

APPENDIX

APPENDIX

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STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals, continued and held at Charleston, Kanawha County, on January 28, 2021, the following order was made and entered:

In re J.S.

No. 20-0914

SCHEDULING ORDER

On November 19, 2020, the petitioner K.S., by counsel Christian J. Riddell, Riddell Law Group, presented a notice of appeal from an order of the Circuit Court of Nicholas County (Case No. 17-JA-130) entered on July 22, 2020, together with a motion to file the notice of appeal out of time and a motion to stay adoption pending appeal. Upon consideration and review, the Court hereby refuses the motions. Justice William R. Wooton would grant the motions. The \$200 filing fee is returned herewith. The appeal will not be docketed in this matter.

A True Copy

Attest: /s/ Edythe Nash Gaiser
Clerk of Court



IN THE CIRCUIT COURT OF NICHOLAS COUNTY, WEST VIRGINIA

CIRCUIT COURT

IN THE INTEREST OF: NICHOLAS COUNTY, WV Juvenile Abuse Neglect No.
Jakeir Strayhorn (D.O.B. 06/04/2010) 17-JA-130
707 NOV 14 P 3:32

Adult Respondents:
Shaina Jarvis
Rashaan Strayhorn

PETITION TO INSTITUTE CHILD ABUSE AND NEGLECT PROCEEDINGS

The Department of Health and Human Resources, by Jennifer Hall, petitions the Court and alleges as follows:

The minor child is currently in the custody of the Department pursuant to a Ratification of Emergency Custody granted by the Nicholas County Magistrate Court on November 9, 2017.

Shaina Jarvis is the biological mother of the child. Her current address is 3083 Richwood Road, Richwood, West Virginia 26261. Rashaan Strayhorn is the biological father of the child. His current address is 3083 Richwood Road, Richwood, West Virginia 26261.

The Department is seeking continued custody of Jakeir Strayhorn. As set forth in the succeeding paragraphs, Petitioner believes the circumstances of the Respondents' care and custody pose a danger to the child's wellbeing.

I. The conduct constituting abuse/neglect pursuant to W.Va. Code § 49-1-201 is as follows:

A. On or about November 9, 2017, a domestic altercation occurred between adult respondents Shaina Jarvis and Rashaan Strayhorn while infant respondent Jakeir Strayhorn was present with them in the home. Rashaan Strayhorn shot Shaina Jarvis in the leg and beat her in the head with a gun in front of the infant respondent. This conduct clearly placed the infant in

imminent danger of serious physical harm and, further, inflicted emotional harm upon the infant respondent.

B. Both adult respondents regularly argue in front of the infant respondent to the extent that he closes his bedroom door to avoid their verbal altercations. Despite attempting to avoid these verbal altercations by exiting to his bedroom, the infant respondent reports that he can still hear yelling and “thumping.” This conduct constitutes emotional abuse of the infant respondent.

WHEREFORE, the Petitioner requests that the Court take the following actions:

Order that the child be placed in the custody of the Department of Health and Human Resources pending further proceedings.

Authorize the Department of Health and Human Resources to give written consent for any medical, dental, psychiatric, or psychological care required for the welfare of the child.

Authorize the Department of Health and Human Resources to arrange for and consent to the child’s participation in educational and cultural activities required for the welfare of the child.

Appoint a guardian *ad litem* for the child.

Appoint counsel for the Respondents.

Determine the financial support the Respondents will be required to furnish to the child during the time the child are in the custody of the Department of Health and Human Resources.

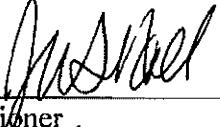
Schedule and conduct a hearing on this matter in accordance with the requirements of West Virginia Code.

WEST VIRGINIA DEPARTMENT OF HEALTH AND
HUMAN RESOURCES
BY COUNSEL


Jonathan M. Calhoun, W.Va. Bar No. 11134
Assistant Prosecuting Attorney
511 Church St., Room 203
Summersville, WV 26651

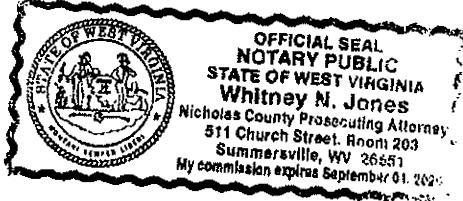
VERIFICATION

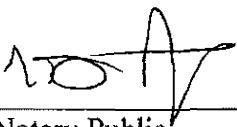
The information, statements, and allegations I have made in this Petition are true and accurate to the best of my knowledge, information and belief.


Petitioner

11/11/17
Date

The person named as the Petitioner made the foregoing affirmation before me on this 14th day of November, 2017.




Notary Public

September, 2020
My commission expires

IN THE CIRCUIT COURT OF NICHOLAS COUNTY, WEST VIRGINIA

IN THE INTEREST OF:

Juvenile Abuse/Neglect No.

JAKEIR STRAYHORN 06/04/2010

17-JA-130

ADULT RESPONDENTS:

SHAINA JARVIS
RASHAAN STRAYHORN

PATERNAL GRANDMOTHER'S MOTION
FOR PLACEMENT OF INFANT CHILD

Now comes the paternal grandmother, Kathryn Strayhorn, by her counsel, J. Mingo Winters, pursuant to Rule 36a of the West Virginia Rules of Procedure for Child Abuse and Neglect Proceedings and West Virginia Code § 49-4-114(a)(3), and moves the Court to permanently place the infant child who is the subject of these proceedings, Jakeir Strayhorn, born June 4, 2010, with his paternal grandmother. In support of her motion, the paternal grandmother states the following:

1. The instant action is a child abuse and neglect proceeding, instituted by the West Virginia Department of Health and Human Resources ("the Department") through its Bureau for Child Protective Services ("CPS") on or about November 14, 2017. In the petition to institute child abuse and neglect proceedings, the Department alleged that the respondent father, Rashaan Strayhorn, shot the respondent mother, Shaina Jarvis, and beat her in the head with a gun on November 9, 2017. The petition further alleged that the respondent father and respondent mother were regular participants in acts of domestic violence in and around the infant child.

2. On or before January 19, 2018, both of the respondent parents stipulated to conduct that would constitute abuse or neglect of the infant child under West Virginia

law. Each of the respondent parents was granted a post-adjudicatory improvement period under terms established by the Court at the time of their stipulation.

3. On or before February 5, 2019, both parents failed to successfully complete the post-adjudicatory improvement periods granted by the Court. As a result of their failure, both parents' parental rights to the infant child were terminated by the Court.

4. On December 19, 2017, the paternal grandmother filed a motion to intervene in this action so that she could be considered for permanent placement of the infant child in the event that the parental rights of both respondent parents were terminated. The Court has deferred ruling on the motion to intervene until such time as a permanency hearing could be held in accordance with Rule 36a of the West Virginia Rules of Procedure for Child Abuse and Neglect Proceedings.

5. The paternal grandmother has sought placement of the infant child from the beginning of these proceedings, but the Department has been unwilling to consider the paternal grandmother as a temporary placement due to the fact that the paternal grandmother resides in the State of New York.

6. The paternal grandmother currently resides at 2569 7th Avenue, Apartment 91, in New York, New York. In addition to the paternal grandmother, the infant child's uncle, Darrien Strayhorn, and the infant child's half-brother, Shakir Strayhorn, age 20, also reside with the paternal grandmother.

7. The infant child also has other relatives that live in proximity to the paternal grandmother in New York City, including the infant child's paternal grandfather, Lloyd Strayhorn, and the infant child's paternal aunt, Lionice Strayhorn.

8. The paternal grandmother is presently employed by the Unified Court System for the State of New York in the Office of Court Administration. The paternal grandmother currently works in the Bronx Division of the Supreme Court of New York. The paternal grandmother has been employed in the court system for the State of New York for over fifteen years.

9. Neither the paternal grandmother nor any other member of her household have ever been arrested or convicted of any crime.

