SC95939

IN THE SUPREME COURT OF MISSOURI

IN THE INTEREST OF A. L. R.,
A Minor Child

K. R.,
Petitioner/Respondent

vs.

A. L. S.,
Natural Mother/Appellant

Appeal from the Probate Division of the
Eighteenth Judicial Circuit Court
of Cooper County, Missouri
Case Number 15CO-PR00038

SUBSTITUTE BRIEF OF APPELLANT

FRANK ROBERT FLASPOHLER
Mo. Bar No. 62684
112 East Morrison Street
Post Office Box 899
Fayette, Missouri 65248
(660) 248-1040
(660) 248-1081 (Facsimile)
office@showmelawyer.com

ATTORNEY FOR APPELLANT

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JURISDICTIONAL STATEMENT

This is an appeal from a final decision by the Probate Division of the Circuit Court of Cooper County granting Respondent's petition to appoint co-guardians and co-conservators of Appellant's minor child, based upon allegations regarding the ability, fitness and willingness of Appellant to serve as natural guardian for her minor child.

Appellant appealed to the Missouri Western District Court of Appeals which reversed and vacated the findings of the trial court. Respondent filed an Application for Transfer to the Supreme Court, which was granted by this Court on November 1, 2016. Accordingly, this appeal is within the jurisdiction of the Missouri Supreme Court pursuant to Article V, Section 10 of the Missouri Constitution.

STANDARD OF REVIEW

The judgment of the trial court in a guardianship proceeding is to be affirmed unless it is unsupported by substantial evidence, is against the weight of the evidence, or erroneously declares or applies the law. *In re M.B.R.*, 404 S.W.3d 389, 392 (Mo. App. S.D. 2013). Appellate review on questions of law is *de novo*, while on questions of fact, appellate courts defer to the fact-finding determinations made by the trial court. *Estate of L.G.T.*, 442 S.W.3d 96 (Mo.

App. S.D. 2014). Evidence, and all reasonable inferences drawn therefrom, are to be reviewed in a light most favorable to the trial court's decision. *Id.* Absent evidence to the contrary, appellate courts shall assume that trial courts know the law. *Dycus v. Cross*, 869 S.W.2d 745, 751 (Mo. banc 1994). The determination of the applicable standard of proof in a particular proceeding is a matter of law to be reviewed *de novo*. *Woodby v. INC*, 385 U.S. 276, 284 (1966).

STATEMENT OF FACTS

Appellant, A. L. S., (hereafter "Mother") is the natural mother of the minor child, A. L. R. (hereafter "Child"). TR. 6, 75. At the time of the initial hearing, Mother was seventeen years old, and the minor child was ten months old. Tr. 6. J. R. L. R. (hereafter "Father") was Child's natural father, and he predeceased the action for the appointment of a guardian and conservator, having died on June 7, 2015. Tr. 7. At the time of her birth, Child, Mother, and Father resided with his father, Respondent, K. R., at his residence in Cooper County, Missouri. Tr. 7.

The minor child, Child, was born on November 11, 2014. Tr. 6, 76. From the time of her birth, she resided primarily in the care of Mother and Father. Tr. 9, 20, 83-86. Father served as the primary breadwinner for the

family. Tr. 86. He worked several jobs, including self-employment with a lawn mowing business, and assisting his father in his work of construction and lumber harvesting. Tr. 19-20, 84. During the hours that Father worked, Mother was the primary caregiver for the minor child. Tr. 83-84.

Father was murdered in early June 2015 by a man who had a nonconsensual sexual encounter with Mother. Tr. 95. Following Father's death, Respondent forced Mother and Child to leave his household shortly following Father's funeral on June 13, 2015. Tr. 76. Respondent took no initial action to ensure that Mother or Child had a suitable place to reside. Tr. 77. Mother and Child subsequently moved in with J. K., a family friend of Respondent's, where they resided until July 30, 2015. Tr. 8, 42, 55-56. Mother and Child were later forced to leave that residence as well. Tr. 77. At the time of the hearing, Mother and Child were residing temporarily with Mother's mother and were approved for public housing in Callaway County. Tr. 79-80.

A Petition for Appointment of Co-Guardians & Co-Conservators (hereafter "the Petition") was filed by Respondent in the Probate Division of the Circuit Court of Cooper County, Missouri. LF 3-5. The Petition alleged that Mother was unfit and unable to properly care for Child based upon several allegations, including her youthful age, incomplete education and lack of a permanent residence. LF 3.

Following the filing of the Petition, the Court appointed Mr. Richard J. Blanc to serve as Guardian ad Litem for the minor child. Mother, through her attorney, Mr. David Ma, requested a continuance of the trial date set for August 13, 2015, based upon the recent passing of the minor child's natural father. LF 6-7. The Guardian ad Litem filed a written statement indicating no objection to this request, recognizing Mother's continuing efforts to obtain a permanent residence. LF 10. Respondent filed an objection with the Court on August 11, 2015. LF 8-9. At hearing on the motion, the Court denied Mother's request for a continuance and proceeded with a full hearing on the Petition.

At the hearing, Respondent presented limited evidence regarding Mother's ability and fitness to serve as the natural guardian for Child. Mother had not completed her GED and was not currently enrolled in an educational program. Tr. 9. Although Mother was unemployed at the time the Petition was filed, she had subsequently obtained part-time employment through Casey's General Store. Tr. 10, 86-87. Additionally, Respondent alleged that Appellant had no permanent residence, but at the hearing, both Mother and Respondent presented testimony that Mother and Child resided with Mother's mother and was on the waiting list for Callaway County Public Housing. LF 3, Tr. 79-80. Respondent offered additional evidence regarding Mother's parenting skills in feeding her daughter and providing a suitable living environment for Child. Tr.

22, 35-36, 47. Respondent's witnesses testified that although Mother was a young "very inexperienced" mother, she was continuing to improve her parenting skills. Tr. 43. However, none of the witnesses testified that they had contacted the Children's Division or the Juvenile Officer regarding any allegations or concerns regarding Mother's parenting skills, nor did they bring such concerns to Appellant's attention. Tr. 15, 73. The Guardian ad Litem indicated that he had not met with Mother or Child prior to the hearing, but nonetheless, recommended the guardianship be instituted. Tr. 2, 132.

Following the hearing, the trial court granted the Petition and appointed J. R. & H. R. as Co-Guardians and Co-Conservators of Child. LF 11-12. The trial court's findings including a generalized statement that Mother "is unable and unfit to properly care for the minor child." LF 12. No additional factual conclusions were provided by the trial court. LF 12. Additionally, the judgment of the trial court made no provisions for visitation, nor did it specify what Mother needed to address prior to seeking return of her daughter. LF 12.

