COMMONWEALTH OF KENTUCKY
SUPREME COURT OF KENTUCKY
2008-SC-000404-D
(2007-CA-001850-MR)

DELORES MARIE KNIGHT — APPELLANT

v.

Appeal from the Lyon Circuit Court
Action No. 07- CI- 000003

LINDA YOUNG — APPELLEE

BRIEF OF APPELLANT

BRAD GOHEEN
629 U.S. 68 E
Benton, KY 42025
(270) 252-0223
(270) 252-0224(fax)

ATTORNEY FOR APPELLANT

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the Brief of Appellant has been mailed in accordance with CR 76.12 by mailing via Next-day delivery U.S. Mail, ten (10) copies to the Clerk of the Supreme Court, 209 Capitol Bldg., 700 Capitol Avenue, Frankfort, Kentucky 40601, and by mailing copies thereof to Barclay Bannister, Esq., 112 East Main Street, Princeton, Kentucky 42445, and Judge Clarence Woodall, III, Lyon County Courthouse, 300 West Dale Avenue, Eddyville, Kentucky 42038, on this 16th day of March, 2009.

Brad Goheen

INTRODUCTION

This is a child custody case wherein the Appellant, the biological mother, and previously the joint custodian, of the subject minor child, was denied custody in favor of the Appellee, who is the paternal grandmother of the minor child. The Appellee initially obtained custody through an emergency action in Lyon District Court shortly after her son, the father and primary residential custodian of the minor child, passed away in December, 2006. After a series of hearings in Lyon District Court, the Appellee filed for permanent custody in Lyon Circuit, culminating in the Findings, Conclusions and Judgment from which an appeal was taken. By unpublished opinion rendered May 2, 2008, the Court of Appeals affirmed the ruling of the trial court, whereupon the Appellant filed her Motion for Discretionary Review that was granted by this Court.

STATEMENT CONCERNING ORAL ARGUMENT

The Appellant believes the issues raised in this appeal, as well as the fullest explanation thereof, can best be effectuated through an oral argument.

STATEMENT OF POINTS AND AUTHORITIES

STATEMENT OF THE CASE

This is a child custody case wherein the subject minor child was in the primary residential custody of Gerald Van Knight, Jr., subject to the reasonable visitation rights of the Appellant pursuant to a Decree of Dissolution entered by the Vigo (Indiana) Superior Court on August 12, 2003. (See attached Decree) Most importantly, pursuant to said Decree, Appellant was to receive unsupervised visits "not less than that provided by the Indiana Parenting Time Guidelines," (Decree, p.5) which amounts to the Standard Visitation Guidelines available in Kentucky. The most notable aspect of the Indiana Decree is that the Appellant was not subject to any restriction with respect to her visitations, such as supervision or daytime-only. (see attached Decree)

For the next four years, Appellant and Mr. Knight maintained a reasonable amount of contact, and Appellant often visited with their minor child, though not to the extent she could have pursuant to the Decree. Appellant then moved to Tiffin, Iowa, while Mr. Knight and the child moved to Lyon County, Kentucky. In fact, Appellant had visited the minor child in Kentucky just weeks before Mr. Knight's tragic death on December 22, 2006, for three days beginning December 6, 2006. (VR 05:00:54 – 05:04-12)

Almost immediately upon Mr. Knight's death, Appellee, the minor child's paternal grandmother, sought an emergency custody order from the Lyon District Court, alleging that Appellant could not be found. (See attached Emergency Custody Order Affidavit) In fact, Appellee knew exactly where Appellant was at all times after Mr. Knight's death, but simply refused to contact Appellant in order to obtain a custody order for the minor child. (VR 04:02:40 –04:03:10) Appellee even testified that she had spoken with Appellant prior to and after the temporary custody order, without telling Appellant such an order was in place. (VR 04:03:15 – 04:05:50) Appellant believes this act was effectuated simply to contravene the

requirements of KRS 405.020(1), pursuant to which custody of the minor child would have immediately vested with Appellant upon Mr. Knight's death. Appellee evidently understood that fact, as she sought counsel (VR 04:05:35- 04:05:40), and filed an Affidavit for the Emergency Custody Order stating that she feared "[Appellant] may try to abscond with the child." (See attached Emergency Custody Affidavit) In fact, Appellee even admitted that the facts alleged in the Affidavit were not based upon current knowledge, but were simply statements of things Appellee had been led to believe four years earlier. (VR 04:07:22-04:09:31) As a result, the underlying emergency custody was simply based upon fraudulent representations to the court and was calculated to obtain custody without even notifying Appellant that any action whatsoever was taking place in Kentucky. Further, under KRS 405.020(2), Appellant had superior right to the child and was the proper individual to have custody at that time, so Appellant certainly would not have "absconded" with the child, she simply would have been entitled to take possession of the child.

