

**Tennessee Judicial Nominating Commission**  
***Application for Nomination to Judicial Office***

*Rev. 25 August 2011*

Name: Sharon E. Guffee

Office Address: Williamson County Juvenile Services  
(including county) 408 Century Court  
Franklin, Williamson County, Tennessee 37064

Office Phone: (615)790-5812 Facsimile: (615)790-5437

Email Address: [sharoneguffee@bellsouth.net](mailto:sharoneguffee@bellsouth.net)

Home Address: [REDACTED]  
(including county) [REDACTED] Williamson County, Tennessee

Home Phone: [REDACTED] Cellular Phone: [REDACTED]

---

**INTRODUCTION**

Tennessee Code Annotated section 17-4-101 charges the Judicial Nominating Commission with assisting the Governor and the People of Tennessee in finding and appointing the best qualified candidates for judicial offices in this State. Please consider the Commission's responsibility in answering the questions in this application questionnaire. For example, when a question asks you to "describe" certain things, please provide a description that contains relevant information about the subject of the question, and, especially, that contains detailed information that demonstrates that you are qualified for the judicial office you seek. In order to properly evaluate your application, the Commission needs information about the range of your experience, the depth and breadth of your legal knowledge, and your personal traits such as integrity, fairness, and work habits.

This document is available in word processing format from the Administrative Office of the Courts (telephone 800.448.7970 or 615.741.2687; website <http://www.tncourts.gov>). The Commission requests that applicants obtain the word processing form and respond directly on the form. Please respond in the box provided below each question. (The box will expand as you type in the word processing document.) Please read the separate instruction sheet prior to completing this document. Please submit the completed form to the Administrative Office of the Courts in paper format (with ink signature) **and** electronic format (either as an image or a word processing file and with electronic or scanned signature). Please submit seventeen (17) paper copies to the Administrative Office of the Courts. Please e-mail a digital copy to [debra.hayes@tncourts.gov](mailto:debra.hayes@tncourts.gov).

THIS APPLICATION IS OPEN TO PUBLIC INSPECTION AFTER YOU SUBMIT IT.

**PROFESSIONAL BACKGROUND AND WORK EXPERIENCE**

1. State your present employment.

I am a full-time Magistrate for the Juvenile Court of Williamson County, Tennessee serving in judicial capacity pursuant to T.C.A. 37-1-107 and Rule 4 of the Rules of Juvenile Procedure.

2. State the year you were licensed to practice law in Tennessee and give your Tennessee Board of Professional Responsibility number.

I was licensed to practice law in 1997. My BPR number is 18937.

3. List all states in which you have been licensed to practice law and include your bar number or identifying number for each state of admission. Indicate the date of licensure and whether the license is currently active. If not active, explain.

I am licensed to practice law in the state of Tennessee.

My BPR number is 18937.

I was licensed on October 21, 1997. My license is currently active.

4. Have you ever been denied admission to, suspended or placed on inactive status by the Bar of any State? If so, explain. (This applies even if the denial was temporary).

No.

5. List your professional or business employment/experience since the completion of your legal education. Also include here a description of any occupation, business, or profession other than the practice of law in which you have ever been engaged (excluding military service, which is covered by a separate question).

## **LEGAL EXPERIENCE**

### **Office of the District Attorney General 21<sup>st</sup> Judicial District 1997-2003**

I was an Assistant District Attorney General for the 21<sup>st</sup> Judicial District serving Williamson, Hickman, Perry and Lewis Counties. I handled cases in Williamson County General Sessions, Circuit, Juvenile and Fairview City Courts. I also made appearances for cases in General Sessions, Circuit and Juvenile Courts in Hickman, Perry and Lewis counties.

My job consisted of trying cases in all the above courts as well as negotiating plea agreements in all courts. I have tried hundreds of cases and have successfully prosecuted jury trials for criminal offenses involving serious crimes to persons and property as well as many drug cases and DUIs. I worked closely with the 21<sup>st</sup> Judicial District Drug Task Force prosecuting their cases.

I had extensive training in domestic violence and handled many of the domestic assault cases early in my career. In my later years in the District Attorney's Office, I received additional training for crimes against children and prosecuted all the crimes against children, including sexual and physical abuse. I was a member of the Child Protective Investigative Team, a statutorily required team consisting of participants from law enforcement, district attorney and juvenile court.

Additionally while in the District Attorney's Office I was involved in the initial planning and preparation for the 21<sup>st</sup> Drug Court from 2000-2003. This included attending numerous seminars throughout the country regarding education about Drug Court that met the requirements for federal funding that we received. I was the designated prosecutor for Drug Court and a member of the Drug Court team that conducted weekly meetings with staff and participants, negotiating settlements for participants and attending continuing education seminars. I remain on the Board of Directors for the 21<sup>st</sup> Drug Court.

While in law school I interned for the District Attorney's Office in Davidson County in their Juvenile Court. I was able to gain experience trying juvenile delinquent cases and observing court proceedings. I also interned for the District Attorney's Office in Williamson County assisting in General Sessions Court. I negotiated plea settlements and conducted preliminary hearings.

### **Private Practice of Law 2003-2007**

I established a successful professional corporation in Franklin, Tennessee for the practice of law specializing in criminal defense, juvenile and family law. I handled criminal cases in General Sessions Courts and jury trials in Circuit Courts for criminal offenses. I also tried divorce cases in Circuit and Chancery Courts. In Juvenile Courts, I represented delinquent and unruly children, parents in dependency and neglect cases and termination of parental rights, as well as custody and visitation cases. I represented children in a guardian ad litem position. I prevailed in a small amount of appellate work involving termination of parental rights, criminal offenses and divorce. I also handled administrative hearings for seizure items with the Department of

Safety. My practice was predominately in Williamson county but I did handle cases in Davidson, Maury, Rutherford, Sumner, Hickman and Lewis counties.

**Part-time Magistrate for Juvenile Court in Williamson County 2004-2007**

I was appointed by the General Sessions/Juvenile Court Judges in Williamson County as part-time Magistrate for Juvenile Court to preside in a judicial capacity over the child support docket one day weekly. I was responsible for hearing approximately 1500 cases per year involving establishing paternity, setting child support, contempt issues, modifications of child support and implementation of the new child support guidelines. I also periodically filled in for the full-time Magistrate handling all other juvenile matters. I continued in my private practice of law.

In September 2006, I was one of three statewide judges to receive a scholarship to attend the National Council for Juvenile and Family Court Judges Fall College seminar in Reno, Nevada. Topics at the seminar included dependency hearings, alternatives to detention, one family-one judge theory, medical aspects of child abuse, adolescent development and substance abuse in juveniles.

**Magistrate for Juvenile Court in Williamson County 2007 to present**

I was appointed by the General Sessions/Juvenile Court Judges in Williamson County to the full-time position of Magistrate in January 2007. I preside in judicial capacity over 6000-7000 hearings annually in our Juvenile Court involving delinquent and unruly children, detention hearings, juvenile traffic offenses, dependency and neglect cases, emergency removals of children, establishing paternity, custody, visitation and modifications of same. We have a staff of seven Youth Services Officers, a twelve (12) bed detention facility with ten (10) full-time detention staff, administrative staff and a Director of Juvenile Services.

**OTHER BUSINESS EXPERIENCE**

**Providence Hospital, Columbia, South Carolina 1975-1979**

I was a registered nurse. I had experience as a Charge nurse for a thirty-five (35) bed medical-surgical floor within six months after graduating. I was a Charge nurse for the Intensive Coronary Care Unit responsible for pre and post-operative care for open heart surgery patients. I had additional experience in the emergency room and intensive surgical and medical care units.

**Self-employed, Retail Business, Hendersonville, North Carolina 1980-1983**

I established a children's specialty shop of apparel and accessories. I was responsible for buying inventory, marketing, accounting, payroll and overall operations. I also established a wholesale business of hand-smocked dresses that were sold in similar upscale specialty shops in the southeast. I was in charge of production, design, marketing and quality control.

**Self-employed, Real Estate, Nashville, Tennessee 1983-1986**

I bought and sold single family and multi-unit investment properties. I managed multiple rental



units and was responsible for accounting, collections, maintenance and repairs, renovating, purchasing and sales. I gained experience in contracts, real estate closings, financing, tenant/landlord laws, low-income housing, FHA regulations, zoning building and codes regulations.

**Self-employed, Real Estate, Franklin, Tennessee 1986-1987**

With a real estate partnership, I developed a seven-unit condominium complex in Historic Downtown Franklin. I was responsible for land purchase negotiations, preparation and presentation to Sovran Bank for construction financing and site plan approval from the City of Franklin Planning Commission. Additionally, I was responsible for interior, exterior design and layout, supervising construction and finally, marketing and sales.

**Real Estate Affiliate Broker 1987-1997**

I was licensed as an affiliate broker in the State of Tennessee and worked for McArthur-Sanders Realtors in Franklin from 1987-1990. Within three months of obtaining my real estate license I secured over two million dollars in listings. I briefly lived in Atlanta, Georgia and worked for Jenny Pruitt & Associates for eighteen (18) months. From 1991 until I graduated from law school in 1997, I worked for Shirley Zeitlin & Company Realtors in the Green Hills office in Nashville. I specialized in residential sales in Williamson and Davidson counties. I was consistently a member of the Gold Award (multi-million dollar sales) from the Nashville and Williamson County Board of Realtors.

6. If you have not been employed continuously since completion of your legal education, describe what you did during periods of unemployment in excess of six months.

Not applicable.

7. Describe the nature of your present law practice, listing the major areas of law in which you practice and the percentage each constitutes of your total practice.

As Juvenile Court Magistrate, I serve pursuant to statute at the pleasure of the Juvenile Court Judges and at their direction. A Juvenile Magistrate has the same authority as the judge to issue any and all process and conduct proceedings with all the powers of a trial judge. I preside over a large and diverse number of cases. Anyone dissatisfied with my decision may request a rehearing before the Juvenile Court Judge within five (5) days. We are a more informal court as our statutory purpose is to provide for the care, protection and wholesome development of children in a nonpunitive manner by providing programs of treatment, training and rehabilitation.

The major areas of law that comprise my position in Juvenile Court include criminal (delinquent) offenses (approximately 25%), status juvenile offenses (unruly, runaway, and truancy – approximately 35%), probation violations (approximately 10%), dependency and neglect,

paternity, custody and visitation, child support, modifications of custody, child support and visitation (approximately 30%). Occasionally I will hear orders of protection and contempt issues.

8. Describe generally your experience (over your entire time as a licensed attorney) in trial courts, appellate courts, administrative bodies, legislative or regulatory bodies, other forums, and/or transactional matters. In making your description, include information about the types of matters in which you have represented clients (e.g., information about whether you have handled criminal matters, civil matters, transactional matters, regulatory matters, etc.) and your own personal involvement and activities in the matters where you have been involved. In responding to this question, please be guided by the fact that in order to properly evaluate your application, the Commission needs information about your range of experience, your own personal work and work habits, and your work background, as your legal experience is a very important component of the evaluation required of the Commission. Please provide detailed information that will allow the Commission to evaluate your qualification for the judicial office for which you have applied. The failure to provide detailed information, especially in this question, will hamper the evaluation of your application. Also separately describe any matters of special note in trial courts, appellate courts, and administrative bodies.

