

No. 24-1224

IN THE
Supreme Court of the United States

DENVER WARD,

Petitioner,

v.

LAURA FISHER, *et al.*,

Respondents.

**ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT**

BRIEF IN OPPOSITION

BRUCE A. MCKENNA
Counsel of Record
MCKENNA & MCKENNA
5801 East 41st Street
Tulsa, OK 74135
(918) 935-2085
bmckenna@mpoklaw.com

*Attorneys for Respondent,
Carol Swenson*

382496



COUNSEL PRESS

(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

1. Whether the Petition Meets the Criteria for Certiorari Review.
2. Whether the Rules of Law at Issue are Well Established That a Court Appointed Guardian *ad Litem* is Entitled to Quasi Judicial Immunity.
3. Whether a Court Appointed Guardian *ad Litem* is a State Actor.

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INTRODUCTION

The original genesis of the issues that are raised in the Petition was a paternity dispute, which ripened into a custody dispute. *Billingsly v. Ward*, Tulsa County, Oklahoma, case no. FP-2016-02 (the “Paternity Case”). That case remains pending.

The Petition herein arises from the United States Court of Appeals for the Tenth Circuit, *Ward v. Fisher*, No. 24-5083, 2025 WL 1012868 (10th Cir. April 1, 2025), *see* Petitioner’s Appendix A, affirming the Opinion and Order of the United States District Court for the Northern District of Oklahoma, *Ward v. Fisher*, case no. 23-cv-554-JFH-JFJ, Dkt. No. 48, *see* Petitioner’s Appendix B, which granted the Motion to Dismiss of defendant Carol Swenson, Respondent herein (“Swenson”), for failure to state a plausible claim for relief. After removal of the Paternity Case, the district court dismissed the state court petition, filed in Tulsa County, Oklahoma, case no. CJ-2023-04033 (hereinafter “the Complaint”).¹ In dismissing the Complaint, the district court stated:

[The Petitioner] concedes that *Vietti* “handles the identical immunity arguments raised by Fisher and Swenson and, if extended, would be outcome-determinative of both Fisher’s and Swenson’s motions.” . . . The Court finds the *Vietti* decision to be well-reasoned,

1. On June 2, 2025, this Court denied a Petition for Certiorari in *Vietti v. Welsh & McGough, PLLC, et al.*, No. 24-1033 *cert. denied*, 2025 WL 1549789, June 2, 2025, which raised issues virtually identical to the issues raised in the present matter.

thorough, and solidly based on binding Tenth Circuit and Oklahoma law. The Court adopts and extends *Vietti*'s rationale and therefore will grant the Fisher and Swenson MTDs.

Petitioner's Appendix B at p. 5 of 8.

STATEMENT OF THE CASE

The Petitioner's quest for review of the Tenth Circuit's affirmance is based, primarily, on the district and circuit courts' application of controlling Oklahoma state law and precedent and the holdings in those cases that Swenson is entitled to quasi-judicial immunity based on her activities as a court appointed guardian *ad litem* for the Petitioner's daughter.

The Petitioner asserts that certiorari should be granted because the issue of quasi-judicial immunity attaching to a guardian *ad litem*'s activities is a question of national importance. That position is questionable, at best, because any such issue is a question of state law—not federal law. Although Petitioner has cited a decision of this Court for the proposition that the interests of parents and their children raise due process considerations, Petitioner does not cite any federal court opinion that is in conflict with any other circuit court opinion on that issue.

The same obstacle to certiorari review exists in connection with the Petitioner's issue related to the scope of authority of a court appointed guardian *ad litem* who has been engaged to assist the trial court and investigate so as to advocate for the best interests of the minor child. The Petitioner has nothing more than the mere argument

of his counsel that somehow Swenson exceeded her authority. That position asks this Court to make fact-based determinations that are claimed to be erroneous or involve the misapplication of a properly stated rule of law. Those issues are directly related to the ongoing state court Paternity Case in which the trial judge has not awarded custody of the minor child to the Petitioner.

Respondent Swenson incorporates herein the positions and arguments of Respondent Fisher.

Pursuant to Supreme Court Rule 10, Swenson respectfully requests that the Petition for a Writ of Certiorari be denied.

REASONS FOR DENYING THE PETITION²

I. The Petition Does not Meet the Criteria for Certiorari Review Under Supreme Court Rule 10.

Rule 10 states:

The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important

2. The Sixth Question Presented related to attorney-client contracts does not apply to Swenson.

federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

(b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;

(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Sup. Ct. R. 10.

Insofar as sub-part (a) of Rule 10 is concerned, the Petition meets none of the stated criteria. The Tenth Circuit's opinion does not conflict with any other Tenth Circuit opinion applying Oklahoma law to the issue of qualified immunity. Neither does the Tenth Circuit opinion conflict with any opinion rendered by the Oklahoma Supreme Court. Nor does that opinion depart from "the accepted and usual course of judicial proceedings or sanction such a departure by a lower court." *Id.* at (a).

Insofar as sub-part (b) of Rule 10 is concerned, the Petitioner has pointed to (A) no opinion of the Oklahoma

Supreme Court that has decided an important issue of federal law that conflicts with any other opinion of the Oklahoma Supreme Court and (B) no state court opinion that conflicts with “another state court of last resort or of a United States court of appeals,” *id.* at (b), related to the issues raised in the Petition.

By its terms, sub-part (c) is inapplicable to this Petition.

In *Braxton v. U.S.*, 500 U.S. 344 (1991), this Court stated that “[a] principal purpose for which we use our certiorari jurisdiction . . . is to resolve conflicts among the United States courts of appeals and state courts concerning the meaning of provisions of federal law.” *Id.* at 348. In the present matter, there are no such conflicts.

The Petition meets none of the criteria set forth in Rule 10.

II. Petitioner’s First Question Seeks to Challenge the Application of the Facts to a Long-Standing Rule of Law in the State of Oklahoma That a Court Appointed Guardian *ad Litem* is an Officer of the Court and, Under the Facts as Pleaded, is Entitled to Quasi-Judicial Immunity.

“A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.” S. Ct. R. 10.

