 1989)
- n. *State ex rel. Cash v. Lively*, 187 S.E. 2d 601 (W.Va. 1972)
- o. *State ex rel. Lipscomb v. Joplin*, 47 S.E. 2d 221 (W.Va. 1948)
- p. *Napoleon S. v. West Virginia Dept. of Health and Human Resources*, 617 S.E. 2d 801 (W.Va. 2005)
- q. *In re: Clifford K.*, 619 S.E. 2d 138 (W.Va. 2005)

2. Statutes

- a. West Virginia Code § 44-10-4
- b. West Virginia Code § 44-10-3

3. Rules

- a. Rule 6(a) of the West Virginia Rules of Procedure for Minor Guardianship Proceedings
- b. Rule 10 of the West Virginia Rules of Procedure for Minor Guardianship Proceedings

V. STANDARD OF REVIEW

“Where the issue on an appeal from the circuit court is clearly a question of law or involving an interpretation of a statute, we apply a *de novo* standard of review.” Syl. Pt. 1, *Chrystal R.M. v. Charlie A.L.*, 194 W. Va. 138, 459 S.E.2d 415 (1995).

“This Court reviews the circuit court's final order and ultimate disposition under an abuse of discretion standard.” Syl. Pt. 4, in part, *Burgess v. Porterfield*, 196 W. Va. 178, 179, 469 S.E.2d 114, 115 (1996).

VI. ARGUMENT

A. BECAUSE THE FAMILY COURT FAILED TO ADHERE TO THE CLEAR AND UNAMBIGUOUS LAW WHICH MANDATES THAT THE COURT APPROVE THE NOMINATION OF A GUARDIAN BY A CHILD OVER THE AGE OF FOURTEEN YEARS, IT ABUSED ITS DISCRETION.

In the Family Court's ruling dated May 4, 2010, it held that it was "not convinced that West Virginia Code §44-10-4 applies to the granting of guardianship to a third party when the child's parents are alive and fit." The Family Court also held that ratifying the teenage child's nomination of his grandmother as his guardian against the wishes of his mother was "unsupported by common sense." The Circuit Court agreed.

West Virginia Code § 44-10-4 clearly allows a child who is over the age of fourteen to nominate his or her guardian. Specifically, the Code states that "If the minor is above the age of fourteen years, he or she may in the presence of the circuit or family court, or in writing acknowledged before any officer authorized to take the acknowledgment of a deed, nominate his or her own guardian, who, if approved by the court, *shall* be appointed accordingly." W. Va. Code § 44-10-4.

The West Virginia Rule of Practice and Procedure for Minor Guardianship Procedures outlines the specific procedure for the nomination of a guardian by a minor child. "A minor above the age of 14 years may nominate his or her own guardian by either making a request on the record before the court or filing a signed and verified written request anytime in advance of the hearing on the petition." Rule 6 (a), W. Va. Rules of Practice and Procedure for Minor Guardianship Proceedings, 2009. The Rules further reiterate the language of the Code in that the appointment of

the guardian nominated by the minor child is mandatory unless the person nominated is found by the court to be unsuitable. "If the court finds that the minor's nominee would be a suitable and appropriate guardian, the appointment *shall* be made." (Emphasis Added.) Id at Rule 6(b).

The word "nominate" has been interpreted by the West Virginia Supreme Court of appeals to mean "[t]hat a child has a right to suggest a guardian to the court, and that the court is *obliged* to confirm the nomination of that particular guardian unless the court specifically finds such guardian to be unfit to serve in such capacity..." (Emphasis Added.) S.H. v. R.L.H., 289 S.E.2d 186, 169 W. Va. 550 (1982); Garska v. McCoy, 167 W. Va. 59, 278 S.E.2d 357 (1981). *See also*, J.B. v. A.B., 242 S.E. 2d 248, 161 W. Va. 332 (1978).

The Court cannot issue a ruling clearly contrary to the statutory mandate. Worley v. Beckley Mech. Inc. 220 W. Va. 633, 648 S.E.2d 620 (2007). The Family Court is not at liberty to order a result contrary to the plain language of the statute. "Where the statutory language is clear and unambiguous, it should be applied as written." Syl. Pt. 5, Walker v. West Virginia Ethics Comm'n. "Where the language of a statute is clear and without ambiguity the plain meaning is to be accepted without resorting to the rules of interpretation." Syl. Pt. 2, State v. Epperly 135 W. Va. 877, 65 S.E.2d 488 (1951). Further, the Family Court cannot substitute its personal opinion in place of the mandatory and plain language of the statute.