**Office of the District Attorney General**

My work in the District Attorney's Office was representing the people of the State of Tennessee in the prosecution of the state criminal statutes. In many cases it involved working with victims of crimes and being available to explain the criminal justice process to them as well as prepare them for trials. Especially when dealing with children who have been sexually or physically abused and their families, there is a great deal of emotion involved. Being a good lawyer is not only being knowledgeable in the law and procedure, but being sensitive to the fears and anxiety that accompany reliving a trauma, recognizing the limitations that younger children can face in a trial and explaining that process in a non-legal way that families can understand. I have dealt with siblings who had been sexually abused by their father, who had to testify before a jury in front of their father, about the acts he had committed on them. It is difficult work that sometimes does not have a happy ending even when justice is served. It was always important to me to be available to not only the families/victims in my cases, but also the law enforcement personnel that are involved with the cases, that have worked hard to stop the violence and are also passionate about what they do. I maintain a personal relationship with many of the families I worked with while in the District Attorney's office. It is gratifying to learn of the accomplishments made by some of the children involved in my trials such as graduating from college with honors.

One of the advantages of being a prosecutor is the tremendous amount of litigation experience you receive. In my six years in the District Attorney's Office I handled trials involving almost all criminal offenses from minor misdemeanors like trespass, criminal impersonation, resisting arrest to more serious misdemeanors such as driving under the influence, evading arrest, simple

possession, and felony offenses involving all schedules of controlled substances/drug charges, aggravated assault, robbery, sexual battery, aggravated sexual battery, sexual battery by authority figure, rape of a child, sexual exploitation of a minor, vehicular assault, and vehicular homicide. It is rare to have jury trials as a defense attorney but as a prosecutor, they were a weekly occurrence. In addition, I became very familiar with the Tennessee Rules of Evidence, the Tennessee Rules of Criminal Procedure as well as the criminal laws. I was able to present an expert witness from the Tennessee Bureau of Investigation as well as a doctor from Vanderbilt Hospital. I was responsible for not only jury trials but also sentencing hearings, motions to suppress, extradition hearings, post conviction hearings, competency hearings, bond hearings, probation violations and bench trials.

As a representative of the State of Tennessee and under the supervision of District Attorney Joe Baugh, our office always prided itself on competency, preparedness, professionalism, proper courtroom decorum and punctuality. I also believe that I was a fair and reasonable prosecutor who would listen to both sides before making a decision. I feel I was well respected not only within my office but also with the defense bar.

### **Private practice of law**

As a sole proprietor in a law practice, I was readily available for my clients. In my criminal defense work, I appeared in City Courts, General Sessions and Circuit Courts in multiple jurisdictions. Clearly, I had clientele that felt my background experience with the District Attorney's Office would benefit them. I would routinely get favorable dispositions because of this experience and I was not afraid to take a case to a jury if necessary. I had a jury trial for a "date" rape case that resulted in a not guilty verdict for my client. I had many criminal cases that were dismissed by the prosecutor. As a defense attorney, in addition to jury trials, I conducted pretrial motion hearings such as motions to suppress, probation violations, bench trials, sentencing hearings, and competency hearings. I have always felt that our criminal justice system affords many protections for the public as well as for defendants and as a defense attorney, my job was to assure those protections regardless of the facts of the case.

My domestic relations practice in Circuit and Chancery Courts in middle Tennessee was also a large portion of my private practice. There rarely is a winner in a divorce and it is an emotionally charged time in people's lives. It was important to me to be accessible and efficient. I tried several divorce cases in many jurisdictions as well as litigating pre-trial hearings, post-divorce hearings and contempt hearings including motions for pendent lite custody and support, exclusive possession of marital residence, modifications of custody, visitation and child support. My litigation experience was invaluable for this. I drafted all my own pleadings, usually filed them myself, handled my own billing and was usually available within a day to return a phone call from a client. I was in court sometimes as much as every day of the week. I was and am very well organized and can multi-task efficiently.

I had a great deal of experience in Juvenile Courts while I was in private practice. While some cases were court appointed, such as guardian ad litem work, I did have many parents retain my services for their children. Additionally, I handled custody matters between unmarried parents as well as grandparents in dependency and neglect cases. Again, my experience as a prosecutor

made this work very comfortable for me as a litigator. I was retained for several cases in Davidson and Maury county Juvenile Courts as well as Williamson county. As we are all looking for the best interest of the child in Juvenile Court, it can be very gratifying work.

My appellate work was minimal only due to the time constraint in my private practice. I was successful in having a termination of parental rights reversed for my client. Other appellate work included some criminal appeals and divorce appeals but most were done by other attorneys.

I have handled civil cases involving contracts, insurance issues, collection matters, and orders of protections as well as bond hearings, and administrative hearings with the Department of Safety. However, the majority of my practice was criminal defense and family law.

**Magistrate for Williamson County Juvenile Court**

When I began working part-time as the magistrate for child support court, I found that I truly enjoyed judicial work. It was an opportunity to use my legal experience as well as my life experience. I am fortunate to work with a truly dedicated group of people who believe they can make a difference in a child's life and they do. It was a difficult decision to close my private practice to become the full-time magistrate but the rewards outweigh the cons. Juvenile law is very promising as statutorily we are here to treat and rehabilitate the child, not punish.

Unless you have been involved in a Juvenile Court proceeding, you may not really understand the important work we do. We hear cases all day long, almost every day. Some cases may take fifteen minutes, some take several days. All are important as they involve a child whether it is a delinquent offense or a dependency and neglect case with horrible abuse. We have two full days a week of dependency and neglect cases, some filed by the Department of Children's Services, others by family members. Another two days are devoted to delinquent and unruly cases as well as petitions filed by the school systems for truancy or delinquency.

There are cases that are difficult to hear. We have one young boy who is autistic and in the custody of the Department of Children's Services (foster care) because he lived with his mother in a hotel room that was so filthy it was indescribable. He was kept in a dog cage and his mother tried to drug him with the dog's medicine. He is awaiting adoption. Another girl was locked in a room with her brother while her mother worked, their hands duct-taped together with a bucket to use for a bathroom. She was literally starved by her mother and treated at Vanderbilt Hospital for malnutrition. She is awaiting adoption while in the care of the Department of Children's Services. She has been seen in our court for the last four and a half years as we continue to try to find permanency for her. I have a bulletin board full of pictures that young children have drawn for me and letters asking me to please help them.

However, even the worst parent has a right to an attorney and competent representation in certain cases. I assure everyone that comes before me that I will listen to any evidence they wish to present in their case whether they have an attorney or not. Patience is imperative in our courtroom. Court proceedings are intimidating and scary. The last thing parties, witnesses or even attorneys need is a judge that is unwilling to listen or treats them disrespectfully.

9. Also separately describe any matters of special note in trial courts, appellate courts, and administrative bodies.

State of Tennessee vs. R.M.\* In the Circuit Court of Williamson County, I prosecuted this case involving a father charged with twenty-one (21) counts of incest, rape, sexual battery by an authority figure, child abuse and assault on three of his thirteen children. At the time of trial, the three victims/children were ages fourteen (14), fifteen (15) and nineteen (19). After indictment, the defendant fled the jurisdiction and was placed on the Tennessee Bureau of Investigation's Top 10 Most Wanted list. After being apprehended in east Tennessee several months later, the case went to trial. His fifteen (15) year old daughter testified to multiple acts of sexual abuse including being raped on her fourteenth birthday. During trial the defendant pleaded guilty to four counts of rape when the State was about to present evidence of a recording with the defendant's wife saying she knew her husband had been fondling one of their daughters. He agreed to serve a forty-eight (48) year sentence at one hundred percent. He was fifty-five (55) years old at the time.

State of Tennessee vs. T.H. and State of Tennessee vs. R.H.\* Also in the Circuit Court of Williamson County, I prosecuted this case against a mother and father charged with five counts of child abuse and neglect on their two children, ages six (6) and seven (7). The couple admitted to beating and torturing their children by paddling to the point of bruising, sticking needles into their legs and buttocks, having one child stick the other child with needles, forcing them to walk on their hands and knees for long periods of time or stand in a corner for hours, unable to go to the bathroom, putting the older child's head into the toilet and flushing it while the mother held her legs so she could not kick. Both defendants pleaded guilty to five counts of child abuse and two counts of child neglect and served a sentence between two to four years in the Tennessee Department of Correction for each count.

\* I have omitted the names of the defendants to assure the privacy of the adult children involved.

10. If you have served as a mediator, an arbitrator or a judicial officer, describe your experience (including dates and details of the position, the courts or agencies involved, whether elected or appointed, and a description of your duties). Include here detailed description(s) of any noteworthy cases over which you presided or which you heard as a judge, mediator or arbitrator. Please state, as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency; (3) a summary of the substance of each case; and (4) a statement of the significance of the case.

Magistrate, part-time, Williamson County Juvenile Court 2004-2007 I was appointed by Williamson County General Sessions/Juvenile Court Judges Al Nations and Lonnie Hoover to preside in judicial capacity over child support cases one day week while I was in private practice. This included hearing cases establishing paternity, custody and visitation between parties not married, setting child support, modifying child support, criminal and civil contempt proceedings. There were approximately 1500 cases per year. I am not aware of any noteworthy cases or any case that was appealed past a rehearing before the Juvenile Court Judge. There may have been

less than ten (10) cases each year that requested a rehearing. I also sat for the full-time Magistrate on occasions hearing delinquent and unruly cases, custody and visitation, dependency and neglect cases and detention hearings.

**Magistrate, full-time, Williamson County Juvenile Court 2007 to present** I was appointed by Williamson County General Sessions/Juvenile Court Judges Al Nations and Denise Andre' to the full time position in 2007 when my predecessor, Honorable Robbie Beal, was elected as Circuit Court Judge for the 21<sup>st</sup> Judicial District. As Magistrate, I preside over 6000-7000 hearings per year including dependency and neglect, establishing paternity, custody and visitation, child support, delinquent and unruly offenses, juvenile traffic offenses and daily detention hearings. We have a staff of thirty (30) full and part-time employees. While I do not supervise any personnel, I do work closely with the Director of Juvenile Services, Betsy Adgent and Juvenile Court Clerk, Brenda Hyden, to assure the smooth daily operations of Juvenile Services and the Alternative Learning Center, the educational facility for those students suspended for zero tolerance, which adjoins our offices.

I am not aware of any noteworthy cases from a legal standpoint that have come out of our court as there are very few appeals that are taken from juvenile cases. However, all cases involving children are important. Additionally, there are very few rehearings of my decisions before the Juvenile Court Judges (generally less than ten (10) per year).

**Special Master, Chancery Court for Williamson County 2009** I was appointed by Circuit Court Judge Timothy Easter to sit as Special Master for preliminary matters in a divorce case involving a child that had history with our Juvenile Court.

11. Describe generally any experience you have of serving in a fiduciary capacity such as guardian ad litem, conservator, or trustee other than as a lawyer representing clients.

While I was in private practice from 2003-2007 I was appointed as guardian ad litem in dependency and neglect cases in Williamson County Juvenile Court. In the last eight (8) years I have attended numerous training seminars conducted by the Administrative Office of the Courts addressing these cases and the role of the guardian ad litem.

12. Describe any other legal experience, not stated above, that you would like to bring to the attention of the Commission.

While in the District Attorney's Office I was a panelist for a Domestic Violence seminar conducted by the Franklin City Police Department. I also participated in the Tennessee Supreme Court SCALES program by speaking to high school students before and after the presentation.

I currently participate in the training for the Court Appointed Special Advocates, a nonprofit

organization that assists Juvenile Courts with cases involving abuse and neglect. I also regularly teach in criminal justice classes for the high schools in Williamson county.

