

No. A10-1348
STATE OF MINNESOTA
IN COURT OF APPEALS

In re the Matter of:
Kelli Rohmiller and Clayton Rohmiller
Respondent.
And
Andrew Hart,
Appellant,
And Jennifer Joseph
Guardian ad Litem

RESPONDENT'S BRIEF AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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1. Whether *Minn.Stat. 257C.08* is the sole source of authority a trial court may rely upon to grant visitation between a minor child and a nonparent.
2. Whether a Family Court may exercise its equitable powers and award visitation with a minor child to a person not enumerated in *Minn.Stat. 257C.08*.
3. Were Appellant's due process rights abridged?
4. Was the amount of visitation awarded excessive?
5. If the Court adopted Appellant's position, it would be easier in Minnesota to obtain third party custody than visitation.

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ISSUES PRESENTED

1. Whether *Minn.Stat. 257C.08* is the sole source of authority a trial court may rely upon to grant visitation between a minor child and a nonparent.
2. Whether a Family Court may exercise its equitable powers and award visitation with a minor child to a person not enumerated in *Minn.Stat. 257C.08*.
3. Were Appellant's due process rights abridged?
4. Was the amount of visitation awarded excessive?

STATEMENT OF FACTS

Appellant appeals from an order and Judgment entered in Dakota County District Court, on June 22, 2010. The Order awards visitation with Appellant's minor child Bailee, born July 15, 2003 to the child's maternal grandfather and her maternal aunt. The mother of the child is deceased. The maternal aunt is the mother's identical twin sister.

Appellant and the child's mother were never married. The parents executed a Recognition of Paternity on July 17, 2003. The parents lived together in Burnsville, Minnesota until July 3, 2004, when the Appellant struck the minor child causing injury and hospitalization. The Appellant was charged with and pled guilty to Malicious Punishment of a Child. He did not see the child and was not allowed contact with the child until after the mother's death, which took place on August 16, 2005.

During the life of the child, the mother and the child moved in with the Respondent in this appeal, Kelli Rohmiller after the July 3rd, 2004 malicious punishment incident. The mother then moved to Iowa with the minor child in July of 2004. The mother lived in Iowa until May 2005, when she and the minor child moved back to Minnesota and again moved in the Respondent Kelli Rohmiller. However, in June 2005, the mother again moved back to Iowa and lived with her aunt, Laurie Lamb. The mother was killed in a car accident on August 16, 2005. (Appendix A2 & 3 Findings 3-17)

During the child's life, despite where the child lived, the maternal aunt Kelli Rohmiller saw the child on a weekly basis when the child lived in Minnesota and was present when the child was born. When the mother and child lived in Iowa, Kelli Rohmiller saw the child in Iowa frequently and after the car accident saw her under a court order. (T.60-64)

After the Mother was killed, in August of 2005, the Appellant sought to see the child and obtained an early release from probation on July 28, 2006. In January of 2005, the Appellant and Kelli Rohmiller, along with Laurie Lamb, the temporary guardian in Iowa, all stipulated to Kelli Rohmiller having visitation and Andrew Hart having conditional visitation with the minor child.(See Appendix A83-87). The Appellant was again granted conditional visitation in September 2006 (Appendix A 71-73) The Appellant throughout "reflected an attitude towards the Court that is troubling." (See Appendix A-64) It was found by the District Court in Iowa, that Respondent Kelli Rohmiller facilitated visitation between Appellant and his family, even before the Appellant was granted visitation with the child in September 2006. (Appendix A 9,

and A 52. The Iowa Court stated: “[T]he Court believes that whatever role Kelli plays in this matter that she will be the one to see that Baily will continue to have contact with both families and that she will be an active member of Bailey’s extended family.” (Appendix A-66.)

In August of 2008, after Appellant gained custody of the child in Iowa, he cut off all contact between the child and her maternal family. Appellant maintained that position throughout the proceedings in District Court.

In October of 2009, the Appellant petitioned the District Court to be appointed the child’s conservator on October 29, 2009. (Appendix A-39) Kelli Rohmiller petitioned the District Court to appoint her as conservator on November 14, 2010. (Appendix A-40) . Concurrently, Kelli Rohmiller sought access with Bailee from Andrew through his attorney. See Appendix A-54- A56) as contained in Exhibit (1) of Kelli Rohmiller’s affidavit (copy of attorney email commencing October 10, 2009, whereby Kelli Rohmiller is seeking visitation with the minor child.