Oklahoma law is clear. In custody matters such as what lies at the heart of the issues in this Court, “the

guardian *ad litem* has almost universally been seen as owing his primary duty to the court that appointed him, not strictly to the child client.” *Kahre v. Kahre*, 916 P.2d 1355, 1362 (Okla. 1995) (“The guardian *ad litem* makes his own investigation as the trial court’s agent.”). “A court-appointed guardian *ad litem* in a custody matter is immune from suit by the ward or any other party, for all acts arising out of or relating to the discharge of his duties as guardian *ad litem*.” *Perigo v. Wiseman*, 11 P.3d 217, 217–18 (Okla. 2000). Upon appointment, “[t]he guardian *ad litem* becomes an officer of the court and is charged with the duty of protecting the rights of the infant for the State in its roll [sic] of *parens patriae*.” *Hoffman v. Morgan*, 245 P.2d 67, 70 (Okla. 1952). The Amended Order appointing Swenson specifically provides that she was appointed to “serve and protect the child’s best interest and objectively advocate on behalf of the minor child, acting as an officer of the Court to independently investigate all matters . . . as the trial court’s agent to ensure the Court receives accurate information concerning the minor child’s best interests, which is not otherwise “filtered through the adversarial attitudes of warring parents.” *See* Appendix A at p. 2a, ¶ 1.

Swenson could only have obtained the information about the claims in the Paternity Case through her activities in that case. Swenson had no contract with the Petitioner. Her activities were solely the result of her appointment by the state court to assist that court by investigating and advocating for the best interests of the minor child. That appointment resulted in Swenson being an officer of the court. Okla. Stat. tit. 43, § 120.7(A) (“As used in this section, “court expert” means a parenting coordinator, guardian *ad litem*, custody evaluator or

any other person appointed by the court in a custody or visitation proceeding involving children.”).

The Tenth Circuit’s opinion stated:

Absolute immunity, which “has long been available to protect judges from liability for acts performed in their judicial capacity,” “has been extended to ‘certain others who perform functions closely associated with the judicial process.’” *Dahl v. Charles F. Dahl, M.D., P.C. Defined Benefit Pension Tr.*, 744 F.3d 623, 630 (10th Cir. 2014) (quoting *Cleavenger v. Saxner*, 474 U.S. 193, 200 (1985)). This includes guardians ad litem, such as Ms. Swenson, and court-appointed child custody evaluators, such as Dr. Fisher. *See Dahl*, 744 F.3d at 630 (guardian ad litem); *Hughes v. Long*, 242 F.3d 121, 128 (3d Cir. 2001) (child custody evaluators). Such immunity “is often called quasi-judicial immunity” because “it is applied to someone other than a judge.” *Dahl*, 744 F.3d at 630. The purpose of quasi-judicial immunity is to allow these officers to “exercise their judgment (which on occasion may not be very good) without fear of being sued in tort.” *Id.* at 631.

There are, of course, “limits to the scope of th[is] immunity.” *Id.* at 630. But those cases are the exception, rather than the rule. As the Supreme Court noted long ago, a party entitled to judicial or quasi-judicial immunity does not lose that immunity simply because “the action

he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the clear absence of all jurisdiction.” *Stump v. Sparkman*, 435 U.S. 349, 356–57 (1978).

Petitioner’s Appendix A, at pp. 7a–8a. The Tenth Circuit held:

After examining the record on appeal, we agree with the district court that Ms. Swenson and Dr. Fisher were entitled to quasi-judicial immunity from Mr. Ward’s claims. Notably, the complaint concedes both defendants were appointed by the state court to assist it in the resolution of the Paternity Action. Further, all of the allegations against Ms. Swenson and Dr. Fisher involve acts that can be characterized as “within the core duties” of the respective roles they were appointed to in “assisting the court” in the Paternity Action. . . . Although the complaint alleges that both defendants acted improperly in carrying out their appointments, none of the allegations are sufficient to establish that either defendant acted in the clear absence of all jurisdiction. We therefore conclude the district court did not err in dismissing the claims against Ms. Swenson and Dr. Fisher.

Id. at p. 8a (internal citation and footnotes omitted) (underscore supplied).

In accordance with Supreme Court Rule 15, a potential misstatement of law is found in the Petitioner's contention that “[t]he Tenth Circuit's decision cannot be reconciled with the fundamental fairness required by due process.” Petition at p. 8. In support of that statement, the Petitioner cited to courts applying South Carolina law, *Falk v. Sadler*, 533 S.E.2d 350 (S.C. 2000), Utah law, *Dahl v. Charles F. Dahl, M.D., P.C.*, 744 F.3d 623 (10th Cir. 2014), Kansas law, *Shophar v. City of Olathe*, 2017 U.S. Dist. LEXIS 93069, 2017 WL 2618494 (D. Kan. June 18, 2017), and New Mexico law. *Walker v. New Mexico*, 2015 U.S. Dist. LEXIS 197638, 2015 WL 13651131 (D.N.M. Sept. 21, 2015). None of those cases support the Petitioner's conclusion.³ More importantly, whether there is a “significant split of authority” between the laws of different states is a red herring. *See* Petition at p. 9. Oklahoma's law is clear. The fact that other states' standards may be different from Oklahoma's does not rise to the level of a dispute worthy of certiorari review in this Court.

Simply stated, the Petitioner does not agree with the application of well settled law. The specific language of the order appointing Swenson as an officer of the court is consistent with that law and even cites *Kahre v. Kahre*, 916 P.2d 1355 (Okla. 1995). The Petitioner's position is a challenge not to the law but, rather, based on a claim that the lower courts have misapplied “a properly stated rule of law.” S. Ct. R. 10.

3. Indeed, those four cases were cited in the *Vietti* Petition in precisely the same language as appears in the Petition in the present matter.