13. List all prior occasions on which you have submitted an application for judgeship to the Judicial Nominating Commission or any predecessor commission or body. Include the specific position applied for, the date of the meeting at which the body considered your application, and whether or not the body submitted your name to the Governor as a nominee.

Not applicable.

### **EDUCATION**

14. List each college, law school, and other graduate school which you have attended, including dates of attendance, degree awarded, major, any form of recognition or other aspects of your education you believe are relevant, and your reason for leaving each school if no degree was awarded.

**Elon College, Burlington, North Carolina 1971** I attended the fall semester and transferred to the University of South Carolina to pursue a degree in nursing.

**University of South Carolina, Columbia, South Carolina 1972-1975** I graduated with a Bachelor of Science in Nursing. I received special permission from the Dean of Nursing to take all my elective classes in religion. Upon arriving at the University, I assisted in organizing the women's swim team and received one of the first Title IX scholarships for women's athletics. I was a reporter for *The Gamecock*, the campus newspaper. In addition to swimming, I worked part-time throughout college. As a former student athlete, I continue to be a proud fan of the University of South Carolina and support it both financially and by attending sports events.

**Furman University, Greenville, South Carolina 1972** I completed a class in religion while home during the summer that transferred to the University of South Carolina.

**Nashville School of Law, Nashville, Tennessee 1993-1997** I graduated with a Doctor of Jurisprudence on June 7, 1997 in the top third of my class. I worked full-time while attending law school and raised two teenagers as a single mother. I passed the Tennessee Bar Examination on October 21, 1997 and was licensed to practice law in the State of Tennessee. I was sworn in by the Supreme Court of Tennessee on November 12, 1997. I thoroughly enjoyed every moment of law school and continue to be a proponent of furthering education.

**PERSONAL INFORMATION**

15. State your age and date of birth.

I am fifty-seven (57) years old. My date of birth is September 25, 1953.

16. How long have you lived continuously in the State of Tennessee?

I have lived in Franklin, Tennessee continuously since 1991. Prior to that I lived in Franklin, Tennessee from 1984 to 1990.

17. How long have you lived continuously in the county where you are now living?

I have lived in Williamson County continuously since 1991. I also lived in Williamson County from 1984 to 1990.

18. State the county in which you are registered to vote.

Williamson County.

19. Describe your military Service, if applicable, including branch of service, dates of active duty, rank at separation, and decorations, honors, or achievements. Please also state whether you received an honorable discharge and, if not, describe why not.

Not applicable.

20. Have you ever pled guilty or been convicted or are you now on diversion for violation of any law, regulation or ordinance? Give date, court, charge and disposition.

No.

21. To your knowledge, are you now under federal, state or local investigation for possible violation of a criminal statute or disciplinary rule? If so, give details.

No.



22. If you have been disciplined or cited for breach of ethics or unprofessional conduct by any court, administrative agency, bar association, disciplinary committee, or other professional group, give details.

Not applicable.

23. Has a tax lien or other collection procedure been instituted against you by federal, state, or local authorities or creditors within the last five (5) years? If so, give details.

No.

24. Have you ever filed bankruptcy (including personally or as part of any partnership, LLC, corporation, or other business organization)?

No.

25. Have you ever been a party in any legal proceedings (including divorces, domestic proceedings, and other types of proceedings)? If so, give details including the date, court and docket number and disposition. Provide a brief description of the case. This question does not seek, and you may exclude from your response, any matter where you were involved only as a nominal party, such as if you were the trustee under a deed of trust in a foreclosure proceeding.

*Nevin H. Downs vs. Sharon E. Tyler, Circuit Court for Williamson County, Tennessee No. 90043 filed January 16, 1990* This was a simple contract lawsuit from a real estate partnership that was handled amicably as there was a legitimate dispute as to the facts. I timely paid a judgment of approximately \$8000.00 in April 1991.

*Sharon Edsall Tyler vs. Edward Grimm Tyler, Superior Court of Fulton County, Georgia No. D-89267* Marital Dissolution Agreement was entered on November 27, 1991 on the grounds of irreconcilable differences.

*Connie Reguli, personally, and Connie Reguli, as next friend of Daughter YKR, a minor child vs. Sharon Guffee, Referee of Williamson County Juvenile Court, Zannie Martin, Youth Services Officer, Terri Bennett, Youth Services Officer, Jeanne Rounsavall, Juvenile Detention Staff, Otis Coffey, Ned Zollicoffer, Rhonda Casillas, Williamson County Sheriff's Department, Michael LaBo, in his official capacity, United States District Court Middle Tennessee Nashville Division, Case No. 3-08-077, filed September 4, 2008* This lawsuit was brought by Ms. Reguli after she filed a petition for unruly behavior on her minor child. The lawsuit alleged violations of the American with Disabilities Act and Civil Rights Protections. A motion to dismiss or judgment on the pleadings was granted by the Honorable Todd Campbell, U.S. District Judge on February 19, 2009. Ms. Reguli appealed to the U.S. Court of Appeals, Sixth Circuit. The District Court's

judgment was affirmed on March 31, 2010.

Glynis Bethel and Orlando Bethel, individually and as next friends of minor children, Zoe, Kezia and Zion Bethel vs. Williamson County Schools, Brentwood, Tennessee; Dr. Mike Looney, Superintendent; Governor Bill Haslam; Kevin Keidel, Brentwood High Principal, Otis Coffey, Security Officer; Jason Golden, C.O.O. & General Counsel; Williamson County Juvenile Court; Detention Supervisor, Steve McMahan; Williamson County Juvenile Court Referee or Juvenile Judge Sharon E. Guffee; Chief of Police for Williamson County or Brentwood; Williamson County Sheriff's Office Lt. Steve Dunning; Reporter for Brentwood Home Page Reporter, Susan Leathers; Defendants A,B and C; All defendants are being sued in both official and individual capacities This lawsuit was filed by parents of three children who were denied admission to Williamson County schools under the McKinney Vento Act, No Child Left Behind and Compulsory Attendance because of their alleged "homeless" status and various other alleged civil rights violations. The lawsuit was dismissed without service of process issuing.

26. List all organizations other than professional associations to which you have belonged within the last five (5) years, including civic, charitable, religious, educational, social and fraternal organizations. Give the titles and dates of any offices which you have held in such organizations.

1. Leadership Franklin, graduate 2008-2009
2. Narcotics Awareness and Resident Counterdrug Training conducted by the 21<sup>st</sup> Drug Task Force, graduate 2009
3. Board of Directors, 21<sup>st</sup> Drug Court, 2003 to present
4. Member of Williamson County Republican Party
5. Member of Williamson County Republican Career Women
6. Member of Williamson County Republican Women
7. Member of St. Paul's Episcopal Church, Franklin, Tennessee

27. Have you ever belonged to any organization, association, club or society which limits its membership to those of any particular race, religion, or gender? Do not include in your answer those organizations specifically formed for a religious purpose, such as churches or synagogues.

- a. If so, list such organizations and describe the basis of the membership limitation.
- b. If it is not your intention to resign from such organization(s) and withdraw from any participation in their activities should you be nominated and selected for the

position for which you are applying, state your reasons.

No.

**ACHIEVEMENTS**

28. List all bar associations and professional societies of which you have been a member within the last ten years, including dates. Give the titles and dates of any offices which you have held in such groups. List memberships and responsibilities on any committee of professional associations which you consider significant.

1. Williamson County Bar Association, 1997 to present
2. Child Protective Investigative Team, 2000-2003
3. Tennessee Council of Juvenile and Family Court Judges, 2004 to present
4. Tennessee Bar Association, 2011

29. List honors, prizes, awards or other forms of recognition which you have received since your graduation from law school which are directly related to professional accomplishments.

1. Williamson County Task Force Against Domestic Violence, Unsung Hero Award, 2000
2. Child Protective Investigative Team award for commitment to the children of Williamson County, 2003
3. I am generally well respected and liked by my peers in my profession. Since I have been Magistrate in Juvenile Court, I have received and continue to receive numerous letters commending me and my demeanor in the courtroom.

30. List the citations of any legal articles or books you have published.

I have not published any legal articles or books. I have assisted Circuit Court Judge Robbie Beal with compilation of a pending publication on juvenile law and procedure.

31. List law school courses, CLE seminars, or other law related courses for which credit is given that you have taught within the last five (5) years.

Not applicable.

32. List any public office you have held or for which you have been candidate or applicant. Include the date, the position, and whether the position was elective or appointive.

Please see answer to question number ten (10.) on my appointment as Juvenile Court Magistrate.

33. Have you ever been a registered lobbyist? If yes, please describe your service fully.

No.

34. Attach to this questionnaire at least two examples of legal articles, books, briefs, or other legal writings which reflect your personal work. Indicate the degree to which each example reflects your own personal effort.

I have attached three Orders from my present position as Magistrate for Juvenile Court. The names of the parties and minor child have been deleted as our records are confidential. Also attached is a brief of an appellant I represented while in private practice. Since this involves an appeal of a termination of parental rights, I have excluded the names of the parties. All documents are one hundred percent my research and work.

### ESSAYS/PERSONAL STATEMENTS

35. What are your reasons for seeking this position? *(150 words or less)*

I am very proud of my profession and feel honored to be a part of the judiciary in my current position. I began my legal career later in life and had the opportunity to begin practicing in Circuit Court under whom I consider to be some of the best judges in our state, Judges Cornelia Clark, Don Harris and Henry Denmark Bell. Circuit Court was then and should be now, an environment where you are competent, prepared, professional and punctual.

I believe my life experience, legal experience both in criminal law, civil law and my judicial experience offer a balance that is necessary in Circuit Court. I have a patient, even temperament. In Juvenile Court, while it is an informal court, the legal issues we address are the same as those in Circuit Court. I am passionate and dedicated to my profession and feel I would be an asset to Circuit Court in the 21<sup>st</sup> Judicial District.

36. State any achievements or activities in which you have been involved which demonstrate your commitment to equal justice under the law; include here a discussion of your pro bono service throughout your time as a licensed attorney. *(150 words or less)*

During my private practice, I represented a number of clients for no fee or at a greatly reduced

fee in order to assure they had access to the court system with good representation. This included criminal cases as well as domestic cases, divorce and orders of protection. Many of my cases involved physical and emotional abuse mostly on women but not exclusively. It was always important to me that those persons were not turned away from representation because they did not have as much money as someone else.

Additionally, as an Assistant District Attorney, there were occasionally defendants that were not guilty or certainly not as culpable as they were charged. While this was not frequent, when it did occur, I was not opposed to dismissing a case or negotiating a lesser charge. It was simply the right to do under those circumstances.

37. Describe the judgeship you seek (i.e. geographic area, types of cases, number of judges, etc. and explain how your selection would impact the court. *(150 words or less)*)

The 21<sup>st</sup> Judicial District is comprised of four counties. There are four Circuit Court Judges that divide the caseload between all counties on a rotating basis. They hear both criminal and civil cases. Civil cases are heard in both Circuit and Chancery Courts.

Williamson County has been a fast growing suburban population with its close proximity to Nashville. Hickman, while geographically a large county, is more rural as well as the smaller counties of Lewis and Perry. Each county has unique dynamics and needs. It is important to me that all counties know they are an integral part of this District and have their opportunity to be heard.

I am familiar with not only the Judges in the District but also the Clerks of the Courts and their staff. I believe my selection would have a very positive impact as I have an excellent professional and personal relationship with everyone in the District. My broad range of litigation and judicial experience would allow me to seamlessly enter the position and begin working without delay.