Following the judgement, Mother filed a Motion for New Trial, or in the Alternative, Motion to Terminate Guardianship & Conservatorship on September 8, 2015. LF 13-16. Mother alleged that the evidence submitted was insufficient to show, by clear and convincing evidence, that she was unable or unfit to serve as the natural guardian of Child, specifically raising this point to

the trial court's attention. LF 14. Additionally, Mother alleged that the trial court failed to include specific findings supporting such conclusions, as requested by the trial court on the hearing date. LF 14, Tr. 132. In the alternative, Mother requested the trial court terminate the guardianship, as Mother had addressed many of the concerns raised by Respondent in the original hearing. LF 15.

At the October 26, 2015 hearing on Mother's post-trial motions, the trial court denied Mother's motion for a new trial without comment. LF 17, Tr. 137. The trial court further denied the motion to terminate the guardianship under the allegation that such motion was untimely filed, pursuant to § 475.083 RSMo. LF 17, Tr. 138.

Appellant appealed to the Missouri Western District Court of Appeals which reversed and vacated the findings of the trial court, holding that a determination that a natural parent is unable or unfit should be made by clear and convincing evidence, and the judgment of the trial court was unsupported by and against the weight of the evidence presented by Respondent. Respondent filed an Application for Transfer to the Supreme Court, which was granted by this Court on November 1, 2016. This appeal now comes before this Court for review.

POINTS RELIED ON

Point One: The trial court erred in finding that Natural Mother is unable and unfit to serve as the natural guardian for her minor child because the trial court misapplied the law in failing to hold Respondent to a clear and convincing standard of proof in showing Natural Mother to be unable and unfit to serve as the natural guardian of her daughter.

In re the Adoption of Carl Lee Debrodie, 452 S.W.3d 644 (Mo. banc 2014)

Santosky v. Kramer, 455 U.S. 745 (1982)

Mathews v Eldridge, 424 U.S. 319 (1976)

Troxel v. Granville, 530 U.S. 57 (2000)

Point Two: The trial court erred in finding that Natural Mother is unable and unfit to serve as the natural guardian for her minor child because the judgment is unsupported by substantial evidence in that Respondent failed to present any evidence showing Natural Mother to be unable and unfit to serve as the natural guardian.

In re K.A.W., 133 S.W.3d 1, 9 (Mo. banc 2004)

Ivie v. Smith, SC93872 (Mo. banc 2014)

In re J.A.R., 426 S.W.3d 624 (Mo. banc 2014)

Point Three: The trial court erred in finding that Natural Mother is unable and unfit to serve as the natural guardian for her minor child because the judgment is against the weight of the evidence in that Respondent failed to present sufficient evidence showing Natural Mother to be unable and unfit to serve as the natural guardian.

Estate of L.G.T., 442 S.W.3d 96 (Mo. App. S.D. 2014)

Pearson v. Koster, 367 S.W3d 36 (Mo. banc 2012)

G.C. v. Green County Juvenile Office, 443 S.W.3d 738 (Mo. App. S.D. 2014)

Point Four: The trial court erred in denying the Motion to Continue filed by the Natural Mother on August 10, 2015 because there had been an insufficient amount of time during which Natural Mother had served as the sole surviving parent and the Guardian ad Litem had not previously met with the Natural Mother before the hearing, such that the denial of the Motion to Continue was an abuse of discretion by the trial court.

Debold v. City of Ellisville, ED99944 (Mo. App. E.D. August 29, 2013)

In the interest of F.L.M, et al., 839 S.W.2d 367 (Mo. App. E.D. 1992)

ARGUMENT

The matter before this Court presents a straightforward question regarding due process: What is the appropriate standard of proof in determining a mother to be unfit to care for her child? Under the juvenile code outlined in RSMO § 221, Missouri law provides that even when a court is temporarily assuming jurisdiction over a minor child, such a determination shall be made by clear and convincing evidence. *In re Y.S.W.*, 402 S.W.3d 600, 603 (Mo. App. E.D. 2013). However, the present case comes in the context of the probate code and the provisions for a minor guardianship. As no Missouri law specifically addresses, and no court, prior to the decision by the Western District below, has addressed the question, this is a case of first impression for Missouri jurisprudence.[1]

In a proceeding for the appointment of a guardian for a minor child, three Missouri statutes apply. *In re Estate of A.T.*, 327 S.W.3d 1, (Mo. App.

[1] In *In the Estate of L.G.T.*, 442 S.W.3d 96 (Mo. App. S.D. 2014), the Southern District Court of Appeals opined that because a minor guardianship was not included in the list of proceedings outlined in RSMo § 475.075, the assumed standard of proof would be a preponderance of evidence. However, the Southern District did not fully examine this issue and the due process requirements were not included in its analysis.

E.D. 2010). Section 475.025 RSMo provides that the father and mother are the natural guardians of a minor child. § 475.025 RSMo. Additionally, parents are to be given the first priority in the appointment of a guardian for their natural children. § 475.045.1 RSMo. Only when both parents cannot fulfill the duties of guardianship is a court permitted to appoint another suitable person to serve the best interests of the minor child. § 475.045.3 RSMo. A court may only take that step under one of three circumstances: (1) the child has no living parent; (2) the parents or surviving parent is unwilling, unable or adjudged unfit; and (3) where both parents' or the surviving parent's parental rights have been terminated. § 475.045.3 RSMo, *In re Estate of A.T.*, 327 S.W.3d 1 (Mo. App. E.D. 2010).

The statutory scheme provides a rebuttable presumption that the natural parent is the appropriate custodian for her child. *Cotton v. Wise*, 977 S.W.2d 263 (Mo banc. 1998). Only after a court determines there is sufficient evidence that the natural parent is unwilling, unable or unfit to take charge of the child may a court issue Letters of Guardianship to a non-parent. *In re T.A.P.*, 953 S.W.2d 638, 642 (Mo. App. S.D. 1997). Because of the fundamental liberty at stake, namely a parent's right to the care and custody of their children, Appellant argues that the appropriate standard of proof in minor guardianship proceedings must be a clear and convincing showing of evidence supporting

any determination that a natural parent is unwilling, unable or unfit to care for her child.

Point One: The trial court erred in finding that Natural Mother is unable and unfit to serve as the natural guardian for her minor child because the trial court misapplied the law in failing to hold Respondent to a clear and convincing standard of proof in showing Natural Mother to be unable and unfit to serve as the natural guardian of her daughter.