Nevertheless, with temporary custody granted by the Lyon District Court, Appellee filed a Petition for permanent custody of the minor child in the Lyon Circuit Court. Appellee's Petition did not allege that she was the *de facto* custodian of the minor child, but rather sought to prove that Appellant was unfit, and that it would be in the best interests of the minor child to remain with Appellee. Approximately a month later, Appellee took it upon herself to have the child enrolled in some level of "counseling" through Mary Fran Davis, a Licensed Clinical Social Worker (LCSW). Some sessions were concurrent with Appellee, while some were individually with the child. While Appellant is unsure how many sessions actually occurred, Davis' deposition revealed the sessions ended prior to the final hearing. Appellant raises at least two issues with respect to the Davis sessions: first, as a LCSW, Appellant does not believe Davis meets the strict criteria for giving opinions regarding the

mental state or any proposed treatment for the minor child, and; second, the sessions only lasted a period of weeks and then abruptly ended, hardly qualifying Davis as a "treating physician" as contemplated by KRE 803(4).

The timing of Davis' deposition brings about an entirely different circumstance. Before present counsel entered his appearance on May 4, Appellant had two prior attorneys; Hon. Lisa DeRenard, who withdrew February 6, and Hon Delbert K. Pruitt, who withdrew April 4. During the month in which Appellant was seeking representation, Appellee filed her Notice to take Davis' Deposition. (See attached Notice) The Notice was filed with the Lyon Circuit Clerk on April 26, and the date of the deposition was to be May 2, in Kentucky. Appellant strongly believes the deposition was scheduled as such to deliberately exclude her from the deposition, as there is no possibility Appellant, residing in Iowa, would receive the Notice in adequate time to either appear personally for the deposition or retain counsel to do so on her behalf.

Further, both the deposition and records submitted therewith contained statements from a six-year old girl who could not possibly be deemed competent to testify within the Courts. Accordingly, Appellant moved the trial judge to exclude the deposition and records on that basis, only to be overruled. The trial judge did not even interview the child in order to determine for himself whether the child could speak competently regarding the unquestionably high stakes.

The final hearing itself, conducted on July 17 in the Lyon Circuit Courtroom, was nothing short of mayhem (the decedent's father has long been the judge-executive in neighboring Caldwell County), in that the large courtroom was packed with Appellee-friendly spectators. It being the Appellee's Petition, she called her witnesses first. The first several witnesses were current teachers of the minor child, that had nothing to offer with

respect to either the relationship between the child and Appellant or about the Appellant herself. At that point, Appellee attempted to bring forth evidence of uncertified military records tending to show that Appellant had been involved in some level of trouble in the late 1980's and early 1990's. Appellant objected, as the evidence was clearly prejudicial and had nothing to do with Appellant's relationship to the subject minor child.

Appellee further added chaos to the proceedings by bringing in as witnesses an ex-husband, to whom Appellant had obtained a divorce over a decade ago; a son form that marriage with whom the Appellant has a strained, at best, relationship; the Appellant's father, to which Appellant has not spoken in a number of years, and; witnesses of the like that were both prejudicial and could offer nothing relating to Appellant and her subject daughter. Each of these witnesses should have been excluded, or at the very least, extremely little weight should have been afforded them due to their obvious estrangement from the issue presented before the trial court.

Additional facts will be stated in the sections that follow as necessary to develop the issues in this appeal.

ARGUMENT

I. THE AWARD OF SOLE CUSTODY AND SUPERVISED VISITATION WAS BASED UPON IMPROPER TESTIMONY AND THEREFORE CONSTITUTES AN ABUSE OF DISCRETION.

As is abundantly evident in the trial judge's Findings, Conclusions and Judgment, the trial judge gave substantial weight to the testimony of third parties, many of whom lacked any knowledge whatsoever as to the Appellant's relationship to the minor child. In so doing, the trial judge heard hours of improperly admitted testimony that was highly prejudicial.

