STATE OF MICHIGAN

COURT OF APPEALS

IN THE MATTER OF:

ALYSSA ANNE KEAST and
AMBER MARIE KEAST,

Minors.

/

Court of Appeals No. 279820

Lower Court No. 05-06388-NA

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APPELLEES TIMOTHY AND BARBARA ATWOOD'S BRIEF IN OPPOSITION TO APPELLANT NICOLE COPPESS'S EMERGENCY APPLICATION FOR LEAVE TO APPEAL

ORAL ARGUMENT REQUESTED

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COUNTER-STATEMENT REGARDING IMMEDIATE CONSIDERATION

The Application for Leave to Appeal was filed on August 9, 2007, and granted the same day, without any notice given to Appellee. Moreover, this Honorable Court ordered that the case be expedited and placed on the first available case call. Appellee received notice of the request for emergency appeal and stay the same day as Appellee received the Court of Appeals Order. These actions were taken without benefit of transcripts for this Court to review or an opportunity for the Appellees to respond. In fact, the only exhibits included with the Application for Leave to Appeal were three orders that have been issued in this case, which fail to present this Court with an accurate picture of what is going on with this case. This is the second time in this case, that this Court has granted emergency leave without input from the Appellees, and with little or no time to respond.

Appellant contends that immediate consideration should be granted and the case stayed due to harm that would occur to the minor children. The Apellants have tried to create a hysteria that does not exist in order to further the position of the Appellant on her quest to adopt. The Appellant assumes that if the children are secluded from contact with their grandparents, that the chance of adoption for the Appellant increases and the chances for the Appellees are hindered.

The Appellants, through testimony at the time of trial established absolutely no evidence that the maternal grandparents created any risk to their grandchildren. There is no evidence to support such a claim that allowing grandparent visitation would harm the children. The only evidence that there "could be harm" caused by the grandparents came from the Appellant, and the two women that she not only works with, but are her close friends and co-horts. These two women, both employees of Community Mental Health for Newaygo County, not only work with the Appellant and are assigned to the same team for service intervention, but also counsel the two minor children that are the subject of this action. These witnesses conferred with the Appellant informally

regarding the progress of these children, through hallway discussions and at social events outside of the workplace. The testimony that was presented by these witnesses is not only biased in the sense of a friend and working relationship with the Appellant, but lacks any evidence of objectivity as to the real issues with these little girls and the source of the problems for these little girls.

What the evidence did establish is the long-term relationship and bond that these beautiful little girls have with their grandparents. Time and time again, throughout the lives of these children, the grandparents had stepped up to bat to care for the children and to take them into their home. The children lived with the Appellees for months at a time before these children were ever removed by Protective Services. The Appellant does not even address this fact and shows no evidence at the relationship with the grandparents ever impacted these children in a negative manner throughout their early childhood. Further, after the children were removed from their mother, they were immediately placed with the grandparents. The children were later removed from the grandparents, based upon inaccurate information that was never litigated until the recent Section 45 hearing in this matter.

What is so incredibly ironic is that the trial court has granted consent to the maternal grandparents to adopt the children and denied that right to the Appellant. The children should be moving towards permanency by beginning their visits with the grandparents, so that the adoption of these children can go forward. Instead, the Appellant seeks the intervention of this Court to once again stop these children from the transition that will inevitable occur, prolonging the difficulty of the transition and the permanency of these children.

STATEMENT REGARDING JURISDICTION

Appellees do not contest Appellant's Statement of Jurisdiction.

STATEMENT OF QUESTIONS PRESENTED

I. Does MCL 722.27b grant the Trial Court the authority to order grandparent visitation?

The Circuit Court says: Yes

Appellant says: No

Appellees say: Yes

II. Was the Circuit Court's finding that grandparent visitation was in the best interests of the minor children appropriate?

The Circuit Court says: Yes

Appellant says: No

Appellees say: Yes

COUNTER-STATEMENT OF FACTS

The subjects of this appeal are the placements and adoptions of two minor children: Alyssa Anne Keast, DOB 1/22/2000 and Amber Marie Keast, DOB 8/18/2002. (Exhibit 4 – Bethany Christian Services Report of 10/15/06). The minor children are the children of Erica and Douglas Keast. The children were first removed from the care of the mother in March of 2005, due to alleged drug dealing in the home and frequent drug use. (Exhibit 4). Since the removal of these children, they have been in constant transition and the subject of constant litigation. Every time that the trial court attempts to move these children to permanency and a future with their family, there have been emergency requests to this Court to stop what the Legislature and the policy of the Department of Human Services has mandated for years – permanency and family priority. It appears that once again, the rush to Lansing has occurred without notice to the Appellees on a timely basis.