A. *The Due Process protections of both the Fourteenth Amendment to the United States Constitution and Article 1, Section 10 of the Missouri Constitution protect the fundamental liberty interest of parents in serving as the natural guardians of their minor children, such that the constitutional provisions demand any finding that a parent unfit, unable or unwilling to serve as the natural guardian of their minor child must be met by a clear and convincing standard of proof.*

The Fourteenth Amendment to the United States Constitution provides that no State may "deprive any person of life, liberty, or property, without due

process of law." Likewise, the Missouri Constitution, in Article 1, Section 10, provides that "no personal shall be deprived of life, liberty, or property without due process of law." Together, the protections of our federal and State constitutions provide heightened protection against government interference with certain fundamental rights and liberties. *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997). See also, *In re K.A.W.*, 133 S.W.3d 1 (Mo. banc 2004).

The interests of parents in keeping the care, custody and control of their children is one of the oldest and most fundamental liberty interests recognized by our courts. *Troxel v. Granville*, 530 U.S. 57 (2000). See also *Planned Parenthood of Southeaster Pa. v. Casey*, 505 U.S. 833, 851 (1992), *Lawrence v. Texas*, 539 U.S. 558 (2003), and *Obergefell v. Hodges*, 2015 WL 2473451 (2015). When the State attempts to interfere with such familial bonds, even when in the interest of the child, it must provide the parents with fundamentally fair procedures. *Santosky v. Kramer*, 455 U.S. 745, 753-54 (1982). The fundamental liberties of natural parents in the care and custody of their children does not simply evaporate because they have not been model parents. *Id.* See also, *In the Interest of M.D.R.*, 124 S.W.3d 469 (Mo. banc 2004) The standard of proof used in a specific type of case should reflect the value society places upon the individual liberty at stake in the matter. *Addington v. Texas*, 441 U.S. 418, 425 (1979). In situations involving the termination of parental rights, the

United States Supreme Court has mandated that the standard of proof by clear and convincing evidence is warranted because the individual interests at stake are particularly important and more substantial that the loss of money. *Santosky* at 756, citing *Addington v. Texas* at 424.

In its 2014 term, this Court followed the reasoning of the United States Supreme Court in requiring clear and convincing evidence of unfitness as a prerequisite for termination of parental rights, even when the individual to be adopted was an adult. See generally *In re the Adoption of Carl Lee Debrodie*, 452 S.W.3d 644 (Mo. banc 2014). In reviewing whether to apply such a high standard, this Court considered the factors set out in *Mathews v. Eldridge*, including the private interests at stake, the risk of error, and the governmental interest in a particular standard of proof. *Id.* at 646, citing *Mathews v. Eldridge*, 424 U.S. 319 (1976). These factors are also relevant when applied to cases establishing a non-parent as the guardian for a minor child because the Missouri probate code assumes that such a guardian will be a "stable and permanent placement" for the minor child. § 475.045.3 RSMo. See also, Rule 124.09(c)(3) (providing for the appointment of a guardian as a permanency plan for a minor child under the supervision of the juvenile court, which relieves the court of its duty to pursue reunification with the parent and child).

The first *Eldridge* factor considers the private interests affected by the court's proceeding. *Eldridge* at 321. The private interest at stake is a parent's fundamental right to the care and custody of their minor children. Issuing Letters of Guardianship for a minor child to an individual other than the natural parent contravenes the parental interest in establishing a home and directing the upbringing of one's children.[2] The effect of a probate court's grant of guardianship is to indefinitely suspend a parent's authority to make decisions regarding their children. Missouri law places no limits on the guardian's powers, unless specified by the court, nor does it specifically provide for any visitation or contact between the parent and the child. Absent a court order, there is nothing in the law to provide for regular contact or visits between the parent and child, and the guardian is authorized to make unilateral decisions regarding the child's health care, education, and religious upbringing without seeking any input from the natural parent. Further, the design of a minor

[2] The fundamental right of parents to establish a home and bring up their children was recognized by the United States Supreme Court more than ninety years ago in *Meyer v. Nebraska*, 262 U.S. 390, (1923). These rights of parents were placed alongside the rights of individuals to enter into contracts and the right to worship God according to the dictates of each person's own conscience. *Id.* at 399.

guardianship is not limited to a specific time frame, such that it could be considered a temporary arrangement, nor does the court have specific guidelines on reexamining the parent-child relationship at any set future date.

Additionally, the determination made by the probate court that a parent is unwilling, unable or unfit to serve as the child's natural guardian forever dissolves the statutory presumption that the natural parent is the appropriate custodian for a minor child. *Cotton v. Wise*, 977 S.W.2d 263, 264 (Mo. banc 1998). RSMo § 475.083.2(3) now excludes that presumption in future motions to terminate guardianship, placing even greater significance upon the initial determination of the trial court. RSMo § 475.038.2(3), see also *In re Schneiders*, 178 S.W.3d 632, 634 (Mo. App. W.D. 2005). Essentaill, event after a natural parent has address the circumstances which led to the guardianship appointment, they return to court without any legal preference or protection in favor of their status as a parent, and instead find themselves on equal footing with the court appointed guardian. The fundamental right of a parent in serving as the natural guardian for their child indicates that this factor must support a heightened burden of proof upon the party seeking to permanently dissolve the protected rights of natural parents.

The second *Eldridge* factor considers whether a lower standard adequately protects against the risk of an erroneous decision by the court that

could deprive one of the parties of their interests. *Santosky* at 761. The key issue is whether the risk of error is fairly divided between the parties; in this case, a single, seventeen year old mother, who was recently expelled from her home and transferred jobs, pitted against an established, paternal grandfather who was responsible for expelling the mother. *Id.* While preponderance of the evidence is appropriate when society had a minimal concern with the outcome and the litigants should share the risk of loss equally, a heightened standard applies when the risk should be reallocated between the parties. *In re Debrodie* at 649. Because of the possibility that a determination made by the probate court will interfere with the fundamental rights of a parent, the standard of applied by the court has constitutional implications. As in a termination proceeding, the petitioning party often has greater resources at its disposal than the parent whose rights will be affected. Additionally, the statutory presumption in favor of the natural parent suggests that even the Legislature has determined that society is not neutral in considering who the appropriate parent for a minor child is. The potential outcome of a guardianship proceeding can forever alter the relationship between parent and child, creating a serious and lifelong consequence to the protected rights of a parent. Because of the serious and permanent consequences which may flow form the decision, a

higher standard of proof should be imposed. Therefore, this factor favors a heightened burden upon the petitioning party.