"It is well established that the word 'shall,' in the absence of language in the statute showing a contrary intent on the part of the Legislature, should be afforded a mandatory connotation." Syl. Pt. 2, Johnson v. Comm'n of Motor Vehicles, 178 W. Va. 675, 363 S.E. 2d 752 (1987), citing Syl. Pt. 1, Nelson v. West Virginia Public Employees Insurance Board, 171 W. Va. 445, 300 S.E.2d 86 (1982). In contrast, "[t]he word "may" generally is afforded a permissive connotation, which renders

the referenced act discretionary, rather than mandatory, in nature.” State v.Hedrick, 204 W. Va. 547552, 514 S.E.2d 397 402 (1999).

Even if this Court believes that applying the plain language of the statute would result in an outcome unforeseen by the West Virginia Legislature when this law was enacted, the Court cannot issue a ruling clearly contrary to the statutory mandate. "When specific statutory language produces a result argued to be unforeseen by the Legislature, the remedy lies with the Legislature, whose action produced it, and not with the courts. The question of dealing with the situation in a more satisfactory or desirable manner is a matter of policy which calls for legislative, not judicial, action." Worley v. Beckley Mech. Inc. 220 W. Va. 633, 648 S.E.2d 620 (2007).

The Family Court held an initial hearing on the Petition for Guardianship filed by Ms. Golden. At that hearing, the court ordered a Guardian *ad Litem* to be appointed and granted temporary Guardianship to Ms. Golden, allowing the child to remain in the physical custody of Ms. Golden.

The Guardian *ad Litem* subsequently conducted an investigation and submitted her Report and Recommendation to the Court. The Guardian *ad Litem* recommended that the Court approve Ms. Golden as the child’s permanent guardian and determined that to be in his best interests.

The Family Court held a hearing and the Guardian *ad Litem* orally place her recommendation on the record. The Family Court started to deny the Petition and counsel for Ms. Golden requested the opportunity to brief the issue. The parties submitted briefs to the court and then the Court entered its written Order. A full evidentiary hearing was never held.

Therefore, the Family Court abused its discretion by ignoring clear and unambiguous law that mandates her acceptance of the child's nomination of guardian and instead substituting its own viewpoint on "common sense."

B. BECAUSE THE FAMILY COURT INTERPRETED THE GUARDIANSHIP STATUTE TO BE INAPPLICABLE TO MATTERS WHEREIN THE PARENTS OBJECT TO THE NOMINATION OF A GUARDIAN BY A CHILD OVER THE AGE OF FOURTEEN YEARS AND THE PARENTS HAVE NOT BEEN PROVEN TO BE UNFIT, THE FINDING BY THE FAMILY COURT WAS CLEARLY ERRONEOUS.

The Family Court stated that it was not convinced that West Virginia Code §44-10-4 applies "to the granting of guardianship to a third party when the child's parents are alive and fit."

The West Virginia Code clearly contemplates the application of the guardianship statute in matters where the child's parent are alive which states at §44-10-3 that "[t]he circuit court or family court of the county in which the minor resides... may appoint as the minor's guardian a suitable person. *The father or mother shall receive priority.*" (Emphasis Added.) This Court has recognized that there are circumstances in which a guardianship may be appropriate and in the child's best interests, even when there is a natural parent whose rights have not been terminated. *See, e.g., In Re Nelson B.*, 696 S.E.2d 910 (W.Va. 2010).

Further, it is the fitness of the guardian that must be determined by the court in deciding whether to grant a nomination of guardian by a child over the age of fourteen. The fitness of the parent is immaterial unless the mother or father is the person being nominated as the guardian by the child.

“The court, when determining an appropriate guardianship appointment over the person of a minor, shall ascertain and consider, among other pertinent matters, whether any proposed guardian:

- 1) Is required to register as a sex offender under West Virginia Code, Chapter 15, Article 12;
- 2) Has a record of any misdemeanor or felony convictions;
- 3) Has ever been subject to a restraining order or final protective order;
- 4) Has ever been the subject of any substantiated report alleging child abuse, neglect, or molestation made to any child protection agency, other law enforcement agency, or court in any jurisdiction;
- 5) Habitually uses any illegal substances or abuses alcohol; or
- 6) Has another person living in the home that involves any of the matters stated above.”