10. The infant child is biracial, with African-American ancestry on his father's side. The infant child is currently placed in a home with white foster parents and in a county where, according to data maintained by the United States Census Bureau, 43 out 26,233 citizens were of black or African-American descent. By contrast, 24.3% of the over eight million residents in New York City are black or of African-American descent. Placement of the infant child with his paternal grandmother will allow the child to reside with members of his family in an area that is racially diverse.

11. West Virginia Code § 49-4-114(a)(3) provides the so-called "grandparent preference" regarding the permanent placement of children in abuse and neglect actions and provides, in pertinent part, the following:

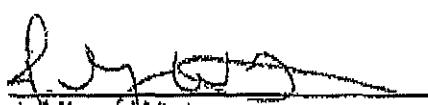
"For purposes of any placement of a child for adoption by the department, the department shall first consider the suitability and willingness of any known grandparent or grandparents to adopt the child. Once grandparents who are interested in adopting the child have been identified, the department shall conduct a home study evaluation, including home visits and individual interviews by a licensed social worker. If the department determines, based on the home study evaluation, that the grandparents would be suitable adoptive parents, it shall assure that the grandparents are offered the placement of the child prior to the consideration of any other prospective adoptive parents."

W.Va. Code § 49-4-114(a)(3) (2014). The paternal grandmother has, at all times since the child's removal from the respondent parents' legal custody, sought the placement of the infant child. The paternal grandmother has further sought the conduct of a home study by the Department to demonstrate her fitness, but the home study has not, despite the passage of more than a year, been completed by the Department.

12. It is in the best interests of the infant child that he be placed with the paternal grandmother, as required by West Virginia Code § 49-4-114(a)(3).

WHEREFORE, the paternal grandmother, Kathryn Strayhorn, prays that her motion be granted; that the Department be ordered to forthwith complete a home study of the paternal grandmother's home; that the child be placed with the paternal grandmother, both temporarily and permanently; and or such other and further relief as the Court may deem just.

KATHRYN STRAYHORN
By Counsel


J. Mingo Winters
Counsel for the Paternal Grandmother
West Virginia State Bar ID #
106 South Heber Street
Beckley, West Virginia 25801

IN THE CIRCUIT COURT OF NICHOLAS COUNTY, WEST VIRGINIA

IN THE INTEREST OF:

Juvenile Abuse/Neglect No.

JAKEIR STRAYHORN 06/04/2010

17-JA-130

ADULT RESPONDENTS:

SHAINA JARVIS
RASHAAN STRAYHORN

CERTIFICATE OF SERVICE

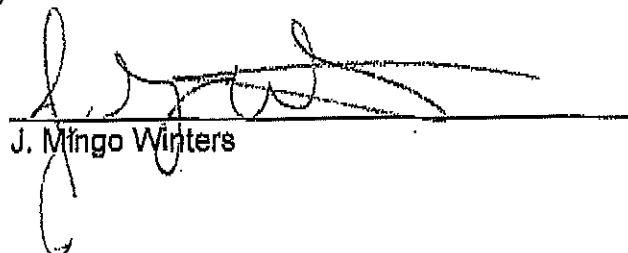
I, J. Mingo Winters, hereby certify that I have served a true and correct copy of the foregoing Paternal Grandmother's Motion for Placement of Infant Child upon the following parties or their counsel by United States mail, first-class, postage prepaid, on the 3rd day of June, 2019 to the following:

Jonathan Calhoun, Esquire
Assistant Prosecuting Attorney
511 Church Street, Room 203
Summersville, West Virginia 26651

Joseph M. Mosko, Esquire
Post Office Box 606
Oak Hill, West Virginia 25901

Sarah Campbell, Esquire
732 Main Street
Summersville, West Virginia 26651

Allison Taylor, Esquire
Post Office Box 89
Fayetteville, West Virginia 25840



J. Mingo Winters

IN THE CIRCUIT COURT OF NICHOLAS COUNTY, WEST VIRGINIA
CIRCUIT CLERK
NICHOLAS COUNTY, WEST VIRGINIA

IN THE INTEREST OF: JUVENILE ABUSE & NEGLECT CAES NO.

JAKIERR STRAYHORN (DOB 06-04-2010) 17-JA-130

ADULT RESPONDENTS
RAHSAAN STRAYHORN
SHANIA JARVIS

**ORDER DENYING MOTION FOR PLACEMENT AND ADOPTION
BY THE INFANT RESPONDENT'S PATERNAL GRANDMOTHER**

This matter came before the Court on July 21, 2020 for purposes of an evidentiary hearing on the motion of Kathryn Strayhorn (paternal grandmother) for placement and adoption of the infant respondent, Jakier Strayhorn (DOB 06-04-2010). The following parties appeared:

Paul Williams	Counsel for DHHR
J. Mingo Winters	Counsel for Kathryn Strayhorn, who did not appear
Allison Taylor	Guardian Ad Litem
Janet Burge	CPS Supervisor

After considering the testimony and the written motion, the Court makes the following findings of fact and conclusions of law:

1. The intervening paternal grandmother did not appear at this hearing although she had counsel. This hearing was set well in advance and her counsel did not offer good cause for her failure to appear. It is the Court's opinion that granting another delay would unreasonably delay permanency for the child. Therefore, the Court proceeded to take testimony.
2. Counsel for the DHHR presented the testimony of CPS Supervisor, Janet Burgh, adoptive mother Pam Toburen and former CPS worker Stephanie Smith. All testimony was subject to cross examination by counsel for the grandmother and the Guardian Ad Litem. Neither

the Guardian Ad Litem nor counsel for the grandmother presented any witnesses. All parties were provided with the right to be heard.

3. The Abuse & Neglect Petition in this case was filed November 14, 2017 alleging, among other things, that the child's father shot the child's mother wounding her and that this took place in the child's presence.
4. The mother's parental rights were terminated April 11, 2018.
5. The father's parental rights were terminated February 8, 2019.
6. The paternal grandmother's motion for placement was filed June 4, 2019.
7. The child has been placed with the adoptive mother, Pam Toburen, since November 7, 2017.
8. The grandmother resides in New York, New York and the adoptive mother lives in Nicholas County, West Virginia.
9. After the grandmother's motion was filed, the DHHR initiated the process to conduct an ICPC regarding the grandmother's home.
10. The Court notes that the grandmother's motion was filed eighteen months after the filing of the petition. This caused delay because the Department is required to conduct a home study or ICPC when a grandparent seeks placement or adoption. During the eighteen-month period prior to her motion, the grandmother did not seek placement or visitation with the child, although there was some phone contact with the child.
11. By September 5, 2019, the ICPC had not been completed and the Court entered an Order continuing the matter generally awaiting the results of the ICPC. The Court notes that it is common (and frustrating) for the ICPC process to cause delays.

12. The Court received the ICPC results January 20, 2020 disapproving placement with the paternal grandmother on grounds that the home was undergoing renovations.
13. The Court finds that there was some discussion among the parties about renewing the request for the home study after the renovations are complete. However, the Court finds that waiting for any renovations to be complete and then waiting for another home study to be completed through ICPC would unreasonably delay permanency in this case.
14. Additionally, when a grandparent requests placement or adoption, West Virginia Code §49-4-114(a)(3) requires the DHHR to conduct a home study, in this case through ICPC. However, there is no requirement that a grandparent is entitled to a second home study and the Court finds that the grandparent in this case is not entitled to a second home study and it would unreasonably delay permanency for this child.
15. At the time of the July 21, 2020 evidentiary hearing, no evidence was presented that the results of the ICPC had been amended or that the grandmother's home is a safe and suitable home. Therefore, at the time of the evidentiary hearing on the grandmother's motion (July 21, 2020), the only evidence before the Court was that the home was disapproved as a placement.
16. Kathryn Strayhorn resides in New York, New York. In her motion she alleges that neither she nor any people who reside in her household have any criminal backgrounds and that the home is safe and suitable, despite the ICPC stating otherwise. She also alleges as follows:

The infant child is biracial, with African American ancestry on his father's side. The infant child is currently placed in a home with white foster parents and in a county where, according to data maintained by the United States Census Bureau, 43 out of 26,233 citizens were of black or African American descent. By contrast, 24.3% of the over eight million residents in New York City are of

black or African American descent. Placement of the child with his paternal grandmother will allow the child to reside with members of his family in an area that is racially diverse.