The final *Eldridge* factor requires consideration of the governmental interest in using a proposed standard of proof. *In re Debrodie* at 650. Without a doubt, the State's *parens patriae* interest in preserving and promotion the welfare of children is an urgent governmental interest. *Wisconsin v. Yoder*, 406 U.S. 205, 233-34 (1972). However, the Western District Court of Appeals has recently reaffirmed the burden of a clear and convincing standard when a juvenile officer alleges that a child is in need of care and protection. *In the interest of J.B.*, WD78428 (October 6, 2015). See also, *In Interest of A.L.W.*, 773 S.W.2d 129 (Mo. App. W.D. 1989) (supporting the premise that a petitioner bears the burden of proof against a natural parent by clear and convincing evidence). This is true event when such a determination has only a temporary effect upon the parent child relationship. *Id.* Like the temporary jurisdiction of a juvenile court, a guardianship proceeding also seeks to ensure a child has adequate care and protection in a situation in which the natural parent is unable, unwilling or unfit to serve as the natural guardian of the minor child. *Estate of Casteel v. Guardian ad Litem*, 17 S.W.3d 585, 588 (Mo. App. W.D. 1995). However, a guardianship proceeding goes even further by permanently destroying the fundamental presumption in favor of natural

parents. And it does so without the processes and protections of the juvenile courts with guarantee a natural parent will receive services, appropriate visitation and regular review, all with the goal of reunification of parent and child. Given these concerns, and potential risks, a petition in probate court even more significant than the actions of a juvenile officer in juvenile court, and it is therefore appropriate to extend the same burden of proof upon all initiating parties.

The State of Missouri is not alone in its recent consideration of the appropriate burden of proof in cases involving minor guardianships. Last year, the Supreme Judicial Court of Maine judicially applied the *Eldridge* factors to determine that a clear and convincing standard is mandated by due process requirements for cases involving minor guardianships. *In re Guardianship of Chamberlain*, 118 A.3d 229 (Me. 2015). The court reasoned that when the court is making a determination about a child's parents with regard to a permanent role in the child's life, the higher burden of proof must be imposed. *Id*.

Even without the specific framework of Eldridge, other courts have used due process requirements to judicially require clear and convincing evidence for minor guardianships. In a contest between a parent and a non-parent regarding the fitness of the parent, the Supreme Judicial Court of Massachusetts

held that the proposed guardian was obligated to present evidence to a clear and convincing standard. *R.D. v. A.H.*, 912 N.E.2d 958 (Mass. 2009). Likewise, in *Hood v. Adams*, the Oklahoma Supreme Court held that depriving a parent of the care and custody of a child must be based upon evidence which is "clear and conclusive, and sufficient to show the necessity for doing so to be imperative." *Hood v. Adams*, 396 P.2d 483, 485-86 (Okla. 1964). Additionally, in considering the state's tutorship guidelines, the Second Circuit Court of Appeals of Louisiana held that parents enjoy a paramount right to custody of their children, such that it may only be overcome by clear and convincing proof. *Hughes v. McKenzie*, 539 So.2d 965, 974 (La. App. 2 Cir. 1989). And, as recently as last year, the Supreme Court of Arkansas held that the preponderance of evidence standard fails to safeguard the natural parent's fundamental right to parent her children, and therefore, a clear and convincing standard is required. *Guardianship S.H. v. Herrington*, 455 S.W.3d 313, 320 (Ark. 2015).[3]

[3] Numerous other state courts have held that in requests to terminate a guardianship where there was no prior finding of unfitness, the guardian bears the burden of showing, by clear and convincing evidence that the guardianship should continue. See also *In re Guardianship of D.J.*, 682 N.W.2d 238 (Ne. 2004), *In re Guardianship of Renna D.*, 35 A.3d 509 (N.H. 2011), *Boddie v.*

Finally, several other states have legislatively imposed the clear and convincing standard for evidence in minor guardianship cases. The State of Tennessee requires a clear and convincing showing to establish dependency and neglect, which is the first step toward a permanent guardianship. Tenn. Code Ann. § 37-1-129(c). The States of Wisconsin, New Hampshire & Delaware each require a clear and convincing standard by statute as well. Wis. Stat. § 54.15, N.H. Rev. Stat. § 463:8 III(b), and Del. Code tit. 13 § 2353(a). These actions by state legislatures reflect a commitment to the principle of due process which requires a heightened standard for cases involving taking custody from a natural parent in favor of a non-parent.

Therefore, because of the fundamental liberties at stake in issuing Letters of Guardianship to a non-parent, the Due Process protections of both the Fourteenth Amendment to the United States Constitution and Article 1, Section 10 of the Missouri Constitution demand any finding that a parent unfit, unable or unwilling to serve as the natural guardian of their minor child must be met by a clear and convincing standard of proof.

Daniels, 702 S.E.2d 172 (Ga. 2010), and *Tourison v. Pepper*, 51 A.3d 470 (Del. 2012). These cases reflect a common understanding that the existence of a guardianship, when contested by a natural parent, must be based upon clear and convincing evidence.

B. The judgment of the trial court in finding that the Natural Mother is unable and unfit to serve as a parent is in error because it is not supported substantial evidence meeting the clear and convincing standard of proof.

The evidentiary standard of clear and convincing refers to evidence that instantly tilts the scales of the listener's mind in favor of the result when weighed against the opposing evidence. *Sparks v. Sparks*, 417 S.W.3d 269, 294 (Mo. App. W.D. 2013). The fact finder should be left with an abiding conviction that the evidence is true. *Id*

The judgment of the trial court found that Appellant was unable and unfit to properly care for Child. LF 12. In the context of the guardianship statutes, neither the term of unable, nor unfit is well defined. *H.W.S. v C.T.*, 827 S.W.2d 237 (Mo. App. E.D. 1992). Some sources indicate that "unable" may include an element of abandonment of the child, such that the parent voluntarily and intentionally relinquishes custody, or withholds her presence, care or love. *Id.* at 239-240, see also *In re K.L.C.*, 9 S.W.3d 768, 772 (Mo. App. S.D. 2000). Others have stated that "unfit" imports parental neglect, such as the failure to perform parental duties or other deprivation. *Id.* at 240. Neglect is

ultimately a question of an intent to forego parental responsibilities. *In re C.M.B.*, 55 S.W.3d, 889, 894 (Mo. App. S.D. 2001). More recent cases have found sufficient evidence to overcome the parental presumption when abandonment or neglect demonstrates an unfitness to serve as the child's guardian. *J.R.D. v. J.L.D.*, ED101337 (Mo. App. E.D. December 16, 2014).

Before the trial court, Respondent presented only limited evidence regarding Appellant's inability or unfitness as a parent for Child. In the Petition, he alleged that Appellant was "unfit and unable to properly care for the child in that [she] is only 17 years of age, has not graduated from high school, and is not currently enrolled in school. [She] is unemployed, has no vehicle, and is without a permanent residence." LF 3. At trial, Respondent testified as follows when questioned by his counsel:

> ATTORNEY: You further alleged that Mother is unfit and unable to properly care in that she's only 17 years of age; is that correct?
>
> RESPONDENT: That is correct.
>
> ATTORNEY: Are you aware if she's graduated from high school?
>
> RESPONDENT: No.
>
> ATTORNEY: Do you know what the highest level of education is that she has completed?
>
> RESPONDENT: I think ninth grade, but I don't know.