Rule 10, W. Va. Rules of Practice and Procedure for Minor Guardianship Proceedings, 2009.

The Family Court made no findings regarding Ms. Golden’s fitness or her ability to be the child’s guardian. The Family Court ignored the statute and the rule and, instead, made findings that were not supported by the law. Thus, the Family Court abused its discretion.

C. BECAUSE THE FAMILY COURT FAILED TO ACKNOWLEDGE A DISTINCTION BETWEEN A CHILD UNDER THE AGE OF FOURTEEN YEARS AND A CHILD OVER THE AGE OF FOURTEEN YEARS, THE DENIAL OF THE PETITION WAS AN ABUSE OF DISCRETION.

With regard to the nomination of a guardian by a child over the age of fourteen, the West Virginia Code states that “[i]f the guardian nominated by the minor is not appointed by the court,

or if the minor resides outside the state, *or if, after being summoned, the minor neglects to nominate a suitable person, the court may appoint the guardian in the same manner as if the minor were under the age of fourteen years.*” (Emphasis Added.) W. Va. Code § 44-10-4.

The West Virginia Supreme Court of Appeals has distinguished between children under the age of fourteen and over the age of fourteen opining that a child over the age of fourteen has an absolute right to nominate his or her guardian. S.H. v. R.L.H., 289 S.E.2d 186, 169 W. Va. 550 (1982). An adolescent fourteen years of age or older is not, has an absolute right under W. Va.Code, 44-10-4 [1923] to nominate his own guardian.” Garska V. McCoy, 167 W. Va. 59, 278 S.E.2d 357 (1981).

Prevailing West Virginia law is clear. The only instance in which the court may refuse to ratify the nomination of a guardian by a child over the age of fourteen, is if the court finds the guardian to be unfit. Then and only then, may the court treat the child in the same manner as it would a younger child. The Family Court did not find Ms. Golden to be unfit. Therefore, the Family Court abused its discretion by applying an incorrect standard to this matter.

D. BECAUSE THE FAMILY COURT IGNORED THE POLAR STAR OF ALL MATTERS INVOLVING THE CUSTODY OF CHILDREN, THAT BEING THE BEST INTEREST OF THE CHILD, THE DENIAL OF THE PETITION WAS AN ABUSE OF DISCRETION .

The court must be guided by the long-standing polar star by which all decisions must be made in all matters involving the welfare of children, which is the best interests of the child.

Carter v. Carter, 196 W.Va. 239, 470 S.E.2d 193 (1996); State ex rel. David Allen B. v. Sommerville, 194 W. Va. 86, 459 S.E.2d 363 (1995); Michael K.T. v. Tina L.T., 182 W.Va. 399,

387 S.E.2d 866 (1989) ; David M. v. Margaret M., 182 W.Va. 57 , 385 S.E.2d 912 , 916 (1989); State ex rel. Cash v. Lively, 155 W. Va. 801, 187 S.E.2d 601 (1972); State ex rel. Lipscomb v. Joplin, 131 W.Va. 302, 47 S.E.2d 221 (1948). The West Virginia Supreme Court of Appeals has further held that “[a] fundamental mandate, recognized consistently by this Court, is that the ultimate determination of child placement must be premised upon an analysis of the best interests of the child.” Napoleon S. v. West Virginia Dept. of Health and Human Resources, 217 W. Va. 254, 617 S.E.2d 801(2005).

West Virginia Code §44-10-3 provides that “[t]he circuit court or family court of the county in which the minor resides... may appoint as the minor's guardian a suitable person. The father or mother shall receive priority. However, in every case, the competency and fitness of the proposed guardian and the welfare and *best interests of the minor* shall be given precedence by the court when appointing the guardian. (Emphasis Added).

Ms. Golden has been serving as Tony’s psychological parent for most of his life. The child primarily resided in Ms. Golden’s home until approximately three years ago when his mother married Sid Huffman and moved from Lost Creek, West Virginia to Buckhannon, West Virginia. A psychological parent is “[a] person who, on a continuing day-to-day basis, through interaction, companionship, interplay, and mutuality, fulfills a child's psychological and physical needs for a parent and provides for the child's emotional and financial support.” In re: Clifford K., 619 S.E.2d 138, 217 W. Va. 625 (2005).