Further, much of the testimony did not even discuss the Appellant's relationship with the subject minor child.

A. The trial judge improperly admitted the deposition testimony of a Licensed Clinical Social Worker (LCSW) and based many of his findings upon that testimony.

Some time after the Appellee filed her Petition for custody of the minor child, the Appellee took it upon herself to have the child attend counseling sessions with Mary Fran Davis, LCSW, (hereinafter "Davis"). Davis met with both the minor child and the Appellee on occasion, and sometimes the minor child individually. It is not clear how many sessions actually took place individually with the child, although the sessions ended in April, 2007. The child has not been back to Davis since that time. As a result, the testimony provided by Davis was improperly admitted and considered by the trial judge.

1. The deposition testimony of Davis occurred without proper notice to the Appellant.

Appellee noticed a deposition of Davis to be held on May 2, 2007 (See attached). At the time the notice was filed, the Appellant was not represented by counsel, as her prior attorney, Delbert K. Pruitt, had withdrawn from the matter pursuant to an Order entered April 4, 2007 (see attached). Therefore, the Notice was mailed directly to the Appellant, who lives in Iowa. According to the certificate of service on the Notice, the Notice was mailed to Appellant on Wednesday, April 25, seven days before the proposed deposition was to take place. Even under the best of circumstances, the Appellant would not have received the Notice until Saturday, April 28, due to the substantial distance from Iowa to Kentucky. As it happens, Appellant did not receive the Notice until the date of the deposition, and therefore had no opportunity to cross-examine Ms. Davis or impeach any of her statements.

CR 30.02(1) provides: "A party desiring to take the deposition of any person upon oral examination shall give **reasonable** notice in writing to every other party to the action." (emphasis added). Later the same rule at CR 30.02(2)(b) provides, "If a party shows that when he was served with notice under subparagraph (a) of this paragraph (2) he was unable through the exercise of diligence to obtain counsel to represent him at the taking of the deposition, the deposition may not be used against him."

In the present case, Appellee knew there was no reasonable likelihood that Appellant would be able to either appear at the deposition or retain counsel to appear on her behalf. Likewise, Appellee made no effort to consult with Appellant to coordinate an acceptable time for such a deposition, as is common practice for such matters. Appellee clearly scheduled Davis' deposition to deliberately exclude Appellant from the deposition, and therefore the deposition should not have been admitted as evidence pursuant to CR 30.02(2)(b), and certainly should not have been relied upon by the trial judge in formulating his ultimate decision.

2. Davis' deposition and records should have been excluded because the opinions and statements therein were comprised primarily from hearsay testimony from an incompetent source.

The overwhelming majority of "evidence" supporting Davis' records and opinions are conversations she had with the minor child. There can be no dispute that such statements are hearsay, as they are out of court statements offered to prove the truth of the matter asserted. Therefore, unless the party offering the hearsay testimony can establish that the statements are admissible through some exception to the hearsay rule, the statements should have been excluded from the final hearing.

In *Souder v. Commonwealth*, Ky., 719 S.W.2d 730 (1986), the Kentucky Supreme Court considered a situation strikingly similar to the one presented in the instant action. In *Souder*, the minor child allegedly told her grandmother subsequent to a child's alleged injury that the Defendant had hurt her and described the way in which the Defendant had hurt her. The statements were allegedly made as a result of questioning by the grandmother. The *Souder* Court held that such statements "cannot qualify as an exception to the hearsay rule. The child's statements were given more than 24 hours after the alleged incident occurred, and in response to persistent questioning of the child regarding what had happened to her. Although the passage of time is simply one of the relevant considerations, in this case the time factor, coupled with the method of eliciting the child's statements, disqualified these statements as an exception to the hearsay rule." *Souder v. Commonwealth*, Ky., 719 S.W.2d 730, 734 (1986).