STANDARD OF REVIEW

On appeal from a judgment where there has been no motion for new trial, the only questions for review are whether the evidence sustains the findings of fact and whether such findings sustain the conclusions of law and the judgment. Gruenhagen v. Larson, 310 Minn. 454, 458, 246 N.W.2d 565, 569 (1976).. Erickson v Erickson, 434, N.W. 2d, 284, 286 (Minn.Ct.App.1989)

The Appellate Court reviews the trial court interpretation of law on a De Novo basis. “ Whether the trial court properly interpreted the parentage act is a question of law, which we review without deference to the trial court's conclusions. *In re the Welfare of C.M.G.*, 516 N.W. 2d 558, (Minn.Ct.App.1994).

A trial court's factual findings will not be set aside unless clearly erroneous. *Minn.R.Civ.P. 52.01*; *Gjovik v. Strobe*, 401 N.W.2d 664, 667 (Minn.1987). Therefore, this court will only reverse a trial court's findings of fact if, upon review of the entire evidence, we are “left with the definite and firm conviction that a mistake has been made.” *Gjovik*, 401 N.W.2d at 667. *In re the Guardianship of Dawson*, 502 N.W. 2d, 65, 68 (Minn.Ct.App.1993).

“The touchstone for statutory interpretation is the plain meaning of a statute's language.”
ILHC of Eagan, LLC v. County of Dakota, 693 N.W.2d 412, 419 (Minn.2005), citing to
Minn.Stat. 645.16 (2004)

ARGUMENT

1. **Whether *Minn.Stat.* 257C.08 is the sole source of authority a trial court may rely upon to grant visitation between a minor child and a nonparent. Answer: It is not.**

The statute in question, *Minn.Stat.* 257C.08 does not preclude other third party visitation with a minor child. The Appellant's position is that *Minn.Stat.* 257C.08 is the only source of authority for the court to grant visitation between a nonparent and a minor child. .

Minnesota 257C.08, in pertinent part reads as follows

Subdivision 1. If parent is deceased. If a parent of an unmarried minor child is deceased, the parents and grandparents of the deceased parent may be granted reasonable visitation rights to the unmarried minor child during minority by the district court upon finding that visitation rights would be in the best interests of the child and would not interfere with the parent child relationship. The court shall consider the amount of personal contact between the parents or grandparents of the deceased parent and the child prior to the application. ... and

Subd. 4. If child has resided with other person. If an unmarried minor has resided in a household with a person, other than a foster parent, for two years or more and no longer resides with the person, the person may petition the district court for an order granting the person reasonable visitation rights to the child during the child's minority. The court shall grant the petition if it finds that:

- (1) visitation rights would be in the best interests of the child;
- (2) the petitioner and child had established emotional ties creating a parent and child relationship; and
- (3) visitation rights would not interfere with the relationship between the custodial parent and the child.

The plain meaning and words of the statute does not confer upon itself the sole authority to authorize visitation between minor children and other persons. There is no statement in any of the language of *257C.08*, that this statute is the sole authority of the Family Court to grant

visitation with persons other than parents and a minor child. The plain meaning of a statute was discussed in *ILHC of Eagan, LLC v County of Dakota*, 693 N.W. 2d 412, 417 (Minn.2005)

When a statute's meaning is plain from its language as applied to the facts of the particular case, a judicial construction is not necessary. *Am. Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn.2001). Only if the statute is ambiguous do we apply the rules of statutory construction. *Correll v. Distinctive Dental Servs., P.A.*, 607 N.W.2d 440, 445 (Minn.2000). Under the basic canons of statutory construction, we are to construe words and phrases according to rules of grammar and according to their most natural and obvious usage unless it would be inconsistent with the manifest intent of the legislature. Minn.Stat. § 645.08(1) (2004); see *Homart*, 538 N.W.2d at 911. “[W]henever possible, no word, phrase, or sentence should be deemed superfluous, void, or insignificant.” *Owens v. Federated Mut. Implement & Hardware Ins. Co.*, 328 N.W.2d 162, 164 (Minn.1983); Minn.Stat. § 645.16.

The statute does not preclude visitation between a minor child and her aunt by its plain meaning. If the statute was to be the sole authority for such visitation, then it would so state that it was the sole authority.