A second potential misstatement is one of mixed fact and law and relates to the Petitioner's claims that Swenson failed to discharge her statutory duty to report alleged child abuse to the state of Oklahoma. Petition at pp. 8–9. For several reasons, that statement is misleading. First, the Petitioner alleged that “[o]n or about April 25, 2017, Oklahoma Department of Human Services (“DHS”) issued a finding substantiating Mother’s abuse of [the minor child], H.A.B.” Petitioner’s Appendix C at p. 40a, ¶19. In the Paternity Case, the Petitioner’s “Application for Ex Parte Emergency Order,” filed on June 2, 2017, the Petitioner represented to the court “[t]hat there have been two previous reports to the Department of Human Services on August 8, 2016 (Report No. 1777468) and February 3, 2017 (Report No. 1815760).” Appendix B at p. 12a, ¶ IV. Second, in that same application, the Petitioner advised the court that “there is currently an open investigation … as to medical child abuse” that he understood that “the allegations are likely to be ‘substantiated.’” *Id.* Based on the foregoing, submitting yet another report by Swenson would, as a matter of law, have been superfluous and unnecessary. In *Paulson v. Sternlof*, 15 P.3d 981 (Okla. Civ. App. 2000), the court stated:

The record is replete with evidence that D.H.S. was already informed of the suspected abuse by the time of Sternlof’s involvement. In any event, the child abuse reporting statutes do not create a private right of action. Knowing and willful failure to report is a criminal misdemeanor. [10A O.S. § 1-2-101(B)(1)]. There is no provision, however, for civil liability.

Id. at 984. Finally, and possibly most importantly, the initial report to DHS was submitted on August 8, 2016,

ten (10) days prior to the filing of the Amended Order appointing Swenson as H.A.B.'s guardian *ad litem* in the Paternity Case. Appendix A at p. 1 (file stamp).

A third potential misstatement—or, at least a misleading impression conveyed—is the Petitioner's reference to the allegation that "Swenson exhibited a pattern of neglect of Ward's child, knowing that the child was being sexually, physically, medically, and emotionally abused by the mother and taking no action to protect the child." Petitioner's Appendix C at pp. 43a–44a. What the Petition does not reveal is that Swenson's June 2, 2017, affidavit in support of the Petitioner's Emergency Ex Parte Motion in the Paternity Case case was submitted to that court two (2) days after a report prepared by Mary Ellen Stokett, M.D., dated May 31, 2017, and first received by Swenson on June 1, 2017. In Swenson's affidavit, she stated:

6. That recent events and descriptions provided by father in conjunction with over "diagnosing" of the minor child by mother in regard to not uncommon symptomology exhibited by the child, in conjunction with the Child Maltreatment Assessment report provided to the GAL 6-1-17 (Exhibit "A" attached hereto and made a part hereof) this GAL believes that the minor child is in a[n] environment while under the Petitioner mother's care that has and could endanger the safety of the minor child and cause irreparable harm.
7. That the Child Maltreatment Assessment report provided to the GAL 6-1-17 was compiled

and promulgated by Mary Ellen Stockett, M.D., Child Abuse Pediatrics, University of Oklahoma, Pediatrics Department, in conjunction with a panel of other experts, substantiates both historical and ongoing concerns of medical child abuse by Petitioner-mother.

8. That the GAL asserts that the only way to ensure the safety and well-being of this minor child is to terminate the temporary joint custody and grant physical custody to Respondent-father subject to supervised visitation with Petitioner-mother.

Appendix B at pp. 15a to 16a, ¶s 7–8.⁴

III. As a Court Appointed Guardian *ad Litem*, Swenson is not a State Actor.

The allegations as to the claimed violations of the Eighth and Fourteenth Amendments to the Constitution of the United States were as follows:

75. In the alternative, Plaintiff asserts that Defendants Swenson and Fisher, acting under cover [*sic*] of state law, violated the Eighth and/or Fourteenth Amendments of the United States Constitution.

4. May 31, 2017, was a Wednesday. Swenson's affidavit was filed on the immediately following Friday, June 2, 2017, the same day as Petitioner's Application for Ex Parte Emergency Order was filed. *See* Appendix B at p. 10a.

76. At all times pertinent hereto, Defendants Swenson and Fisher were acting under color of state law. Defendants Swenson and Fisher were endowed by the Tulsa County Court with powers or functions that were governmental in nature, such that Defendants Swenson and Fisher became instrumentalities of the State and subject to its constitutional limitations.

Petitioner's Appendix C at p. 49a, ¶s 75–76. In reality, those paragraphs are simple conclusions of law. The district court was presented with no fact allegations to support the federal questions attempted to be set forth the Complaint. The actual question presented to this Court in connection with this claim is whether the pleaded facts were sufficient to state a claim under 42 U.S.C. § 1983. As such, the Petition herein seeks to test the application of *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), and their progeny to the facts of this case. The asserted error consists of a challenge grounded in the “misapplication of a properly stated rule of law.” S. Ct. R. 10. The Petition does not meet this Court's requirements for certiorari review.

Without regard to the foregoing, in Question Presented No. 5, the Petitioner has expressly raised the issue of whether “guardian *ad litem*s and custody evaluators [are] state actors when their duty is to the Court, not the individual?” Petition at p. i. Petitioner states his reason for raising that question as follows:

Even though the Tenth Circuit did not address this argument in their opinion, the District Court by its extension of the opinion in *Vietti*

v. Welsh & McGough, PLLC, Case No. 21-CV-00058-WPJ-SH, 2024 WL 870562 (N.D. Okla. Feb. 29, 2024), incorporated this argument; therefore, Ward further asserts this argument herein.

Petition at p. 16, n. 4.

The district court opinion in *Vietti* concluded that “a court-appointed guardian is not a state actor because he or she represents the best interests of the individual, not the state.” *Vietti v. Welsh & McGough, PLLC*, Case No. 21-CV-00058-WPJ-SH, 2024 WL 870562 at *4 (N. D. Okla. Feb. 29, 2024). The Tenth Circuit summarily affirmed that decision. *Vietti v. Welsh & McGough, PLLC*, No. 4:21-CV-0058-WPL-SH, 2024 WL 5220734 at *2 (10th Cir. Dec. 26, 2024).

In the present matter, the Tenth Circuit stated “[b]ecause we conclude Dr. Fisher was entitled to quasi-judicial immunity from Mr. Ward’s claims, we need not address Mr. Ward’s argument that Dr. Fisher was a state actor for purposes of 42 U.S.C. § 1983.” *Ward v. Fisher*, No. 24-5083, 2025 WL 1012868 at *3 (10th Cir. April 1, 2025).