It is interesting to note that the removal of these children was done because the children were at a risk of harm. Like all removals, the intervention comes swiftly, quickly and without transition, because the harm to the child is considered to be so significant. The concern over trauma to the child by removal is considered secondarily or not at all. When a placement is not successful, then children are moved again. No one stands at alert and cries that there is trauma to the children in moving in with strangers, attending new schools or moving to another family. Instead, it is simply accepted that a new placement is necessary and that the children will adjust.

After the removal of the children from their mother in March of 2005, Appellee Department of Human Services ("DHS") moved the minor children on several different occasions. *Id.* DHS removed the children from their mother in March of 2005 and placed with the maternal grandparents until June of 2005. *Id.* When DHS broke this placement, there was not a concern of a

transition of these children to another environment or how the children will behave, regress or act out. These same children had lived with Appellees, on and off for all of the years of their life, prior to removal from their mother. Their relationship with their grandparents was as close a relationship as a grandparent can have. Yet, no one sounded the alarm, claiming that this would create any kind of emotional or psychological harm to these girls. DHS then placed the children in the care of an uncle and broke that placement after one week. *Id.* In July of 2006, DHS moved the children to their first foster home for 10 days. DHS then moved the children to their second foster home for another ten days. *Id.* In mid-July, DHS placed the children in their third foster home.

DHS then put the children back into the care of their mother in December of 2006, only days after she tested positive for illegal drugs, and while she was living with her boyfriend. This was same boyfriend that DHS said the mother could not expose the children to, and a basis for claiming that the Appellees violated a parent-agency agreement they never received. *Id.* DHS removed the children from the care of their mother, approximately a week later, when the mother overdosed on drugs in front of the children. *Id.* DHS then placed the children back into their current foster care home in the middle of July, 2005. *Id.*

The parental rights of Douglas Keast were terminated on or about February 22, 2006. (Exhibit 5). Erica Keast's parental rights were terminated on or about May 10, 2006. (Exhibit 6). The children were then committed to MCI, pursuant to the Orders of Termination. *Id.*

The grandparents were never notified of the termination or the MCI commitment. They learned of the termination by going through the court file at the Courthouse. Immediately, they contacted DHS, requesting adoption, contact with the children and information on the process. Bethany Christian Services, which had contracted to provide services to the Michigan Children's Institute, issued a written report vehemently stating that consent to adopt should be withheld.

(Exhibit 7 – Bethany Christian Services report dated 10/26/06). Further testimony at the time of the Section 45 hearing for the Atwoods demonstrated that Bethany Christian Services was holding out and was continually contacting the foster mother (Appellant) to get her to file for adoption. At the same time as the Atwoods (Appellees) were requesting adoption, the adoption worker was actively recruiting other potential adoptive parents. Without independent investigation, this report was then re-typed and adopted by the Department of Human Services (DHS) and MCI, without any further elaboration. (Exhibit 8). The Atwoods appealed the decision as arbitrary and capricious to the Newaygo County Circuit Court pursuant to MCL 710.45.

A hearing was held on February 7, 2007. (Exhibit 9). The hearing was noticed as a review hearing for post-termination proceedings, as well as a "section 45 hearing." *Id.* The Court took up the issue of the review hearing first. The Court heard testimony from the foster care worker and accepted into evidence the Adoption Progress Report. The report clearly indicated that the foster mother was still considering adoption, but had not finalized her decision. The report further indicated that other sources of adoption were being considered. *Id.* At the review hearing, the question was raised as to whether the Court could terminate the jurisdiction of MCI due to failure to provide reasonable efforts toward permanency planning for Alyssa and Amber Keast. *Id.*, p. 97. The Court requested briefs on that issue. *Id.* After reviewing the briefs, the Court issued an order terminating the guardianship of MCI and awarding custody of the two minor children to Tim and Barbara Atwood. (Exhibit 10). In this order, the Court found:

> Reasonable efforts have not been made to finalize the court-approved permanency plan of adoption for Alyssa and Amber Keast. Progress towards the children's adoption was not made in a timely manner... Although the parental rights to the children were terminated and the children committed to the Department of Human Services for permanency planning, supervision, care and placement under MCL 400.203, by order dated May 10, 2006, as of the date of this review hearing virtually nothing has been done towards the adoption goal other than disapprove the grandparents and request the adoptive mother to reconsider.... [G]iven their ages and

> the length of time they have been in foster care reasonable efforts have not been made to place them for adoption in a timely manner.