In the instant case, the trial court held that because the above statute does not hold itself out as the sole authority for visitation, and by the absence of language in the statute holding that the statute is the sole source for visitation between minors and third parties. The Court held that it has equitable power to award visitation to the maternal aunt and that the minor child. The trial Court said on page 16, in Conclusion, 2 of its order entered June 2010:

“The Court is mindful that this statute (referring to 257C.08 Subd 1) sets forth visitation for only two specific classes of persons: parents and grandparents, and that the maternal aunt is not specifically states as a class. However, the statute does not preclude or prohibit visitation with other classes.

The Appellant urges this court to find that the trial court may only enter visitation orders with minor children under the above statute’s authority. In doing so, the Appellant seeks to eliminate the Court’s equitable powers to act in a child’s best interest and urges this court to find that the Family Court has no equitable powers.

- 2. The Court has the equitable power to award visitation between the Aunt and the minor child.**

The Court does have the power to award visitation with the maternal aunt, under its inherent equitable powers. Under our statute and pursuant to its inherent power, the trial court may at any time entertain a petition....”*Wallin v Wallin*, 290 Minn.161, 187 N.W. 2d 627, 632 (Minn.1971) , finding and setting forth a standard for an equitable award of third party custody. “ Since the jurisdiction of the district court in divorce actions is equitable, relief may be awarded as the facts in each particular case and the ends of justice may require.” *Johnston v Johnston*, 280 Minn.81, 158 N.W.2d 24), (Minn.1968). The trial court has the equitable power to grant relief as a fact situation dictates even if that relief is one of first impression. *DeLa Rosa v DeLa Rosa*, 309 N.W.2d 755 (Minn.1981) whereby it was upheld by our Supreme Court that it was fair and equitable to make an award to a spouse that provided financial support to her husband for his schooling. “ We find that the trial court did not abuse its discretion in making an equitable award to respondent for the financial support she provided petitioner during his schooling in light of the facts and circumstances of this case.” *DeLaRosa at 757*.

If the court adopts appellant’s position, no trial court may ever exercise its equitable powers and must solely make its orders pursuant to statutory authority only. That is how Family Court works in Minnesota.

The Court sits in *Parens patriae* concerning all issues related to a minor child. “The state’s interest in assuming the decision is in acting as *Parens patriae*, fulfilling its duty to protect the well-being of its citizens who are incapable of so acting for themselves.” *Price v. Sheppard*, 307 Minn. 250, 239 N.W.2d 905, Minn 1976.

“Because section 257.022 does not contain any clause specifically repealing, restricting, or abridging a non-parent’s common-law visitation rights, we construe the statute to extend and supplement the common law” *Simmons v Simmons*, 486 N.W.2d 788, 789(Minn.Ct.App.1992, holding that step-parents have a common law right to visitation with step-child that lived with step-parent. The then visitation statute was held to extend and supplement the common law.

In the instant case, it is well settled law in Minnesota that the “guiding principal in all custody cases is the best interest of the child.” *Durkin v Hinich*, 442, N.W. 2d 148, 150 (Minn.1989). “ The District court enjoys broad discretion in determining visitation” *Olson v Olson*, 534 N.W. 2d 547, 550 (Minn.1995).

The court has the equitable power to award visitation between the aunt and the minor child.

3. Were Appellant's due process rights abridged?

Parental rights, however, are not absolute and are not to be unduly exalted and enforced to the detriment of the child's welfare and happiness. The right of parentage is not an absolute right of property, but is in the nature of a trust reposed in them, and is subject to

their correlative duty to protect and care for the child. The law secures their parental right only so long as they shall promptly recognize and discharge their corresponding obligations. As the child owes allegiance to the government of the country of its birth, so it is entitled to the protection of that government, which, as *Parens patriae*, must consult its welfare, comfort, and interests in regulating its custody during its minority. *In re Adoption of Anderson*, 235 Minn. 192, 50 N.W.2d 278, MINN 1951, citing *Purinton v. Jamrock*, 195 Mass. 187, 80 N.E. 802, 18 L.R.A., N.S., 926.

The Court may use its power to protect children "if it appears that parental decisions will jeopardize the health or safety of the child, or have a potential for significant social burdens." *In re P.T. 657 N.W.2d 577 Minn.App., 2003*, citing *Yoder*, 406 U.S. at 233-34, 92 S.Ct. at 1542.

