IN THE SUPREME COURT OF FLORIDA

CHARLENE RICHARDSON,

Appellant,

v. CASE NO.: 94,810

ADRIENNE RICHARDSON,

Appellee,

----------/

APPELLEE'S ANSWER BRIEF ON THE MERITS

Adrienne E. Richardson, In Pro Se
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ON APPEAL FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT, IN AND FOR ESCAMBIA COUNTY, FLORIDA AND FROM THE FIRST DISTRICT COURT OF APPEAL

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PRELIMINARY STATEMENT

I, Adrienne E. Richardson, am Appealing to this Court in Pro Se. I would like to apologize to the Court if my wording appears unprofessional and or inappropriate, because it is and can be.

I will in most part, refer to myself in third person throughout this Appellate Brief for ease of readability to and for this Court.

Mr. Kimmel on page 1, of his Statement of the Case and Facts seems to be referring to himself and/or his client as the Appellee's. I believe I am the Appellee in this case, to avoid confusing myself, I will refer to myself as the Appellee and I will refer to Mr. Kimmel's client as the Appellant.

There have been some significant changes in the form of

parties in this case.

Raymond F. Richardson withdrew, there is no pending chapter 61 action in this case. The Father know resides in an unknown location somewhere in Georgia and has since 1997.

Raymond E. Richardson, an original petitioner died on November 13th 1998.

The remaining parties in this case are:

Adrienne E. Richardson, Mother Appellee, and her daughter Ashleigh, age 9.

Charlene Richardson, Paternal Grandmother/Appellant.

STATEMENT OF THE CASE AND FACTS

THE TRIAL COURT FACTUAL FINDING

The Trial Court allowed the Paternal Grandparents, Raymond E. and Charlene Richardson to intervene pursuant to Florida Statute 61.13(7). The trial court found it was in the best interest of Ashleigh E. Richardson to reside with her paternal grandparents in Florida.

THE DISTRICT COURT FACTUAL FINDING

The Mother filed an Appeal with the 1st DCA, Case #98-1240, or Richardson v. Richardson, (Fla. 1st DCA, January 5, 1999), in which the 1st DCA Reversed the Trial Court's decision

and found that Florida Statute 61.13(7), is facially unconstitutional. On February 19th, 1999 the Trial Court returned Ashleigh E. Richardson to the custody of her Mother, Adrienne E. Richardson.

APPELLEE'S STATEMENT OF THE CASE AND FACTS

Initially, I assumed that my defense in the Florida Supreme Court would consist of the Trial Court Finding, or even the First District Court of Appeal decision; however, I have noted that the Appellant now seems to allege parental unfitness, a new allegation which has never been directly addressed in any Court.

The Appellant in the Trial Court twisted and embellished a minuscule piece of truth, formed his own version, asked a question based on a mis-truth and put it in writing in the form of his Statement of the Case and Facts. There is absolutely no evidence that I am a harm to my child or in any way unfit. I do not have time to argue 11 pages of what I consider to be virtually slander, I have less than 5 working days to complete this brief. Notwithstanding the fact that, not only am I appearing in pro se, but also Mr. Kimmel managed to direct my mail, not only from this Court, but also from Trial Court to an address he knew was not my address, and in

doing so he held me back at least a week in preparations.

I believe Mr. Kimmel's Statement of The Case and Facts Section should be disregarded by this Court, as I believe it is merely a last ditch effort on his part to create an entirely new issue, my fitness as a parent has never been a consideration in this entire case.

SUMMARY OF ARGUMENT

(1) Florida Statue 61.13(7), is unconstitutional. The District Court Opinion is Correct.

(2) The Statute cannot be salvaged.

(3) The Mother has never harmed her child, therefore a compelling state interest does not exist.

(4) The Mother has never been shown to be unfit, nor a

detriment.