On April 13, 2007, DHS filed an emergency appeal with the Court of Appeals, which required the Atwoods to respond within four days. (Notice was given to the Atwoods on Friday at noon to have a response in by Monday at 4:00 pm). (Exhibit 11 – Court of Appeals Docket). On April 17, 2007, the Court of Appeals, without oral argument, or the benefit of the entire court file, issued a peremptory order reversing the decision. (Exhibit 12). The Atwoods filed a timely Motion for Reconsideration on May 8, 2007, which was denied on June 5, 2007. (Exhibit 13). The Atwoods filed an application for leave to appeal with the Michigan Supreme Court on July 17, 2007 that remains pending.

The trial court then continued the hearing on the Atwoods' Motion pursuant to MCL 710.45 and heard their Motion for Grandparenting Time, pursuant to MCL 722.27b. On June 21, 2007, the Court issued its Opinion Concerning the Withholding of Consent Conducted Pursuant to MCL 710.45. (Exhibit 14). In this Opinion, the trial court found that clear and convincing evidence existed that the MCI superintendent's denial of consent for the Atwoods to adopt the minor children was arbitrary and capricious and granted the Atwood's petition to adopt. On August 5, 2007, the trial court issued its Opinion and Order relative to Maternal Grandparents Motion for Visitation, wherein the court found it to be in the best interest of the minor children to have visitation with their grandparents. (Exhibit 1). The trial court also denied the motion of the foster mother, Appellant Nicole Coppess, to adopt the children. (Exhibit 2).

ARGUMENT

I. MCL 722.27b GRANTS THE CIRCUIT COURT THE AUTHORITY TO ORDER GRANDPARENT VISITATION.

A. STANDARD OF REVIEW

This case involves issues of statutory interpretation. The standard of review for issues involving statutory interpretation is *de novo*. *Herald Co., Inc v Eastern Michigan University Bd of Regents*, 475 Mich 463, 470, 719 NW2d 19 (2006).

B. ANALYSIS

The grandparent visitation statute, MCL 722.27b, clearly provides for specific situations when a grandparent has standing to request visitation. That statute provides as follows:

> (1) A child's grandparent may seek a grand- parenting time order under 1 or more of the following circumstances:
>
> (a) An action for divorce, separate maintenance, or annulment involving the child's parents is pending before the court.
>
> (b) The child's parents are divorced, separated under a judgment of separate maintenance, or have had their marriage annulled.
>
> (c) The child's parent who is a child of the grandparents is deceased.
>
> (d) The child's parents have never been married, they are not residing in the same household, and paternity has been established by the completion of an acknowledgment of parentage under the acknowledgment of parentage act, 1996 PA 305, MCL 722.1001 to 722.1013, by an order of filiation entered under the paternity act, 1956 PA 205, MCL 722.711 to 722.730, or by a determination by a court of competent jurisdiction that the individual is the father of the child.
>
> (e) Except as otherwise provided in subsection (13), **legal custody of the child has been given to a person other than the child's parent, or the child is placed outside of and does not reside in the home of a parent.**
>
> (f) In the year preceding the commencement of an action under subsection (3) for grandparenting time, the grandparent provided an established custodial environment for the child as described in section 7, whether or not the grandparent had custody under a court order.

(Emphasis added).

The Appellant urges this Court to adopt a restrictive reading of the statute. The grandparent visitation statute is a part of the Child Custody Act. MCL 722.26(1). The Child Custody Act must be liberally construed and applied. *Mason v Simmons*, 267 Mich App 188, 194, 704 NW2d 104 (2005). Specifically, MCL 722.26(1) provides, "This act is equitable in nature and shall be liberally construed and applied to establish promptly the rights of the child and the rights and duties of the parties involved."

