

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

STATE OF WEST VIRGINIA,

Petitioner,

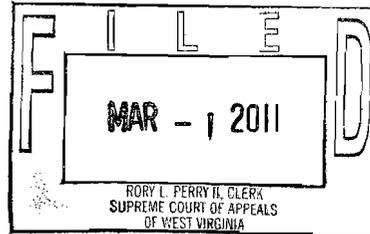
vs.

Docket Number 11-0175

Mingo County Case Number: 09JA-11, 12, 13

KEVIN B.,
AMY B.,
MICHELLE K.,

Respondents.



**IN THE INTEREST OF THESE MINOR CHILDREN
IN RESPONDENTS' CUSTODY**

COURTNEY B.
HUNTER B.
KAYLEY B.

**SUMMARY RESPONSE OF GUARDIAN AD LITEM TO
PETITION TO APPEAL**

Submitted By:

Stacey M. Kohari, Esq.
Christian R. Harris, Attorney at Law
Post Office Box 257
Williamson, West Virginia 25667
(304) 235-2131
W. Va. State Bar I.D. No. 10494
staceybowens@suddenlinkmail.com

Guardian Ad Litem for the Children

February 28, 2011

TABLE OF CONTENTS

Table of Contents 2

Position of the Guardian Ad Litem 3

Guardian Ad Litem’s Response to Respondent Mother’s Arguments 4

 Response to First Argument: The Court Erred in Terminating
 the Parental Rights of Michelle K. 5

 Response to Second Argument: The Court Erred in Failing to
 Award Post Termination Visitation to Michelle K. 9

Status of Children’s Placement 10

Conclusion 11

Certificate of Service 12

POSITION OF THE GUARDIAN AD LITEM

Pursuant to Order of the W. Va. Supreme Court and Rev. R.A.P. 11(h), the Guardian Ad Litem is filing this response to the Respondent Mother's Petition for Appeal. The Guardian Ad Litem is in agreement with the decision of the Circuit Court to terminate the parental rights of the Respondent Mother and to deny her post-termination visitation with the child, Courtney B. The position of the Guardian Ad Litem is set forth more completely in the responses to the Respondent Mother's arguments.

RESPONSES OF THE GUARDIAN AD LITEM
TO THE ARGUMENTS OF THE RESPONDENT MOTHER

- I. Guardian Ad Litem's Response to Respondent Mother's First Argument: The Court Erred in Terminating the Parental Rights of Michelle K.

- II. Guardian Ad Litem's Response to Respondent Mother's Second Argument: The Court Erred in Failing to Award Post-Termination Visitation to Michelle K.

I. GUARDIAN AD LITEM'S RESPONSE TO RESPONDENT MOTHER'S FIRST ARGUMENT:

THE COURT ERRED IN TERMINATING THE PARENTAL RIGHTS OF MICHELLE K.

First, the Respondent Mother argues that the Court erred in terminating her parental rights to the child, Courtney B. The Guardian Ad Litem disagrees with the Respondent Mother's position. Prior to the filing of an abuse and neglect proceeding in the Circuit Court of Mingo County, the Respondent Mother and the Respondent Father, Kevin B., were parties to an action in the Family Court of Mingo County regarding custody of the infant child, Courtney B. According to the Family Court's Final Order, entered in that matter on December 11, 2007, Kevin B. was granted primary custodial responsibilities for Courtney B. based on findings that the Respondent Mother had provided inadequate care for Courtney B. by allowing her to miss approximately forty (40) days of school while in her custody and on additional findings that the Respondent Mother had failed to protect the child after allegations of molestation by the child's grandfather. Thereafter, Courtney B. resided in her father's home with his wife, Respondent Amy B., and their two children, Hunter B. and Kayley B. Michelle K. was granted parenting time with Courtney B. under the Family Court's Final Order so long as she resided with her mother. The Order also directed the Respondent Mother that she must obtain the Family Court's permission before moving from her mother's residence.

At the time that the first abuse and neglect case was filed in June 2008, Michelle K. was named as a Respondent based upon the Family Court's earlier findings, her child support arrears in the amount of \$500.00, and because she had failed to exercise her

visitation time with Courtney B.

During the pendency of the first abuse and neglect proceeding, Michelle K. was generally compliant with services, however, she was residing with her boyfriend in a home of their own and there were concerns regarding the drug screening results for Michelle K.'s boyfriend. He was provided random drug and alcohol screens but he did not take all of the screens provided to him and when he did take the screens the results were often negative dilute.

In November 2009, Courtney B. was placed back in the physical custody of the Respondents, Kevin B. and Amy B., and Michelle K. was granted community visits with the child. Nevertheless, permanency was never established in that case due to continuing allegations of domestic violence between Kevin B. and Amy B.

In December 2009, the West Virginia DHHR filed an emergency petition resulting in this abuse and neglect case. Michelle K. was once again named as a Respondent based on upon the findings that she had not corrected the conditions that led to the original removal and because she was only receiving community visits with Courtney B.

During the course of this case, Michelle K. was again offered numerous services, including random drug and alcohol screens, in-home services, parenting and counseling. At the first Dispositional Hearing in this matter, which was held in March 2010, the parental rights of the Respondents, Kevin B. and Amy B., were permanently terminated, and Michelle K. was granted a Post-Dispositional Improvement Period. As a condition of that improvement period Michelle K. was to remain drug and alcohol free.