There are four (4) reasons that Question No. 5 should not give rise to a grant of certiorari review. First, the Question does not present a novel question of law. Second, the Question attempts to obtain certiorari review of the application of facts to a well settled principal of law. Third, even if the Tenth Circuit had reviewed the issue separately, the Petitioner would not have prevailed. The Tenth Circuit has already addressed the issue and the Petitioner has

not met his burden to show that there is a genuine split of authority between and among the various courts, as set forth in Supreme Court Rule 10. The district court opinion in *Vietti*, which was adopted by the district court's opinion in the present matter, succinctly stated the Tenth Circuit's holdings on the state actor issue. *Vietti v. Welsh & McGough, PLLC*, Case No. 21-CV-00058-WPJ-SH, 2024 WL 870562 at *4 (N. D. Okla. Feb. 29, 2024) ("for purposes of § 1983, a court-appointed guardian is not a state actor because he or she represents the best interests of the individual, not the state."). The *Vietti* Court specifically cited to Tenth Circuit decisions as follows:

Phan v. Volz, 2021 WL 2213229, at *2 (D. Colo. April 15, 2021) (citing *Adams v. People of State of Colorado*, 1999 WL 273327, at *1 (10th Cir. 1999) (affirming dismissal of claim against 'court appointed attorneys, conservator and guardian *ad litem*' as legally frivolous because those individuals are not state actors for purposes of imposing liability under § 1983); *Bangerter v. Roach*, 467 F. App'x 787, 788 (10th Cir. 2012) (citing *Meeker v. Kercher*, 782 F.2d 153, 155 (10th Cir. 1986) (guardians *ad litem* are not state actors for purposes of § 1983 because they give their 'undivided loyalty to the minor, not the state.')).

Id.

In *Rice v. Sioux City Memorial Park Cemetery*, 349 U.S. 70 (1955), this Court stated:

"it is very important that we be consistent in not granting the writ of certiorari except in cases

involving principles the settlement of which is of importance to the public, as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the Circuit Courts of Appeals.”

Id. at 79.

CONCLUSION

In the present matter, the law is well established and certiorari review should be denied.

Respectfully submitted,

BRUCE A. MCKENNA
Counsel of Record
MCKENNA & MCKENNA
5801 East 41st Street
Tulsa, OK 74135
(918) 935-2085
bmckenna@mpoklaw.com

*Attorneys for Respondent,
Carol Swenson*

APPENDIX

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**APPENDIX A — AMENDED ORDER OF THE
DISTRICT COURT IN AND FOR TULSA COUNTY,
STATE OF OKLAHOMA, FILED AUGUST 18, 2016**

IN THE DISTRICT COURT IN AND FOR
TULSA COUNTY
STATE OF OKLAHOMA

CASE NO. FP-2016-021
DOCKET D

DEBRA BILLINGSLY,

Petitioner,

vs.

DENVER G. WARD, JR.,

Respondent.

Filed August 18, 2016

**AMENDED ORDER APPOINTING GUARDIAN
*AD LITEM***

Now on this 12th day of August, 2016, this matter comes before the Court pursuant to Petitioner's Motion to Appoint Guardian ad Litem ("GAL") for the Minor Child in this case and pursuant to Okla. Stat. tit. 43 § 107.3; Petitioner appearing in person, being represented by and through their counsel of record, Heather Flynn Earnhart and Megan M. Beck of HALL, ESTILL, HARDWICK, GABLE,

Appendix A

GOLDEN & NELSON, P.C.; Bradley A. Grundy and Angela L. Smoot of CONNER & WINTERS, LLP, appearing for the Respondent. The Court having reviewed the file and the allegations herein and being fully advised, makes the following Findings and Orders:

1. IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the Court that a Guardian Ad Litem (hereinafter “GAL”) shall be appointed in this case to serve and protect the child’s best interest and objectively advocate on behalf of the minor child, acting as an officer of the Court to independently investigate all matters concerning the best interests of the following minor child, namely: H.B., born June 2014, (hereinafter the “minor child”). The GAL is appointed to represent the best interests of the minor child by conducting an investigation as set forth in this Order as the trial court’s agent to ensure the Court receives accurate information concerning the minor child’s best interests, which is not otherwise “filtered through the adversarial attitudes of warring parents.” *See Kahre v. Kahre*, 1995 OK 133, 916 P.2d 1355.

2. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Carol Swenson is hereby appointed as GAL for the minor child to act as an officer and agent of the Court with the authority to protect and foster the best interests of the minor child. The contact information for the GAL is 1719 East 71st Street, Tulsa, Oklahoma 74136, (918) 481-5898.

3. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that in addition to other duties required by the court and as specified by the Court, the GAL is tasked with the following responsibilities:

Appendix A

- a. Obtain and review documents, reports, school and medical records and other information and documentation relevant to the case;
- b. Meet with and observe the child in appropriate settings including investigating the home conditions of the parties and of any third parties as applicable;
- c. Interview parents, caregivers, teachers and other school officials, health care providers and any other collateral person with knowledge relevant to the case including, but not limited to, other family members, and counselors;
- d. Advocate the best interests of the child by participating in the case, attending any hearings depositions or mediations in the matter and advocating appropriate services for the child when necessary;
- e. Monitor the best interests of the child throughout any judicial proceeding; and
- f. Present written reports to the Court and the parties prior to trial or at any other time as specified by the Court or upon such other terms and conditions of the parties, which are either agreed to by them or otherwise ordered by the Court on the best interests of the child; that said reports shall include conclusions and recommendations and the facts upon which they are based.

Appendix A

4. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the GAL shall undertake and commence such pleadings, motions, and discovery as shall be reasonable and necessary, as warranted by the judgment and discretion of the GAL under the circumstances presented, or as requested by the Court. The GAL shall have the right to participate in any evidentiary hearing, including presentation of evidence on behalf of the minor child and examining witnesses called by either party.

5. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that the GAL is appointed as an officer of this Court with the authority to protect and foster the best interests of the minor child and shall take all necessary action to objectively advocate for and protect the inherent rights of the child to receive the custody, visitation and support of her parents in accordance with the best interest of her mental, physical and moral welfare. The GAL shall be entitled to interview the minor child and the parties at her discretion and per the parameters she so chooses and obtain information from whatever sources deemed necessary to consult with the minor child as clients; and shall make an independent judgment of what she believes to be in the best interest of the child.

6. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that both parties shall cooperate by making the minor child available to the GAL and neither party shall interfere with or otherwise abridge the GAL'S ability to represent the minor child's interests. Further, the parties shall in all respects communicate to the GAL any information that he or she may have that impacts or may impact the minor child.

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7. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that the GAL shall be entitled to petition the Court for appointment of any mental health professional or other professionals deemed necessary in addition to those currently in place, to evaluate the minor children and to assist in making a recommendation as to the best interests of the minor child.

8. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that the GAL shall be notified before any action affecting the minor child is taken by either the parents or their counsel.

9. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that pursuant to *Kelley v. Kelley*, 2007 OK 100, 175 P.3d 400, the parties' constitutional due process dictates that the GAL shall be subject to cross-examination by the parties' attorneys at any evidentiary hearing concerning the basis of any recommendations or report made by the GAL pursuant to this Order.

10. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that, upon presentation of a certified copy of this Order to any agency (including the Department of Human Services), hospital, organization, school, person or office, pediatrician, psychologist, psychiatrist, or other medical or mental health provider, or police department, the GAL shall have the right to inspect and copy any records relating to the minor child and both parties to this action. The GAL shall maintain any information received from any such source as confidential, and said information shall not be disclosed except in reports to the Court, to

Appendix A

the parties and their counsel, or as otherwise directed by the Court.

11. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that the GAL is hereby vested by the Court with all powers, privileges, and responsibilities necessary or desirable for the full and effective performance of her duties and obligations to the minor child. If the GAL is in doubt at any time as to the scope or limitation of the authority, the GAL may apply to the Court on an emergency basis, if necessary, for clarification of that authority.

12. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that the fees of the GAL, including any required retainer fee, shall be paid by both parties, with Petitioner paying 15% of the fees and Respondent paying 85% of said fees, without prejudice to either party's request for reallocation at a later date.

13. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the GAL shall serve in this case until the entry of a final order resolving custody of the minor child.

SUCH IS THE ORDER OF THE COURT.

/s/ Stephen R. Clark
JUDGE OF THE DISTRICT
COURT [8-12-2016]

STEPHEN R. CLARK

Appendix A

Approved as to Form:

/s/ Bradley A. Grundy
Bradley A. Grundy, OBA No. 14240
Angela L. Smoot, OBA No. 20267
CONNER & WINTERS, LLP
4000 Williams Center
Tulsa, OK 74172
Telephone: (918) 586-8711
Facsimile (918) 586-8982
ATTORNEYS FOR RESPONDENT,
DENVER G. WARD, JR.

/s/ Megan M. Beck
Heather Flynn Earnhart, OBA No. 19456
Megan M. Beck, OBA No. 30962
HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON, P.C.
320 South Boston Ave, Ste. 400
Tulsa, OK 74103-3708
Telephone: (918) 594-0400
Facsimile: (918) 594-0500
ATTORNEYS FOR PETITIONER,
DEBRA BILLINGSLY

Appendix A

VERIFICATION

STATE OF OKLAHOMA }
COUNTY OF TULSA } ss.

The undersigned, of lawful age and first duly sworn upon oath, deposes and states as follows: That he is an attorney for the Respondent in the above-styled matter; that he has read the above and foregoing instrument; and that he believes the testimony and evidence at trial will prove the facts and matters therein setforth are true and correct.

/s/ N. Scott Johnson
N. Scott Johnson

Subscribed and sworn to before me on this 2 day of June, 2017.

/s/ Melody Freeman
Notary Public

Appendix A

CERTIFICATE OF SERVICE

I certify that on the 2 day of June, 2017, a true and correct copy of this instrument was:

mailed with postage prepaid thereon;

mailed by certified mail,
Return Receipt No. _____,

transmitted via facsimile;

transmitted via email to _____; or

hand-delivered;

to: Heather Flynn Earnhart, Esq.
Megan M. Beck, Esq.
HALL ESTILL HARDWICK GABLE
GOLDEN & NELSON, P.C.
320 South Boston Avenue, Suite 200
Tulsa, Oklahoma 74103
Attorneys for Petitioner

Carol L. Swenson, Esq.
1719 East 71st Street
Tulsa, Oklahoma 4136
Guardian ad Litem

/s/ N. Scott Johnson
N. Scott Johnson

**APPENDIX B — PETITIONER'S APPLICATION
FOR EX PARTE ORDER OF THE DISTRICT
COURT IN AND FOR TULSA COUNTY,
STATE OF OKLAHOMA, FILED JUNE 2, 2017**

IN THE DISTRICT COURT IN AND FOR
TULSA COUNTY
STATE OF OKLAHOMA

CASE NO. FP-2016-21
FD DOCKET D
JUDGE CLARK

DEBRA BILLINGSLY,

Petitioner,

v.

DENVER G. WARD, JR.,

Respondent.

Filed June 2, 2017

**PETITIONER'S APPLICATION FOR EX PARTE
EMERGENCY ORDER**

COMES Now, the Respondent, Denver G. Ward, Jr., by and through his attorney of record, N. Scott Johnson of the law firm, N. SCOTT JOHNSON & ASSOCIATES, P.L.L.C., and pursuant to 43 O.S. Subsections 110 and 107.4 and in support of his Application for Emergency Ex Parte Order, alleges and states as follows:

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I.

That on the 5th day of December, 2016, an Agreed Temporary Order was entered and filed in this matter. Pursuant to said order, the parties were awarded Joint legal custody of the minor child H.B., born 2014. Further, the parties are to share physical custody on a 50/50 basis with the exchange to occur every five (5) days.

II.

That Carol Swenson was appointed Guardian Ad Litem in this matter pursuant to the Order Appointing Guardian Ad Litem previously filed on the 9th day of August, 2016.

That Carol Swenson has been involved with the parties and advocated for the best interests of the minor child for nearly a year.

III.

That both Respondent and the Guardian Ad Litem have had current and historical concerns regarding Petitioner's approach toward medical care for the minor child. That Respondent provided the child's historical medical records to a Dr. Mary Ellen Stockett who specializes in pediatric child abuse and is recognized for her expertise in the State of Oklahoma.

That upon reviewing the medical history of the minor child, Dr. Stockett's finding was "medical child abuse".

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Upon making such finding, Dr. Stockett reported the abuse to the Department of Human Services and provided a copy of the Child Maltreatment Assessment Records Review report to the Guardian Ad Litem. *See*, attached Exhibit “A”, incorporated herein by reference.

IV.