The Appellant contends that the Atwoods' legal connection to the minor children has been severed. The Appellant provides absolutely no legal authority for this position, and the grandparent visitation statute does not contemplate that the termination of parental rights in an abuse or neglect action severs the grandparent relationship. In fact, this is explicitly excluded by the grandparent visitation statute, which references adoption as an impediment to grandparenting time (except in step-parent adoptions), but does not state that the termination of parental rights has the same result. MCL 722.22(13). Further, the grandparent visitation statute actually contemplates that grandparenting time can occur in neglect and abuse cases, as it references same under the best interest factors.

> The willingness of the grandparent, except in the case of abuse or neglect, to encourage a close relationship between the child and the parent or parents of the child. MCL 722.27b(6)(g).

The Child Custody Act further provides that a legal connection exists. Under MCL 722.22(e), a grandparent is defined as the "natural or adoptive parent of a child's natural or adoptive parent." As the Atwoods are the natural parents of the children's natural mother, they have a legal connection under the grandparent visitation statute to request visitation with the minor children. The statute clearly and unambiguously allows for grandparent visitation when the child's parent no

longer has legal custody of the child, **or** the child is placed outside of and does not reside in the home of a parent. Both of these situations apply to the case before the Court.

The Appellant's argument that when parental rights have been terminated, a child has no parents and therefore cannot be placed outside of the home of a parent is not only contrary to the plain language of the grandparenting statute, and the Child Custody Act, but it is also illogical. If a child had no parents, all homes that child could be placed in would be outside of the home of a parent. If the plain and ordinary meaning of a statute such as this one is clear and unambiguous, judicial construction is unnecessary. *Institute of Basic Life Principles, Inc. v Watersmeet Twp*, 217 Mich App 7, 12; 551 NW2d 199 (1996). The Appellant is attempting to add further restrictions to the statute that were not expressed or intended by the Legislature. The minor children at issue are currently placed in a home outside of that of a parent; therefore, as their maternal grandparents, the Atwoods can and should be granted grandparenting time pursuant to MCL 722.27b.

Appellants argue that the trial court committed clear error when it mentioned MCL 710.45(8) in its order granting the Atwoods' motion for visitation. This argument is unpersuasive. The trial court stated that, "The court's jurisdiction in this matter is conferred by MCL 710.45(8) and the order of the court determining Alyssa and Amber to be permanent wards of the court and by the grandparent visitation statute, MCL 722.27b..." (Exhibit 1, p. 1). By reference to MCL 710.45(8), the trial court referred to its prior termination of the rights of the Michigan Children's Institute, which led to Alyssa and Amber being made wards of the court. The Court's jurisdiction of the children was vested by the neglect case in this matter as well as the pending adoption cases. Under either case, the Court had personal jurisdiction over the parties and subject matter jurisdiction over the issue to proceed with the best interests of the minor children. The trial court properly cited

MCL 722.27b as the authority for its order relative to grandparent visitation.

II. THE CIRCUIT COURT'S DECISION THAT GRANDPARENT VISITATION WAS IN THE BEST INTERESTS OF THE MINOR CHILDREN WAS APPROPRIATE.

A. STANDARD OF REVIEW

Appellant asks this Court to review the trial court's findings regarding the best interests of the children under the *de novo* standard of review, which is inappropriate. This issue requires the review of the Circuit Court's findings of fact, which are reviewed for clear error. *K & K Const., Inc. v Department of Environmental Quality*, 267 Mich App 523, 543, 705 NW2d 365 (2005). An appellate court will only disturb such findings where that appellate court is "left with the definite and firm conviction that a mistake has been made." *Ambs v Kalamazoo Co. Rd. Comm.*, 255 Mich App 637, 652, 662 NW2d 424 (2003).

B. ANALYSIS

Pursuant to MCL 722.27b(6), the trial court properly considered the best interest of the minor children when awarding visitation to their grandparents. The factors considered by the trial court were prescribed by the statute, including:

> (a) The love, affection, and other emotional ties existing between the grandparent and the child.
> (b) The length and quality of the prior relationship between the child and the grandparent, the role performed by the grandparent, and the existing emotional ties of the child to the grandparent.
> (c) The grandparent's moral fitness.
> (d) The grandparent's mental and physical health.
> (e) The child's reasonable preference, if the court considers the child to be of sufficient age to express a preference.
> (f) The effect on the child of hostility between the grandparent and the parent of the child.
> (g) The willingness of the grandparent, except in the case of abuse or neglect, to

encourage a close relationship between the child and the parent or parents of the child.
(h) Any history of physical, emotional, or sexual abuse or neglect of any child by the grandparent.
(i) Whether the parent's decision to deny, or lack of an offer of, grandparenting time is related to the child's well-being or is for some other unrelated reason.
(j) Any other factor relevant to the physical and psychological well-being of the child.