APPELLEE'S REPLY TO APPELLANT'S ARGUMENT

(1) Florida Statute 61.13(7) is Unconstitutional

(1)A DISTINCTION BETWEEN STATUTES

The distinction between the grandparent visitation

statutes in Von Eiff v. Azricri, 23 Fla.L.Weekly S583 (Fla. November 12, 1998), and Beagle v. Beagle, 678 So.2d 1271 (Fla. 1996), and the custody section of Florida Statute 61.13(7) are as the Appellant claims “like comparing apples to oranges”. In Beagle v. Beagle, as well as, Von Eiff v. Azricri,, the Courts agreed that Florida Statute 752.01, Grandparent Visitation, or court imposed grandparent visitation is in some cases unconstitutional. Unarguably, a grandparent seeking custody and a grandparent seeking visitation are two separate issues. However, the Supreme Court has recognized the parents’ right to raise their child, has constitutional protection.

Florida Statute 61.13(7) Grandparent Intervention, has allowed a grandparent the ability to intervene in dissolution proceedings and actually have contestant standing as a natural parent in custody issues. Florida Statutes 752.01 and 61.13(7) are similar in that a natural parent has superior rights when it comes to the custody and raising of their child. To state impose that a third party may intrude upon a family in the form of visitation or custody of a child over the objections of a parent, in the absence of parental unfitness or harm, is unconstitutional. S.G. v. C.S.G, (Fla. 1st DCA, January 21, 1999), found a parents’ right to raise their child is protected

by the privacy provision of Article I, Section 23 of the Florida Constitution, A parents' right to raise their child are undeniable to that parent in the absence of parental unfitness or actual harm, and the right to raise one's child is a constitutionally protected liberty interest.

Florida Statute 61.13(7) enables the Courts to rely solely on best interest in determining custody of a child between a parent and a grandparent. In the instant case, we have a Father who initiated a Chapter 61 proceeding for his parents to be given the opportunity to intervene, subsequently withdrew his petition and purchased a home in Atlanta,(Argument II, of my Original Initial Brief submitted to the 1st DCA , Appendix 1), and a "possessed" grandmother (Final Order on Petition To Modify, Page 37, paragraph 1)

(1) (B) ABANDONMENT OF PRIVACY RIGHT

The Appellant claims the Mother would be invading the privacy of the grandmother's home. It seems that a "third party" would have no rights to familial privacy with someone else's child, a child with whom the care taker has not even established visitation rights. The child's stay with the Appellant was known by all to be a strictly temporary situation while the Mother attempted to finish her education at a

university, nearly 2 hours away from the Grandparents home. The Father/Petitioners viewpoint is clear, in the Petitioner's own UCCJA affidavit dated October 1, 1993 (pg 2, line 1, Final Order on Petition to Modify) and his subsequent UCCJA affidavit dated January 2, 1997 (pg 6, bottom of page and pg 7 top of page, Final Order on Petition to Modify). The Father never considered his child to be residing with the Grandparents until December of 1994, the fact is the Grandparents assured both parents that it was a temporary day care situation. Neither of child's parents considered the Grandparents offer as anything more than a kind offer by family members to help with day-care. The Grandparents were always aware of the temporary nature of the day-care situations in which they initiated. They will attempt to make it appear that the child has spent the majority of her life with the Grandparents, she has spent the majority of her life with her Mother. A parent's constitutionally protected rights of familial privacy can not end when their child spends time at the grandmother's house. The child was not abandoned, abused or neglected by her Mother. Third parties cannot be given right to invoke familial privacy upon someone else's child, over the strenuous objections of a fit natural parent who hasn't abandoned her child, or rights to

familial privacy, due process, or otherwise terminated her parental rights in any form; if such intrusive invasions were invoked or forced upon parents' it would deny the parent or intrude upon their constitutionally protected liberty interest to raise their child which is guaranteed by both the Due Process Clause of the Fourteenth Amendment of the United States Constitution and the privacy provision of the Florida Constitution, article I, section 23.