The family court judge ordered that Tony and his mother attend family counseling and that Tony attend individual counseling. Clearly, the court believed the child to be in emotional distress. Yet, the court ignored the child’s mature and well contemplated request to live with his

grandmother, which both he and Ms. Golden believed to be in his best interest. The court refused so much as to hear any evidence with which to make a decision as to the best interest of the child. Further, the Family Court ignored the recommendation of the Guardian ad Litem that it was in the child's best interest to approve his request to name his grandmother as his guardian.

By ignoring the polar star of all matters involving minor children and the recommendation of the Guardian ad Litem, the Family Court abused its discretion and, therefore, its ruling should be overturned.

VII. CONCLUSION

For the forgoing reasons the Order should be reversed and remanded with instructions to appoint Carol Golden as the guardian for the minor child, Antonio Robert Aguilar, and for such further and additional relief to which the Court deems appropriate under the circumstances.

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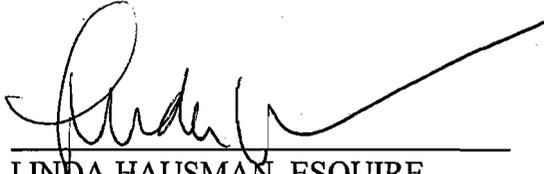
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By ignoring the polar star of all matters involving minor children and the recommendation of the Guardian ad Litem, the Family Court abused its discretion and, therefore, its ruling should be overturned.

VII. CONCLUSION

For the forgoing reasons the Order should be reversed and remanded with instructions to appoint Carol Golden as the guardian for the minor child, Antonio Robert Aguilar, and for such further and additional relief to which the Court deems appropriate under the circumstances.



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CERTIFICATE OF SERVICE

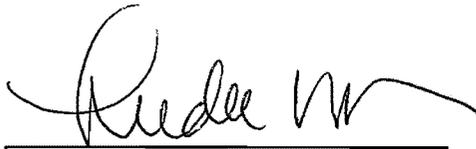
I, Linda Hausman, counsel for Carol Golden, do hereby certify that a true copy of the foregoing Joint Petition for Appeal on Behalf of Petitioner, Carol Golden, and Guardian ad Litem was served upon Steven B. Nanners, Esquire, counsel for Gina Huffman, Respondent Mother herein; and upon Jorge Aguilar, Respondent Father herein by the following method:

- United States mail, postage prepaid
- Certified mail, return receipt requested
- Hand delivered
- FAX
- Credible Person Service/Private Process Server

and I further certify that service was made this 8th day of November, 2010, at the following addresses:

Steven B. Nanners, Esquire
45 West Main Street
Buckhannon, West Virginia 26201

Jorge Aguilar
11609 Lockwood Drive, Apt. P4
Silver Spring, MD 20904

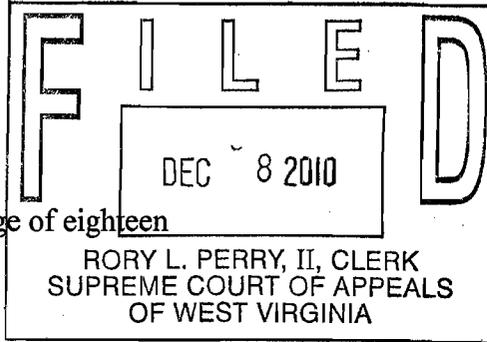


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**Supreme Court of Appeals of West Virginia
DOCKETING STATEMENT**

IN RE THE MATTER OF:
ANTONIO ROBERT AGUILAR

a minor under the age of eighteen



TYPE OF ACTION:

Civil
Criminal

PETITIONER(S):

Plaintiff(s)
Defendant(s)

Circuit Judge: Thomas A. Bedell

Circuit
Number: 09-FIG-1-4

County: Harrison

TIMELINESS OF APPEAL:

Date of entry of judgment or order appealed from: **July 8, 2010**

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

Date of entry of order deciding post-judgment motion: **N/A**

Date of filing of petition for appeal: **November 5, 2010**

Date of entry of order extending appeal period: **N/A**

Time extended to:

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 judgement entered pursuant to R. Civ. P. 54(b)?

Yes No

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 N/A

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 N/A

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]

SEE ADDENDUM ATTACHED HERETO.

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.]

SEE ADDENDUM ATTACHED HERETO.

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. SEE ADDENDUM ATTACHED.