At a Further Dispositional Hearing held in September 2010, testimony was offered

that Michelle K. was compliant with in-home services and that her visits with Courtney B. went well. However, there was additional testimony that Michelle K. had violated the terms of her improvement period by testing positive for marijuana in June 2010. Further testimony was provided that she had ended her relationship with her boyfriend several months prior to the hearing and since that time she had been residing with her mother and younger daughter in her mother's one-bedroom apartment. Tammy Hope, a counselor at a local mental health facility, also testified that she had worked with Michelle K. in some capacity since 2006. She testified she had been providing general therapy to Michelle K. for depression and anxiety, and that she had also provided in-home services to Michelle K. in the past. Ms. Hope testified that it was her recommendation that Michelle K. enter an inpatient substance abuse treatment program.

Although Courtney B. does have a bond with Michelle K., I believe placement with Michelle K. would be detrimental to Courtney B. and would be contrary to her best interests. These abuse and neglect proceedings have continued for more than two years, yet Michelle K. does not appear to have benefitted from the services she has been offered. She has tested positive for marijuana within the last months of this case and her counselor, Tammy Hope, who has worked closely with Michelle K. since 2006, has recommended that Michelle K. enroll in an inpatient substance abuse treatment program. Michelle K. has also failed to obtain appropriate housing. Although the Family Court had previously found that Michelle K.'s mother was an appropriate individual to supervise Michelle K.'s visits with Courtney B., a one-bedroom apartment is not an appropriate placement for two young children and two adults. Michelle K. does not seem to have improved her situation in any

way.

I am also of the opinion that it would be contrary to Courtney B.'s best interests to separate her from her siblings, Hunter B. and Kayley B. These children have resided with one another for almost five years, and it is clear that they have a very strong bond. Therefore, the Court did not err when it terminated the parental rights of Michelle K. to the child, Courtney B.

II. GUARDIAN AD LITEM'S RESPONSE TO RESPONDENT MOTHER'S SECOND ARGUMENT:

THE COURT ERRED IN FAILING TO AWARD POST-TERMINATION VISITATION TO MICHELLE K.

Second, the Respondent Mother argues that the Court erred in failing to grant her post-termination visitation. The Guardian Ad Litem disagrees with the Respondent Mother's position. Courtney B. needs a safe and stable living environment, and it is the Guardian Ad Litem's belief that continued visitation with Michelle K. would be detrimental to Courtney B.'s well-being.

Courtney B. is eleven years old so obviously she does know her mother, however, her visits with her mother have been somewhat sporadic and have most recently been held in a supervised setting at Kanawha Valley Center (KVC). Robert Ellis, the Kanawha Valley Center employee who supervised these visits, testified at the Further Dispositional Hearing that Michelle K. had been late for visits several times and had missed at least two visits without informing KVC. Further, Michelle K. has recently tested positive for marijuana and I have concerns that she may continue to use illegal substances in the future.

I believe that it is in Courtney B.'s best interests to be adopted along with her siblings, Hunter B. and Kayley B., and I have concerns that continued visitation with Michelle K. would make her adjustment to an adoptive placement more difficult and cause her more psychological damage.

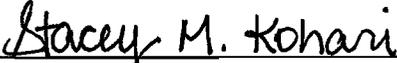
STATUS OF CHILDREN'S PLACEMENT

Courtney B. is currently in a foster placement with her siblings, Hunter B. and Kayley B., as all known relative placements for these children have been investigated and proven to be inappropriate. These children have been in foster care since they were removed from Kevin B. and Amy B.'s custody when the second abuse and neglect petition was filed. Their foster care placement is not an adoptive placement, however, the children have become familiar with other families that are interested in pursuing an adoption.

CONCLUSION

For all of the reasons previously stated, herein, the Guardian Ad Litem agrees with the decision of the Circuit Court to permanently terminate the parental rights of the Respondent Mother to the child Courtney B., and to deny her post-termination visitation with this child. The Guardian Ad Litem believes these decisions are in the best interests of the child, and that it would be detrimental to the child to separate her from her siblings, Hunter B. and Kayley B.

Respectfully Submitted,



Stacey M. Kohari, Esq.
Christian R. Harris, Attorney at Law
Post Office Box 257
Williamson, WV 25661
(304) 235-2131
W. Va. State Bar I.D. No. 10494

Guardian Ad Litem for the Children

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

STATE OF WEST VIRGINIA,

Petitioner,

vs.

Docket Number 11-0175

Mingo County Case Number: 09JA-11, 12, 13

KEVIN B.,
AMY B.,
MICHELLE K.,

Respondents.

**IN THE INTEREST OF THESE MINOR CHILDREN
IN RESPONDENTS' CUSTODY**

COURTNEY B.
HUNTER B.
KAYLEY B.

CERTIFICATE OF SERVICE

I, Stacey M. Kohari, do hereby certify that on this the 28th day of February, 2011, I have served a true and accurate copy of the foregoing "Summary Response of Guardian Ad Litem to Petition to Appeal" upon the following individuals, by United States Postal Service, postage prepaid, and addressed as follows:

Michael L. Jackson, Esq.
Assistant Attorney General
4190 Washington Street, West
Charleston, West Virginia 25313

Teresa D. Maynard, Esq.
Assistant Prosecuting Attorney
75 East Second Avenue, Suite 201
Williamson, West Virginia 25661

Diana Carter Wiedel, Esq.
Attorney at Law
7 East Second Avenue
Williamson, West Virginia 25661

Stacey M. Kohari
Stacey M. Kohari, Esq.
Christian R. Harris, Attorney at Law
Post Office Box 257
Williamson, WV 25661
(304) 235-2131
W. Va. State Bar I.D. No. 10494
Guardian Ad Litem for the Children