

IN THE CIRCUIT COURT OF JACKSON COUNTY, WEST VIRGINIA:

IN RE:

MOJMIR LIZON
(DOB: 5/29/11)

Civil Action No. 12-CIG-7

**ORDER CONTINUING TEMPORARY GUARDIANSHIP
AND RESCHEDULING HEARING**

On October 19, 2012, this matter was before the Court for final hearing pursuant to previous order. At the hearing, the following appearances were noted:

The petitioner, Thomas B. Hofeller, appeared in person, and Kathleen H. Hofeller, by counsel, with their counsel, Barbara Lynn Utt;

The respondent, Peter Lizon, appeared in person and with his counsel, C. Blaine Myers;

The respondent, Stephanie Lizon, appeared in person and with her counsel, Stephen L. Gaylock;

The *guardian ad litem*, Anita Harold Ashley, appeared in person; and

The hearing was also monitored by the West Virginia Department of Health and Human Resources, by their counsel, James P. McHugh, Prosecuting Attorney.

The *guardian ad litem* tendered and asked leave to file her Report of Guardian ad Litem, which being received by the parties and the Court, is **ORDERED** filed.

Peter Lizon, by counsel, indicated that he no longer consented to the appointment of guardian, asserting that such

appointment is not necessary, and asked that custody of the minor child, Mojmir Lizon, be restored to his wife, Stephanie Lizon. He had not filed any writing, revoking the earlier written waiver and consent for appointment of guardian. The petitioners and the *guardian ad litem* objected. The Court **ORDERED** that any revocation of the waiver must be made in writing, served on the other parties, and be filed with the Clerk before it will be considered by the Court.

Stephanie Lizon, through her counsel, agreed with her husband that the parties' circumstances had changed because, since the waivers were signed, Peter Lizon is no longer incarcerated. She, likewise, had filed no formal written revocation of the waiver, and the petitioners and the *guardian ad litem* objected. She was also advised that the Court **ORDERED** that any revocation of the waiver must be made in writing, served on the other parties, and be filed with the Clerk before it will be considered by the Court.

The Court further noted that, if the respondent parents object to the appointment of a guardian for their minor child, the law is clear that it is incumbent upon the petitioners to prove, by clear and convincing evidence, that the child is an abused or neglected child, as defined by W. Va. Code §49-1-3, before they

may be appointed as his guardians and the parents deprived of their rights to custody of their child.

Peter Lizon, by counsel, had earlier moved to continue the hearing, since counsel had only been recently retained. The Court **ORDERED** this motion granted, for good cause, and continued the case for evidentiary hearing to December 10, 2012, at 9:00 a.m. Thereafter, the parties agreed to reschedule the hearing to December 13, 2012, at 9:00 a.m., which rescheduled date is acceptable to the Court and the parties are **ORDERED** to appear at this new date and time.

In the interim and until further Order, it is **ORDERED** that the petitioners Thomas B. Hofeller and Kathleen H. Hofeller shall be and remain the temporary guardians of Mojmir Lizon, and as such, they shall have legal and physical custody of the child and full authority to make decisions involving him, which decisions shall not be subject to veto by either parent at this time.

On motion of the *guardian ad litem*, West Virginia Department of Health and Human Resources Child Protective Services is **ORDERED** to investigate the circumstances giving rise to the filing of the guardianship petition and other relevant matters related to the minor child, and provide a written report, with recommendations,

to the Court on or before December 1, 2012. This report shall be filed with the Clerk and served on all counsel.

On motion of the *guardian ad litem*, the Court considered the issue of visitation of the minor child, Mojmir Lizon, by the respondents pending further hearing. The *guardian ad litem* made a recommendation. Counsel was provided the opportunity to make recommendations. Peter Lizon personally addressed the Court with his recommendation. Based on the foregoing, the Court **ORDERS** as follows, to be in effect until further Order:

1) Peter Lizon is entitled to visits once monthly at a neutral, public location chosen by the petitioners and supervised by one or both of them and a neutral, non-family member, third party, with the times and duration to be agreed. Peter Lizon shall have no guests with him for the visit. So long as his bond conditions remain in place, the supervision shall be required and all visits shall occur in West Virginia. Supervision means that the child shall not leave the eyesight or earshot of the supervisor and the child shall not be left alone with Peter Lizon at any time. For purposes of seeing the child on this hearing date, Peter Lizon may visit with Mojmir Lizon at the Burger King at Fairplain, West Virginia, following this hearing, with DHHR staff providing supervision.