The state, "in its role as *parens patriae*, has a compelling interest in promoting relationships among those in recognized family units ... in order to protect the general welfare of children." *SooHoo v. Johnson*, 731 N.W.2d 815, 823, Minn. May 10, 2007).

The District Court in this case made ninety-three findings, setting forth why it is important for this child to continue to see and maintain a relationship with her maternal aunt.

Appellant cites to *Troxel v Granville*, 530 U.S. 57, (2000) as authority for the proposition that all parental decisions are proper decisions and should not be disturbed by a court. That is not the holding in the case. The court in Supreme Court held that parental decisions deserve a presumption of fitness, but may be intruded upon by the court in certain instances, those being:

Accordingly, so long as a parent adequately cares for his or her children, (ie is fit) there will normally be no reason for the state to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children. *Troxel v Granville*, 530 U.S. 57, (2000)_

In this case, the Appellant is not acting as a "fit" parent when he refused to allow the child to see her maternal aunt and grandfather. The District Court found in that Appellant:

"fails to see the issue in terms of the best interests of the child in such a unique fact situation where the child has the opportunity to know the identical twin sister of her deceased mother. Rather, according to his testimony and the Petitioner's testimony, he unilaterally cut the child off from all contacts with her maternal relatives. In do so, the child suffered yet another loss and abandonment. The position of the Respondent (Appellant) is one of expressing his rights. He ignores the emotional well being of his daughter. It is the Court's finding that Respondent (Appellant) appears to be putting he views and "rights" ahead of his daughter's best interests. (See O&J Finding 50, page 9). Neither the U.S. Supreme Court nor our State courts view a parent's decision as absolute.

The trial stated in Conclusion of Law No. 8, (O&J, page 18, Conclusion 8)

" Parental rights are not absolute and are not to be unduly exalted and enforced to the detriment of the child's welfare and happiness. The right of parental is not an absolute right of property, but is in the nature of a trust reposed in them, and is subject to their correlative duty to protect and care for the child. The law secures their parental right only so long as they shall promptly recognize and discharge their corresponding obligations. As the child owes an allegiance to the government which as *Parens patriae*, must consult is welfare, comfort, and interest in regulating is custody during its minority. *In Re Adoption of Anderson, 50 N.W. 2d 278 (Minn.1951)*.

Neither the Supreme Court of the United States or the Minnesota Courts have ever held that a parent's decision that would harm and emotionally endanger the child, is constitutionally protected. In this case, the District Court in Findings No.62, found the child is "appropriately bonded" with the Aunt. (O&J page 11, para 62) The Court found that "the child is bonded with and has a strong relationship with the mother's sister and her maternal family." (O&J Finding No. 71, page 12, para #71), "the court finds and agrees with the Guardian ad Litem in this matter, that the child would suffer emotional endangerment if she were not allowed to see Petitioners". (O&J, page 19, para #13. "The level of primary loss this child has suffered by the age of five is of grave concern." (O&J page 20, Conclusion #13 continued from page 19). The Court in this matter has clearly set forth all the reasons why Appellant's decision is wrong to withhold this

child from her maternal family and why the court must intervene to protect the welfare of this child.

4. Did the trial court abuse its discretion in awarding the visitation it awarded? No

The trial court's decision regarding the amount and duration of visitation is given great deference. "the discretion of the trial court in deciding questions *Manthei v Manthei*, 268 N.W. 2d 45 (Minn.1978) " I am persuaded by the unique facts before us, and the detailed and through findings and conclusions of the district court, that there was no abuse of discretion." *SooHoo at 826*.

This trial court made ninety-three detailed findings of fact and twenty (20) specific conclusions of law. The trial court carefully considered the best interests of the child and even incorporated the guardian ad litem's report into its order. (See A-16, Finding No. 92,). The visitation award is not excessive and is within the trial court's discretion.

5. It would be an absurd result if a District Court is more limited in awarding third party visitation than it is in awarding third party custody.

Minn.Stat. 257C.03 Subd (7) sets out criteria for the establishment of Interested Third Party; burden of proof; factors. This statute sets forth factors to be considered when a nonparent seeks custody of a child. In part, the statute sets forth in *Subd (7)* criteria the third party must meet:

(ii) placement of the child with the individual takes priority over preserving the day-to-day parent-child relationship because of the presence of physical or emotional danger to the child, or both; or

(iii) other extraordinary circumstances.