ATTORNEY: Are you aware she has her GED?

RESPONDENT: No.

ATTORNEY: You're not aware?

RESPONDENT: No, I'm not.

ATTORNEY: Do you know if she's currently enrolled in school?

RESPONDENT: No, I do not.

ATTORNEY: At the time the petition was filed, you believed her to be unemployed; is that correct?

RESPONDENT: That is correct.

ATTORNEY: Are you aware of her current employment situation?

RESPONDENT: I think she's got a temporary job at Casey's or did have.

ATTORNEY: You further alleged that she is without a permanent residence. Do you still believe that to be true?

RESPONDENT: I think so, yes.

Tr. 9-10.

As outlined above, Respondent presented five points in the Petition support of his claim that Appellant was unable and unfit to properly care for Child: (1) Appellant is only 17 years old; (2) Appellant's limited educational background; (3) Appellant's current employment; (4) Appellant's lack of a motor vehicle; and (5) Appellant's lack of a permanent residence. However, in

his testimony, Respondent immediately refutes the allegation of employment, and further states that he has no personal knowledge of Appellant's educational background. Appellant later testified that she had dropped out of school during her sophomore year in high school, but that she had plans of completing her GED and going to college. Tr. 88-89.

As to Respondent's first allegation, nothing in the language of Section 475.025 limits the right of a natural parent under the age of eighteen to serve as the natural guardian of her child. § 475.025 RSMo. In fact, other statutes specifically recognize that a minor child may serve as a natural parent and is entitled to special protection, including the appointment of counsel by the court. § 211.462.2 RSMo. Additionally, the Missouri probate code specifically states that a minor shall not be denied their roles a natural guardian of their child because they have not reached the age of majority. § 475.055.1(1) RSMo. Therefore, Appellant's age alone is irrelevant to any determination of her ability or fitness to serve as natural guardian of her daughter.

Nor has any statute or case law imposed a requirement upon a parent to have a motor vehicle as an element to show their fitness to serve as natural guardian for their child. Therefore, Respondent's only remaining allegation goes to Appellant's alleged lack of a permanent residence. However, Appellant's temporary residences were partly due to Respondent's own actions.

Respondent, one of his witnesses, and Appellant all testified that Appellant left Respondent's home shortly after the funeral of the minor child's father. Tr. 8, 42, 76-77. Appellant provided unrefuted testimony that she was forced to leave by Respondent, who showed no concern for the minor child at the time he evicted them from his household. Tr. 77. After Appellant moved in with a family friend of Respondent, she was again kicked out of that house, shortly before the hearing on the Petition filed by Respondent. Tr. 42, 77. Respondent's allegation that Appellant lacked a permanent residence and was therefore unfit to serve as her daughter's natural guardian is both self-serving and self-created.

Other witnesses provided additional evidence that merely hinted at concerns over Appellant's ability to properly care for her daughter. Respondent's brother, R. R., testified that he witnessed Appellant give the minor child a bottle in a recliner and then leave the room. Tr. 22. The event occurred on the afternoon of June 7, 2015. Tr. 22. However, R. R. also testified that he never actually witnessed the minor child have any difficulties during feeding, and he did not believe his concerns were severe enough to warrant bringing to Appellant's attention. Tr. 27-28. He did not bring this concern to Appellant's attention until his testimony in court on August 13, 2015. The trier of fact can reasonably infer that if the minor child's great uncle was not

concerned enough to discuss the matter with the child's mother for more than sixty days, the fact should carry little weight in convincing anyone that Appellant was unfit as a parent.

Respondent's sister, Ms. Jean Young, also testified in support of his allegations regarding Appellant's ability to properly care for Child. She presented testimony regarding the disarray of Appellant's bedroom and bathroom on the date she was forced to move from Respondent's home. Tr. 35-37. The photographs she took were taken on the date of the move, when bags of clothes appeared on the bed and in Child's crib. Tr. 35-36. She stated that she believed the room was often in such disarray even when Appellant was not in the process of being evicted. Tr. 37.

Respondent's friend, J. K., testified that she provided Appellant a place to live after she left Respondent's house. Tr. 42. She also presented testimony regarding disarray in Appellant's bedroom and bathroom. Tr. 47. In addition, she testified about a single night during which she woke up and took care of Child in the night while Appellant was sleeping. Tr. 45. Although she testified that Appellant resided with her for forty-six days, J. K. recalled only one night during which she got up and took care of Child. Tr. 45. Finally, J. K. provided testimony that she provided diapers and food for Child on occasion, for two days after Appellant moved out of her residence. Tr. 56-57. However, nothing

in J. K. testimony alleged that she provided those supplies for an extended period of time.

Respondent's niece and the individual nominated as co-guardian, H. R., also testified that she provided Appellant with diapers and baby food on a few occasions. Tr. 63. Without stating any specific concerns, she testified that she supported the request for the guardianship and believed it was only appropriate for Appellant to have supervised visits. Tr. 65. Under cross-examination, she stated that she previously had concerns that Child's paternal family was not giving Appellant a fair chance to be a mother, but on the date of the hearing, she said she no longer harbored such concerns. Tr. 76.

J. R., the other individual nominated as co-guardian and spouse to H. R., was the final witness offered by Respondent. He expressed some concerns about the way a car seat was installed, but such concerns predated the death of the child's father. Tr. 73. Additionally, like R. R., J. R. never felt the need to bring those concerns to Appellant's attention prior to the trial date.

Several of the witnesses alleged possible drug use by Appellant, which was refuted both by a court-ordered hair follicle test, and by her own testimony. Tr. 12. Further, Respondent himself testified that he had never seen Appellant act erratically or witnessed any other evidence of drug use beyond the hearsay statements of one of her associates. Tr. 15. Additionally, Respondent testified

that he had never felt the need to report any of his allegations regarding Appellant's parental fitness to the Children's Division or the juvenile office. Tr. 15.

While the witnesses disagreed as to who was the primary caretaker between father and mother, all witnesses agreed in their testimony that Appellant has had custody and been a care provider for Child since her birth. Respondent and his brother, R. R., both testified that they believed the child's father had been the primary caretaker. Tr. 9, 26. However, R. R. also testified that he witnessed Appellant feeding the child on several occasions, albeit in ways he deemed unacceptable. Tr. 22. J. K. specifically testified that she believed Appellant was not a perfect mother and was "very inexperienced," but that on the occasions she gave her direction, Appellant improved and followed those directions. Tr. 43-44.