The *Souder* Court further held that a social worker who was investigating the possibility of child abuse was barred from recounting the minor child's statements made during interviews with the minor child as a result of the hearsay rule. Specifically, the *Souder* Court held, "There is no recognized exception to the hearsay rule for social workers or the result of their investigations." This includes pointing and demonstrating performed by the child in the presence of the social worker, using a so-called 'anatomically correct' doll, because hearsay includes 'nonverbal conduct of a person, if it is intended by him as an assertion." *Id.*

In the present case, the only information presented trial judge with respect to the child's alleged fear of her mother was based upon the minor child's alleged statements to the Appellee. Thereafter, without any directive of the Court or any other judicial body, Appellee took it upon herself to have the child questioned by Davis, a Licensed Clinical Social

Worker. The statements made to Davis were not spontaneous, nor were they made at the time any of the alleged events occurred. Therefore, the statements retain their character as inadmissible hearsay, and the trial judge should have excluded any such statements from the hearing on this matter.

Although Appellee argued, and the trial judge accepted, that Davis' testimony and records were properly admissible as statements made for the purposes of medical treatment or diagnosis pursuant to KRE 803(4), the underlying statements must still be of a character determined to be competent. In the present case, the statements introduced through Davis originate from a 6-year old child. There is no authority whatsoever tending to accept the statements of child of that age as competent testimony. Furthermore, as a Licensed Clinical Social Worker, Davis would not qualify as one who "treats" or "diagnoses" within the meaning of KRE 803(4). She is simply a social worker who talked with the minor child for a brief period of time, and has not returned since at least the final hearing and likely not since the deposition. As such, it is evident that utilizing Davis' services was merely a calculated effort by Appellee to present negative testimony against Appellant, and the deposition and records provided by Davis should have been excluded.

B. The trial judge improperly admitted the testimony of several witnesses that had no knowledge as to the relationship between Appellant and the minor child.

A great many witnesses were presented by Appellee tending to show that Appellant has had difficulty with money, prescription medication, emotional problems and even essentially no relationship with her son from a previous marriage. However, Appellee completely failed to show that any of these problems currently exist or have in any way affected the subject minor child. Appellant testified that she had postpartum depression after the birth of the subject child, which was treated within six months (VR 04:43:45 – 04:45:06)

The only thing that appeared to be close to such a finding is the fact that Appellant only paid $240.00 in child support over the course of the four years since the divorce (See attached Findings). However, Appellant explained that her ex-husband had told Appellant not to pay the support, and that fact is borne out by the failure of Mr. Knight to pursue any type of collection of the child support from Appellant.

II. THE TRIAL JUDGE COMPLETELY MISAPPLIED KRS 405.020 AND ITS SUPPORTING CASELAW, LEADING TO AN IMPROPER RESULT.

In his Findings, the trial judge correctly acknowledged that KRS 405.020(1) is the controlling statute regarding the present case, subparagraph 2 of which states:

> The father and mother shall have the joint custody, nurture, and education of their children who are under the age of eighteen (18). **If either of the parents dies, the survivor, if suited to the trust, shall have the custody, nurture, and education of the children who are under the age of eighteen (18).** (emphasis added)

The trial judge also noted that *Davis v. Collinsworth*, Ky., 771 S.W.2d 329 (1989), as expanded by *Forester v. Forester*, Ky.App., 979 S.W.2d 928 (1998), provides the essential criteria upon which the trier of fact must determine whether a parent normally entitled to custody pursuant to KRS 405.020(1) is unfit to have the care, custody and control of a minor child. However, the trial judge failed to properly apply the cases to the detriment of Appellant, and thereby committed a clear abuse of discretion.

A. *Davis* and *Forester* contain a number of elements that must be present before a finding of unfitness, which were not present in the instant action.

The relevant portion of *Davis v. Collinsworth* is as follows: "The type of evidence that is necessary to show unfitness on the part of the mother in this custody battle with a third party is: (1) evidence of inflicting or allowing to be inflicted physical injury, emotional harm or sexual abuse; (2) moral delinquency; (3) abandonment; (4) emotional or mental illness;

and (5) failure, for reasons other than poverty alone, to provide essential care for the children." *Davis*, at 330. Likewise, the *Forester v. Forester* opinion retained the *Davis* elements, but added, "We think it is critical to the case before us to recognize that *Davis, supra,* omitted the requirement that where the lack of ability to provide parental care and protection is the basis for involuntary termination, the trial court must find that there is no reasonable expectation of improvement in parental care and protection as required by KRS 625.090(1)(d). For reasons stated below, we find it necessary to expand on the *Davis* court's attempt to define "unfitness." *Forester*, at 930.