17. The Court asked the grandmother's counsel for a proffer of evidence if his client were present. The arguments for placement can be summarized as follows:

- a. Placement with the grandmother would be a "family" placement and family is important.
- b. The child has African American heritage and because the adoptive mother is Caucasian, the adoptive mother cannot provide that part of the child's cultural background and heritage to his life.
- c. The grandmother is African American and is better suited to provide that cultural element of the child's heritage because she is African American.
- d. There are more African Americans in New York than in Nicholas County, West Virginia and it would be more appropriate for the child to be raised in a more diverse population.

18. The Court, for the reasons stated herein, finds no merit to any of the grandmother's claims. This becomes especially true when the Court considers (1) that the child has thrived emotionally, socially and academically while in the foster mother's home and (2) that the child has a very strong bond with the foster mother, her family and even the community.

19. The Court notes that Jakier Strayhorn has resided with the current foster/adoptive mother (Pam Toburen) since November 7, 2017.

20. Ongoing CPS Supervisor Janet Burge testified as follows:

- a. The grandmother has had phone contact only with the child.

- b. She has observed that the child has a very strong bond with the adoptive mother and has thrived in the home. He calls her "Momma."
- c. She has observed that the child has a strong bond with the adoptive mother's other (15-year-old) adopted son in the home and refers to him as his brother.
- d. She has observed that the child is very intelligent and mature for his age and is a voracious reader.
- e. The child has lived with the adoptive mother during the ages of 8, 9 and 10 years old and these are very formative years.
- f. The child has lived in Nicholas County almost his entire life. He participates in many activities and he considers it home.
- g. The child does not want to leave the adoptive mother and move to New York.
- h. The child keeps a journal and writes. The Court notes that some of his writings were attached to the most recent Court summary and they are also attached to this Order. In some of these writings he is thankful for being away from his parents and he clearly states his desire to be adopted by Pam Toburen.

21. Adoptive mother, Pam Toburen, testified as follows:

- a. The child has consistently stayed with her since November 7, 2017.
- b. The child is high achieving academically with exceptional intelligence. He is further emotionally stable and very happy.
- c. The child is aware of his African American heritage but never asks about it.
- d. The child had scheduled phone calls with his grandmother (the intervenor) and at the end the grandmother would recite a list of people who love him. She included his parents whose parental rights were terminated. This made the child feel uncomfortable.

The grandmother was asked to stop ending the phone calls in this manner. However, she continued.

- e. It would be emotionally harmful to remove the child from her home because he is so smart, well-adjusted and bonded.
- f. The child has nightmares about the possibility of moving to New York and he is upset at the thought of leaving what he considers home.

22. Former CPS worker, Stephanie Smith, testified as follows:

- a. She was the ongoing CPS worker until accepting a job in the probation department.
- b. The child has thrived emotionally, socially and academically while in the care of the adoptive mother.
- c. The grandmother never made any effort to visit the child although the grandmother did appear in Nicholas County for two of her son's criminal hearings.
- d. The child witnessed horrible events which lead to the termination of his parents' rights, but he has nonetheless thrived under the care of the adoptive mother.
- e. She never believed that the grandmother would be an appropriate placement for the child.
- f. Since leaving the DHHR, she has observed the child around her own children at events and activities around the county and he is extremely happy and has lots of friends.
- g. The child stated he wanted to be adopted by Pam Toburen.

23. The Court finds that the testimony of Janet Burge, Pam Toburen and Stephanie Smith is credible.

24. The Court notes that while the grandparent preference must be balanced with the best interests of the child, it is the child's best interest that serves as the ultimate determinable

factor in the child's placement. Further, the grandparent preference statute contemplates that placement with grandparents is presumptively in the best interests of the child, and the preference for grandparent placement may be overcome only where the record reviewed in its entirety establishes that such placement is not in the best interests of the child. In Re: J.P. No. 19-1089, Submitted: May 20, 2020, Filed: June 15, 2020.

25. Given that (1) the only evidence of the grandmother's home through the ICPC home study is that the home was disapproved and (2) that there is clear and credible testimony that the child is thriving and very bonded in the foster, the Court finds that placement with the grandmother is not in the best interest of the child.
26. The DHHR is of the opinion that placement with the grandmother is not in the best interest of the child.
27. The Guardian Ad Litem is of the opinion that placement with the grandmother is not in the best interest of the child.
28. This Court is of the opinion that placement with the grandmother is not in the best interest of the child.
29. The Court finds that the credible evidence weighs so heavily in favor of adoption by the foster mother that this ruling would be the same even if the grandmother's home study was approved through the ICPC – that is, even if the grandmother's home study was approved, it would not be in the best interest of the child to be placed or adopted there.
30. The Court finds that removing the child from the home he has lived in since November 7, 2017 would cause irreparable emotional harm to the child and that moving him is clearly not in his best interest.

31. The grandmother's sporadic participation in this case certainly does not warrant removing the child because he now has the happy, loving and stable home which he deserves and enjoys.

32. Regarding the grandmother's specific arguments, the Court finds as follows:

- a. The grandmother argues that placement with her would be better because it is a placement with family. While this may be biologically accurate, this family relationship has been attenuated and contact has been sporadic and solely by phone. In addition, the child was removed from the parents' home November 7, 2017 and the grandmother did not file the motion for placement until June 4, 2019.
- b. The grandmother also argues that because she is African American, she could provide that specific African American heritage and background as a part of the child's life. She also argues that the adoptive mother cannot provide that experience because she is Caucasian. The Court finds that this argument is completely without merit and is borderline offensive. Essentially, the argument is that the child should be raised in an African American home and not a Caucasian home. The Court is of the opinion that the child should be raised in the a safe, stable and loving home which he currently has.
- c. The grandmother also cites statistics that the African American population in New York is far greater than in Nicholas County West Virginia – concluding that the child should be raised in a “more diverse” population. The Court also finds that this argument is also completely without merit. While it is true that the African American population in New York is far greater than in Nicholas County West Virginia, it does not logically follow that this child should be raised in New York for that reason. The Court is of the opinion that the child should be raised in the safe, stable and loving

home which he currently has, regardless of any disparity in African American populations between New York and Nicholas County, West Virginia.

33. The grandmother is notified as follows:

- a. You have the right to appeal this case.
- b. A notice of intent to appeal must be filed within 30 days of entry of the final order in this case.
- c. The appeal must be perfected within 60 days of entry of the final order

34. It is therefore **ORDERED** as follows:

- a. The grandmother's motion for placement and for adoption is denied.
- b. This case shall proceed with the permanency plan of adoption with Pam Toburen.
- c. The **CLERK** shall provide copies of this Order to the following:

Paul Williams
203 Courthouse Annex
Summersville, WV 26651

J. Mingo Winters
106 South Heber Street
Beckley, WV 25801

Allison Taylor
PO Box 89
Fayetteville, WV 25840

DHHR - Janet Burge
707 Professional Park Drive
Summersville, WV 26651

Enter this the 22nd day of July 2020.


STEPHEN O. CALLAGHAN, JUDGE

IN THE CIRCUIT COURT OF NICHOLAS COUNTY, WEST VIRGINIA

IN THE INTEREST OF: **ABUSE & NEGLECT**

JAKEIR STRAYHORN, 06/08/10 **CASE NO: 17-JA-130**

ADULT RESPONDENTS:

SHAINA JARVIS
RASHAAN STRAYHON

KATHRYN STRAYHORN
Paternal Grandmother, Intervenor

MOTION TO REINCORPORATE THE COURT'S PRIOR FINDINGS AND MOTION
FOR A STAY PENDING APPEAL

Comes now the Intervenor, Kathryn Strayhorn, by counsel, Christian J. Riddell, and moves this honorable Court for an Order reincorporating its prior findings from the July 22, 2020 Order Denying Motion for Placement and Adoption by the Infant Respondent's Paternal Grandmother. Intervenor further requests, pursuant to Rule 50 of the West Virginia Rules of Procedure for Abuse and Neglect, a stay of any adoption or other proceedings pending said appeal.