The Appellant cites, In the Interest of L.R.R., 455 So. 2d 598 (Fla. 5th DCA 1984),(page 14-,Appellant's Initial Brief on the Merits), the cited case does not resemble the instant case at all. The Mother in the instant case, has maintained a continual and ongoing contact with her daughter, never once relinquishing her parental rights to anyone, nor having them taken from her. The exception being the trial court ruling which allowed the grandparents to intervene and intrude upon and force the break-up of her natural family pursuant to Florida Statute 61.13(7). The Appellant argues that the Mother waived her "fundamental right to raise her child" by surrendering it to the grandparents (page 16, Appellants Initial Brief on the Merits), and cites Spence v. Stewart, 705 So.2d 996 (Fla 4th DCA 1998). The Mother did not delegate or in

any other form authorize the grandparents to raise her child, in fact, the Mother in the instant case has fought strenuously with the grandparents for custody of her daughter since the Mother's relocation with her daughter to North Carolina, on December 14th, 1996. The child's stay was clearly a temporary situation, as to the documents, they enabled the grandparents to obtain "medical care" for the child while the Mother was at work or school. This in no way translates to the Mother's voluntary surrender of her daughter's custody to the grandparents, nor the voluntary surrender of parental rights to the child. Applying the Spence holding, The mother did not abandon her right to privacy,(1) The Mother did not allow the child to grow up with the grandparents. It was a temporary situation, initiated by the grandparents under the guise of assisting the Mother and Child. (2) The Mother left the 100 mile area with the prior verbal consent of the father, (Final Order On Petition To Modify, page 37, Lines 1-2).

In a case similar to the instant case, a Kansas Court awarded custody of a child to a grandparent when the Mother was not found to be unfit and where the Court relied on "best interest" to determine who should have primary residential custody of the child. This case was later overturned by the

Kansas Supreme Court. Sheppard v. Sheppard, 630 P.2d 1121 (Kansas 1981). In the Kansas Supreme Court's explanation of its decision the court declared: "Under the law of the land the welfare and best interests of children are primarily the concern of their parents, and it is only when parents are unfit to have custody, rearing and education of children, that the state as parens patriae, with it's court and judges, steps in to find fitting custodians in loco parentium..." Sheppard v. Sheppard, 630 P.2d 1121 (Kansas 1981) at 1124, which quotes In Re Kailer, 123 Kan. 229,, 230, 231, 255 p.41 (1927). Similarly, Florida Statute 61.13 (7), violates parents constitutionally protected rights to raise their children especially in the absence of a finding that a parent is unfit. In Quilloin v. Walcott, 434 U.S. 246 at 255 and Smith v. Organization of Foster Families, 431 U.S. 816, 862-863 (1977) the Court notes:

> "We have little doubt that the Due Process Clause would be offended "[i]f a State were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in

the children's best interest.".

In custody proceedings involving a parent and a third party it has been established that, “the test must include consideration of the right of a natural parent to enjoy the custody, fellowship and companionship of his offspring...This is a rule older than common law itself.” In Re: The Guardianship of D.A. McW.v McWhite, 460 So. 2d 368, 370 (Fla 1984), and in In Re: The Guardianship of D.A. McW.v McWhite, 460 So. 2d 368, 370 (Fla 1984) Judge Anstead of the Fourth District distinguished between the rights of parents and a third party in custody proceedings by stating: “When a custody dispute is between two parents, where both are fit and have equal rights to the custody, the test involves only the determination of the best interests of the child” at 369 and 370 However, “[w]hen a custody dispute is between a natural parent and a third party,... custody should be denied to the natural parent only when such an award will, in fact, be detrimental to the welfare to the child.” at 370. To give a third party custody of a child in the absence of parental unfitness or detriment to the child and to base a decision merely on best interest violates both the Article I, Section 23