That there have been two previous reports to the Department of Human Services on August 8, 2016 (Report No. 1777468) and February 3, 2017 (Report No. 1815760). That there is currently an open investigation regarding the findings made by Dr. Stockett as to medical child abuse. That upon Respondent’s counsel speaking with the DHS worker, Bridget O’Brian and her supervisor, Betsy Boyd, it is understood that based upon the report of Dr. Stockett and review of said report and information with the medical doctor employed by the Department of Human Services the allegations are likely to be “substantiated”.

V.

That based upon the findings of Dr. Stockett, the current DHS investigation and the medical knowledge of the Guardian Ad Litem, Carol Swenson (who maintained a nursing license in the State of Oklahoma until October, 2016) combined with the knowledge and information she has obtained regarding the child’s current and historical medical treatment, she believes that in the event the Court does not immediately terminate Joint legal custody and immediately place the minor child in the sole legal custody of Respondent subject to supervised visitation to

Appendix B

Petitioner, the minor child will likely suffer irreparable harm.

VI.

That Respondent's attorney contacted Petitioner's attorney to advise of the presentation of the instant application at 9:00 a.m. on the 2nd day of June, 2017 before this Honorable Court.

WHEREFORE, Respondent requests that, upon hearing, this Honorable Court enter an ex parte order terminating joint custody, awarding Respondent temporary sole custody of the minor child, requiring that the minor child's contact with Petitioner be professionally supervised at Petitioner' sole expense, including travel, in the State of Texas, set this matter for show cause hearing, Respondent be awarded his attorney fees and costs expended herein, and such other and further relief to which Respondent is entitled and which this Honorable Court deems equitable and just.

/s/ N. Scott Johnson
N. Scott Johnson, OBA #15268
N. SCOTT JOHNSON & ASSOCIATES, P.L.L.C.
302 East 10th Street
Tulsa, Oklahoma 74120
Telephone: (918) 794-3333
Facsimile: (918) 794-3336
Attorney for Respondent

Appendix B

IN THE DISTRICT COURT IN AND FOR
TULSA COUNTY
STATE OF OKLAHOMA

CASE NO. FP- 2016-21
JUDGE STEPHEN CLARK
FD DOCKET D

DEBRA BILLINGSLY,

Petitioner,

v.

DENVER G. WARD,

Respondent.

AFFIDAVIT OF CAROL L. SWENSON

STATE OF OKLAHOMA)
) ss.
CITY OF TULSA)

I, Carol L. Swenson, as court appointed Guardian Ad Litem herein pursuant to 43 O.S. §107.3, being of lawful age and duly sworn, do depose and state:

1. Pursuant to the written “filed” stamped Amended Order Appointing Guardian Ad Litem, entered August 12, 2016 and filed of record August 18, 2016, this Court appointed me Guardian Ad Litem

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(hereinafter “GAL”) for the minor child of the parties, H.M.B., born June, 2014.

2. That as GAL I was ordered to investigate and have investigated the matters pertaining to H.M.B., through interviews, documents, reports, parental journals and ongoing communications with persons pertaining to this case in regards to the child, as provided to and obtained by me.
3. That until October 2016 this GAL maintained her license as a registered nurse with the Oklahoma State Board of Nursing for the State of Oklahoma.
4. That this case has a long and tortured history from the birth of the minor child in regards to medical appointments, procedures, medications, and treatments arranged by mother for and on the minor child, with at least 18 different health care providers before the age of 2 ½ years.
5. In addition there is great concern from the beginning in regards to overmedication of the child, which said issue has once again raised its ugly head in spite of the fact that mother denies giving any medications to the child that are not listed in the medical log.
6. That recent events and descriptions provided by father in conjunction with over “diagnosing” of the minor child by mother in regards to not uncommon symptomology exhibited by the child, in conjunction

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with the Child Maltreatment Assessment report provided to the GAL 6-1-17 (Exhibit “A” attached hereto and made a part hereof) this GAL believes that the minor child is in a environment while under the Petitioner-mother’s care that has and could endanger the safety of the minor child and cause irreparable harm.

7. That the Child Maltreatment Assessment report provided to the GAL 6-1-17 was compiled and promulgated by Mary Ellen Stockett, M.D., Child Abuse Pediatrics University of Oklahoma, Pediatrics Department, in conjunction with a panel of other experts, substantiates both historical and ongoing concerns of medical child abuse by Petitioner-mother.
8. That the GAL asserts that the only way to ensure the safety and well-being of this minor child is to terminate the temporary joint custody and grant physical custody to Respondent-father subject to supervised visitation with Petitioner-mother.

Further Affiant sayeth not.

/s/ Carol L. Swenson
Carol L. Swenson, OBA #8798
Swenson & Swenson, PLLC
1719 East 71st Street
Tulsa, OK 74136
(918) 481-5898
FAX: 918-481-5898
Guardian Ad Litem for the Minor Child

*Appendix B***Child Maltreatment Assessment
Records Review**

Date of Consult: May 31, 2017

Child's Name: [REDACTED]

DOB: June 23, 2014

Age: 2 years 11 months

Source of records reviewed: The University of Texas Health Sciences Center, Houston, South Tulsa Pediatrics, Saint Francis Hospital, Tulsa, Allergy Clinic of Tulsa, Eastern Oklahoma ENT, Warren Clinic, Tulsa

Summary of Information Reviewed: [REDACTED] was referred for review of medical records because of concern about medical child abuse. Summary of [REDACTED]'s medical care is presented in the table below.

Date	Provider	Assessment	Therapy
6-23-14	Tomball Regional Medical Center	Term, AGA girl, echocardiogram because of report of pericardial effusion on prenatal ultrasound, small patent ductus arteriosus, home 6-24-14, normal newborn screen, normal hearing screen, no prenatal ultrasound record at Tomball Regional Medical Center when requested (could be from other location)	

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6-25-14	Memorial Hermann Medical Group (MHMG)	Well child care, pericardial effusion prenatal echocardiogram	Referral cardiology, FU 2 weeks
7-1-14	MHMG phone call	Hadley's mother, Debra Billingsiy, reported hands and feet and face blue	Advised to take to emergency department
7-3-14	Pediatric Cardiology at University of Texas	Echocardiogram, electrocardiogram, normal heart	FU 6 months
7-8-14	MHMG	Well Child, gastroesophageal reflux disease (GERD)	Zantac, FU for 2 month well child care
7-14-14	MHMG phone call	Mother reported still choking and raspy, eating and crying constantly	Continue Zantac and can give probiotic
7-18-14	MHMG phone call	Mother reported worse reflux, choking and gagging, changed to soy formula, on gas drops, probiotic and Zantac,	Change to Alimentum or Nutramigen, continue medications, ED if tongue blue