In support of said Motion, Intervenor avers as follows:

1. On July 21, 2020, a final contested evidentiary placement hearing was held regarding the placement of the infant, J.S., pursuant to Intervenor's motion for placement and adoption. Said Order was entered into the record on July 22, 2020.
2. At that time Intervenor was not present, but was represented by her attorney at the time, Mr. J. Mingo Winters.

3. Intervenor avers that Mr. Winters had informed her that there was a hearing on that day (though he did not specify that it was the final evidentiary hearing on her motion for placement), and that he would call her to conference her into the hearing at the appropriate time.
4. Intervenor further states that she waited by her phone for over 3 hours, and never received a call from Mr. Winters.
5. Subsequent to said July 21st hearing, Intervenor Strayhorn attempted to contact Mr. Winter's office multiple times in an attempt to obtain information about the status of her case, to no avail.
6. Intervenor never received a return call, text, or email of any kind from her counsel informing her that the Court had denied her motion for placement. In fact, Intervenor has never had any contact with Mr. Winters since the day of the July 21, 2020 hearing.
7. Because Intervenor was not made aware of the Court's ruling, she had no idea that her appeal time frame had begun to run. As such, the timeframe for appeal elapsed without Intervenor being able to have her appeal docketed before the West Virginia Supreme Court of Appeals.
8. Intervenor, after not hearing from her attorney, hired new counsel in October of 2020, who diligently set out to determine the status of the case.
9. It was only through the course of undersigned's investigation that Intervenor was first made aware of the Court's July 21, 2020 Order denying her placement of J.S.
10. It is manifestly against the interests of justice to allow Intervenor's right of appeal to be eliminated under the circumstances elucidated above.

11. Additionally, a stay of any adoption proceedings is warranted and necessary in this matter because, without such a stay, the adoption of J.S. to foster parents will become a fait accompli, and thus will amount to irreparable harm incurred by Intervenor during the pendency of her appeal insomuch as the very act which Intervenor intends to challenge through an appeal will have already occurred. Additionally, in the event that Intervenor is successful on her appeal, any nullification or other removal of an already completed adoption will have a traumatic impact on the infant J.S. As such, good cause plainly exists under Rule 50 for a stay in this matter, and the West Virginia Supreme Court grants such stays in abuse and neglect matters regularly.

12. In the event the Court declines to reissue its Order Denying Motion for Placement, Intervenor would maintain her request for a stay, as W.Va. Rule of Appellate Procedure Rule 2 allows for the suspension of the requirements of “any of these Rules in a particular case on application of a party or on its own motion,” upon good cause shown. Intervenor believes that the Supreme Court is likely to consider the circumstances articulated in the instant motion as amounting to such good cause, and, as such, may allow her appeal to be docketed even without this Court’s reissuance of its July 21st hearing Order. As such, Intervenor would request a stay of the Court’s prior Order regardless of the Court’s determination as to reincorporation of its prior Order.

WHEREFORE, for all the reasons stated above, Intervenor requests that this honorable Court reincorporate its July 22, 2020 Order into a new Order such that the timeframe for appeal begins anew and stay all proceedings relating to placement or adoption of the infant J.S. during the pendency of Intervenor’s appeal.

Intervenor
By Counsel

/s/ Christian J. Riddell

CHRISTIAN J. RIDDELL, ESQUIRE
WV Bar No.: 12202
The Riddell Law Group
329 South Queen Street
Martinsburg, WV 25401
(304) 267-3949

IN THE CIRCUIT COURT OF NICHOLAS COUNTY, WEST VIRGINIA

IN THE INTEREST OF:

ABUSE & NEGLECT

JAKEIR STRAYHORN, 06/08/10

CASE NO: 17-JA-130

ADULT RESPONDENTS:

**SHAINA JARVIS
RASHAAN STRAYHON**

**KATHRYN STRAYHORN
Paternal Grandmother, Intervenor**

CERTIFICATE OF SERVICE

I, Christian J. Riddell, legal counsel for the Intervenor Kathryn Strayhorn do hereby certify that I have served a true and accurate copy of the attached Motion To Reincorporate The Court's Prior Findings and Motion For A Stay Pending Appeal upon all parties of record by filing the same with the Court via the WV EFILE system this 10th day of November, 2020.

/s/ Christian J. Riddell
CHRISTIAN J. RIDDELL, ESQUIRE
WV Bar No.: 12202
The Riddell Law Group
329 South Queen Street
Martinsburg, WV 25401
(304) 267-3949



West Virginia E-Filing Notice

CC-34-2017-JA-130

Judge: Stephen O. Callaghan

To: Christian Riddell
stedmanriddell@gmail.com

NOTICE OF FILING

IN THE CIRCUIT COURT OF NICHOLAS COUNTY, WEST VIRGINIA

IN THE INTEREST OF: JAKEIRR STRAYHORN

CC-34-2017-JA-130

The following motion was FILED on 11/10/2020 4:28:01 PM

Notice Date: 11/10/2020 4:28:01 PM

Debbie Facemire
CLERK OF THE CIRCUIT
Nicholas
700 Main Street, Suite 5
SUMMERSVILLE, WV 26651

(304) 872-7810
DeborahR.Facemire@courtswv.gov

FILE COPY

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
DOCKET NO.

IN RE:

JS, Infant

CASE BELOW: NO: 17-JA-130

S.J., Mother
R.S., Father
K. S. Paternal Grandmother, Intervenor

**MOTION FOR LEAVE TO FILE NOTICE OF APPEAL OUT OF TIME AND MOTION
TO STAY ADOPTION PENDING APPEAL**

Comes now the Petitioner, Katherine Strayhorn, and moves this Honorable Court, pursuant to W.Va Rule of Appellate Procedure 2 and Rule 39(b), for an extension of time to file her Notice of Appeal and have said appeal docketed with the Court out of time. Petitioner further moves, pursuant to W.Va. RAP 28, for an Order staying permanency and adoption of the infant J.S. pending appeal before the Court. In support of said Motion, Petitioner avers as follows:

1. Petitioner is the grandmother of the Infant, J.S., who attempted to obtain placement of said infant upon the termination of parental rights for the infant's parents.
2. On July 21, 2020, a final contested evidentiary placement hearing was held regarding the placement of Petitioner's grandson, the infant J.S., pursuant to Petitioner's motion for placement and adoption. Said Order was entered into the record on July 22, 2020.
3. The Court's order overrode the established grandparent preference for placement on the basis that Petitioner's ICPC request with New York was denied as a result of renovations that Petitioner was doing on her home and that "waiting for any renovations to be complete and then waiting for another home study to be completed through ICPC would

unreasonably delay permanency in this case.” Final Order, ¶ 13. The Court also found that “even if the grandmother’s home study was approved, it would not be in the best interest of the child to be placed or adopted there.” Id. at ¶ 29.

4. At the time of said hearing, Petitioner was not present, but appeared through her counsel, Mr. J. Mingo Winters.
5. Petitioner avers that Mr. Winters had informed her that there was a hearing on that day (though he did not specify that it was the final evidentiary hearing on her motion for placement), and that he would call her to conference her into the hearing at the appropriate time.
6. Petitioner further states that she waited by her phone for over 3 hours, and never received a call from Mr. Winters.
7. Subsequent to said July 21st hearing, Petitioner Strayhorn attempted to contact Mr. Winter’s office multiple times in an attempt to obtain information about the status of her case, to no avail.
8. Petitioner never received a return call, text, or email of any kind from her counsel informing her that the Court had denied her motion for placement. In fact, Petitioner has never had any contact with Mr. Winters since the day of the July 21, 2020 hearing.
9. Because Petitioner was not made aware of the Court’s ruling, she had no idea that her appeal time frame had begun to run. As such, the timeframe for appeal elapsed without Petitioner being made aware of her right to appeal nor being able to have her appeal timely docketed before the West Virginia Supreme Court of Appeals.
10. Petitioner, after not hearing from her attorney, hired undersigned counsel in October of 2020, who diligently set out to determine the status of the case.