of The Florida Constitution as well as the Fourteenth Amendment Due Process Clause of the United States Constitution. There is not a compelling state interest warranting interference with a parents right to raise their child in the absence of an actual finding of abandonment, abuse or neglect. The rights of parents to raise their children have been upheld in The United States Supreme Court and that freedom has been firmly established as a constitutionally protected liberty interest "freedom of personal choice in matters of . . . family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment." Cleveland Board of Education v. LaFleur, 414 U.S. 632, 639-640 (1974). And in Beagle v. Beagle, 678 So. 2d 1260 (Fla. 1st DCA 1995) the courts ruled that a third party cannot impose upon the family's right to privacy, Florida Statute 61.13(7) is likewise unconstitutional in that it violates a parents rights to raise their children because the "best interests" test is the appropriate standard only when a court is confronted with a custody or visitation dispute between two parents and it was established that Article I, Section 23 protects the privacy rights of all family units in the same way, regardless of the marital status of the parents.

In the case of In re:Marriage of Matzen, 600 so.2d. 487

(Fla. 1st DCA 1992) the trial court ruled that custody could not be denied a natural in preference to a third party unless there is clear evidence of abandonment, detriment to the child or the parent is unfit. The absence of detriment criteria has been established in In re: Guardianship of D.A. McW., 460 So. 2d 368, 369-370), Beagle, and Von Eiff, .

The United States Supreme Court has on many occasions emphasized the importance of the family unit. One of the liberties protected by the Due Process Clause, the Court has held, is the freedom to "establish a home and bring up children." Meyer v. Nebraska, 262 U.S. 390, 399 (1923). If a State were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interest, I should have little doubt that the State would have intruded impermissibly on "the private realm of family life which the state cannot enter." Prince v. Massachusetts, 321 U.S. 158, 166 (1944). One of the liberties due the citizens of this nation and protected by the Due Process Clause is the freedom to "establish a home and bring up children." and the rights to bear and raise one's children have been deemed “essential,”

Meyer v. Nebraska, 262 U.S. 390, 399 (1923). The rights to raise one's child are the "basic civil rights of man," Skinner v. Oklahoma, 316 U.S. 535, 541 (1942). These rights are to be considered "far more precious . . . than property rights," May v. Anderson, 345 U.S. 528, 533 (1953). "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." Prince v. Massachusetts, 321 U.S. 158, 166 (1944). The Supreme Court has recognized that the relationship between parent and child is constitutionally protected Wisconsin v. Yoder, 406 U.S. 205, 231-233 (1972), Meyer v. Nebraska., 262 U.S. 390, 399-401 (1923). A parents right to raise his or her child in the absence of a finding to determine parental fitness has been upheld and shown to be a protected liberty interest in Stanley v. Illinois, 405 U.S. 645 (1972). The integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment, Meyer v. Nebraska., 262 U.S. 390, 399 (1923), the Equal Protection Clause of the Fourteenth Amendment Skinner v. Oklahoma, 316 U.S. 535, 541 (1942) and the Ninth Amendment, Griswold v. Connecticut, 381 U.S. 479, 496 (1965).

I request the Court to find that Florida Statute 61.13(7) violates a parent's constitutional right to raise their child in the absence of a finding that the parent is unfit and that the right to raise children is a constitutionally protected Liberty Interest and guaranteed right to everyone in our Nation by the Due Process Clause of the Fourteenth Amendment of The United States Constitution. As a mother who has not been shown to be unfit, I should have the right to raise my child without the fear that a court can override my desire to raise my child, and decide that my daughters best interest would be served better by allowing a third party to raise her as opposed to me being given that most basic human right of bearing and raising my child. The right to raise our children is a fundamental right of each citizen and is protected by the Due Process Clause of the Fourteenth Amendment of the United States Constitution and in Florida the citizens of the state voted on November 4, 1980 to amend the Florida Constitution to include Article I, Section 23 which states in part: "Every natural person has the right to be let alone and free from government intrusion...". "The State registers no gain towards it declared goals when it separates children from the custody of fit parents." Stanley v. Illinois, 405 U.S. 645, 652 (1972).

(2) When the Supreme Court finds the use of the best interest standard is unconstitutional, the entire statute will be in unsalvageable.