Id. Though the trial court may not have considered these best interest factors in the same order as the statute suggests, the trial court did consider each and every factor, as referenced in the Court's written opinion. (Exhibit 1).

While leave to appeal has been granted in this matter, without transcripts available for a complete evaluation of the record, the only record of the hearing is the actual opinion of the trial Judge. There is no other evidence for this Appellate Court to review and no way for this Appellate Court to determine what evidence was provided at the trial court level. The haste in which this case has been thrust into the lap of the Court of Appeals leaves this reviewing court with nothing to review but the opinions of attorneys that were present at the hearing and the trial court's findings of facts. An Appellate Court can not make a finding of clear error, if the Appellate Court has no means to evaluate what a trial court heard and the evidence that was reviewed.

Appellant argues that, in the Trial Court's order, the trial court "misrepresented the testimony and failed to weigh unfavorable testimony" against the Atwoods. (Application for Leave to Appeal, p. 17). Again, how can this Appellate Court evaluate this allegation, without a record of the proceedings? Appellee states to this Court that this statement is misleading and untrue. A careful review of the record, once provided to this Court, will support the trial court's statements. Evidence was presented of a letter authored by the Atwoods (Appellees) in March/April of 2007. At that time, the trial court had ordered that the children would be transitioned to the home of the Atwoods. The Atwoods actually wrote a letter and made cookies for the Appellant (foster care

mother) and told her that they wanted to keep her in the children's lives and asked that she call them to discuss how to facilitate this relationship. The Appellant testified that she wanted nothing to do with the Atwoods and that she never called them, nor would she. When asked if there were any circumstances under which the Appellant would allow the Atwoods to see their granddaughters, the foster-mother stated that she was unsure and that it could only happen if she thought they were appropriate, but she refused to give further information. When the Appellant was questioned about the possibility of not seeing the children if she was not granted the right to adopt and if there was another way, where both parties could stay in the lives of these children, the foster mother said she was willing to take that risk of never seeing the children again. Though Appellant argues that the trial court mischaracterized her testimony, she admits that she would have no further relationship with the minor children if their maternal grandparents adopted them. The trial court correctly characterized her relationship with the children as all or nothing.

The trial court also hit the mark when it described Appellant's reluctance to establish any kind of connection with the grandparents and to actually thwart it at every turn. The Appellant admitted that she told the children, before a scheduled visitation with the Atwoods, that if anyone hurt them to call 911. Of course, this planted fear in the minds of the children that someone was going to hurt them, and that was likely to be their grandparents. Instead of encouraging the children to go with their grandparents and have a good time, she planted fear and hatred. On the first scheduled overnight visitation that occurred in April of 2007, the Appellant refused to send clothes, pajamas, toothbrushes or their favorite blanket or stuffed animal. The children arrived with the clothes on their back, with none of the items that children associate with security or comfort. The Atwoods went out and bought pajamas, toothbrushes and teddy bears for the girls, so that they would feel at home and could sleep. When compared with the Atwoods' determination to pursue

every option available to them to see their grandchildren, and make them feel comfortable in their home as well as the Appellants, it is evident why the trial court would weigh the best interest factor concerning love and affection in the grandparents' favor.

Appellant complains that the trial court did not mention testimony she claims was presented in her favor. Just because that testimony was not mentioned in the court's opinion, however, does not mean that the court failed to consider the evidence. Instead, it is evident that the trial court was not persuaded by the testimony offered. Deference should be given to the trial court's determination of witness credibility. *MacIntyre v MacIntyre (On Remand),* 267 Mich App 449, 459; 705 NW2d 144 (2005).

In arguing with the trial court's determination as to the capacity and disposition of the parties to provide the children with food, clothing, and medical care, the Appellant argues only that this factor should weigh in her favor merely because her income is greater. However, the Court pointed to the fact that the Atwoods have owned their own home for over 30 years and have enjoyed a stable marriage for 35 years. Further, the Atwoods own a reliable vehicle, have no issues of debt and are financially stable. On last minute notice, they even went out and bought all the essentials that the minor children would need for an overnight visitation, because the Appellant refused to send even the bare essentials. The Appellant provides no evidence that the Atwoods would be unable to provide their grandchildren with food, clothing or other care, or that there is any debt issues or financial instability.