2) Stephanie Lizon shall be entitled to visits with Mojmir Lizon, limited only by the requirement that the petitioners know her whereabouts at all times when she has the child with her and that she not leave the metro-Washington, DC area (i.e., northern Virginia, Maryland, and DC). Visits outside the petitioners' home shall be day visits only and shall not be overnight, except that she and the child are permitted to stay overnight in the home of the child's paternal grandmother, in Montgomery County, Maryland, if the petitioners agree and consent ahead of time.

Having been advised of the Court's ruling, Peter Lizon declined supervised visits. As such, it is **ORDERED** that the petitioners shall not be required to make the child available to him, until further Order.

All previous Orders entered in this case, not inconsistent with the rulings herein, shall be and remain in full force and effect.

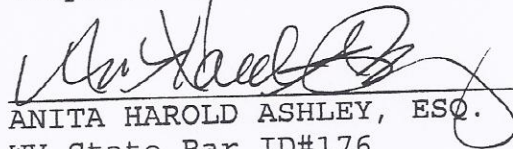
The Clerk shall provide an attested copy of this Order to the following: counsel for petitioners, Barbara Lynn Utt, Esq., Law Offices of Barbara Lynn Utt, 300 Capitol Street, Suite 300, Charleston, West Virginia 25301; counsel for respondent Stephanie Lizon, Stephen L. Gaylock, Esq., Law Office of John R. Mitchell,

Jr., P. O. Box 6724, Charleston, West Virginia 25362; counsel for respondent Peter Lizon, C. Blaine Myers, Esq., Myers Law Offices, P. O. Box 287, Parkersburg, West Virginia 26102; the guardian ad litem, Anita Harold Ashley, Esq., P. O. Box 823, Spencer, West Virginia 25276; James P. McHugh, Esq., Jackson County Prosecuting Attorney, P. O. Box 811, Ripley, West Virginia 25271; and Barbara Taylor, Customer Service Manager, West Virginia Department of Health and Human Resources, 2139 Cedar Lakes Road, Ripley, West Virginia 25271.

ENTER this ____ day of November, 2012.

THOMAS C. EVANS, III
CIRCUIT JUDGE

Prepared by:


ANITA HAROLD ASHLEY, ESQ.
WV State Bar ID#176
Guardian ad litem

Approved by:

BARBARA LYNN UTT, ESQ.
WV State Bar ID#9614
Counsel for petitioners

STEPHEN L. GAYLOCK, ESQ.
WV State Bar ID#4945
Counsel for Stephanie Lizon

C. BLAINE MYERS, ESQ.
WV State Bar ID#2700
Counsel for Peter Lizon

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Anita Harold Ashley Atty. 3049275150

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Jr., P. O. Box 6724, Charleston, West Virginia 25362; counsel for respondent Peter Lizon, C. Blaine Myers, Esq., Myers Law Offices, P. O. Box 287, Parkersburg, West Virginia 26102; the guardian ad litem, Anita Harold Ashley, Esq., P. O. Box 823, Spencer, West Virginia 25276; James P. McHugh, Esq., Jackson County Prosecuting Attorney, P. O. Box 811, Ripley, West Virginia 25271; and Barbara Taylor, Customer Service Manager, West Virginia Department of Health and Human Resources, 2139 Cedar Lakes Road, Ripley, West Virginia 25271.

ENTER this 21st day of November, 2012.

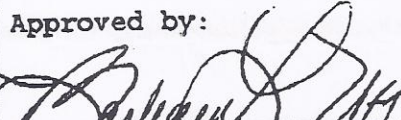


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Prepared by:

ANITA HAROLD ASHLEY, ESQ.
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Guardian ad litem

Approved by:


BARBARA LYNN UTT, ESQ.
WV State Bar ID#9614
Counsel for petitioners

In Re: Mojmir Lizon, 12-CIG-7, Page 6

A TRUE COPY, CERTIFIED THIS THE

NOV 26 2012


CLERK CIRCUIT COURT
OF JACKSON COUNTY, WEST VIRGINIA

ENTERED THE 26th DAY OF

NOV 2012
ORDER BOOK 109 PAGE

320