38. Describe your participation in community services or organizations, and what community involvement you intend to have if you are appointed judge? *(250 words or less)*

I believe it is important to be involved in the community. I participate in organizations such as Leadership Franklin that allow me the opportunity to develop relationships outside the legal profession. I continue to assist with programs involving Leadership Franklin and Youth Leadership Franklin. I serve on the Board of Directors for the 21<sup>st</sup> Drug Court, a non-profit organization of which I was a founding member while in the District Attorney's Office. Drug Court serves our Judicial District in treatment alternatives to incarceration for non-violent offenders whose crimes result from drug or alcohol addiction.

I routinely support and attend functions for many non-profit organizations including CASA, Bridges (domestic violence), My Friends House (group home for boys), YCap (after school

program for at-risk youth) and the Boys and Girls Club.

With my role in Juvenile Court, I routinely speak to middle and high school students as well as frequent their sporting events. I particularly enjoy speaking to young women about career opportunities. I attend various community events including the performing arts on a regular basis. I regularly volunteer for the Tennessee High School Mock Trial competition.

If fortunate enough to receive this appointment, I would not only continue my community involvement in Williamson county but include the counties of Hickman, Lewis and Perry as well.

39. Describe life experiences, personal involvements, or talents that you have that you feel will be of assistance to the Commission in evaluating and understanding your candidacy for this judicial position. *(250 words or less)*

I have had unique opportunities in my life to experience different careers. When I was a nurse, open heart surgery was in its infancy. I was in a cutting edge hospital learning skills that were only being performed in a few locations across the country. I use my nursing background almost every day.

I started a retail business when I was twenty-six (26) years old. I then learned almost everything possible in the real estate industry including investing in rental property, development, financing and sales. I have always been comfortable in leadership roles and have always welcomed the opportunity to learn new skills.

I believe it is imperative for judges to first be competent in the law but also to have diverse life skills and maturity that will assist in fair and just decisions. I have an intuitive nature that allows me to readily identify issues, understand dynamics of the circumstances and quietly and patiently allow everyone the opportunity to be heard. Many times after ruling against someone, they will walk out of the courtroom thanking me. Everyone deserves their day in court. When they appear in court, for whatever reason, it is the most important thing in their lives at that moment.

I have learned in my present position the facts of every case are unique. Listening is one of the most important skills a judge can have. Respecting a person's opinion is a close second, even if you do not agree with them. People generally respect our court system and our criminal justice system. I remind myself daily that it is a humbling experience to be a judge and I have an opportunity to reinforce to those in the court system that we are there to hear them.

40. Will you uphold the law even if you disagree with the substance of the law (e.g., statute or rule) at issue? Give an example from your experience as a licensed attorney that supports your response to this question. *(250 words or less)*

Yes. As an attorney and in my current judicial capacity, my personal opinion is completely

irrelevant. I have taken an oath to uphold the law and the Constitutions of the United States and the State of Tennessee.

I have represented defendants charged with heinous crimes such as rape of a child, the facts of which would cause some to question how anyone could represent them. They still have fundamental rights that must be protected and the State of Tennessee must always be held accountable to not only protect those rights but also for the heavy burden of proof beyond a reasonable doubt.

Alternatively, I have prosecuted cases where the crimes and facts were also tragic and troubling. Often victims and their families were seeking the maximum punishment under the law. Our sentencing guidelines provide for alternative sentencing in many cases including sexual offenses and crimes against persons such as robbery and aggravated assault. While that may be unpopular in some instances, it is the law and it is my obligation to abide by it whether I personally agree with it or not.

### REFERENCES

41. List five (5) persons, and their current positions and contact information, who would recommend you for the judicial position for which you are applying. Please list at least two persons who are not lawyers. Please note that the Commission or someone on its behalf may contact these persons regarding your application.

A. Rogers Anderson, Mayor of Williamson County, 1320 West Main Street, Suite 125, Franklin, Tennessee 37064 (615)790-5700

B. Charles Sargent, State Representative 61<sup>st</sup> District, 206 War Memorial Building, Nashville, Tennessee 37243 (615)741-6808

C. Marianne Schroer, Coordinator 21<sup>st</sup> Drug Court, 105 Southeast Parkway, Suite 104, Franklin, Tennessee 37064 (615)595-7868

D. Vanessa Bryan, Public Defender, 21<sup>st</sup> Judicial District, 112 Second Avenue North, Franklin, Tennessee 37064 (615)595-7868

E. Robert H. Hassell, Young, McDade & Hassell, 227 Bridge Street, Franklin, Tennessee 37064 (615)791-0058

**AFFIRMATION CONCERNING APPLICATION**

Read, and if you agree to the provisions, sign the following:

I have read the foregoing questions and have answered them in good faith and as completely as my records and recollections permit. I hereby agree to be considered for nomination to the Governor for the office of Judge of the Circuit Court of the 21<sup>st</sup> Judicial District of Tennessee, and if appointed by the Governor, agree to serve that office. In the event any changes occur between the time this application is filed and the public hearing, I hereby agree to file an amended questionnaire with the Administrative Office of the Courts for distribution to the Commission members.

I understand that the information provided in this questionnaire shall be open to public inspection upon filing with the Administrative Office of the Courts and that the Commission may publicize the names of persons who apply for nomination and the names of those persons the Commission nominates to the Governor for the judicial vacancy in question.

Dated: September 17, 2011.



\_\_\_\_\_  
Signature

When completed, return this questionnaire to Debbie Hayes, Administrative Office of the Courts, 511 Union Street, Suite 600, Nashville, TN 37219.





**TENNESSEE JUDICIAL NOMINATING COMMISSION**  
511 UNION STREET, SUITE 600  
NASHVILLE CITY CENTER  
NASHVILLE, TN 37219

**TENNESSEE BOARD OF PROFESSIONAL RESPONSIBILITY**

**WAIVER OF CONFIDENTIALITY**

I hereby waive the privilege of confidentiality with respect to any information which concerns me, including any complaints erased by law, and is known to, recorded with, on file with the Board of Professional Responsibility of the Supreme Court of Tennessee, and I hereby authorize a representative of the Tennessee Judicial Nominating Commission to request and receive any such information.

Sharon E. Guffee

Type or Printed Name

A handwritten signature in blue ink that reads "Sharon E. Guffee".

Signature

September 17, 2011

Date

18937

BPR #

JUVENILE COURT  
WILLIAMSON COUNTY, TN  
IN THE JUVENILE COURT FOR WILLIAMSON COUNTY, TENNESSEE  
AT FRANKLIN  
2010 JUL 20 AM 10:27

In the Matter of A. D.  
A minor child, DOB 1/19/2008

Social File # 36874  
Legal File # 29623

ORDER

This cause came to be heard on the 12th and 13 day of July, 2010, before the Honorable Sharon Guffee, Magistrate of the Juvenile Court of Williamson County, Tennessee, for a hearing on a Petition for Guardianship and Custody filed by Francis King, Attorney for the maternal great aunt and uncle, Dr. C. R. and E. R. on June 2, 2010.

Present for the hearing were the R.; Leslie Bruce, Assistant General Counsel for the Department of Children's Services; Shauna Lowery, Department of Children's Services Casemanager; the Guardian ad Litem, Robert Plummer; Jennifer Honeycutt, attorney for Mother; the foster parents, M. and A. P.; and Court Appointed Special Advocate, Carol Lewis. The Father's whereabouts are unknown and notice was sent to his last known address.

The following is a brief background and procedural history of the case:

1. On April 23, 2009 a Protective Custody Order was signed granting temporary custody of the child to the Department of Children's Services.
2. On April 24, 2009 DCS filed a Petition for Custody and Emergency Removal.
3. A Preliminary Hearing was held on April 27, 2009. The parents had

notice but were not present. The maternal grandmother, Mrs. D [redacted] H [redacted], with whom the child had been residing and from whose care the child was removed, was present. The Court found probable cause the child was dependent and neglected based on the medical neglect of the child and drug exposure to the child. The child was to remain in the custody of the Department of Children's Services pending a final hearing. The child was initially placed in the foster home of Mr. and Mrs. A [redacted] P [redacted] and has remained in their care throughout the entire history of the case.

4. On June 23, 2009 the Court adjudicated the Dependency and Neglect for the same reasons found at the Preliminary Hearing. The parents had notice and did not appear. The foster parents were present. The grandmother tested positive for marijuana on this date. The child was to remain in the custody of the Department of Children's Services. The Court also ratified the Permanency Plan filed by DCS pursuant to T.C.A. 37-2-403. The plan presented a dual goal of Return to Parent and Exit Custody to live with Relative. The Plan listed as Child and Family Team Members the parents and maternal grandparents only.

5. On July 28, 2009 an Order was entered directing the grandmother to comply with intensive outpatient substance abuse treatment and a parenting assessment and psychological evaluation.

6. On December 15, 2009 the Court ratified another Permanency Plan with the goal of Exit Custody to Relative and Adoption. The same family members were identified on the plan as the prior plan. The Mother was present for the hearing and represented by counsel.

7. On February 4, 2010 the maternal grandfather filed a petition to establish visitation.

8. On February 9, 2010 the petition for grandfather's visitation denied and the grandmother's visitation was suspended due to her continued positive drug screens and emotional harm to the child. The Court found permanent placement with the grandmother improbable.

9. On March 12, 2010 DCS filed a Termination of Parental Rights and Petition for full Guardianship alleging as grounds substantial noncompliance with the Permanency Plan and abandonment. A hearing date of July 14, 2010 was set.

10. On April 27, 2010 an annual Permanency Hearing was held. The parents were notified but not present. The Order notes that both parents were in substantial noncompliance with the Plan.

11. On May 4, 2010 a Motion to Intervene in the T.P.R. was filed on behalf Dr. C and Mr. E. R .

12. On May 25, 2010 the Court ratified another Permanency Plan with the sole goal of Adoption. The Department of Children's Services had already completed several of the actions needed to achieve the desired outcome of adoption. Judge Al Nations denied the Motion to Intervene in the T.P.R. filed by the R .

13. On June 2, 2010 a Petition for Guardianship and Custody was filed by Attorney for the Reyeses.

I. A hearing was conducted over two days on the R . petition for guardianship and custody. The Court heard testimony from Petitioner, Dr. " ”

R , who testified she and her husband and two children live in Midland, Texas. She has a doctorate in Audiology and her husband is an engineer. They live in a lovely six bedroom four bath home on two acres with plentiful family members nearby. Their sons attend a private Catholic school and are good students, active in sports and church. She has worked with the Early Intervention Program in the state of Texas.

She further testified she had never met the child, her great niece. She did not become aware of the child being removed from her sister, D H: until November of 2009. She testified she has an estranged relationship with her sister. Dr. R testified she saw the mother of the child about two years ago when she was pregnant this child. She sees the mother about two to three times a year. Further, Dr. R actually had custody of D H 's children (including the mother of this child for several years).

Dr. R stated that she was under the impression that the child would ultimately be returned to the custody of D H so she took no action to become involved with the Department of Children's Services in Tennessee. She said she did not know the condition of the child when she was removed from Ms. H 's care.

The R offered the expert testimony of Dr. William Bernet, Professor of the Department of Psychiatry at Vanderbilt University Medical Center. Dr. Bernet offered an academic opinion based on reviewing court documents, family documents and medical documents that moving the child from the F ' preadoptive home to the R home would be "moderately stressful" but would not injure or damage

her. Further, it is highly unlikely that the child would develop reactive attachment disorder as a result of transferring households. Dr. Bernet never conducted an interview involving the child and/or the P. He considered the record to show that the child had suffered mild neglect involving not receiving all immunizations and not receiving adequate interpersonal stimulation resulting in delayed speech and fine motor development and that she had “bounced back” and was now caught up in her development. This concluded the R’s proof.