11. It was only through the course of undersigned's investigation that Petitioner was first made aware of the Court's July 21, 2020 Order denying her placement of J.S.
12. Prior to filing the instant Motion with the Court, Petitioner first attempted to move the Circuit Court to reincorporate its July 2020 final order into a new Order to start Petitioner's timeframe anew, but the Circuit Court denied said motion, stating that "the Court does not find Grandmother's explanation on why she failed to appear at the hearing credible." See Petitioner's Exhibit A, *Order Denying Motion to Reincorporate*, ¶ 26. The Court made this finding despite the fact that there was no dispute put forth as to the fact that Petitioner had not been contacted or informed by Mr. Winters of the Court's ruling.
13. Rule 2 of the West Virginia Rules of Appellate Procedure provides that "in the interest of expediting decision, or for other good cause shown, the Supreme Court may suspend the requirements or provisions of any of these Rules in a particular case on application of a party or on its own motion and may order proceedings in accordance with its direction. These Rules shall be construed to allow the Supreme Court to do substantial justice." Rule 39(b) provides that "The Court for good cause shown may upon motion enlarge the time prescribed by these rules or by its order for doing any act, or may permit an act to be done after the expiration of such time."
14. It is manifestly against the interests of justice to allow Petitioner's right of appeal to be eliminated under the circumstances elucidated above. She never had notice of the Court's final decision despite her diligent efforts to make contact with her prior counsel, and, as such, she has not had an opportunity for meaningful due process regarding her appeal rights. As such, extending the time frame to file her Notice of Appeal is warranted under the circumstances and in the interests of substantial justice.

15. Rule 28(b) provides that, should the Circuit Court refuse to grant a stay, a Petitioner apply to the Supreme Court for such stay.
16. A stay of any adoption proceedings is warranted and necessary in this matter because, without such a stay, the adoption of J.S. to foster parents will become a fait accompli, and thus will amount to irreparable harm incurred by both Petitioner and J.S. during the pendency of her appeal insomuch as the very act which Petitioner intends to challenge and forestall through said appeal will have already occurred. Additionally, in the event that Petitioner is successful on her appeal, any nullification or other removal of an already completed adoption will have a traumatic impact on the infant J.S..As such, good cause plainly exists under Rule 28 for a stay in this matter.
17. Petitioner, having now submitted to the Court its perfected appeal concomitant with the instant motion, has laid out the basis for its appeal and assignments of error, and believes that said perfected appeal provides clear and obvious grounds for success on the merits of the appeal, and thereby warrants a stay of any adoption proceedings in the underlying case.

WHEREFORE, for all the reasons stated above, Petitioner respectfully requests that this Honorable Court Grant Petitioner's motion to extend the timeframe for filing her appeal and to stay adoption proceedings below for the duration of Petitioner's pending appeal.

Respectfully,
Petitioner

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
DOCKET NO.

IN RE:

JS, Infant

CASE BELOW: NO: 17-JA-130

S.J., Mother
R.S., Father
K. S. Paternal Grandmother, Intervenor

CERTIFICATE OF SERVICE

I, Christian J. Riddell, Esq., attorney for the Petitioner, do swear that a copy of the foregoing "Motion For Leave To File Notice of Appeal Out of Time and Motion To Stay Adoption Pending Appeal" in this matter was served upon counsel for the Respondents by United States Postal Service, postage pre-paid, this 17th day of November, 2020 to Paul Williams, Esq. 203 Courthouse Annex, 511 Church Street, Summersville, WV 26651, Allison Taylor, GAL, P.O. Box 89 Fayetteville, WV 25840.


Christian J. Riddell (WV Bar #12202

The Riddell Law Group

329 S. Queen Street

Martinsburg, WV 25401

(P): 304-267-3949

(F) 304-267-5411

Email: stedmanriddell@gmail.com

BY COUNSEL:

Christian J. Riddell (WV State Bar #12202)
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Email: stedmanriddell@gmail.com

FILE COPY

SUPREME COURT OF APPEALS OF WEST VIRGINIA
NOTICE OF APPEAL

Use this form only for an appeal from a final judgment of a Circuit Court.

ATTACH COPIES OF ALL ORDERS BEING APPEALED

1. COMPLETE CASE TITLE AND CASE NUMBERS IN CIRCUIT COURT

(Include all party designations, such as plaintiff, intervenor, etc. Use an extra sheet if necessary.)

In Re: JS, infant 17-JA-130

Rahsaan Strayhorn, Father, Adult Respondent

Shania Jarvis, Mother, Adult Respondent

2. COUNTY APPEALED FROM AND NAME OF JUDGE(S) WHO ISSUED DECISION(S)

(If the presiding judge was appointed by special assignment, include an explanation of the circumstances on an extra sheet.)

Nicholas County

Judge Stephen O. Callaghan

3. **PETITIONER(S)** (List all parties who join in the petition for appeal and provide the name, firm name, address, phone number, and e-mail address of counsel of record for each party. Self-represented parties must provide an address and telephone number.)

Kathryn Strayhorn, Intervenor by Christian J. Riddell, Esquire, Riddell Law Group, 329 South Queen Street, Martinsburg, WV 25401; 304-267-3949; stedmanriddell@gmail.com

4. RESPONDENT(S) (List all parties against whom the appeal is taken and provide the name, firm name, address, phone number, and e-mail address of counsel of record for each party. Self-represented parties must provide an address and telephone number.)

Paul Williams, Assistant Prosecuting Attorney, 203 Courthouse Annex, Summersville, WV 26651; 304-872-7870;
nicholascountyprivate@gmail.com

Allison Taylor, Esquire, Allison Taylor Law, PO Box 89, Fayetteville, WV 25840; 304-574-3994;
allisontaylorlaw@gmail.com

5. **NON-PARTICIPANT(S)** (List any parties to the lower court action that will not be involved in the appeal and provide the name, firm name, address, telephone number and e-mail address of counsel of record for each non-participant. Provide the name, address and telephone number of any self-represented litigant who was a party to the lower court action but is not participating in the appeal.)

n/a

6. Date of Entry of Judgment: 07 / 22 / 2020

Date of Entry of Judgment on Post-Trial Motions, if any:

(1) / / (2) / / (3) / /

7. CRIMINAL CASES:

Defendant's Sentence:

n/a

Bail Status: n/a

8. ABUSE AND NEGLECT CASES: On an extra sheet, provide a list of the names, ages, and parent's names of all minor children, a brief description of the current status of the parental rights of each parent as of the filing of the notice of appeal, a description of the proposed permanent placement of each child, and the name of each guardian *ad litem* appointed in the case.

9. Is the order or judgment appealed a final decision on the merits as to all issues and all parties? YES / NO

If your answer is no, was the order or judgment entered pursuant to R. Civ. P. 54(b)? YES / NO

If your answer is no, you must attach a brief explanation as to why the order or judgment being appealed is proper for the Court to consider.

10. Has this case previously been appealed? YES / NO

If yes, provide the case name, docket number and disposition of each prior appeal.

11. Are there any related cases currently pending in the Supreme Court or in a lower tribunal? YES / NO

If yes, cite the case, provide the status, and provide a description of how it is related.

12. Is any part of the case confidential? YES / NO

If yes, identify which part and provide specific authority for confidentiality.

Yes, all of it as it pertains to abuse & neglect

13. If an appealing party is a corporation, an extra sheet must list the names of parent corporations and the name of any public company that owns ten percent or more of the corporation's stock. If this section is not applicable to the appealing party, please so indicate below.

The corporation who is a party to this appeal does not have a parent corporation and no publicly held company owns ten percent or more of the corporation's stock.

