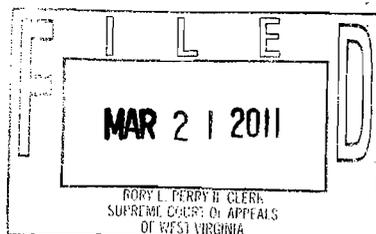


**SUPREME COURT OF APPEALS
OF WEST VIRGINIA**



CHARLESTON

FROM THE FAMILY COURT OF HARRISON COUNTY, WEST VIRGINIA

IN RE: Antonio R. A.

No. 101559

**Harrison County Family Court
Civil Action No. 01-D-156-4**

RESPONDENT'S SUMMARY RESPONSE

**TO THE HONORABLE JUSTICES
OF THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

RESPONDENT'S SUMMARY RESPONSE

A natural biological 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 by agreement or otherwise has transferred, relinquished, or surrendered such custody. In this case Gina Huffman is the biological mother of the infant child, Antonio Robert Aguilar. The infant child in this case has had his temporary care, custody and control placed with his grandmother due to unfounded allegations contained in a Domestic Violence Protective Order. A Guardian Petition was filed by the maternal grandmother seeking the physical care, custody and control of the infant child due to the infant child's stated preferences of living with grandmother. While the case was pending the allegations of her abuse and neglect had been raised by the grandmother against the Respondent, Gina Huffman were investigated by the West Virginia Department of Health and Human Resources and all allegations were unsubstantiated.

This case is similar to issues raised in the IN RE: Abbigail Faye B. 222 W.Va. 466, 665 S.E. 2d 300 (2008). In the In re: Abbigail Faye B case a grandmother was attempting to obtain custody from the biological parents and asserted temporary placement of the child with the grandparents together with Domestic issues and drug use. The West Virginia Supreme Court of Appeals held that the grandparents failed to show that the biological parents were unfit and applied the law that a biological parent is entitled to custody of their child absence of showing of unfitness.

The West Virginia Supreme Court of Appeals has held that a finding of unfitness would be based upon child abuse and neglect law as allegations of abuse must be proven as defined by West Virginia Code 49-1-3. That a referral would be made to the Circuit Court under overlap proceedings and that the abuse and neglect allegations set forth in the Petition would need to be proven by clear and convincing evidence. *IN RE: Abbigail Faye B* id., held in the law concerning custody of minor children, no rule is more firmly established than the right of a natural parent to the custody of his or her infant child is paramount to that of any other person; it is a fundamental personal liberty protected and guaranteed by the Due Process Clauses of the West Virginia and United States Constitutions. *Citing In re: Willis* 157 W.Va. 225, 207 S.E. 2d 129 (1973). Further, *In re: Abbigail Faye B* when the Supreme Court of Appeals addressed the best interest of minor children stated “ While courts always look to the best interests of the child in controversies concerning his or her custody, such custody should not be denied to a parent merely because some other person might possibly furnish the child a better home or better care” *Citing Hammack vs. Wise* 158 W.Va. 343, 211 S.E. 2d 118 (1975).

The West Virginia Supreme Court clearly held that biological parents have a natural right to their children over third parties. This is why the West Virginia Supreme Court has set such stringent standards on depriving a biological parent of his or her child. The West Virginia Supreme Court has required a level of proof such as in abuse and neglect proceedings that rises to the level of clear convincing evidence of the act of abuse or neglect. In this case, the allegations as alleged by the Petitioner have been investigated by the West Virginia Department of Health and Human Resources and were found unsubstantiated. Accordingly, the Petitioner

cannot prove by clear and convincing evidence an act of abuse and neglect as required in this matter. Thus, the Respondent Gina Huffman is entitled to the return of her child and a dismissal of the Guardian's Petition herein.

Gina Huffman, Respondent
By Counsel

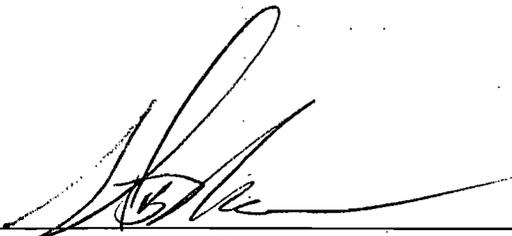


Steven B. Nanners, #6358
Law Offices of Nanners & Willett, LC
45 West Main Street
Buckhannon, WV 26201
304-472-2048

RELIEF REQUESTED

The Respondent prays that this Court deny the Petitioner's Appeal and affirm the Order of the Family Court and Circuit Court of Harrison County, West Virginia.

Gina Huffman, Respondent
By Counsel



Steven B. Nanners, #6358
Law Offices of Nanners & Willett, L.C.
45 West Main Street
Buckhannon, West Virginia 26201
304-472-2048

CERTIFICATE OF SERVICE

I, Steven B. Nanners, do hereby certify that on this the 18th day of March, 2011, the foregoing Respondent's Summary Response was duly served by depositing true copies thereof in an envelope, in the United States Mail, with sufficient postage attached thereto, addressed as follows:

Linda Hausman
Kaufman, McPherson, PLLC
PO Box 768
Bridgeport, West Virginia 26330

Amy L. Lanham
Attorney at Law
230 Court Street
Clarksburg, WV 26301



Steven B. Nanners, #6358
Law Offices of Nanners & Willett, L.C.
45 West Main Street
Buckhannon, West Virginia 26201
304-472-2048