List the Petitioner(s) name: Carol Golden and Guardian ad Litem, Amy L. Lanham
If incarcerated, provide institutional address:

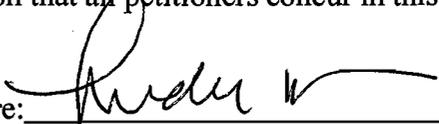
Name of attorney or pro se litigant filing Docketing Statement: Linda Hausman
 ATTORNEY PRO SE

Will you be handling the appeal? Yes No

If so, provide firm name, address, and telephone number:

Linda Hausman, Esquire (State Bar ID #9066)
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Bridgeport, West Virginia 26330
304-842-4300

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. 9066

Date: 11/5/10

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.

A True Copy

Clerk, Supreme Court of Appeal

ADDENDUM TO SUPREME COURT OF APPEALS DOCKETING STATEMENT

The Petitioner, Carol Golden, filed a "Petition for Permanent Guardianship and Emergency Temporary Guardianship" on October 29, 2009. At that time, the minor child, Antonio Robert Aguilar, also filed an Affidavit nominating Carol Golden as his guardian. A hearing was held before the Honorable Beth Longo, Special Family Court Judge of Harrison County. At that time, the Family Court appointed a Guardian ad Litem to represent the best interests of the minor child and for the Guardian to prepare a Report and Recommendation. Thereafter, the Guardian ad Litem recommended that the Court approve the appointment of Carol Golden as the Guardian for Antonio Robert Aguilar. A hearing was conducted to review the Guardian ad Litem's Report and Recommendation. At that hearing, the Court allowed the parties to brief the issue. Thereafter, the Family Court entered an Order Denying the Petition entered on May 6, 2010.

The Petitioner and the Guardian ad Litem filed an appeal to the Circuit Court of Harrison County. An Order Denying Petition for Appeal was entered July 8, 2010, by the Honorable Thomas A. Bedell, Judge of the Circuit Court of Harrison County. It is from this Order that the Petitioner and Guardian ad Litem appeal.

ADDENDUM TO JOINT PETITIONER STATEMENT

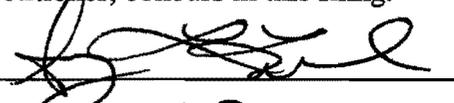
Amy L. Lanham, Esquire (State Bar ID#8568)
Delby B. Pool & Associates
230 Court Street
Clarksburg, West Virginia 26301
304-623-9711

The Guardian ad Litem, Amy L. Lanham, joint petitioner, concurs in this filing.

Signature: _____

WV Bar No. _____

Date: _____


8568
11/8/10

OPPOSING PARTIES:

Gina Huffman
C/O Steven B. Nanners
45 West Main Street
Buckhannon, West Virginia 26201
(304) 472-2048

Jorge Aguilar
11609 Lockwood Drive, Apt. P4
Silver Spring, MD 20904

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

IN RE THE MATTER OF:
ANTONIO ROBERT AGUILAR,

a minor under the age of eighteen.

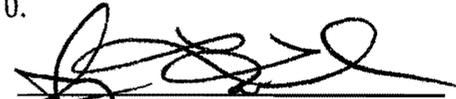
CIVIL ACTION NO 09-FIG-1
(HARRISON COUNTY)

ATTORNEY'S CERTIFICATION UNDER R.A.P. RULE 4A

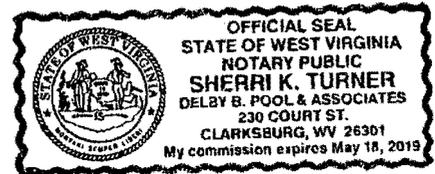
Now comes Amy L. Lanham and pursuant to R.A.P. Rule 4A asserts that she is filing this appeal without a transcript of the hearings.

The undersigned certifies that the facts alleged are faithfully represented and are accurately represented to the best of the undersigned's ability.

Given this 8th day of November, 2010.

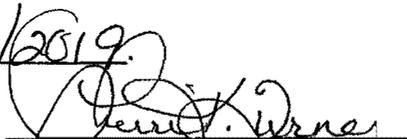

AMY L. LANHAM

STATE OF WEST VIRGINIA,
COUNTY OF HARRISON,



The foregoing was taken, subscribed and sworn to before me this 8th day of November, 2010.

My commission expires: 5/18/2019.


NOTARY PUBLIC