14. Do you know of any reason why one or more of the Supreme Court Justices should be disqualified from this case?

YES / NO If yes, set forth the basis on an extra sheet. Providing the information required in this section does not relieve a party from the obligation to file a motion for disqualification in accordance with Rule 33.

15. Is a transcript of proceedings necessary for the Court to fairly consider the assignments of error in the case?

YES / NO If yes, you must complete the appellate transcript request on page 4 of this form.

16. NATURE OF CASE, RELIEF SOUGHT, and OUTCOME BELOW

(Limit to two double-spaced pages; please attach.)

17. ASSIGNMENTS OF ERROR

Express the assignments in the terms and circumstances of the case, but without unnecessary detail. Separately number each assignment of error and for each assignment:

- (1) state the issue;
- (2) provide a succinct statement as to why the Court should review the issue.

Limit to eight pages double-spaced; please attach.

18. ATTACHMENTS

Attach to this notice of appeal the following documents in order:

- (1) extra sheets containing supplemental information in response to sections 1 - 14 of this form;
- (2) a double-spaced statement of the nature of the case, not to exceed two pages, as material required by section 16 of this form;
- (3) a double-spaced statement of the assignments of error not to exceed eight pages as required by section 17 of this form;
- (4) a copy of the lower court's decision or order from which you are appealing;
- (5) a copy of any order deciding a timely post-trial motion; and
- (6) a copy of any order extending the time period for appeal.
- (7) the statutory docket fee of \$200; or a copy of the lower court's granting of the application for fee waiver in this case. The statutory docket fee does not apply to criminal cases, appeals from the Worker's Compensation Board of Review or original jurisdiction actions.

NOTICE:

You must file a separate affidavit and application anytime your financial situation no longer meets the official guidelines or anytime the court orders you to do so.

SHORT CASE NAME: In Re: JS, infant 17-JA-130

CERTIFICATIONS

STATE OF WEST VIRGINIA

I hereby certify that I have performed a review of the case that is reasonable under the circumstances and that the contents of the Notice of Appeal are accurate and complete.

11/17/2020

Date



Counsel of record or unrepresented party

I hereby certify that on or before the date below, copies of this notice of appeal and attachments were served on all parties to the case, and copies were provided to the clerk of the circuit court from which the appeal is taken and to each court reporter from whom a transcript is requested.

11/17/2020

Date



Counsel of record or unrepresented party

SHORT CASE NAME: _____

**SUPREME COURT OF APPEALS OF WEST VIRGINIA
APPELLATE TRANSCRIPT REQUEST FORM**

INSTRUCTIONS

- (1) If a transcript is necessary for your appeal, you must complete this form and make appropriate financial arrangements with each court reporter from whom a transcript is requested.
- (2) Specify each portion of the proceedings that must be transcribed for purposes of appeal. See Rule of Appellate Procedure 9(a).
- (3) A separate request form must be completed for each court reporter from whom a transcript is requested. If you are unsure of the court reporter(s) involved, contact the circuit clerk's office for that information.
- (4) Failure to make timely and satisfactory arrangements for transcript production, including necessary financial arrangements, may result in denial of motions for extension of the appeal period, or may result in dismissal of the appeal for failure to prosecute.

Name of Court Reporter, ERO, or Typist: Sherry Young

Address of Court Reporter: 700 Main Street, Suite 5, Summersville, WV 26651

Civil Action No.: 17-JA-130 County: _____

Date of Final Order: 7/22/2020

Date of Proceeding	Type of Proceeding	Length of Proceeding	Name of Judge(s)	Portions Previously Prepared
7/12/2020	Evidentiary Hearing		Judge Callaghan	
/ /				
/ /				
/ /				
/ /				
/ /				
/ /				
/ /				

CERTIFICATIONS

I hereby certify that the transcripts requested herein are necessary for a fair consideration of the issues set forth in the Notice of Appeal.

I hereby further certify that I have contacted the court reporter and satisfactory financial arrangements for payment of the transcript have been made as follows:

Private funds. (Deposit of \$ _____ enclosed with court reporter's copy.)

Criminal appeal with fee waiver (Attach order appointing counsel or order stating defendant is eligible.)

Abuse & neglect or delinquency appeal with fee waiver (Attach order appointing counsel.)

Advance payment waived by court reporter (Attach documentation.)

11-17-2020

Date mailed to court reporter

Counsel of record or unrepresented party

**SUPREME COURT OF APPEALS OF WEST VIRGINIA
NOTICE OF APPEAL - EXTRA SHEET**

SHORT CASE NAME: In Re: JS, infant 17-JA-130

LOWER COURT CASE NO:

This is a response to **SECTION 8: ABUSE AND NEGLECT CASES** (Provide a list of the names, ages, and parent's names of all minor children, a brief description of the current status of the parental rights of each parent as of the filing of the notice of appeal, a description of the proposed permanent placement of each child, and the name of each guardian ad litem appointed in the case.)

JS, infant, age 10 yrs. old

RS, father; parental rights terminated

SJ, mother; parental rights terminated

Proposed placement is adoption

GAL is Allison Taylor

Check here if the section above is continued on the next page.

16. Nature of Case, Relief Sought, Outcome Below

This appeal pertains to the decision by the Nicholas County Circuit Court to deny placement to paternal grandmother of the infant, J.S., following the Court's termination of J.S.'s parents' parental rights.

On July 21, 2020, a final contested hearing was held on Petitioner's Motion for Placement wherein the Court chose to disregard the established preference under West Virginia law for grandparent placement in favor of granting permanency to J.S.'s foster family, relying primarily on the fact that J.S. had formed a bond with his foster family that should not be disturbed. There was no finding of unfitness levied against Petitioner.

Wherefore, Petitioner files the instant notice of appeal and requests that this Honorable Court reverse the decision of the Nicholas County Circuit Court and grant Petitioner's Motion for Placement.

17. Assignments of Error

1. The Circuit Court erred in denying Petitioner's Motion for Placement of J.S.
2. The Circuit Court erred by overriding the state preference for grandparent placement under the circumstances of the case.

IN THE CIRCUIT COURT OF NICHOLAS COUNTY, WEST VIRGINIA
NICHOLAS COUNTY, WEST VIRGINIA

IN THE INTEREST OF: JUVENILE ABUSE & NEGLECT CAES NO.

JAKIERR STRAYHORN (DOB 06-04-2010) 17-JA-130

ADULT RESPONDENTS
RAHSAAN STRAYHORN
SHANIA JARVIS

**ORDER DENYING MOTION FOR PLACEMENT AND ADOPTION
BY THE INFANT RESPONDENT'S PATERNAL GRANDMOTHER**

This matter came before the Court on July 21, 2020 for purposes of an evidentiary hearing on the motion of Kathryn Strayhorn (paternal grandmother) for placement and adoption of the infant respondent, Jak ierr Strayhorn (DOB 06-04-2010). The following parties appeared:

Paul Williams	Counsel for DHHR
J. Mingo Winters	Counsel for Kathryn Strayhorn, who did not appear
Allison Taylor	Guardian Ad Litem
Janet Burge	CPS Supervisor

After considering the testimony and the written motion, the Court makes the following findings of fact and conclusions of law:

1. The intervening paternal grandmother did not appear at this hearing although she had counsel. This hearing was set well in advance and her counsel did not offer good cause for her failure to appear. It is the Court's opinion that granting another delay would unreasonably delay permanency for the child. Therefore, the Court proceeded to take testimony.
2. Counsel for the DHHR presented the testimony of CPS Supervisor, Janet Burgh, adoptive mother Pam Toburen and former CPS worker Stephanie Smith. All testimony was subject to cross examination by counsel for the grandmother and the Guardian Ad Litem. Neither

the Guardian Ad Litem nor counsel for the grandmother presented any witnesses. All parties were provided with the right to be heard.