The 1st DCA was given three separate arguments with regard to the Lower Tribunal's decision (Appellants Original Initial Brief, 1st DCA, case No. 98-1240, Appendix 1) and (Reply Brief, 1st DCA, case No. 98-1240, Appendix 2). The Appellant never argued to the 1st DCA in that case that "§ 61.13 (7), Fla.Sta. (1995), should at worst be utilized without the best interest standard" (Argument 2, Page 20, Appellant's Initial Brief on the Merits); furthermore, the Court found later found in S.G. v. C.S.G (Fla. 1st DCA, January 21, 1999) that, "The parties in Richardson made no argument regarding an interpretation of section 61.13(7) which might have avoided an unconstitutional application of the statute in that case", the District Court in S.G. v. C.S.G. "applied the statute in a manner that was consistent with the privacy provision of the Florida Constitution"(S.G. v. C.S.G, [fn6]). The Appellant had his chance to have the 1st DCA consider this alternative; however, he failed to do so in the 1st DCA. I would however, argue that the entire statute is unconstitutional in that it relies solely on a best interest basis and elevates a third party to the position of a natural parent, with or without the natural parents consent, and when that parent is not unfit, and has not caused harm or detriment to the child, or abandoned the

child. If a third party is elevated to the status or same standing of a natural parent, when that parent has not been shown to be unfit, or abandoned the child, it would be a violation of the natural parent's right to familial privacy.

If the Supreme Court were to salvage a portion of Florida Statute 61.13(7) that would in any sense allow a grandparent to compete with the natural parent for custody of the child, the court would be in effect allowing the grandparent to compete on a best interest basis with the parent. and in In Re: The Guardianship of D.A. McW.v McWhite, 460 So. 2d 368, 370 (Fla 1984) Judge Anstead of the Fourth District distinguished between the rights of parents and a third party in custody proceedings by stating: "When a custody dispute is between two parents, where both are fit and have equal rights to the custody, the test involves only the determination of the best interests of the child" at 369 and 370 However, "[w]hen a custody dispute is between a natural parent and a third party,... custody should be denied to the natural parent only when such an award will, in fact, be detrimental to the welfare to the child." at 370. Florida Statute 61.13(7) is unsalvageable simply because it elevates the grandparents to the status of the natural parents. It has been shown to

violate the parents constitutionally protected liberty interest to raise her child free from government intrusion. Parents compete on a best interest basis in custody issues. To allow any standing as a parent to a grandparent would be allowing that grandparent, third party, to compete on a best interest basis against the parent without a need to show parental unfitness, abandonment, or harm.

It would be almost impossible to elevate a third party in a custody dispute to the position or status of a natural parent and rule on anything other than best interest; thus, violating the parent's right to familial privacy unless this court rules at the same time that best interest test is no longer the appropriate standard in a custody dispute between two parents, the court will have to affirm the District Court Opinion and find Florida Statute 61.13(7) Unconstitutional. The entire statute is grounded in the elevation of the grandparents to the same standing as parents in a custody dispute, which violates article I, section 23, of the Florida Constitution.

Florida Statute 61.13(7), which began as Florida House Bill 699 , provides:

> "In any case where the child is actually residing with a grandparent in a stable relationship, whether the court has awarded custody to the grandparent or not, the court may

> recognize the grandparents as having the same standing as parents for evaluating what custody arrangements are in the best interest of the child.
>
> In a summary of the bill, the sponsors noted:
>
> This bill authorizes the court to recognize grandparents as having the same standing as parents for purposes of ordering custody in dissolution proceedings in cases where the child actually resides with a grandparent in a stable relationship. The effect of the bill is to give the court a third option in ordering custody which is in the best interest of the minor child as a result of a dissolution proceeding. (Emphasis added)Fla. House Comm. on Judiciary, Final Bill Analysis & Economic Impact Statement, HB 699 at 1 (April 19, 1993).”

Babb v. Begines 701 So.2d 616 (Fla.App. 4 Dist. 1997).