The remainder of the statute sets forth the standard of proof to be met in third party

custody and factors for the trial court to consider. (*Minn.Stat. 257C.03 Subd. (2) and Subd (3)*). Finally *267C.03 Subd (c)* calls for the trial court to use the “best interest factors set forth in *257C.04*. “The statute and our law allow for the court to make findings and use its judgment and discretion. There is no mechanical application of classes and criteria as exist in *Minn.Stat 257C.08*.

Case Law in this state regarding third party custody going back to *Wallin v Wallin*, 290 *Minn. 261*, 187 *N.W.2d 2d*, (1971) and its references dating back throughout the twentieth century, and as recently as recent as *In Re the Custody of N.A.K*, 649 *N.W. 2d 166*, (*Minn.2002*), affirms that in third party custody matters, the trial court has “broad discretion” in matters of child custody.

District courts have broad discretion to determine matters of custody. *Durkin v. Hinich*, 442 *N.W.2d 148, 151* (*Minn.1989*). Appellate review of custody determinations is limited to whether the district court abused its discretion by making findings unsupported by the evidence or by improperly applying the law. *Pikula v. Pikula*, 374 *N.W.2d 705, 710* (*Minn.1985*). When determining whether findings are clearly erroneous, an appellate court views the record in the light most favorable to the trial court's findings. *Rogers v. Moore*, 603 *N.W.2d 650, 656* (*Minn.1999*) (citation omitted). As a general matter, appellate courts review questions of law de novo. *Frost Benco Electric Ass'n v. Minnesota Pub Utils. Comm'n*, 358 *N.W.2d 639, 642* (*Minn.1984* *In re Custody of of N.A.K*, 649 *N.W. 2d 166*, (*Minn.2002*),

..we have held that in determining matters of custody the trial court is vested with broad discretion, such that its determination will be reversed only if such judgment was a clear abuse of discretion in the sense that the order was arbitrary, unreasonable, or *267 without evidentiary support. *Smith v. Smith*, 282 *Minn. 190*, 163 *N.W.2d 852*; *Schultz v. Schultz*, *Supra*; *Fish v. Fish*, *Supra*; *Molto v. Molto*, 242 *Minn. 112*, 64 *N.W.2d 154*. We have no disagreement with that approach, for in custody matters and in domestic relations cases generally, a high regard must necessarily be given to the trial court's discretion. Yet, in view of that broad discretion, it is especially important that the basis for the court's decision be set forth with a high degree of particularity if appellate review is to be meaningful. *Wallin at 631*.

In Minnesota, we have always respected the parent and afforded a presumption of fitness to that parent that must be overcome by the third party seeking custody.

However difficult such decisions may be, they must nonetheless be made in accordance with established principles of law. In determining custody disputes between the mother of a minor child and its grandparents, courts have based their decisions on two basis doctrines. The first of these doctrines stands for the proposition that a mother is entitled to the custody of her children unless it clearly appears that she is unfit or has abandoned her right to custody, or unless there are some extraordinary circumstances which would require that she be deprived of custody. The second doctrine is the so-called best-interest-of-the-child concept, according to which the welfare and interest of the child is the primary test to be applied in awarding custody. Annotation, 29 A.L.R.3d 366, 390., *Wallin at 629, 630*

From a very early date this court has recognized both doctrines. In the 1905 case of State ex rel. Lehman v. Martin, 95 Minn. 121, 122, 103 N.W. 888, 889, the maternal grandmother *265 of the child sought to regain custody from the father. This court said: 'The only question for our consideration is whether, from the evidence submitted, respondent is a fit and suitable person to have the custody and care of his child. His right, as the child's father, both under the statute and at common law, is paramount and superior to that of any other person, and prima facie entitles him to the judgment of the court, unless the evidence shows that the child's welfare demands and requires that she remain with relator. The burden to establish his unfitness is therefore upon relator.' *Wallin at 630*

The parental presumption however can be overcome and should be overcome in extra ordinary situations.