3. The Abuse & Neglect Petition in this case was filed November 14, 2017 alleging, among other things, that the child's father shot the child's mother wounding her and that this took place in the child's presence.
4. The mother's parental rights were terminated April 11, 2018.
5. The father's parental rights were terminated February 8, 2019.
6. The paternal grandmother's motion for placement was filed June 4, 2019.
7. The child has been placed with the adoptive mother, Pam Toburen, since November 7, 2017.
8. The grandmother resides in New York, New York and the adoptive mother lives in Nicholas County, West Virginia.
9. After the grandmother's motion was filed, the DHHR initiated the process to conduct an ICPC regarding the grandmother's home.
10. The Court notes that the grandmother's motion was filed eighteen months after the filing of the petition. This caused delay because the Department is required to conduct a home study or ICPC when a grandparent seeks placement or adoption. During the eighteen-month period prior to her motion, the grandmother did not seek placement or visitation with the child, although there was some phone contact with the child.
11. By September 5, 2019, the ICPC had not been completed and the Court entered an Order continuing the matter generally awaiting the results of the ICPC. The Court notes that it is common (and frustrating) for the ICPC process to cause delays.

12. The Court received the ICPC results January 20, 2020 disapproving placement with the paternal grandmother on grounds that the home was undergoing renovations.
13. The Court finds that there was some discussion among the parties about renewing the request for the home study after the renovations are complete. However, the Court finds that waiting for any renovations to be complete and then waiting for another home study to be completed through ICPC would unreasonably delay permanency in this case.
14. Additionally, when a grandparent requests placement or adoption, West Virginia Code §49-4-114(a)(3) requires the DHHR to conduct a home study, in this case through ICPC. However, there is no requirement that a grandparent is entitled to a second home study and the Court finds that the grandparent in this case is not entitled to a second home study and it would unreasonably delay permanency for this child.
15. At the time of the July 21, 2020 evidentiary hearing, no evidence was presented that the results of the ICPC had been amended or that the grandmother's home is a safe and suitable home. Therefore, at the time of the evidentiary hearing on the grandmother's motion (July 21, 2020), the only evidence before the Court was that the home was disapproved as a placement.
16. Kathryn Strayhorn resides in New York, New York. In her motion she alleges that neither she nor any people who reside in her household have any criminal backgrounds and that the home is safe and suitable, despite the ICPC stating otherwise. She also alleges as follows:

The infant child is biracial, with African American ancestry on his father's side. The infant child is currently placed in a home with white foster parents and in a county where, according to data maintained by the United States Census Bureau, 43 out of 26,233 citizens were of black or African American descent. By contrast, 24.3% of the over eight million residents in New York City are of

black or African American descent. Placement of the child with his paternal grandmother will allow the child to reside with members of his family in an area that is racially diverse.

17. The Court asked the grandmother's counsel for a proffer of evidence if his client were present. The arguments for placement can be summarized as follows:

- a. Placement with the grandmother would be a "family" placement and family is important.
- b. The child has African American heritage and because the adoptive mother is Caucasian, the adoptive mother cannot provide that part of the child's cultural background and heritage to his life.
- c. The grandmother is African American and is better suited to provide that cultural element of the child's heritage because she is African American.
- d. There are more African Americans in New York than in Nicholas County, West Virginia and it would be more appropriate for the child to be raised in a more diverse population.

18. The Court, for the reasons stated herein, finds no merit to any of the grandmother's claims.

This becomes especially true when the Court considers (1) that the child has thrived emotionally, socially and academically while in the foster mother's home and (2) that the child has a very strong bond with the foster mother, her family and even the community.

19. The Court notes that Jakier Strayhorn has resided with the current foster/adoptive mother (Pam Toburen) since November 7, 2017.

20. Ongoing CPS Supervisor Janet Burge testified as follows:

- a. The grandmother has had phone contact only with the child.

- b. She has observed that the child has a very strong bond with the adoptive mother and has thrived in the home. He calls her "Momma."
- c. She has observed that the child has a strong bond with the adoptive mother's other (15-year-old) adopted son in the home and refers to him as his brother.
- d. She has observed that the child is very intelligent and mature for his age and is a voracious reader.
- e. The child has lived with the adoptive mother during the ages of 8, 9 and 10 years old and these are very formative years.
- f. The child has lived in Nicholas County almost his entire life. He participates in many activities and he considers it home.
- g. The child does not want to leave the adoptive mother and move to New York.
- h. The child keeps a journal and writes. The Court notes that some of his writings were attached to the most recent Court summary and they are also attached to this Order. In some of these writings he is thankful for being away from his parents and he clearly states his desire to be adopted by Pam Toburen.

21. Adoptive mother, Pam Toburen, testified as follows:

- a. The child has consistently stayed with her since November 7, 2017.
- b. The child is high achieving academically with exceptional intelligence. He is further emotionally stable and very happy.
- c. The child is aware of his African American heritage but never asks about it.
- d. The child had scheduled phone calls with his grandmother (the intervenor) and at the end the grandmother would recite a list of people who love him. She included his parents whose parental rights were terminated. This made the child feel uncomfortable.

The grandmother was asked to stop ending the phone calls in this manner. However, she continued.

- e. It would be emotionally harmful to remove the child from her home because he is so smart, well-adjusted and bonded.
- f. The child has nightmares about the possibility of moving to New York and he is upset at the thought of leaving what he considers home.

22. Former CPS worker, Stephanie Smith, testified as follows:

- a. She was the ongoing CPS worker until accepting a job in the probation department.
- b. The child has thrived emotionally, socially and academically while in the care of the adoptive mother.
- c. The grandmother never made any effort to visit the child although the grandmother did appear in Nicholas County for two of her son's criminal hearings.
- d. The child witnessed horrible events which lead to the termination of his parents' rights, but he has nonetheless thrived under the care of the adoptive mother.
- e. She never believed that the grandmother would be an appropriate placement for the child.
- f. Since leaving the DHHR, she has observed the child around her own children at events and activities around the county and he is extremely happy and has lots of friends.
- g. The child stated he wanted to be adopted by Pam Toburen.

23. The Court finds that the testimony of Janet Burge, Pam Toburen and Stephanie Smith is credible.

24. The Court notes that while the grandparent preference must be balanced with the best interests of the child, it is the child's best interest that serves as the ultimate determinable

31. The grandmother's sporadic participation in this case certainly does not warrant removing the child because he now has the happy, loving and stable home which he deserves and enjoys.

32. Regarding the grandmother's specific arguments, the Court finds as follows:

- a. The grandmother argues that placement with her would be better because it is a placement with family. While this may be biologically accurate, this family relationship has been attenuated and contact has been sporadic and solely by phone. In addition, the child was removed from the parents' home November 7, 2017 and the grandmother did not file the motion for placement until June 4, 2019.
- b. The grandmother also argues that because she is African American, she could provide that specific African American heritage and background as a part of the child's life. She also argues that the adoptive mother cannot provide that experience because she is Caucasian. The Court finds that this argument is completely without merit and is borderline offensive. Essentially, the argument is that the child should be raised in an African American home and not a Caucasian home. The Court is of the opinion that the child should be raised in the a safe, stable and loving home which he currently has.
- c. The grandmother also cites statistics that the African American population in New York is far greater than in Nicholas County West Virginia – concluding that the child should be raised in a "more diverse" population. The Court also finds that this argument is also completely without merit. While it is true that the African American population in New York is far greater than in Nicholas County West Virginia, it does not logically follow that this child should be raised in New York for that reason. The Court is of the opinion that the child should be raised in the safe, stable and loving

home which he currently has, regardless of any disparity in African American populations between New York and Nicholas County, West Virginia.

33. The grandmother is notified as follows:

- a. You have the right to appeal this case.
- b. A notice of intent to appeal must be filed within 30 days of entry of the final order in this case.
- c. The appeal must be perfected within 60 days of entry of the final order

34. It is therefore **ORDERED** as follows:

- a. The grandmother's motion for placement and for adoption is denied.
- b. This case shall proceed with the permanency plan of adoption with Pam Toburen.
- c. The **CLERK** shall provide copies of this Order to the following:

Paul Williams
203 Courthouse Annex
Summersville, WV 26651

J. Mingo Winters
106 South Heber Street
Beckley, WV 25801

Allison Taylor
PO Box 89
Fayetteville, WV 25840

DHHR - Janet Burge
707 Professional Park Drive
Summersville, WV 26651

Enter this the 22nd day of July 2020.