Even during the pending litigation prior to the hearing, Appellant was clearly taking steps to address the issues raised by Respondent in the Petition. Respondent himself testified that she had secured employment at Casey's since he had filed the Petition. Tr. 10. Appellant also testified that she had been approved for public housing in Callaway County and was on the waiting list to obtain a residence. Tr. 79-80. In the interim, she was residing with her mother, assured that she was permitted to remain there as long as necessary. Tr. 79.

Although she had not yet applied for Social Security Benefits, she had ensured that both herself and the minor child were enrolled in WIC, and she had enrolled the child for health coverage under Medicaid. Tr. 93.

Taken together, this evidence is wholly lacking in its ability to show, by a clear and convincing standard, that Appellant is unable and unfit to serve as the natural parent for Child. There are no allegations that Appellant withheld her love and affection from her daughter, nor did she intentionally relinquish custody of her child to any other person. On the contrary, with each move, Appellant ensured that her daughter had a crib to sleep in, and her daughter continued to reside with her at each location, and the only testimony showing occasions that Appellant was not with the minor child were justified by Appellant's work schedule.

Nor is there sufficient evidence to show that Appellant failed to perform her parental duties or otherwise deprived the child of her needs. Appellant obtained employment while the hearing was still pending, and she had secured a working vehicle to transport the child to and from appointments. Tr. 81-82. Additionally, she obtained a driver's license shortly before the hearing date. Tr. 82. There is no evidence that Appellant intended to forego her parental responsibilities at any point during her care for her child.

Therefore, because there is insufficient evidence to show by a clear and convincing standard that Appellant is unable and unfit to properly care for Child, the judgment of the trial court should be reversed and the Letters of Co-Guardianship and Co-Conservatorship issued to J. R. and H. R. should be set aside without delay.

Point Two: The trial court erred in finding that Natural Mother is unable and unfit to serve as the natural guardian for her minor child because the judgment is unsupported by substantial evidence in that Respondent failed to present any evidence showing Natural Mother to be unable and unfit to serve as the natural guardian.

Substantial evidence that which has some probative forced on each fact necessary to sustain the trial court's judgment. *In re K.A.W.*, 133 S.W.3d 1, 9 (Mo. banc 2004). Evidence has some probative force it is likely to affect the determination of any material fact. *Ivie v. Smith*, SC93872 (Mo. July 8, 2014). In reviewing whether the trial court's judgment is supported by substantial evidence, appellate courts should view the evidence in the most favorable light to support the trial court's judgment. *Id.*. Appellate courts should defer to the trial court on all credibility determinations. Contrary evidence need not be

considered, regardless of the burden of proof used. *Id.* To prevail on a challenge of substantial evidence, Appellant must demonstrate that there is no evidence in the record tending to prove a fact necessary to the trial court's judgment. *Id.*, see also *In re J.A.R.*, 426 S.W.3d 624, 626-27 (Mo. banc 2014).

In the present case, the trial court made a finding that Appellant was unfit and unable to properly care for Child. LF 3. A finding of either unfitness or inability is sufficient to sustain the trial court's judgment ordering the issuance of Letters of Co-Guardianship and Co-Conservatorship. § 475.030.4(2) RSMo. Unfitness requires a personal deficiency or incapacity which has or will prevent performance of parental obligations to the detriment of the child. *Estate of L.G.T. v. N.R.*, 442 S.W.3d 96, 111 (Mo App. S.D. 2014). Inability is associated with abandonment in relinquishing custody of the child or withholding a parental love and affection. *H.W.S. v. C.T.*, 827 S.W.2d 237, 239-40 (Mo. App. E.D. 1992).

A detailed review of the evidence and testimony provide above reveals that no individual testified as to any time that Appellant had relinquished custody of her daughter, other than times that she was at work. Additionally, no individual testified that Appellant had ever withheld her love or affection from the minor child. Therefore, because there was an entirely lacking presentation of evidence regarding the claim that Appellant was unable to properly care for

her daughter, there was no substantial evidence to support this finding by this trial court.

Further, no witness testified that Appellant possessed any personal deficiency or incapacity which rendered her unfit to serve as the natural guardian for her child. Respondent's own witness, J. K., had the longest period to observe Appellant and testified most extensively regarding Appellant's parenting skills. Tr. 43 *ff*. She stated that although there were aspects of Appellant's parenting skills which were lacking, they were improving. Tr. 43. J. K. testified as follows when questioned by Respondent's attorney:

ATTORNEY: Can you please describe her in general terms as a mother?

J. K.: She's a very young mom, a very inexperienced mom that didn't have much upbringing to show how to be a mom, so in my opinion there's a lot of work to be done. She's – I would not consider her to be a perfect mom, which none of us are, but she would interact but not a lot of interaction.

ATTORNEY: Let's talk about some specifics.

J. K.: Sure.

ATTORNEY: Were there any concerns with Mother's feeding of Child?

J. K.: Yeah. She wasn't aware of a feeding schedule that needed to be done when she gets a certain age. I kind of advised her as being a

> mom myself and going through it that it was time where she needed to be fed at lunchtime, like fruit and vegetable, dinner fruit and vegetable. Give her some -- Try her on some juice. Still giving her formula, of course. I did state some cereal. She said no because it did constipate her and upset her stomach. But she wasn't aware of none of that. So trying to step into that position, I tried to steer her and give her the direction on how to feed Child.
>
> ATTORNEY: Did she follow the directions you provided?
>
> J. K.: She did. She did.
>
> Tr. 43.

Respondent's witness states that the inexperience of Appellant was due to her youthful motherhood, and not the result of any personal deficiency. There was no evidence presented to suggest that any detriment or harm had been suffered by the minor child, nor had any of the witnesses been concerned about the possibility of such harm such that they brought it to the attention of Appellant or reported it to the Children's Division or juvenile office.

Therefore, because the judgment of the trial court is not supported by substantial evidence in its finding that Appellant is unable and unfit to properly care for the minor child, the judgment should be reversed and the Letters of Co-

Guardianship and Co-Conservatorship issued to J. R. and H. R. should be set aside without delay.

Point Three: The judgment of the trial court in finding that the Natural Mother is unable and unfit to serve as a parent is in error because it is against the weight of the evidence.