One of the most important facts that the Appellant is unable to dispute, is the trial court's finding that that both grandparents would be available for the children at all times, due to retirement and issues of disability, whereas the Appellant is a single mother who works outside of the home at

least 40 hours a week. The trial court's finding that the parties were equal as to this factor was appropriate.

The trial court's finding that the children had not experienced a lengthy stable environment was also appropriate. Although the children have resided with the Appellant for two years, the children are aware that this was a foster environment, such as the others they had previously been in and removed from. Additionally, for a considerable amount of time during these proceedings, the foster mother had refused to adopt the children, indicating that the relationship was not a permanent or stable one. Further, the Court considered that the Appellant had love interests in and out of her life, of which the children had gained attachment. This affected the stability of the children and their relationships while in the care of the Appellant.

With regard to the moral fitness of the parties, the trial court considered the maternal grandfather's past marijuana use, and did not minimize or discount it, as claimed by the Appellant. The trial court correctly noted, however, that the grandfather underwent drug and alcohol screening, which indicated no addiction, present use or risk. No evidence was presented to support Appellant's argument that the children were ever exposed to marijuana use by their grandfather. In fact, as stated by the court, the opposite is true.

The Appellant discounts the effect of her own actions on the minor children, by exposing them to relationships outside of marriage where the Appellant slept with both of her boyfriends in the presence of the minor children. The children have stayed in the home of her current boyfriend on numerous occasions and slept on the floor, while she and her boyfriend shared a futon, a few feet away. This is the second such relationship where the children have stayed at the home of the boyfriend overnight, while the Appellant slept with her boyfriend. Such young children should not be sleeping in the same room as an unmarried couple, whether that couple in engaging in sexual

behavior at the time or not. Additionally, the children are not even provided with beds when the foster mother takes them for overnight visits at the apartment of her boyfriend.

One major focus of the testimony during the course of the trial was the behavioral problems of the children before and after visitation with the grandparents. A great deal of testimony was entered regarding the separation anxiety of the children, due to the constant removals and placements throughout the course of the last few years. Yet, with all of this transition, the Appellant failed to make any connection that severing another relationship (that of the grandparents) would create further anxiety for these children. Further, she had no idea that her own actions, by introducing boyfriends, and then severing those connections would also have consequences on the anxiety of these children.

One of the most telling aspects of the entire hearing came from the adoption supervisor in the case, called by the Appellant. While she was testifying primarily in relation to the Appellant's request for consent to adopt, she stated how important extended family is in the realm of adoption. She talked about the need for a support network that grandparents provide and the nurturing and familial relationship that grandparents foster. She testified at length how important extended family and especially grandparents can be when determining appropriate adoption placement.

Finally, Appellant argues that the visitation time awarded to the grandparents in this case is too extensive, and that permanency for the minor children cannot be achieved as quickly if such visitation is allowed. In making these arguments, Appellant ignores the fact that the trial court denied her petition for consent to adopt the minor children and granted consent to the Atwoods. (Exhibits 2 and 3). By arguing against visitation for the grandparents, she is the one postponing stability and permanency for the minor children. MCL 722.27b(6) provides, "If the court finds by a preponderance of the evidence that it is in the best interests of the child to enter a grandparenting

time order, the court shall enter an order providing for reasonable grandparenting time of the child by the grandparent by general or specific terms and conditions." In light of the fact that the court has granted the Atwoods consent to adopt the minor children, the visitation that was ordered is reasonable to transition the children smoothly to their new environment.

CONCLUSION

Without the benefit of transcripts, this Appellate Court is at a disadvantage in evaluating the entire record. The Court is really left with determining the legal issues in this matter and the interpretation of the enabling statutes. The Appellants want this Court to simply stop the evolution of this case, because it suits their final objective of adoption. However, this reviewing Court only has the power to apply the law as set forth by the statute and not to add or create restrictions that do not exist and which were never intended by the Legislature. Appellees Tim and Barbara Atwood respectfully request that this Honorable Court dismiss this appeal and remand this matter back to the trial court.

Respectfully submitted,

WILLIAMS, HUGHES & COOK, PLLC

Dated: August 29 2007

By _____
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