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7-21-14	MHMG phone call	Mother reported very fussy	Continue Alimentum, discussed soothing
7-21-14	MHMG	Milk protein allergy (no blood in stool)	Prevacid, Zantac, Alimentum, Swallow study, call in 2 weeks
7-25-14	MHMG phone call	Mother asked to add rice cereal to formula	Add rice cereal to formula
7-28-14	MHMG phone call	Mother reported continued vomiting and 5 bowel movements	Referral gastro-enterology
7-31-14	MHMG	Swallow study normal	
8-13-14	UT Physicians, Gastro-enterology (UTP-GI)	Vomiting	Neocate, stop Zantac, continue Prevacid, FU 3 weeks
8-13-14	UT Nutrition	Vomiting	Neocate 22oz/day

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8-18-14	MHMG	Well child, GERD, milk protein allergy	Zantac, Prevacid, Neocate, imunizations, FU 2-3 weeks
9-3-14	UT-GI	Vomiting, esophageal reflux, milk protein intolerance	Bethanecho 1, Prevacid, Zantac, abdominal ultrasound, upper GI series, FU 2-3 weeks
9-8-14	MHMG	GERD	Continue Neocate, Prevacid, Zantac, Upper GI and abdominal ultrasound as recommended by GI
9-17-14	MHMG phone call	Knot on head	FU GI since has upcoming appointment
9-22-14	Memorial Hermann Katy Hospital	Upper GI series normal Abdominal ultrasound normal	

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9-23-14	UT-GI	Milk protein intolerance, esophageal reflux, failure to thrive, diarrhea, scalp lump	Prevacid, Zantac, Neocate with increased caloric content, referral cardiology and ENT, fecal elastase, ultrasound of head, FU following week
9-30-14	UT-GI	Milk protein intolerance, esophageal reflux, noisy breathing, improved weight gain	Prevacid, Zantac, Neocate, FU ENT as recommended, FU 2 weeks
10-6-14	MHMG	Upper respiratory infection (URI)	Zyrtec, Benadryl, Zantac, nasal saline
10-9-14	Memorial Hermann Katy Hospital Radiology	Ultrasound of head and neck because of scalp lesion, negative	

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10-13-14	MHMG	Well child, scalp lesion, GERD, milk protein allergy	Continue Zantac, Prevacid, Neocate, immunizations, FU at 6 month well visit
10-14-14	UT-GI	Milk protein intolerance, esophageal reflux	Prevacid, Zantac, Neocate, can try milk of magnesia, FU ENT, FU 1 month.
10-29-14	MHMG phone call	Mother reported scalp lesion getting bigger	Monitor size at home
11-18-14	UT-GI	Milk protein intolerance, esophageal reflux, improved weight gain	Prevacid, Zantac, Neocate, FU 2 months
12-15-14	MHMG	Well child, scalp lesion, milk protein allergy, GERD	Referral dermatology, FU cardiology, ENT, Neocate, immunizations, mother declined influenza immunization, FU at 9 month well visit

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1-14-15	UT-Cardiology	Innocent murmur due to peripheral pulmonary stenosis, normal echocardiogram 7-14	No therapy needed, murmur expected to spontaneously resolve, FU 1 year
3-3-15	MHMG phone call	Mother reported green and yellow nasal discharge	Pediatric appointment
3-4-15	South Tulsa Pediatrics (STP)	URI	Symptomatic Therapy, follow up (FU) prn
3-24-15	MHMG	Well child, allergic rhinitis, GERD, milk protein allergy	Zantac, Neocate, FU GI, Zyrtec, Benadryl, FU 12 month well visit
3-24-15	UT-GI	Milk protein intolerance, esophageal reflux, adequate weight gain	Zantac, Neocate, FU in 3 months
7-29-15	MHMG	Well child, GERD	Zantac, FU GI, immunizations, FU 15 month well visit

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7-29-15	UT-GI	Esophageal reflux, milk protein intolerance	Soy milk trial, Zantac, FU 3-4 months
8-6-15	STP	URI	Symptomatic Therapy, FU prn
8-25-15	MHMG phone call	Mother reported nasal congestion, cough, choking	Zyrtec, Benadryl
9-8-15	MHMG phone call	Mother reported constipation after formula changed, giving enemas	
9-11-15	Austin Emergency Center	Reported history of patient swallowed lava rack, stopped breathing for 30 seconds, no cyanosis, vomited 1 time, x-ray to evaluate for foreign body, no foreign body seen	Felt to be foreign body ingestion but transferred to Dell Children's Hospital to rule out foreign body aspiration.

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9-11-15	Dell Children's Medical Center	History reported by mother of choking episode on day of evaluation, swallowed lava rock from fireplace, gagged, choked, examination normal, bilateral decubitus x-rays normal, diagnosed with choking episode	No therapy
10-21-15	MHMG phone call	Mother reported diaper rash	Nystatin prescribed
11-30-15	STP	Pneumonia, abnormal chest x-ray	Amoxicillin, FU 10-14 days
12-11-15	MHMG Phone call	Mother reports swallowed lava rock, then diagnosed with pneumonia	FU pulmonology in Houston with continued problems

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12-11-15	STP	Continued abnormal chest x-ray, history of swallowing lava rock	Referred to emergency department for surgical evaluation to consider bronchoscopy
12-11-15 to 12-13-15	St Francis Hospital	Normal chest x-ray in the emergency department, hospitalized with mild hypoxia, nasal congestion and cough, laboratory evaluation normal, received supplemental oxygen for 1 day, continued Amoxicillin by mouth	FU primary provider after 2-3 days, referral pulmonology with persistent problems

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		Records indicated that mother reported that Hadley has history of hole in heart and sees electrophysiologist in Houston area and gets echocardiogram every 6 months, also reported allergy to influenza immunization	
12-15-15	STP	Pneumonia resolved, mother concerned about foreign body	Referral to pulmonologist, allergist, Zithromax, FU prn
12-22-15	STP	URI, normal chest x-ray	Symptomatic Therapy, FU prn, FU pulmonology
12-31-15	Allergy Clinic of Tulsa	Allergic rhinitis, pneumonia resolved	Allergy skin tests, Nasonex
1-4-16	STP	Well Child	FU 2 years old