Ms. Shauna Lowery, casemanager for DCS, testified she asked both Ms. H and the mother of the child for names of any family members upon DCS’s initial involvement with the child and family. She was told by both Ms. and the mother on more than one occasion there were no viable family members with whom to place the child. The mother never told Ms. Lowery about family members and never mentioned that she was raised by her aunt. The child has been placed with the P’s since her initial removal on April 23, 2009. She testified there was a strong bond between the child and the P’s and they had agreed to be a preadoptive home for the child.

Ms. Lowery testified that when the child entered DCS custody at fifteen months old she was “impersonable”, made no eye contact, barely crawled and was lethargic. Today she is energetic, playful, talking and walking. The child has a bond with the other child in the home, a five year old girl adopted by the P’s.

Ms. Mary Ann Schroer, senior psychological examiner and M.A., testified for the Department of Children’s Services as a consultant for preadoption regarding the child. She reviewed medical and psychological evaluations and also relied on

her personal observations of the child and the P [redacted]; and an interview with the P [redacted], all occurring within the last month.

Her expert opinion was the child has formed a formal and secure attachment with the P [redacted]. Attachment is not biologically determined. It is especially important in the first three years of life as when the brain is developing, attachment sets the stage for all development. In her observations of the child with the P [redacted]s, she observed a social security through the child's body language and referencing, eye contact, concern when the parent left the room, and wary of her (Ms. Schroer's) presence.

Ms. Schroer further testified the child was at a 3-6 month level developmentally when she came into DCS custody and has most likely had trauma in utero from drug use on the part of the mother, further trauma at the hands of the grandmother that potentially was severe abuse until she was placed into foster care. She described it as "significant" trauma. To move the child once again would be devastating. It would be as if both her parents had died. They are her attachment figures. This would be repeated trauma prior to the age of three. It would only be appropriate to move this child if she were being abused and neglected in her current placement.

Both foster parents testified. Mr. A [redacted] P [redacted] stated that he and his wife had changed their entire lifestyle to care for their children. They had decreased their work schedule to be present and have a routine each day. He is an accountant with a M.B.A. and speaks five languages. Mrs. M [redacted] P [redacted] is a registered pediatric nurse with a Masters in Public Health. They live in Brentwood, Williamson County

Tennessee and have been married for twenty-two years. They have lived here for ten years and have no plans to move.

He described his first encounter with this child as like holding a “block of wood”. She was rigid, no emotion, not walking or talking, her legs were undeveloped. She had apparently been kept in a crib all the time. She would fall down and have no reaction. She had an aversion to water. She did not know how to eat.

Mrs. P testified that she had to teach her how to eat. She wouldn’t open her mouth for a month. She would literally stuff all the food into her mouth at one time. She had no core muscles in her abdomen. She had never been turned on her tummy so she had no strength. She wouldn’t let you touch her. She could not lift up her arms. She smelled like smoke for days after she came to their home.

The P began physical therapy and speech therapy and testified to the remarkable progress the child has made in their care. They have set up an education fund for both girls. They have already determined the private school the girls will attend. They have every resource to provide physical, emotional and spiritual care for this child and want to adopt her.

The CASA advocate, Ms. Carol Lewis, testified that she has a B.A. in Sociology and a M.A. in Reading and Supervision. She is the former principal of a school of seven hundred students and familiar with growth and development of children. She has been the advocate for this child since the beginning of the case. She observed the grandmother’s home from which the child was removed and stated the child was kept in crib in a dark kitchen all day long with only a television



on. The smell of smoke was overpowering. She also testified as to the transformation the child has made in the P's care and the bonding that has taken place with the older sister.

After hearing the testimony, the Court took the matter under advisement to review the briefs and case law submitted by the parties.

II. Juvenile Court has exclusive original jurisdiction over dependency and neglect cases pursuant to T.C.A 37-1-103(a)(1) until such time the case is dismissed, the custody determination is transferred to another juvenile, circuit or chancery court, a petition for adoption is filed, or the child reaches the age of eighteen (T.C.A 37-1-103(c)).

Under the dependency and neglect statute, T.C.A. 37-1-130(a)(2), the Court may transfer temporary legal custody to any of the following:

- (A) Any individual who...is found by the court to be qualified to receive and care for the child;
- (B) The department of children's services;
- (C) Any agency or other private organization licensed or otherwise authorized by law to receive and provide care for the child; or
- (D) An individual in another state with or without supervision by an appropriate officer under 37-1-142.

The Court can modify or vacate any order pursuant to T.C.A. 37-1-139(b) and Tennessee Rules of Juvenile Procedure 34(c) on the ground that changed circumstances so require in the best interest of the child.

The juvenile court has the authority to appoint a permanent guardian pursuant to T.C.A. 37-1-801, et.al. The statutory requirements are listed in T.C.A. 37-1-802 and under 37-1-802(b) are specific to include all five (5) requirements, one of which is that the child has been living with the proposed permanent guardian for at least six (6) months. The Court finds the guardianship statute to be inapplicable in this case because the child has not lived with the R

However, their intervening petition for custody is properly before the Court as part of the Dependency and Neglect proceedings and was filed and heard prior to the hearing for Termination of Parental Rights. The Court can consider their petition as further disposition in the Dependency and Neglect and can modify the custody order based on changed circumstances in the best interest of the child. Further, an appeal of this Court's order regarding the Dependency and Neglect would be *de novo* to the Circuit Court pursuant to T.C.A. 37-159(a).

Based on the above, the Court finds that the intervening petition by the R is not a changed circumstance. However, in the event that it was found to be a changed circumstance, it is not in the best interest of the child to change custody for the following reasons.

The R have never met this child. There is no relationship at all other than Dr. R is the great aunt of the child. There is clearly an enormous amount of love, affection and emotional ties existing between the P and the child as

shown through their emotional and endearing testimony, descriptions of the close and warm relationship with their other daughter as evidenced by the many photographs introduced at trial. The P's have adjusted their work schedules to make these two girls the most important part of their lives. The Court places a strong emphasis on this factor in making a best interest determination. The child has bonded with this family. She calls them "mommy" and "daddy" and believes she has a sister. She has transformed from almost nonresponsive and lethargic to a happy, healthy, normal two and a half year old. The Court agrees with the testimony of Ms. Schroer that removing her from the P's home would be as if both her parents had died. It would be a trauma that the Court feels is not only unnecessary but potentially devastating based on what this child has already experienced at the hands of her biological family.

While both the R's and the P's are financially able to provide the child with food, clothing, medical care, education and other necessary care, it is the P's who have for over the last year been the primary caregiver. They have been the only people that have provided for this child both physically, emotionally and spiritually. They have taken her to numerous medical appointments, physical and speech therapy, enrolled her in a private school, and set up an education fund for her. This factor weighs heavily in favor of the P's.

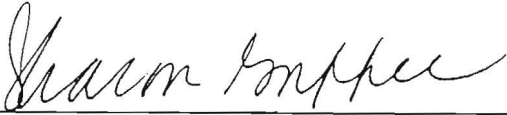
The Court considers the importance of continuity in the child's life and the length of time the child has lived in a stable, satisfactory environment also most strongly favors the P's. Based on the very disturbing history of neglect in this child's life, it is important that she is able to continue to thrive in this home where

she is loved and wanted. She has been part of the P's family for fifteen months. It is for exactly this reason our statute T.C.A. 36-1-115(g)(1) gives first preference to foster parents willing to adopt a child over anyone else, including family members. (*In Re: Adoption of A.K.S.R and A.T.S.R.* 71 S.W.3d 715 2001). Certainly, if the R's had come forward at the beginning of this case, it could have been a different outcome.

All other factors regarding the child's best interest including the stability of the family unit, the mental and physical health of the parents and the home, school and community record of the child, the Court considers relatively equal.

It is for the above reasons, the Court finds the petition for custody shall be denied. The child shall remain in the custody of the Department of Children's Services until such time as the Order is entered regarding the Petition for Termination of Parental Rights.

It is therefore ORDERED, ADJUDGED and DECREED this  
the 19<sup>th</sup> day of July, 2010.

  
\_\_\_\_\_

Juvenile Court Magistrate

**CERTIFICATE OF SERVICE**

Williamson County Juvenile Court Clerk  
408 Century Court  
Franklin, TN 37064

The undersigned hereby certifies that on this the 20<sup>th</sup> day of July, 2010, a true and exact copy of the foregoing document has been forwarded to the persons listed below:

Department of Children's Services  
Attn: Leslie Bruce, Assistant General Counsel  
1810 Columbia Ave. Ste 18  
Franklin, TN 37064

Department of Children's Services  
Attn: Shauna Lowery, CM  
1810 Columbia Ave. Ste 18  
Franklin, TN 37064

Francis King  
Attorney at Law  
Nashville City Center 511 Union St. Ste. 1850  
Nashville, TN 37219

Jennifer Honeycutt  
Attorney at Law  
219 3rd Avenue North  
Franklin, TN 37064

Robert Plummer  
Attorney at Law  
P. O. Box 1361  
Franklin, TN 37064

- U.S. Mail, Postage Prepaid
- Atty, Atty Hand Delivered L. Bruce, S. Lowery, R. Plun
- Overnight Delivery Service 7-20-10 mer
- Certified Mail, Return Receipt Requested ls
- Facsimile
- Receptacle at Juvenile Services

Kristin Lucas  
Williamson County Juvenile Court Clerk (D.C.)

JUVENILE COURT  
 WILLIAMSON CO. TN  
**IN THE JUVENILE COURT OF WILLIAMSON COUNTY, TENNESSEE**  
 AT FRANKLIN JUN -6 PM 4:14

In the Matter of:

M            B            & H  
 DOB 3/7/07

FILED - CLERK OF COURT

C     M. H	)	
Petitioner	)	
	)	
vs.	)	SF #39027
	)	LF #31346
Q        F	)	
Respondent	)	

**ORDER**

This cause came to be heard on May 2, May 3 and May 16, 2011 before the Honorable Sharon Guffee, Juvenile Court Magistrate for Williamson County, Tennessee. Appearing before the Court were the Father, C H , represented by Ms. Angela Hoover and the Mother, Q F , represented by Mr. James Rose on a Petition to Establish Parentage, to Establish Visitation and to Set Child Support filed by the Father on January 28, 2011. Mother filed an Answer on March 8, 2011.

A temporary order for visitation and child support was entered on March 23, 2011.

Father's proof at trial included testimony from two witnesses that were familiar with Mother and her living arrangements, Father's testimony and paternal grandfather. Mother's proof included her testimony as well as her current roommate and a past roommate and maternal grandmother.

Father made an oral motion to allow his pleadings to conform to the evidence as

he was asking to be primary residential parent in addition to establishing paternity and visitation which was granted.