A challenge to the trial court's judgment based upon an against-the-weight-of-the-evidence claim necessarily involves a review of the trial court's factual determinations. *Pearson v. Koster*, 367 S.W3d 36 (Mo. 2012). However, the appellate court should only overturn a judgment under this review when it is has a firm belief that the judgment is wrong. *Id.* Reviewing a challenge to a judgment as against the weight of the evidence is a four-step analysis: (1) identify the challenged factual proposition; (2) identify all favorable evidence supporting such proposition; (3) identify all contrary evidence, resolving conflicts according to the trial court's credibility determinations; and (4) demonstrate why favorable evidence, along with the reasonable inferences, is so lack that it fails to induce belief in the proposition relied upon by the trial court. *Massey v. Massey*, SD33170 (Mo. App. S.D. July 2, 2015).

In the present case, the trial court made two factual determinations which are necessary to sustain the judgment. Each will be considered in turn according to the analysis outlined above:

A. The trial court erred in finding that Appellant was unable to properly care for her daughter because such finding was against the weight of the evidence.

In its first error, the trial court found that Appellant was unable to properly care for Child. LF 10. Inability to care for one's child is associated with abandonment in relinquishing custody of the child or withholding a parental love and affection. *H.W.S. v. C.T.*, 827 S.W.2d 237, 239-40 (Mo. App. E.D. 1992). An inability to parent can exist when the parent is unable to appropriately provide for the physical, mental and emotional needs of the child. *G.C. v. Green County Juvenile Office*, 443 S.W.3d 738 (Mo. App. S.D. 2014).

All evidence presented before the trial court was based upon the testimony of Respondent, his family members and friends, Appellant and one of her friends. In his testimony, Respondent presented no specific evidence supporting a finding that Appellant was unable to serve as a parent, other than a generalized statement that she was unable to do so. Tr. 9. Respondent's brother, R. R., presented testimony that he believed Appellant's feeding methods were

inappropriate, as well as Appellant's placement of the child on a full sized bed. Tr. 22, 23, 30. Respondent's sister, J. Y., presented testimony that Appellant's living area during the time she resided with Respondent was often in disarray. Tr. 37.

J. K. provided the greatest testimony regarding Appellant's ability as a parent, having witnessed her parenting from June 13, 2015 to July 29, 2015. Tr. 42. She recounted a single evening on which she got up with the minor child in the middle of the night because Appellant was sleeping with headphones in her ears. Tr. 45. She also testified regarding the disarray of Appellant's living space, including dirty clothes on the floor and other housekeeping concerns. Tr. 46-48. Finally, J. R., the suggested co-guardian, testified as to a single event when he witnesses a child safety seat not properly secured in the vehicle. Tr. 73.

In contrast to this evidence stands the agreed upon fact that Appellant has lived with and cared for the minor child since the date of her birth in November 2014. Until the order of the trial court appointing a guardian and conservator, Appellant had not spent any significant time away from the child other than for work. Her testimony indicates that when it became difficult to continue her education and attend regular doctor's appointments, she put her daughter's interest first and stopped attending school. Tr. 88. During the time

that the child's father was working, she stayed at home as the primary caregiver. Tr. 84-86. Additionally, Appellant presented the testimony of her friend, Kayla Oliver, who had witnessed Appellant as a parent, feeding her daughter and changing her diaper. Tr. 125. This witness testified that she had no concerns about Appellant's parenting ability.

Many of the facts presented in the testimony are without dispute. All parties agree that Appellant stayed at home and provided for the minor child while the child's father was at work. Tr. 19-20, 83-84. Both parties also agree that Appellant stopped her education to allow her to be at home with her daughter. Tr. 9, 88-89. Both Respondent and Appellant agreed that no one had ever contacted the Children's Division or the juvenile office to report any concerns or allegations regarding Appellant's parenting. Tr. 15, 91-92. Respondent presented evidence of only a few specific where he believed, in hindsight, that there were concerns about Appellant's parenting, and these events occurred both before and after the death of the child's father.

Respondent failed to present any evidence that Appellant took any steps to relinquish the care of custody of her daughter, nor has he shown that she is unable to properly care for the needs of her daughter. At best, Respondent has shown a few, isolated incidents in which Appellant could have used better judgment in minor aspects of her parenting. However, these events came in the

days following the sudden death of her child's father, and in the turmoil of being evicted from Respondent's home. Despite these factors, Appellant has continue to provide for her daughter and take steps to obtain permanent housing and employment. As of the date of the hearing, the majority of the allegations Respondent initially made in the Petition had been addressed to every extent possible.

Considering the totality of the evidence presented, Respondent's case fails to induce a belief in the proposition that Appellant is unable to properly care for her daughter. Therefore, this Court should reverse the judgment of the trial court and set aside the Letters of Co-Guardianship and Co-Conservatorship issued to J. R. and H. R. without delay.

B. *The trial court erred in finding that Appellant was unfit to properly care for her daughter because such finding was against the weight of the evidence.*

In its second error, the trial court found that Appellant was unfit to properly care for Child. LF 10. Unfitness requires a personal deficiency or incapacity which has or will prevent performance of parental obligations to the detriment of the child. *Estate of L.G.T. v. N.R.*, 442 S.W.3d 96, 111 (Mo App.

S.D. 2014). Unsuitability for any reason may render a parent unfit for custody. *Id.*

Respondent testified regarding his belief that Appellant's lack of a GED or high school diploma rendered her unfit to serve as a parent for her daughter. Tr. 9. He also referenced her lack of employment inability to maintain permanent housing as grounds for finding her unfit. Tr. 9. J. K. testified more extensively regarding Appellant's occasional need for assistance in purchasing supplies for her daughter, although J. K. did not testify to having provided any supplies after July 30, 2015. Tr. 49, 56-57. H. R. also testified that she had assisted Appellant in purchasing diapers and baby food on occasion. Tr. 63.

As of the date of trial, Respondent admitted that Appellant had secured employment at Casey's. Tr. 9. Additionally, Appellant testified that she had secured a place on the waiting list for public housing in Callaway County, and was free to continue living with her mother until such housing was available. Tr. 79-80. Appellant further testified that she was receiving WIC, and had been receiving it since she had discovered she was pregnant. Tr. 93. Additionally, the minor child was covered under the health insurance provided by the State of Missouri through Medicaid. Tr. 93. She further indicated that she intended to apply for Social Security benefits, but had been unable to do so prior to the trial. Tr. 93. None of these facts were disputed by either side at trial.

Respondent's allegation of unfitness cannot be supported by the evidence presented, event with the inferences drawn therefrom. Respondent's primary contention of Appellant's lack of employment has already been addressed by the trial date, ensuring she would have income to help support her daughter. Additionally, she had taken steps to obtain WIC and Medicaid, further evidencing her efforts to ensure her child's needs were met.