As a result of these two cases, the trial court was obliged to determine, based upon the evidence properly admitted, that Appellant was not only "unsuited to the trust" of the child presently, but that there was no reasonable expectation that Appellant's parenting abilities would improve. However, the vast majority of the testimony presented to the trial court involved unsubstantiated allegations of improper conduct nearly twenty years prior to the final hearing, as well as testimony from a number of relatives that have no contact with the Appellant currently. *Davis* and *Forester* clearly require proof an inability to parent the child which is the subject of the action. In the instant action, there was scant evidence of the Appellant's inability to parent the subject child, and certainly not evidence sufficient to rise to the level of clear and convincing.

B. The *Davis* and *Forester* cases clearly limit any proof of "unfitness" to the relationship between the parent and the child which is subject to the action, whereas the trial judge based much of his Findings upon Appellant's past actions and her relationship with other children from different relationships.

The facts presented in both *Davis* and *Forester* are clearly limited to how the parent seeking custody interacted and/or lacked as a parent to the child that was the subject of the

case. There is no indication from either case that the trial courts, or the appellate courts, considered any evidence with respect to the parent's relationship to any other children that parent may have had, or any failings with respect to the "unfitness" criteria set forth within the opinions that parent may have had prior to seeking custody of the subject children. However, in the instant case, the trial judge's Findings are replete with utilization of Appellant's difficulties well prior to even the birth of the subject child in order to find current "unfitness." There is absolutely no authority within either *Davis* or *Forester* allowing the trial judge to equate former problems with current failings.

In the present case, the Findings repeatedly refer to alleged "problems" the Appellant had while with her then-husband stationed in Okinawa, Japan, in the mid-1990's to buttress his findings of moral delinquency. Further, he referred to "affairs while married," which would have been prior to the 2003 Decree (Findings, p.6, paragraphs (b) and (c)); the findings of the Indiana court during the divorce proceeding occurring in 2003 (Findings, p. 7, paragraph (e)); an alleged arrest for bad checks and credit card theft occurring in Okinawa (Findings, p. 7, paragraph (f)); forging a prescription, which occurred in 2000 (Findings, p.7, paragraph (g)); Alleged "black marketing" in Okinawa, occurring in the mid-1990's (Findings, p.7, paragraph (i); testimony regarding two children from a previous marriage occurring more than 7 years earlier (Findings, p. 7, paragraph (j)), and; testimony regarding the subject child as an infant more than five years earlier (Findings, p. 7, paragraph (k)). In essence, the only moral delinquency the trial judge could find currently with Appellant was an allegation that she smoked marijuana while the child was in her residence, though not in the child's presence, and her relationship with Mark Griffith which bore no relationship to the subject child whatsoever. Therefore, the "moral delinquency" finding with respect to the subject child has no merit and must be overturned.

Likewise, the only finding the trial judge could make regarding harm to the child is tenuous at best. The trial judge specifically found no physical or sexual abuse upon the child by Appellant, but based emotional harm solely upon the inability of Appellant to visit with the minor child on two occasions, although one visit took place at a later date (Findings, p.4). Both of these occasions were explained by Appellant (VR 04:58:02-05:04:27), but apparently the trial judge equates postponed visits with emotional harm. Such is a far cry from the statutory definition of emotional harm, as set forth in KRS 600.020(24), which defines "emotional injury" as follows:

> "Emotional injury" means an injury to the mental or psychological capacity or emotional stability of a child as evidenced by a substantial and observable impairment in the child's ability to function within a normal range of performance and behavior with due regard to his age, development, culture, and environment as testified to by a qualified mental health professional.

The trial judge's Findings in this respect are clearly lacking, as there was absolutely no evidence presented in the final hearing supporting the type of emotional harm envisioned by the statutes. Further, any such evidence is required to be recounted by "a qualified mental health professional," which did not occur in this case. Therefore, again, the trial court's finding with respect to emotional harm must be completely overturned.