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2-3-16	STP	Head injury	Monitor, FU prn
2-5-16	Allergy Clinic of Tulsa	Allergic rhinitis, milk and soy protein intolerance, skin test indicating allergy to dust mites, but not to foods or other inhalants, did not get Nasonex from previous visit	Nasonex
2-18-16	STP	URI, otitis media	Amoxicillin, FU prn
2-19-16	Warren Clinic Pulmon- ology	History of wheezing reported, no wheezing on examination, assessment- wheeze	x-rays of chest normal, x-ray of neck with enlargement of lingual tonsils, xray of sinuses with chronic left maxillary sinusitis

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3-8-16	Eastern Oklahoma ENT	Chronic adenoiditis, sleep disturbance, mother reported history of atrial septal defect, difficulty with sleep, examination normal	Recommended adenoidectomy
3-21-16	STP	Maxillary sinusitis	Cefdinir, FU prn
4-1-16	STP	Pharyngitis	Symptomatic therapy, FU prn
4-6-16	Pediatric Cardiology of Oklahoma	Tiny patent ductus arteriosus	No therapy
4-11-16	STP	URI	Symptomatic Therapy, FU prn
4-19-16	Warren Clinic ENT	Mother reported recurrent pneumonias, nasal congestion, runny nose, cough, snoring, mouth breathing, witnessed sleep apnea, sneezing	Recommended adenoidectomy and inferior turbinate reduction

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		sniffing, history of otitis media, examination with 3+ tonsils and enlarged turbinates, soft tissue neck x-ray with enlargement of lingual tonsils and moderate enlargement of adenoid tissue, diagnosed with adenoid hypertrophy, inferior turbinate hypertrophy, recurrent sinusitis, recurrent pneumonia	
5-26-16	STP	URI, otitis media	Augmentin, FU prn
5-31-16	STP	URI	Complete course of antibiotics because of prolonged illness, FU prn
6-24-16	STP	Well child	FU at 3 years old

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6-27-16	Eastern Oklahoma ENT	Mother reported many episodes of ear infections with many courses of antibiotics, and sleep disturbance, examination normal, diagnoses: chronic serous otitis media, chronic adenoiditis, sleep disturbance	Recommended myringotomy tubes, adenoidectomy and laryngoscopy
7-12-16		Esophageal reflux, milk protein intolerance	Neocate, Zantac, FU 3-4 months
7-20-16	STP	Candida diaper rash, eczema	Clotrimazole, Bactroban, hydrocortisone, FU prn
7-27-16	STP	Viral exanthem, URI	Triamcinolone ointment, FU prn
8-2-16	Allergy Clinic of Tulsa	Viral exanthem, atopic dermatitis	Atarax, moisturizer
8-4-16	STP	Urticaria (hives)	Atarax, prednisolone

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8-15-16	Saint Francis Hospital	Diagnosed with shortness of breath and viral illness, had a rash, hypoxia briefly treated with supplemental oxygen and then resolved, chest x-ray normal, laboratory evaluation normal except for elevated white blood cell count associated with recent steroid use, mother reported past pneumonia and swallowed lava rock a year prior.	FU primary care provider
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8-25-16	Warren Clinic Pediatrics	Mother reported that Hadley had seen allergist and had minimal inhalant allergies but some food allergies, Diagnosed with shortness of breath, eczema, gastroesophageal reflux disease, noisy breathing	Albuterol, hydroxyzine, moisturizer, triamcinolone ointment prn
8-31-16	Eastern Oklahoma ENT	Chronic adenoiditis, hoarseness	Recommended adenoidectomy and laryngoscopy

Hadley's father, Denver Ward, reported that in the last 2 months her mother has reported to him concern that Hadley has irritable bowel syndrome and diabetes and that she is restricting Hadley's fluids in an attempt to potty train her. There is also report that Hadley had a cardiology appointment and record of email from Carol Swenson requesting that cardiology appointment of May 17, 2017 be cancelled or rescheduled or that Donna Boswell be allowed to attend in her father's place. Hadley's father reported that the cardiology appointment was cancelled. I do not have medical records pertaining to these issues.

*Appendix B***IMPRESSION**

Medical Child Abuse

Review of medical records indicates that Hadley's mother reported the following medical information:

1. On December 11, 2015, she reported to medical personnel at St. Francis Hospital, Tulsa that Hadley had a hole in her heart, was followed by an electrophysiologist in Houston, and had an echocardiogram every 6 months. This is not supported by review of the medical records.
2. On March 8, 2016, Ms. Billingsly reported to medical personnel at Eastern Oklahoma ENT that Hadley had history of atrial septal defect with which she was never diagnosed.
3. On April 19, 2016, she reported to the Ear, Nose and Throat Specialist at Warren Clinic that Hadley had recurrent pneumonia. However, review of the records indicates that Hadley had pneumonia November 30, 2015 but there is no indication of another episode of pneumonia.
4. On June 27, 2016, Ms. Billingsly reported to medical personnel at Eastern Oklahoma Ear, Nose and Throat, that Hadley had many ear infections with many courses of antibiotics. However, the records indicate two episodes of sinusitis and otitis media (ear infection) one time for a total of three courses of antibiotics.

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Neck x-ray indicated adenoidal hypertrophy and inferior turbinate hypertrophy was seen on examination. Two different ENT specialists recommended adenoidectomy. One also recommended turbinate reduction and the other recommended myringotomy tubes. These recommendations were likely based on the reported recurrent infections that did not occur along with the x-ray and examination findings. Hadley's father objected to surgical therapy and it was not performed. However, Hadley was at risk to be harmed by unnecessary surgery based on her mother's report of many infections that did not occur. This constitutes physical abuse through medical child abuse.

I do not find indication of harm related to erroneous reports of heart abnormalities though there is potential for unnecessary evaluation and resultant harm. I do not have medical records to evaluate other reported disease concerns.

RECOMMENDATIONS

It should be ensured that Hadley receives appropriate medical care based on accurate portrayal of medical history and symptoms. If that cannot be assured in the care of her mother, she should not be in her mother's care. She should have a consistent primary medical provider that coordinates her medical care.

/s/ Mary Ellen Stockett, M.D.
Mary Ellen Stockett, M.D.
Child Abuse Pediatrics