STEPHEN O. CALLAGHAN, JUDGE

In the Circuit Court of Nicholas County, West Virginia

IN THE INTEREST OF:

JAKEIRR STRAYHORN

6/4/2010

Case No. CC-34-2017-JA-130

Adult Respondent(s): **N/A**

ORDER DENYING REQUEST FOR HEARING TRANSCRIPT

On November 17, 2020 the Court received a Supreme Court of Appeals of West Virginia Appellate Transcript Request Form in the above referenced matter. Upon review of the record, the Court has determined that the individual seeking the evidentiary hearing transcript was never a party in this matter and thus, is not entitled to a copy of the hearing transcript.

Accordingly, it is the **ORDER** of this Court that the request for the July 21, 2020 Evidentiary Hearing transcript is hereby **DENIED**.

/s/ Stephen O. Callaghan
Circuit Court Judge
28th Judicial Circuit

Note: The electronic signature on this order can be verified using the reference code that appears in the upper-left corner of the first page. Visit www.courtswv.gov/e-file/ for more details.



West Virginia E-Filing Notice

CC-34-2017-JA-130

Judge: Stephen O. Callaghan

To: Christian John Riddell
stedmanriddell@gmail.com

NOTICE OF FILING

IN THE CIRCUIT COURT OF NICHOLAS COUNTY, WEST VIRGINIA

IN THE INTEREST OF: JAKEIRR STRAYHORN

CC-34-2017-JA-130

The following order - case was FILED on 11/20/2020 12:35:52 PM

Notice Date: 11/20/2020 12:35:52 PM

Debbie Facemire
CLERK OF THE CIRCUIT
Nicholas
700 Main Street, Suite 5
SUMMERSVILLE, WV 26651

(304) 872-7810
DeborahR.Facemire@courtswv.gov

In the Circuit Court of Nicholas County, West Virginia

IN THE INTEREST OF:

JAKEIRR STRAYHORN

6/4/2010

Case No. CC-34-2017-JA-130

Adult Respondent(s): **N/A**

Order Denying Motion to Reincorporate and Motion for Stay

Pending before the Court is Intervenor, Kathryn Strayhorn's, Motion to Reincorporate the Court's Prior Findings and Motion for a Stay Pending Appeal. Essentially, the intervenor seeks to have this Court re-enter its Order of July 22, 2020 so that her appeal deadlines would start anew. This Court declines. Upon review of the record in its entirety, the current pending motions, and after taking into consideration the best interests of the child, Jakier Strayhorn, the Court **DENIES** the pending motions and makes the following findings of fact and conclusions of law:

1. The original Petition in this matter alleging abuse and neglect was filed November 14, 2017.
2. On April 11, 2018, the mother's parental rights were terminated.
3. On February 8, 2019, the father's parental rights were terminated.
4. The paternal grandmother and Intervenor (hereinafter, Grandmother), Kathryn Strahorn's, motion for placement was filed June 4, 2019.
5. The child has been placed with the adoptive mother, Pam Toburen, since November 7, 2017.
6. After the Grandmother's previously denied motion for placement was filed, the DHHR initiated the process to conduct an ICPC regarding the grandmother's house.
7. The Grandmother's motion was filed eighteen months after the filing of the

petition. This caused delay because the Department is required to conduct a home study or ICPC when a grandparent seeks placement or adoption. During this time, the grandmother did not seek placement or visitation with the child, although there were some phone contacts with the child.

8. By September 5, 2019, the ICPC had not been completed and the Court entered an Order continuing the matter generally awaiting the results of the ICPC.
9. On January 20, 2020, the Court received the ICPC results disapproving placement with the Grandmother on the grounds that the home was undergoing renovations.
10. On July 21, 2020 an evidentiary hearing on the Grandmother's motion for placement and adoption of the child, Jakier Strayhorn.
11. The Grandmother did not appear at this hearing although she had counsel. This hearing was set well in advance and her counsel did not offer good cause for her failure to appear.
12. For the reasons stated in the July 22, 2020 Order Denying Motion for Placement and Adoption by the Infant Respondent's Paternal Grandmother, the Court determined that placement with the Grandmother was not in the best interest of the child, and that removing him from the home he has lived in since November 7, 2017 would cause irreparable and emotional harm to the child.
13. In that Order the Court noted that "the grandmother's sporadic participation in this case certainly does not warrant removing the child because he now has a happy, loving and stable home which he deserves and enjoys.
14. The July 22, 2020 Order also notified the grandmother of her appeal rights and no notice if intent to appeal was filed and no petition for appeal has been filed. Further, the deadlines for the notice if intent to appeal and petition for appeal have expired by the time of the Grandmother's motion herein.

15. On October 22, 2020 (well past the deadlines to file a notice of intent to appeal and petition for appeal) a Notice of Appearance was filed by Christian J. Riddell, on behalf of the Grandmother.
16. Later, on November 10, 2020 the Court received the Grandmother's Motion to Reincorporate the Court's Prior Findings and Motion for a Stay Pending Appeal.
17. In her motion, the Grandmother states that the reason she did not attend the July 22, 2020 hearing was because her former counsel, Mingo J. Winters, advised her that he would call her to conference her into the hearing at the appropriate time. The Grandmother further states that she waited by the telephone for three hours waiting for her counsel's telephone call.
18. The Grandmother states that because her counsel did not return her calls, texts or emails, she was not aware of the Court's ruling and had no idea that her appeal time frame had begun to run.
19. The Grandmother first moves the Court to for an Order reincorporating its prior findings from the July 22, 2020 Order Denying Motion for Placement and Adoption by the Infant Respondent's Paternal Grandmother.
20. The Grandmother offers no authority for this Court to re-enter its prior Order so that the appeal deadlines would start anew.
21. In support of this motion, the Grandmother argues that "it is manifestly against the interests of justice to allow Intervenor's right of appeal to be eliminated under the circumstances elucidated above."
22. On the contrary, this Court finds that it is manifestly against the interests of justice to grant the Grandmother's motion and further delay permanency for this child.
23. The Court does not find the Grandmother's reason for missing the July 21, 2020 hearing credible. When questioned by the Court as to his client's whereabouts, the

Grandmother's former counsel, J. Mingo Winters, did not offer good cause for her failure to appear. Furthermore, the Grandmother admits in her motion that she was aware of the hearing date. It is not the Court's responsibility to ensure that Grandmother attended the hearing either in person or by telephone.

24. Accordingly, no good cause exists to grant the Grandmother's motion and the Court hereby **DENIES** all relief requested by the Grandmother.
25. Lastly, the Grandmother moves this Court to stay these proceeding pursuant to Rule 50 of the West Virginia Rules of Procedure for Abuse and Neglect and Rule 2 of the West Virginia Rules of Appellate Procedure.
26. It is well established that once a petition for appeal has been filed, Rule 50 does not automatically stay the proceedings. The circuit court **may grant** a stay upon a showing of good cause. As discussed above, the Court does not find the Grandmother's explanation on why she failed to appear at the hearing credible. Furthermore, Rule 50 contemplates that a motion for a stay *follows* a petition for appeal and no petition or notice was filed in this case.
27. Accordingly, Court declines the relief sought in this matter because it is clearly not in the child's best interests or wishes.
28. As such, the Court **DENIES** the motion to stay these proceedings.

/s/ Stephen O. Callaghan
Circuit Court Judge
28th Judicial Circuit

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West Virginia E-Filing Notice

CC-34-2017-JA-130

Judge: Stephen O. Callaghan

To: Christian John Riddell
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NOTICE OF FILING

IN THE CIRCUIT COURT OF NICHOLAS COUNTY, WEST VIRGINIA

IN THE INTEREST OF: JAKEIRR STRAYHORN

CC-34-2017-JA-130

The following order - case was FILED on 11/13/2020 3:32:27 PM

Notice Date: 11/13/2020 3:32:27 PM

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