Finally, Respondent's allegation that Appellant was without a permanent residence fails to induce the belief that Appellant is unfit as a parent, given that Respondent is partly responsible for taking away Appellant's permanent residence. Prior to her eviction from Respondent's home on June 13, 2015, she had resided there since approximately February 2014. Tr. 76. Respondent abruptly forced Appellant, and her daughter, out of his home, and less than twenty days later, filed a petition alleging that she was unfit as a parent due to her lack of a permanent residence. His actions suggest that either he knew Appellant would have a suitable place to reside, or he was setting up a factual pattern in which he could allege that she was unfit as a parent. Of course, it is possible that Respondent was simply setting Appellant up to fail.

Considering the totality of the evidence presented, Respondent's case fails to induce a belief in the proposition that Appellant is unfit to properly care for her daughter. Therefore, this Court should reverse the judgment of the trial

court and set aside the Letters of Co-Guardianship and Co-Conservatorship issued to J. R. and H. R. without delay.

C. Because neither of the factual conclusions made by the trial court can be sustained against the weight of the evidence, the judgment of the trial corut should be reversed.

A court may only grant a guardianship in the present case if the natural mother is found to be unable, unwilling or unfit to serve as the guardian for her minor child. § 475.045.3 RSMo. For the reasons stated above, the trial court's findings that Appellant was unable and unfit to properly care for her child are against the weight of the evidence, and therefore, the judgment of the trial court should be reversed.

Point Four: The trial court erred in denying the Motion to Continue filed by the Natural Mother on August 10, 2015 because there had been an insufficient amount of time during which Natural Mother had served as the sole surviving parent and the Guardian ad Litem had not previously met with the Natural Mother before the hearing, such that the denial of the Motion to Continue was an abuse of discretion by the trial court.

The decision of a trial court to grant or deny a continuance is a matter of judicial discretion. *Commerce Bank of Mexico, N.A. v. Davidson*, 667 S.W.2d 474, 476 (Mo. App. E.D. 1984). However, the trial court does not have absolute or arbitrary discretion, and the decision will be reversed if there is an abuse of discretion. *In the interest of F.L.M, et al.*, 839 S.W.2d 367, 374 (Mo. App. E.D. 1992).

In the present case, the trial court abused its discretion in denying the Motion to Continue filed by Appellant/Natural Mother, Mother Stegeman, on August 10, 2015. In this motion, Appellant alleged that the recent death of the child's natural father and the insufficient time since that event would affect the determination at any hearing upon Appellant's ability and fitness to serve as the natural guardian for her minor child. LF 6. Additionally, this motion was not

opposed by the Guardian ad Litem, who affirmatively stated that Appellant was in the process of moving to a permanent residence. LF 10. As the lack of a permanent residence was specifically cited in Respondent's Petition to Appoint Co-Guardians and Co-Conservators, the determination of whether or not she had completed such a move was highly relevant to the issues presented at trial. LF 3. Although Respondent filed a written response and objection to the request for continuance, it merely restated the allegations of the Petition. LF 8-9.

A concise chronology of the trial court's history is relevant here. The Petition was filed on July 2, 2015. Mr. Richard J. Blanck was subsequently appointed as Guardian ad Litem on July 7, 2015. Appellant was served by special process server on July 21, 2015 with an original court date of July 27, 2015. On July 24, 2015, Mr. David Zhubo Ma filed a Certificate of Inability to Pay Costs, Fees and Expenses and a Motion for Continuance. At a hearing on July 27, 2015, the trial court granted a continuance to August 13, 2015. Appellant subsequently filed a second request for continuance on August 10, 2015. LF 6. This motion was denied on August 13, 2015, when the trial court proceeded with the hearing on the Petition.

Appellant was served only twenty-three days prior to the date of the hearing. Additionally, the case itself had only been filed forty-two days prior to

the date of the hearing. Appellant and the minor child had suffered the loss of the child's natural father only sixty-seven days prior to the date of the hearing. Respondent neither pled, nor alleged any emergency circumstances that required immediate attention from the trial court, other than to allege that Appellant was without a permanent residence. LF 3, 8. However, Respondent was in part at fault for the lack of Appellant's residence, having evicted her form his home on June 13, 2015 after nearly sixteen months of allowing her to reside there. Tr. 76. Additionally, Respondent did not file any motion for emergency or temporary guardianship in this matter.

Finally, at the time the trial court considered the Motion to Continue, the Guardian ad Litem stated that he had not yet had the opportunity to meet with Appellant. Tr. 2. While noting that they had each attempted to contact each other, he proposed two future time that he would be willing to meet with her. Tr. 2. While his written motion indicated that the possibility of a permanent residence would be a relevant ground to grant a continuance, his oral statements indicate that he favored the continuance to allow him to fully investigate the case. LF 10, Tr. 2.

The trial court erred in denying Appellant's request to continue the August 13, 2015 trial date, and such deny amounted to an abuse of discretion. Within the preceding seventy days, Appellant had suffered the loss of her

child's father, been evicted from her home twice, and served with allegations that she was unfit as a parent. She obtained legal counsel only twenty days prior to the hearing. The request for a continuance was supported by the Guardian ad Litem who had not yet met with Appellant to investigate the case but believed she was obtaining a permanent residence. For these reasons, it was an abuse of discretion for the trial court to deny Appellant's request for continuance, and this matter should be reversed and remanded to the trial court for a new hearing and the Letters of Co-Guardianship and Co-Conservatorship issued to J. R. and H. R. should be set aside without delay.

CONCLUSION

For the reasons set forth above, Appellant respectfully requests that the judgment made by the Probate Court of Cooper County regarding Natural Mother/Appellant's ability and fitness to properly care for Child, should be reversed and the Letters of Guardianship issued to J. R. & H. R. be set aside without delay.

Respectfully Submitted,

FRANK ROBERT FLASPOHLER
Missouri Bar Number 62684
112 East Morrison Street
Fayette, Missouri 65248
(660) 248-1040
(660) 248-1081 (Facsimile)
office@showmelawyer.com

ATTORNEY FOR APPELLANT

CERTIFICATE OF SERVICE & COMPLIANCE

I hereby certify that a true and correct copy of the foregoing Brief of Appellant was filed and served electronically via Missouri Case.Net on November 21, 2016 to:

Wendy Layne Wooldridge,
Attorney for Respondent
312 Main Street
Boonville, Missouri 65233

Richard Blanc
Guardian ad Litem
213 Main Street
Boonville, Missouri 65233

I further certify that a true and correct copy of the foregoing Brief of Appellant was served by U.S. First Class Mail, postage pre-paid, on November 21, 2016 to:

J. R. & H. R.
Guardians & Conservators for the Minor Child
11249 Mile Corner Road
Pilot Grove, Missouri 65276

The undersigned further certifies that the foregoing brief complies with the limitations contained in Rule Number 84.06(c) and that this brief contains 10,756 words.

Frank Robert Flaspohler
Attorney for Appellant