The Court makes the following findings of fact regarding Father's petition for paternity, custody, visitation and child support:

1. The parties have one child, M , who is three years old. The parties were never married. There has never been a custody order or a child support order. The parties lived together for approximately one year after the child was born. Mother primarily stayed at home with the child during this time.
2. Upon separating, the parties have followed a visitation schedule that essentially equally divides the parenting time to accommodate mother's work schedule. Father's parenting time has been Wednesday at 4:00 p.m. until Thursday at 4:00 p.m. (Paternal grandfather cares for the child on Thursdays.) The child then is delivered to the maternal grandmother's home where she stays until picked up Friday at 4:00 p.m. by Father and remains until Sunday at 5:00 p.m.
3. Father purchased a three bedroom, two bath single family home in 2010. Photographs reveal a well-kept home with a fenced back yard and playground equipment. The child has her own room with appropriate décor and toys. Father married in 2010 and he and his wife are expecting their first child.
4. Mother has had several residences since the parties separated and has lived with many roommates in order to decrease her living expenses. Father testified the Mother had as many as four residences in a six month period and

he was concerned about her living conditions. Father testified mother was frequently overdrawn in her checking account and on occasions Father has paid Mother's cell phone bill, assisted with a car loan, and has consistently paid child support to the Mother in cash or by check without being court ordered.

5. Father has a B.S. degree from M.T.S.U. in concrete management and works for Quality Electric Service in Murfreesboro. His income is \$2080.00 per month. He pays for health insurance for the child in the amount of \$91.44 per month. Mother has a high school diploma and a couple college credits. She works as a server at Chuy's Restaurant making \$2.13 per hour plus tips. She works 20-30 hours per week. Her income is \$1000.00 per month.
6. The parties have an unharmonious relationship as evidenced by exhibits #7 and #8, forty-two pages of text messages. Mother has threatened to withhold visitation until Father paid her child support.
7. Mother previously has lived in a two bedroom apartment with two adults and two children. She has been a roommate of Nicole Rickard's and lived with her in a four bedroom four bath home with two other adults and four children. Since January 2011, Mother leased a three bedroom apartment and has a male roommate, Brad Walker. Mr. Walker testified that he is married but separated from his wife. He is a manager at Firestone Tires. He testified that several people, including Steve, have spent the night at the apartment. Mother testified that Lindsey, Steve, Carly and her boyfriend have all spent the night at her apartment. Her boyfriend does not spend the night when the child is



visiting. Mr. Walker, his wife, his mother-in-law and Mother are all on the 12 month apartment month lease. Mr. Walker submitted to a drug screen and tested positive for opiates and benzoids. He provided a prescription for hydrocodone and diazepam.

8. Both parents tested negative on a drug screen on this date. Mother had previously tested positive for benzoids on March 14, 2011 without a prescription. Child Protective Services were ordered to investigate and on March 17, 2011 provided a report to the Court. The Court previously ordered the Department of Children Services to randomly drug screen the Mother. Mother testified Father has previously used illegal drugs. Father has been convicted of Driving While Impaired in 2004 and DUI 1<sup>st</sup> offense and Simple Possession of Marijuana in 2004. He successfully completed his probation.
9. Both paternal grandparents and maternal grandmother assist in the care of the child.
10. Mother testified that her monthly income is usually \$1000.00 She receives \$225.00 in child support. Her rent is \$615 per month and her expenses are \$719.00 per month leaving her with a negative cash flow of \$109.00 per month.
11. Father has paid child support in the amount of \$17,853.65 (exhibit #3), \$1682.00 (exhibit #4) and \$200.00 in cash per his testimony for a total amount of \$19,735.65. Mother disputed much of the cash payments of child support and Father presented checking account statements (exhibit #14) to corroborate his cash payments.

12. The testimony at trial was that both parents have a close and loving relationship with the child as do the grandparents.

13. Father admits that he is the Father of the child and does not require a hearing on paternity.

Father's petition is governed by T.C.A. 36-6-106. The Court makes a determination based on the best interest of the child considering the relevant statutory factors. The Court makes the following findings based on the above facts.

- (1) The Court finds the love, affection and emotional tie existing between the child and each parent to be equal not weighing towards either parent.
- (2) The disposition of the parent to provide the child with food, clothing, medical care, education and other necessities and the degree to which a parent has been a primary caregiver weighs more heavily to the Father. Father is more stable financially and has provided more financial support than required under the law to this child. He owns a lovely home and has a stable job. He has arranged preschool for the child near his home. While Mother initially had stayed at home with the child, she is working long evening hours as a server in a restaurant and continues to have financial difficulty. The parties have equally divided parenting time with the child since separating. Mother has not had stable housing in the past and continues to rely on roommates to allow her to meet her expenses. She has also relied on the Father to provide additional monies so she can purchase a car and pay her bills.

- (3) The importance of continuity in the child's life and length of time the child has lived in a stable, satisfactory environment factor favors the Father for the same reasons stated in factor two (2). Mother just recently obtained a vehicle and car insurance.
- (4) The stability of the family unit of the parents also weighs heavily for the Father. Father has recently married and is expecting a child with his new wife. Father's parents live in an established Franklin subdivision in a beautiful home with a pool. The paternal grandfather cares for the child every Thursday and has done so for the past two years. The child spends at least one night a month with the paternal grandparents. As stated above, Mother has lived in numerous apartments with many different roommates and one single family home with many adults and children. It is only as of January 2011 Mother has secured a three bedroom apartment where the child has her own room but there is at least one male roommate and several other temporary occupants. The maternal grandmother also cares for the child every Thursday evening and on other occasions as needed. She does not have an automobile but has neighbors nearby for emergencies. She has prior Driving Under the Influence convictions and testified she does not drink alcohol when the child is present.
- (5) Both parents displayed good mental and physical health so this factor weighs equally between the parties.
- (6) The home, school and community record of the child is not applicable as to school due to the age of the child. However, the home and community record weighs towards the Father.

(7) and (8) factors are not applicable in this case.

(9) The character and behavior of any other person who resides in or frequents the home of a parent and person's interactions with the child factor weighs more heavily for the Father. Mother not only has a male roommate who is prescribed narcotics and valium but she has frequent overnight guests sleeping on her couch. (Mother tested positive for benzoids initially at a court hearing without a prescription.) Father and his wife have a male roommate who is moving out.

(10) Each parent's past and potential for future performance of parenting responsibilities including willingness and ability to facilitate and encourage a close and continuing parent-child relationship weighs more heavily to the Father. The testimony and exhibits show Mother withholding visitation until receiving monetary payment from the Father. Both parents have problems communicating effectively and without using foul language however, Father did take the initiative to file this petition and seek to establish some continuity in parenting. He is making every attempt to create a safe and stable environment for his child and appears to be making it a priority to look out for her best interest and not quarrel with the Mother.

Based on the above summation of the statutory factors and finding that it is in the child's best interest to have stability and continuity, the Court finds the Father to be a fit and proper primary residential parent with Mother having standard visitation every other Sunday at 5:00 p.m. until Wednesday at 4:00 p.m. The parties may equally divide the Christmas holiday with Mother having the first week of the holiday until Christmas day at noon and Father having the second week of the holiday. On even years Father shall

have the first week. Mother shall have Thanksgiving holiday from Wednesday at 6:00 p.m. until Sunday at 6 p.m. in odd years. Father shall have spring break holiday in even years. Mother shall have extended summer time of two weeks, one week in June and one week in July giving written notice to Father by May 1 each year of the weeks she desires. All other holidays may be as the parties can agree or they may petition the Court.

Child support shall be calculated based on Father being primary residential parent with Mother receiving standard visitation. Father's income is \$2080 per month and Mother's income is \$1000.00 per month. Father may receive credit for payment of health insurance in the amount of \$91.44 per month. A child support worksheet shall be prepared by attorney for Father and submitted to the Court. The Court may order a deviation of Mother's child support for undue hardship.

Father's temporary child support of \$246.00 per month shall terminate upon entry of this order. Mother's child support obligation shall begin July 1, 2011. Father will have no arrearage based on the amount of child support he has previously paid to Mother.

It is therefore **ORDERED, ADJUDGED and DECREED** on this  
the 6<sup>th</sup> day of June, 2011.

  
Juvenile Court Magistrate

**CERTIFICATE OF SERVICE**

Williamson County Juvenile Court Clerk  
408 Century Court  
Franklin, TN 37064

The undersigned hereby certifies that on this the 7<sup>th</sup> day of June, 2011, a true and exact copy of the foregoing document has been forwarded to the persons listed below:

Angela Hoover, Attorney at Law  
Ainley, Hoover, Clark & Hoover, PLLC  
204 Fourth Avenue South  
Franklin, TN 37064

James Rose  
Attorney at Law  
19 Music Square W Ste R  
Nashville, TN 37203

- U.S. Mail, Postage Prepaid
- Atty, Atty \_\_\_\_\_
- Hand Delivered
- Overnight Delivery Service
- Certified Mail, Return Receipt Requested
- Facsimile
- Receptacle at Juvenile Services

Kristen R \_\_\_\_\_  
Williamson County Juvenile Court Clerk / D.C.

IN THE JUVENILE COURT OF WILLIAMSON COUNTY, TENNESSEE  
AT FRANKLIN

2011 JUN 11 PM 12:36



In the Matter of:

S I GJ  
DOB 5/24/06

J P G , )  
Petitioner/Mother )

vs. )

J M. S , )  
Respondent/Father )

SF #29763

LF #25924

J# 52955

YS:RP

ORDER

This cause came to be heard on June 21, 2011 before the Honorable Sharon Guffee, Juvenile Court Magistrate for Williamson County, Tennessee on Notice of Interference with this Court's Jurisdiction over the Minor Child filed by the Father on May 4, 2011 and Response to Father's Notice and Motion to Dismiss and for Attorney's Fees filed by the Mother on June 10, 2011. A Motion to Quash Subpoena was filed by the Attorney General's Office on June 21, 2011.

Present before the Court were Dana Schmidt, Attorney for Father; Julia Stovall and Jennifer Williams, Attorneys for Mother; Dianne Dycus, Deputy Attorney General and Ben Smith, Attorney for the Department of Children's Services.

The Court grants the Motion to Quash Subpoena for the reasons set forth in the Attorney General's motion.

Father's Notice of Interference stems from the filing (and later adjudication) of a Dependency and Neglect petition filed by the Department of Children's Services in the

Davidson County Juvenile Court on November 28, 2008 for allegations of abuse/neglect occurring in Davidson County. The parties had previously entered into an agreed order in Williamson County Juvenile Court on November 6, 2006 establishing paternity, custody and visitation of the child.

Father argues the Williamson County Juvenile Court maintains continuing subject matter jurisdiction over the minor child based on the paternity and custody order using *In Re B.N.S. (2004 TennApp LEXIS 263)* as the basis of his argument. Father argues since Williamson County Juvenile Court maintained continuing jurisdiction, the Dependency and Neglect petition should have been filed in Williamson County and since Davidson County did not have subject matter jurisdiction, the Davidson County orders should be void and Father's visitation issues should be addressed by the Williamson County Juvenile Court.

Mother's response to Father's argument is that Williamson County Juvenile Court does not have continuing jurisdiction over the child pursuant to establishing paternity under T.C.A. 36-2-301 to the exclusion of all matters such as the filing of a Dependency and Neglect petition and the issue is one of venue and personal jurisdiction as opposed to continuing jurisdiction under T.C.A. 37-1-103(c).

This Court agrees with the Mother for the following reasons. Juvenile Courts are courts of limited jurisdiction defined by statute. T.C.A. 37-1-103 sets out those proceedings under which juvenile court has **exclusive original jurisdiction**, one of which is dependency and neglect proceedings. Under T.C.A. 37-1-103(c) this jurisdiction continues until the case is dismissed, or until the custody determination is transferred to



another juvenile, circuit, chancery or general sessions court exercising domestic relations jurisdiction, or until a petition for adoption is filed.