The sponsors of the statute were quite clear in that they clearly state “The effect of the bill is to give the court a third option in ordering custody which is in the best interest of the minor child”, and the bill itself “authorizes the court to recognize grandparents as having the same standing as parents” in a custody dispute. The Statue’s fatal flaw is that it allows a grandparent the same standing as parents in a custody dispute. Florida Statute 61.13(7) is unconstitutional in it’s entirety. The entire statute is based on the elevation of a grandparent to same status of a parent, which is

unconstitutional; therefore, Florida Statute 61.13(7) cannot be salvaged without infringing upon the natural parent's right to familial privacy.

(3) The Appellant has failed to provide evidence that a "harm to a child" exception exists.

As this Court is aware, I am not an attorney, my argument to the 1st DCA was based on the applications and constitutionality of § 61.13 (7), Fla.Sta.(1995) which provided the means for the appellant to intervene on a "best interest" basis. It seems my Right to Due Process will be Denied, if I have to defend to the Supreme Court an issue which has never been directly addressed in a Trial Court, or even a District Court of Appeal. Accusations of parental unfitness are serious and should be taken seriously, when they are justified, appropriate action is taken. Any proof of specific harm to a child should be proven by clear and convincing evidence before the state may sanction intrusion on parental rights Santosky v. Kramer, 455 U.S. 745 (1982).

Florida Statutes, Chapter 39 specifically, has provided a means for a third party, as the Appellant is, to gain custody

of their grandchildren when a parent is not fit to raise her child. The Appellee would suggest to this Court that if she were actually unfit or a detriment to her child that the Appellant utilize the proper statute in the instant case. The Mothers fitness has never been an issue, until now, and in fact it is basically a smoke-screen to this Court.

The Trial Court on February 18th 1999, offered The Appellant additional time to actually show danger or harm was an issue before entering an Order returning the Child to her Mother, the Appellant could not and did not. The Trial Court Ordered the Child be returned to her Mother's care on February 19th 1999 (Appendix 3). The Child is currently residing with her Mother in Boone, North Carolina.

The Appellees daughter was not exposed to any horrors as a result of living with her mother. There is no reason for the Appellant to assume the child will be exposed to horrors, stabbings, or lewd behavior while in her mother's care, there was a stabbing; however, the Appellees daughter was in the care of a babysitter, the child slept through the entire incident, which occurred outside the home approximately 30 feet from the house. I am not negating the incident; however, clearly it was an extraordinary and unfortunate incident, and certainly not

common or likely to occur again.

(4) The Trial Court's Factual Findings do not conclusively establish the likely harm to the child or the unfitness of the Mother.

The trial Court Judge allowed the grandparents to intervene pursuant to Florida Statute 61.13(7). The ruling was based on a best interest basis. The Appellant choose to intervene pursuant to Florida Statute 61.13(7) in which a best interest test was held. The Appellant had available to them, and still does, the means to attempt to change or modify custody through a Chapter 39 dependency hearing in which they could have attempted to, and still can try to show that I am in someway unfit or had abandoned or even volunteered custody of the child to the grandparents. The Appellants still have that option available, yet lack supporting evidence to initiate

such a proceeding. That is why they choose to intervene under Florida Statute 61.13(7).

The District Court opinion did focus on the constitutionality of Florida Statute 61.13(7) and the application of it in the case, they ruled that the statute violates a parents right to familial privacy.

The trial court ordered the Mother “extensive visitation” including the entire summer break,(Final Order on Petition to Modify, page 47, line 3-5, and page 48, first paragraph). Realistically, I don’t believe that a judge would order such generous and liberal visits with a Mother if he feared that the Mother would or could somehow harm her child, or was otherwise unfit or incapable. There simply is no evidence to support a claim of parental unfitness.

The District Court found the Appellee’s daughter did not reside with the grandparents. The court found the child merely stayed with the grandparents at various times.