Hohmann's language sets forth the rule later articulated in *Wallin*, providing that "exceptional circumstances" can overcome the superior custody rights of a parent. *Hohmann, 255 Minn. at 169, 95 N.W.2d at 647.* Furthermore, in *Hohmann* we stated that the parental preference must be viewed in context of the parent's parenting in the past. "The weight to be given to the promise of future right treatment arising out of the blood relationship of parent and child varies according to the surviving parent's past record of fidelity in meeting his parental obligations." *Id. at 170, 95 N.W.2d at 647.* *In Re the Custody of N.A.K, 649 N.W. 2d 166, 174*

While the best interests analysis can be very helpful in illuminating the reasoning of the district court, the essential question to be answered by the court is whether extraordinary circumstances of a grave and weighty nature exist to support the grant of permanent custody to a third party and not to a surviving parent. In Re the Custody of N.A.K, 649 N.W. 2d 166, 176

Had Petitioners sought custody of the child, with the court's finding and the guardian's finding that she would be endangered if she was cut off from her maternal family, it is not at all a stretch to then go to the second test and assert the child's best interests are better served with

custody being in Petitioners. (A-8 Finding No 50, Appellant “ignores child’s well being”, Finding No. 93, incorporating the guardian’s report finding it iss in the best interests of the child to see her maternal family.”) See A-16)

However, it appears, under Appellant’s argument, the law of visitation, ignores the best interest of the minor child, and even if the situation meets the endangerment test for the first prong of the *Wallin* standard, (*Wallin at 629,630*) and in fact the parental presumption is considered, the child’s then best interests are simply ignored and the trial court has only the limited authority set forth for just a few classes of person for visitation.

It should not be that it is easier to obtain third party custody of a child and nonparent visitation with a child.

In this instance, visitation with the aunt is not about the aunt, nor is it about the father, rather it is about the child’s right to know her mother and her mother’s family, which she has a unique opportunity to do in visitation with the maternal aunt. “what is at issue in grandparent visitation cases is the “right of the child to ...know her grandparents” not the interests of the grandparents. *Roberts v Ward*, 126 N.W. 388, 493 A.2d 478, 482 (1985) cited by our Supreme Court in *Olson v Olson*, 534 N.W. 2d 547 (Minn.1995).

Clearly, a five year old child, who has lost her mother to death, her father for 3 (+) years due to him inflicting physical abuse upon her when she was (10) months old, then lost her other primary caretaker of (3) years, is an extraordinary circumstance. Then if this was not bad enough, the child’s one continuous relationship, that with her maternal Aunt is taken away from her abruptly and without warning, when the child moves away from her three year primary caretaker to Minnesota. Add to his horrible mix of loss and abandonment, the fact that this child has in her family the opportunity to know her maternal aunt, who is the identical twin to her

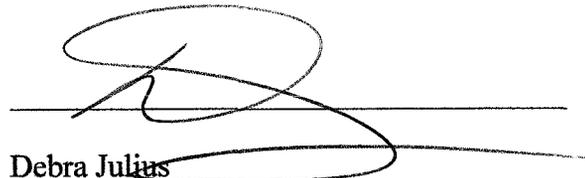
deceased mother. It is not hard to see how the trial court and the guardian believe it is not only in the child's best interests to retain the relationship; it would harm her emotionally were she to be deprived of this relationship. During the child's first visit to the aunt after being away from her for nearly (6) months, the child drew a picture for the aunt of two heart and said she drew the picture "[B]ecause I love you a lot, I can love you twice in a row." (See Guardian's Report A-31 para. 5) The Guardian held that "...Bailey's interest in restoring connections to her biological relatives outweighs the relative discomfort Andrew may experience as a result of Bailey's contact with the Rohmillers." (See Guardian's report A-37 para. 3).

CONCLUSION

The trial court in its ninety – three (93) detailed findings and twenty (20) conclusions of law, properly balanced the due process rights and parental presumptions with the best interests and harm that would befall the child, and made a well reasoned appropriate decision. This case is unique. The child in this case by age five has lost every primary caretaker she has ever had in her life. She did form an attachment and bond with her maternal aunt. The aunt's relationship is one of love and comfort to the child and has been continuous throughout the child's life. The Father's decision to cut off that relationship was not a sound and caring decision. He was not acting as a fit parent when he cut off the maternal aunt and accordingly, the court was correct and proper in awarding visitation with the maternal aunt and the grandfather.

Respectfully submitted,

Dated: *December 15, 2011*



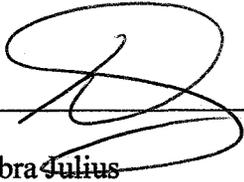
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CERTIFICATE AS TO BRIEF LENGTH

I hereby certify that this brief conforms to the requirements of *Minn. R. Civ. App. P 132.01 Subd. 1 and 3* for a brief produced with a proportional font. The brief was prepared using Microsoft Word.

Dated:

December 15, 2010



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