Juvenile Courts have **concurrent jurisdiction** with many other courts pursuant to T.C.A. 37-1-104. Two of those courts are circuit and chancery courts (T.C.A. 37-1-104(f)) for establishing paternity of children born out of lawful wedlock and to determine custody, visitation, support, education or other issues regarding the care and control of children born out of wedlock (under T.C.A. 36-2-301). T.C.A. 37-1-104(f) does not call for exclusive or continuing jurisdiction in these matters.

This Court agrees with the reasoning in *Terry v. Botts (2001 WL 173207)* where the Court of Appeals discusses exclusive original jurisdiction saying “It is well established under the aforementioned statute (T.C.A. 37-1-103) that once juvenile court has jurisdiction over a person, that person remains subject to the juvenile court jurisdiction until the age of eighteen (18). However, we do not interpret the language of this statute and the case law in Tennessee to include those persons brought into juvenile court for the limited purpose of a legitimation proceeding which was fully adjudicated, without any question of delinquency or dependency and neglect.”

So have we here, an order in Williamson County Juvenile Court establishing only paternity and addressing those issues regarding the care and control of the child. There were never any allegations of dependency and neglect in Williamson County that would allow for exclusive original and continuing jurisdiction.

The Department of Children’s Services was correct in filing a Dependency and Neglect petition in the venue where the allegations occurred and Davidson County therefore has exclusive continuing jurisdiction pursuant to T.C.A. 37-1-103(c).

It is therefore **ORDERED, ADJUDGED and DECREED**, Father's Notice of Interference and Show Cause is denied and Mother's Motion to Dismiss is granted.

Since this was a question of subject matter jurisdiction that can always be raised at every stage of a proceeding, the Court finds this was not a frivolous motion and orders that each party pay their own attorney fees.

**ENTERED** this 11<sup>th</sup> day of July, 2011.

  
\_\_\_\_\_  
**Juvenile Court Magistrate**

**CERTIFICATE OF SERVICE**

Williamson County Juvenile Court Clerk  
408 Century Court  
Franklin, TN 37064

The undersigned hereby certifies that on this the 12th day of July, 2011, a true and exact copy of the foregoing document has been forwarded to the persons listed below:

Dana Schmidt  
Attorney at Law  
P.O. Box 198341  
Nashville, TN 37219

Dianne Stamey Dycus  
Deputy Attorney General, General Civil Division  
P.O. Box 20207  
Nashville, TN 37202

Jennifer Williams  
Attorney at Law  
109 5th Ave. West  
Springfield, TN 37172

Julia Stovall  
Attorney at Law  
136 Fourth Ave. South  
Franklin, TN 37064

Tennessee Department of Children's Services  
Attn.: Ben Smith  
436 6th Ave. No., 7th Floor  
Nashville, TN 37243

- U.S. Mail, Postage Prepaid
- ~~Hand Delivered~~ *Dianna Dycus, DA Gen, Ben Smith DCS*
- Overnight Delivery Service
- Certified Mail, Return Receipt Requested
- Facsimile
- Receptacle at Juvenile Services

  
Williamson County Juvenile Court Clerk *D.C.*

YSO Rafael Pineyro  
SF# 29763  
LF# 25924  
DT# : 52955

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE

FILED  
SEP 18 AM 10:15  
CLERK  
NASHVILLE

IN RE: W L B. , IV No. M2004-00999-COA-R3-JV  
L B] and K] B] ) Juvenile Court  
) Williamson County  
)  
vs. ) Hon. Al Nations,  
) Presiding Judge  
)  
V H and W B. , III ) (Termination of Parental Rights)

ON APPEAL AS OF RIGHT FROM THE JUDGMENT OF THE  
JUVENILE COURT FOR THE TWENTY-FIRST DISTRICT  
AT FRANKLIN, WILLIAMSON COUNTY

BRIEF OF THE APPELLANT

Sharon E. Guffee #018937  
Attorney at Law  
143 Fourth Avenue North  
Franklin, Tennessee 37064  
(615)794-7379  
Attorney for Appellant

TABLE OF CONTENTS

	<u>PAGE</u>
Authorities Cited.....	ii
Introduction.....	1
Issues Presented for Review.....	2
 <b>Whether there was clear and convincing evidence to terminate the Father’s parental rights on the statutory ground of abandonment?</b>	
 <b>Whether there was clear and convincing evidence that termination of the Father’s parental rights was in the best interest of the child?</b>	
Statement of the Case.....	3
Statement of the Facts.....	5
Argument.....	8
Conclusion.....	13
Certificate.....	14

## TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<u>In re Swanson</u> , 2 S.W.3d 180 (Tenn.1999).....	8
<u>Hodges v. S.C. Toof &amp; Co.</u> , 833 S.W.2d 896 (Tenn. 1992).....	8
<u>In re Estate of Armstrong</u> , 859 S.W.2d 323 (Tenn.Ct.App. 1993).....	8
<u>In re D.L.B.</u> , 118 S.W.3d 360 (Tenn. 2003).....	9
<u>State of Tenn. Dept. of Children’s Services v.K.L.K.</u> , No. E2003-2452-COA-R3-PT 2004 Tenn.App. LEXIS 443 May 22, 2004.....	9
<u>In re T.L.P.</u> , No. W1000-01940-COA-R3-CV, 2201 Tenn.App.LEXIS 638 August 22, 2001.....	9
<u>Stanley v. Illinois</u> , 405 U.S. 645, 31 L.Ed.2d 551 92 S.Ct. 1208 (1972).....	10
<u>M.L.B. v. S.L.J.</u> , 519 U.S. 102,136 L.Ed2d 473 117 S.Ct. 555 (1996).....	10
 <u>Other</u>	
Tennessee Code Annotated 36-1-113(c).....	8
Tennessee Code Annotated 36-1-102(l)(A).....	9
Tennessee Code Annotated 36-1-113 (l)(1).....	10
Tennessee Code Annotated 36-1-113(i)(5).....	11

## INTRODUCTION

### **MAY IT PLEASE THE COURT:**

This is an appeal as of right from the Juvenile Court for the Twenty-First District, Williamson County at Franklin, Tennessee, the Honorable Al Nations presiding.

On the 3<sup>rd</sup> day of March, 2004, the parental rights of the appellant, W. B. III, were terminated as to his son, W. B. IV, D.O.B. 6/20/00. Also terminated were the rights of the mother, V. H. as to her son, W. B. and her two other children by different relationships. They are not part of this appeal. This appeal will address only those issues that pertain to W. B. III. The petition was filed by the pre-adoptive parents, L. and K.

The court based its decision on the statutory factors of abandonment (*Tenn. Code Annotated* 36-1-113(g)(1) in that Mr. B. willfully failed to support the child four months prior to the petition being filed. In finding that it was in the best interest of the child to terminate Mr. B.'s parental rights, the court held that *Tenn. Code Annotated* 36-1-113(I)(5) was applicable in that a change of caretakers and physical environment would affect the child's emotional, psychological and medical condition.

The appellant will be referred to as Mr. B. The appellee will be referred to as Mr. and Mrs. B. or "the B.".

The record is in two parts. The technical record will be indicated by the abbreviation (R.page) and the transcript of the evidence will be indicated by page and line (T.285/5).

## ISSUES PRESENTED FOR REVIEW

The appellant, W B. III, submits the following issues are raised in his appeal:

1. Whether there was clear and convincing evidence to terminate the Father's parental rights on the statutory ground of abandonment?
2. Whether there was clear and convincing evidence that termination of the Father's parental rights was in the best interest of the child?



## STATEMENT OF THE CASE

On May 1, 2003 a petition for dependency and neglect was filed by Diann Mustin, a friend of the mother, V. H. (R.1). Ms. H. is the mother of three children (R.1). One of her children is W. B. IV (R.1). The father of W. B. , IV, is Mr. W. B. , III (R.14).

On July 28, 2003 a petition to change custody was filed by L. and K. B. , a couple who would like to adopt the three children, and heard simultaneously with the dependency and neglect petition (R.9). The court found the children to be dependent and neglected due to the mother's continued drug use and abandonment and placed the children in the custody of the B. (R.12). The B. petition for custody was dismissed (R.12).

On November 3, 2003, the B. filed a petition to terminate the parental rights of V. H. and W. B. , III (R.14).

Mr. B. was determined to be indigent and the court appointed Sharon E. Guffee, a member of the Williamson County Bar Association, to represent him by Order entered February 5, 2004 (R.27).

On March 3, 2004, Mr. B. filed a petition for custody of W. B. IV (R.29). The trial for the termination of parental rights was held on March 3, 2004 and the Juvenile Court for Williamson County sitting at Franklin, terminated the parental rights of father, W. B. , III as to his son, W. B. , IV, D.O.B. 6/20/00 (R.33). The court relied on the statutory ground of abandonment for willful nonsupport for four months preceding the petition and that it was in the best interest of the child because of the effect of a change in caretakers and physical environment is likely to have on his emotional, psychological and medical condition (R.33).

On April 19, 2004 the Order for termination of parental rights was entered (R.33). On

April 21, 2004, Mr. B filed a notice of appeal evidencing his intention to appeal as of right to this Honorable Court (R.37). Mr. B was again determined to be indigent and Sharon E. Guffee was appointed again to represent him on appeal by Order dated April 1, 2004 (R.43).

## STATEMENT OF THE FACTS

W. B. , III, is the father of W. E. , IV, D.O. B. 6/20/00 (R.14). V. H. is the mother and she also has two additional children with two different fathers (R.1). This appeal only involves the rights of the father, W. B. , III. ( R.14)

W. B. III lived with his mother and father after his birth in Cedar Ridge apartments in Hermitage, Tennessee (T.297/15). During that time Mr. B. was working (T.297/18) and providing food, clothing, shelter for little Will (T.298/4,6). Sometime during 2001, V. H. moved to Franklin (T.24/17-19) to stay with Diann Mustin who works with Kabeshbarnea Ministries, an organization that assists young single mothers and their children (T.17/24,25;18/1-16). V. began in-patient treatment for drug addiction at Meharry (T.299/7-11). Mr. B. moved in with his mother in Nashville (T.299/16,17). V. had trouble with her recovery (T.26/17-25;299,300/23-2) and moved back to Nashville in 2001 and filed for an apartment at J.C. Napier (T.300/1,2).

Mr. B. provided furnishings for V.'s apartment (T.300/6-8) and would visit on the weekends and some weekdays (T.300/9-14). Mr. B. provided support for little W. by buying whatever they needed (T.301/4) but would not give V. money because he knew she would spend it on drugs (T.300/24,25; 301/1-3). Mr. B. would see little W. on a regular daily basis (T.301/18-25) while V. was living at J.C. Napier.

In 2002, V. again moved to Franklin (T.302/1-4) because she was unable to care for her children and DCS was about to take her kids (T.38/6-25;39/1-4). In January 2003, V. signed a paper giving custody of her three children to Diann Mustin (Exhibit #1).

Mr. B. was convicted of felony possession of controlled substance for resale in July 2002 (T.319/15-18) and was incarcerated for ninety days from May until July 2002 (T.304/18-

21).

During the time Mr. B was not incarcerated, he continued to see little W with the help of his brother transporting all three children to Mr. B's home in Nashville (T.302/5-17) every other weekend (T.303/2). Mr. B provided food, clothing, and diapers for little W (T.303/6-17). Mr. B had an established relationship with the child (T.304/18-20) to the point where little W would cry when he had to return to Diann Mustin's house (T.303/21-25).

