

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

IN THE INTEREST OF: C.L.,

Appellant

v.

M.T., S.T., AND N.L.B.,

Respondents

DOCKET NUMBER WD71971

DATE: February 1, 2011

Appeal From:

Circuit Court of Jackson County, MO
The Honorable Charles Emmert Atwell, Judge

Appellate Judges:

Division Three
Cynthia L. Martin, P.J., James Edward Welsh, and Gary D. Witt, JJ.

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Counsel for Respondent, N.L.B.

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**IN THE INTEREST OF: C.L., Appellant, v.
M.T., S.T., AND N.L.B., Respondents**

WD71971

Jackson County

Before Division Three Judges: Cynthia L. Martin, P.J., James Edward Welsh, and Gary D. Witt, JJ.

C.L. appeals the circuit court's judgment granting guardianship of C.L.'s son, N.L.B., to unrelated third parties, M.T. and S.T. C.L. contends that the circuit court erroneously applied the law in regard to whether extraordinary and unusual circumstances existed such that the well being of the child required that guardianship of the child be placed with M.T. and S.T. C.L. also contends that the circuit court's findings and conclusions that extraordinary and unusual circumstances existed were against the weight of the evidence. Further, C.L. complains that the circuit court erred in denying his request for fees and costs, in calculating child support at \$641 per month, and in allowing the child's name to be changed.

AFFIRMED IN PART; REVERSED IN PART; REMANDED.

Division Three holds:

(1) C.L.'s briefing concerning the circuit court's alleged error in calculating C.L.'s child support obligation does not comply with Rule 84.04, and therefore, we deem this point abandoned.

(2) To the extent that the circuit court established a guardianship over the child pursuant to section 453.101 based solely upon the best interests of the child, it was in error. Without a finding that C.L. was unwilling, unable, or unfit to take charge of the child, a guardianship is not appropriate in this case.

(3) Although the circuit court erred in the creation of a guardianship in favor of M.T. and S.T. over N.L.B., the circuit court did not err in maintaining N.L.B.'s placement with M.T. and S.T. as the extraordinary and unusual circumstances of this case as they existed at the time of the hearing demanded it. A significant bonding familial custody relationship with third parties can constitute a special or extraordinary reason or circumstance rendering it in a child's best interests to award custody to a third-party. N.L.B., therefore, remains under the jurisdiction of the circuit court with legal custody and physical custody vested in the Children's Division for placement with M.T. and S.T. subject to visitation with C.L. as is consistent with the circuit court's directives. Reunification with C.L., however, is the permanency plan for N.L.B. and should be pursued deliberately.

(4) The circuit court erred in refusing to order the payment of costs incurred by C.L. on the previous appeal to this court in this matter. In our previous mandate, we ordered M.T. and S.T. to pay C.L.'s costs that he incurred during the appeal. The circuit court is obligated to follow this court's mandate. Thus, on remand, the circuit court shall award C.L. his costs

associated with the previous case before this court. Costs, however, should not include C.L.'s attorney's fees.

(5) The circuit court erred in allowing the child's name to be changed to the name that M.T. and S.T. call him, which also changed the child's last name to the same as M.T.'s and S.T.'s last name. Although the family court did have exclusive jurisdiction over the subject matter of the custody of N.L.B., it had no authority over the subject matter of his name change. Moreover, given that reunification with C.L. is the permanency plan for N.L.B., we also do not believe that the name change is in the child's best interest.

Opinion by: James Edward Welsh, Judge

February 1, 2011

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