Next, the trial judge found that Appellant suffers from emotional or mental illness, even though the trial judge specifically acknowledges that there is no medical proof to substantiate the finding. Instead, the judge relied on the "facts," which included "past hallucinations" from therapist's notes in 1989 (Findings, p.8, paragraph (b)); "Suicidal ideations" in 1989 (Findings, p.8, paragraph(c)); alleged irrational behavior occurring prior to the minor child's birth (Findings, p.8, paragraph (e)), and; the trial judge's own opinion, although Appellant is not aware of any medical or psychiatric training possessed by the trial

judge to adequately form such an opinion (Findings, p.8, paragraph (f)). Appellant even discussed the time frame during which she took such antidepressants (VR 04:41:45- 04:42:45) Obviously, millions of individuals take antidepressants on a daily basis without succumbing to violent attacks toward their children. If anything, the trial court should have applauded the Appellant for seeking treatment with antidepressants since the trial court was clearly disillusioned with the Appellant's alleged behavior several years prior to the birth of the subject child. Nevertheless, there is no legal basis for the trial judge to have made the finding of emotional or mental illness whatsoever, much less during the period the minor child has been alive. As a result, there can be no finding of mental or emotional illness, and such a finding must be overturned.

Lastly, the trial judge found that Appellant failed to provide essential care for the minor child, based primarily upon lack of child support payments (Findings, p.9, paragraph (a)). However, Appellant described in detail how she purchased many necessary items for the minor child, and also allowed the child's father to claim the child for the purposes of filing state and federal income taxes in a year during which Appellant was entitled to do, which more than made up for the child support she would have owed. (VR :18:27-05:19:24). Further, it is readily apparent that the child's father was satisfied with the arrangement between he and Appellant in that over the course of more than three years, he never attempted to pursue any kind of action to obtain any outstanding support from Appellant. The trial judge then went on to utilize the credit card issues from the mid 1990's as a current financial difficulty for Appellant (Findings, p.9, paragraph (c)), and also the relationship Appellant has with the children from a prior relationship that has no bearing on her relationship with the subject minor child. (Findings, p.9, paragraph (d)) Therefore, there is no substantial basis for the trial judge to have found that Appellant either cannot provide essential care for the child

currently or has no reasonable likelihood of providing essential care for the subject child in the future. Appellant testified that she has a good job capable of supporting both herself and the child (VR 04:36:15-04:38:02), and has every intention and desire to do so. Again, the trial judge's finding in inappropriate, and must be overturned.

CONCLUSION

Appellee's case, and the trial judge's Findings, are much like a house of cards built upon a foundation of post-it notes. The Appellee obtained a temporary custody order for the subject minor child using information admittedly years old and then made no effort to contact the Appellant or to notify the Court as to Appellant's whereabouts. She even effectuated this fraud upon the courts on the advise of counsel. Having a temporary custody order in-hand, she then proceeded to the Lyon Circuit Court to make the temporary order permanent. In so doing, Appellee brought in every conceivable witness that may know the subject child, whether or not they knew the Appellant, as well as every conceivable witness that may know Appellant, whether or not they knew the subject child.

A LCSW was retained to provide "counseling," even though she had no medical training or was certified to diagnose mental conditions. Even those sessions abruptly ended prior to the final hearing, as Davis was no longer necessary after having submitted a deposition (to which Appellant could not have possibly appeared to defend herself) and written notes of some of the sessions. Tellingly, Davis was not called as a witness at the final hearing to defend her claims or subject herself to cross-examination.

Appellee called a number of educational witnesses who could offer no testimony as to the relationship between Appellant and the child, which was the sole purpose of the final hearing. Appellant later called witnesses that could only testify regarding alleged erratic

behaviors long before the birth of the subject child, and certainly offered nothing relating to the current relationship between the two.

Lastly, the trial judge entered Findings, Conclusions and Judgment that relied heavily on each of these irrelevant witnesses' testimony, and never bothered to frame his findings based upon Appellant's current relationship with the child as required by caselaw. If the trial judge simply felt the child was is a stable home with Appellee, he has a right to that opinion. But he does not have a right to circumvent the statutorily and common-law-mandated manner by which he is to reach that conclusion. As stated hereinbefore, Appellant is entitled to the immediate vacating of the trial judge's Findings, Conclusions and Judgment and the immediate return of her daughter pursuant to KRS 405.020(1). No other rehearings, taking of additional proof or similar remedy will accomplish this proper result.. Appellant simply and respectfully requests that this Court do what should have been accomplished before the temporary hearing ever took place, return the minor child to her pursuant to KRS 405.020(1)

Respectfully submitted,

BRAD GOHEEN
629 U.S. 68 E
Benton, KY 42025
(270) 252-0223
(270) 252-0224(fax)

ATTORNEY FOR APPELLANT