Ms. Mustin admitted that she did not have knowledge of what type of support Mr. B was providing for little W in 2001 or in 2002 (T.112/4-24;113/9-15; 114/22-25;115/1-3) and corroborated that Mr. B's brother would sometimes pick up the children (T.115/12-15).

Mr. B insisted that the only time Ms. Mustin asked him for money for little W was right after Mr. B got out of jail in July 2002 (T.305/24, 25;306/1-12).

Mr. B continued to see little W on a regular basis through the Thanksgiving holiday in 2002 (T.304/3-6) and even for the week of Valentine's Day in 2003 (T.307/3-7). Mr. B was again incarcerated for a probation violation from February 2003 until October 23, 2003 (T.307/13-18).

Mr. B testified at the hearing that he had been drug free for fourteen months (T.309/9,10). This was corroborated by the petitioner's witness, Yvonne Smith Keaton who testified that in fact Mr. B had been clean for over a year and tested negative on a drug screen on the court date (T.280/1-11).

Even while incarcerated, Mr. B would have phone contact with little W that lasted until June 2003 (T.307/19-24). This was confirmed by Ms. Mustin (T.120/23-25;121/1-4;131/22-25;132/1-10).

While Mr. B was incarcerated in 2003, a dependent and neglected petition was filed

on V [redacted]'s three children (R.1) and a petition to change custody to Mr. and Mrs. B [redacted] (R.9). Mr. B [redacted] was never notified of the hearings and actually found out about it through his family (T.309/16-25;355/16-21). Mr. B [redacted] maintains that there were many options of placement for little W [redacted] within his family (T.310/12-14;355/16-21)

Upon his release from incarceration, Mr. B [redacted] finds that W [redacted] was now living with the B [redacted] (T.312/5-7) and he wanted to see his son (T.312/8,9). The B [redacted] had filed a petition for a restraining order (R.20) which was dismissed on November 24, 2003 (R.22). Mr. B [redacted] denied ever threatening to take the child (T.312/18-25;313/1-11).

Mr. B [redacted] was able to visit with W [redacted] while he was living with the B [redacted] (T.313/15-25; 314/1-6). These visits were discontinued in January 2004 upon Mr. B [redacted]'s petition for visitation (R.24) which was continued until the court hearing for the termination (R.25).

Mr. B [redacted] testified that he is employed and has a choice of hours that could accommodate taking care of W [redacted] (T.357/25;358/1-17) and would follow any court orders. He has a single family home that is debt free and Mr. B [redacted] is debt free. (357/20-24).

Mr. B [redacted] was incarcerated from February 2003 until October 23, 2003 (T.307/13-18). The petition for termination of parental rights was filed on November 3, 2003 (R.14.)

## ARGUMENT

WHETHER THERE WAS CLEAR AND CONVINCING EVIDENCE TO  
TERMINATE THE FATHER'S PARENTAL RIGHTS ON THE STATUTORY GROUND OF  
ABANDONMENT?

This issue examines the sufficiency of the evidence involving the first part of the analysis for termination of parental rights. The appellant would respectfully assert that there is not clear and convincing evidence that the statutory ground of abandonment was met. *In re Swanson*, 2 S.W.3d 180 (Tenn. 1999).

The trial court found that the appellant had willfully failed to provide support for the child for the four months preceding the filing of the petition to terminate parental rights (R.33). The appellant would assert that he was incarcerated for the majority of the four months preceding the filing of the petition and therefore could not willfully fail to provide support (T.307/13-18).

Termination of parental or guardianship rights must be based upon a finding by the court that: (1) the grounds for termination of parental or guardianship rights have been established by clear and convincing evidence; and (2) termination of the parent's or guardian's rights is in the best interests of the child. *Tennessee Code Annotated* 36-1-113(c). Before a parent's rights can be terminated, it must be shown that the parent is unfit or substantial harm to the child will result if parental rights are not terminated. *In re Swanson*, 2 S.W. 3d 180,188 (Tenn. 1999). Similarly, before the court may inquire as to whether termination of parental rights is in the best interests of the child, the court must first determine that the grounds for termination have been established by clear and convincing evidence. *Tennessee Code Annotated* 36-1-113 (c).

"Clear and convincing" evidence has been defined as follows: "Clear and convincing evidence eliminates any serious or substantial doubt concerning the correctness of the conclusions to be drawn from the evidence." *Hodges v. S.C. Toof & Co.*, 833 S.W.2d 896, 901

n.3 (Tenn. 1992). “It should produce in the fact-finder’s mind a firm belief or conviction with regard to the truth of the allegations sought to be established.” *In re Estate of Armstrong*, 859 S.W.2d 323,328 (Tenn.Ct.App. 1993).

The Juvenile Court found by clear and convincing evidence that the grounds of abandonment have been met in that for a period of four months prior to the petition being filed, he willfully failed to support this child. However, the Court also stated that “it appeared that Mr. [redacted] is attempting to make an adjustment in his circumstances. He has not maintained regular visitation, but I will have to say that he as, I think, especially since he’s been released from jail, attempted to—to visit with his child. He says that there’s been a meaningful relationship with his son.” (T.387/23-25;388/1-4).

The record is undisputed that Mr. B [redacted] was incarcerated from February 2003 until October 23, 2003. The petition to terminate parental rights was filed on November 3, 2003, some eleven days after Mr. E [redacted] was released. In the recent case of *In re D.L.B.*, 118 S.W.3d 360, 367 (Tenn.2003), the Tennessee Supreme Court stated that it must be shown that the conduct terminating parental rights was *willful* and that the trial court is the proper court to make a determination of willfulness pursuant to *Tenn. Code Annotated* 36-1-102(1)(A). Because in this case, the trial court did not make a determination of willfulness, grounds for termination have not been established and therefore, the Supreme Court could not reach the best interest of the child analysis. *In re D.L.B.*, 368.

Mr. B [redacted] would argue the same lack of willfulness has not been established in his case. He was incarcerated for the better part of the four months prior to the filing of the termination petition and was incapable of providing support. “An element of intent must also be applied to the definition of abandonment. Relying on the intent requirement, this Court held that

abandonment was not the proper basis to terminate parental rights when the parent was incarcerated during the four month relevant period.” *State of Tennessee, Department of Children’s Services v. K.L.K., No. E2003-2452-COA-R3-PT, May 22, 2004.*

Additionally this case cites *In re T.L.P., No. W1999-01940-COA-R3-CV, 2001 Tenn.App. LEXIS 638 (Tenn.Ct.App. Aug. 22, 2001)* where the Court of Appeals stated that “Because Ms. Henderson was incarcerated during the four months immediately preceding the filing of the petition, we find the element of intent lacking in Ms. Henderson’s failure to visit and/or support the children. Absent intent, we cannot uphold the termination of Ms. Henderson’s parental rights on the ground of abandonment under the standard articulated by the *Swanson* court. Accordingly, we find that the trial court erred by terminating Ms. Henderson’s parental rights on the ground of abandonment.”

Accordingly, the trial court erred in terminating Mr. B’s parental rights on the grounds of abandonment and the judgment of the Juvenile Court should be reversed and remanded to the Juvenile Court for proceedings as are consistent therein.

WHETHER THERE WAS CLEAR AND CONVINCING EVIDENCE THAT TERMINATION OF THE FATHER’S PARENTAL RIGHTS WAS IN THE BEST INTEREST OF THE CHILD?

This issue examines the sufficiency of the evidence as it pertains to the second part of the analysis for termination of parental rights. The determination of whether the termination is in the best interest of the child must be proven by clear and convincing evidence. The appellant would respectfully assert that there was not clear and convincing evidence that termination was in the best interest of the child. *Tennessee Code Annotated 36-1-113(c).*

Since the best interest determination requires a separate analysis, the existence of grounds



to terminate parental rights does not automatically mean that termination of parental rights is in the best interest of the child. *Supra, D.C.S. vs. K.L.K, 37.*

As stated earlier, the Juvenile Court found that Mr. B was attempting to improve his circumstances. He now has a full time job that can be flexible with hours to care for his son. He has a single family home that is unencumbered and he has no debt. He has been drug free for fourteen months. He has maintained regular contact with his son with the exception of the two times he was incarcerated and then he had telephone contact with the child.

A parent has a fundamental right to the care, custody and control of his or her child. *Stanley v. Illinois, 405 U.S. 645, 651, 92 S.Ct. 1208, 1212-13, 31 L.Ed. 2d 551 (1972).* Terminating parental rights has the legal effect of reducing the parent to the role of a complete stranger, "severing forever all legal rights and obligations of the parent." *Tennessee Code Annotated 36-1-113 (1)(1).* The United States Supreme Court has recognized the unique nature of proceedings to terminate parental rights, stating that "few consequences of judicial action are so grave as the severance of natural family ties." *M.L.B.v. S.L.J., 519 U.S. 102, 119, 117 S.Ct. 555,565, 136 L.Ed.2d 473 (1996).*

The Juvenile Court based its ruling on best interest on *Tennessee Code Annotated 36-1-113(i)(5)*, the effect of the change of caretakers and physical environment is likely to have on a child's emotional, psychological and medical condition (R.33). The Court expressed concern over the possibility of V H, the child's mother, being present at Mr. B's home. Mr. B testified that he would follow all orders of the court if he should be granted his son back (R.33). There was no expert testimony as to the effects of changing caretakers on the child. There was testimony as to the stability of Mr. B's home and work situation.

Accordingly, the Juvenile Court erred in finding it in the best interest of the child to

terminate the parental rights of Mr. B and the judgment of the Juvenile Court should be reversed and remanded to Juvenile Court for proceedings as are consistent therein.

### CONCLUSION

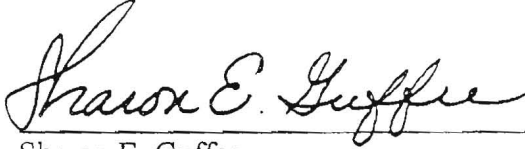
Based upon the foregoing reasons, the appellant, W B , III, submits that the judgement of the Juvenile Court for Williamson County should be set aside and reversed, and the parental rights of W B , IV, be restored to Mr. W B , III.

BY:

Sharon E. Guffee #018937  
Attorney for Appellant  
143 Fourth Avenue North  
Franklin, Tennessee 37064  
(615)794-7379

CERTIFICATE

I, Sharon E. Guffee, certify that a true and exact copy of the foregoing Brief of Appellant has been served on Ms. C. Diane Crosier, Attorney for Appellee, 136 Fourth Avenue South, Franklin, Tennessee and Ms. Deana C. Hood, Guardian Ad Litem for child, 304 Public Square, Franklin, Tennessee, via the United States Mail, first-class postage prepaid, this 18 day of August, 2004.

  
Sharon E. Guffee

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs December 8, 2004

**IN RE: W.B., IV**

**Juvenile Court for Williamson County  
No. 41460**

---

**M2004-00999-COA-R3-PT**

---

**JUDGMENT**

**FILED**

APR 29 2005

**Clerk of the Courts**

This cause came on to be heard upon the record on appeal from the Juvenile Court for Williamson County, briefs, and oral argument; upon consideration whereof, this Court is of the opinion that the order of the Juvenile Court should be reversed.

In accordance with the opinion of the Court filed herein, it is, therefore, ordered and decreed by this Court that the judgment of the trial court is reversed. The cause is remanded to the Juvenile Court for Williamson County for any further proceedings which may be necessary, consistent with this judgment and the opinion of this Court.

Costs of this appeal are taxed against Appellees, L and K B for which execution may issue if necessary.