The Appellants would somehow expect this court to believe that the Appellee’s daughter had resided with the grandparents for years. That simply is not true. If you add up the zero month’s the father swore under oath (pg 2, line 1, Final Order

on Petition to Modify) and his subsequent UCCJA affidavit dated January 2, 1997 (pg 6, bottom of page and pg 7 top of page, Final Order on Petition to Modify), between the child's birth and the next 5 years that his daughter did not reside with the grandparents, there are 0 of the first 60 months or 60 of 60 months, the child resided with her mother. Another 0 of the next 5 months or 65 of 65 months, the child resided with her mother. Under a temporary child-care arrangement with the grandparents in June of 1995,(page 29 and 30, Final Order on Petition to Modify) the child did spend time at the grandparents home over the next 18 months; however, it was not a residency situation, and never presented to the Mother as such, the child spent every weekend and any available days off with her Mother. Even if the Court were to conclude that the 15 months prior to the Mother's relocation could be construed as a residency situation, 78 of 96 Months, the child resided with her mother, and the limited time she stayed with her grandparents was a known by all parties to be temporary.

The trial court's factual findings do not conclusively establish the likely harm to the child or the unfitness of the Mother.

CONCLUSION

In Conclusion, the District Court opinion should be upheld. Florida Statute 61.13(7) unconstitutional. The Statute elevates a third party to the status equal to that of a natural parent when determining custody issues. The natural parents compete with each other in custody issues on a best interest basis, to allow a third party the same status as that of a natural parent and allow the grandparent to compete with

the natural parents would in effect allow a third party to compete on a best interest basis with the natural parent. That has been shown to be unconstitutional. A grandparent who has actual evidence or proof of parental unfitness has available to them the means to take custody of a child, however, family reunification is usually the goal. Florida Statute 61.13(7) can allow a third party to permanently destroy a family without that opportunity.

Respectfully Submitted,

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(828) 265-4336

CERTIFICATE OF MAILING

I, ADRIENNE RICHARDSON, the undersigned, do hereby certify that on_____, 1998 did place a copy of this Brief in an envelope and mailed via First Class Postage to each of the following parties:

Robert R. Kimmel
Attorney for the Appellant,
LAW OFFICES OF KIMMEL & BATSON
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Signed:_____
ADRIENNE E. RICHARDSON, Appellee
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IN THE SUPREME COURT OF FLORIDA

CHARLENE RICHARDSON,

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Appellee,
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APPENDIX

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ON APPEAL FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT, IN AND FOR ESCAMBIA COUNTY, FLORIDA AND FROM THE FIRST DISTRICT COURT OF APPEAL

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FINAL ORDER ON PETITIONS TO MODIFY

DEPOSITIONS, TAKEN AUGUST 4TH, 1997 AT 314 S. BAYLEN STREET, SUITE 100, PENSACOLA, FLORIDA. Taken By Melissa A. Odom.

PRELIMINARY STATEMENTS

I, Adrienne E. Richardson am Appealing to this Court in Pro Se. I am appealing in pro se because I cannot afford an attorney not because I have any knowledge of the law. I would like to apologize to the Court if my wording appears unprofessional and or inappropriate, because it is and can be.

I will in most part, refer to myself in third person throughout this Appellate Brief for ease of readability to and for this Court.

The Mother, is Adrienne E .Richardson, I will try to refer to the grandparents/as The Grandparents, I will refer to Ashleigh's step-mother as, Mrs. Richardson, the Father is the Petitioner.

The Petitioner / Father / my ex-husband, Raymond F. Richardson Withdrew his Petition to Modify Custody and I do not believe he is a party to this Appeal; however, I do not know. His actions are relevant to this case in that he initiated the original proceedings in an attempt to get the Court to have my daughter returned to his parents and for the purpose of allowing his parents to be given the opportunity to intervene, any mention of him in this Brief will refer to him as the Petitioner.

I will refer to the Final Order On Petitions To Modify extensively throughout this Brief, I will use the abbreviation (F.O.) for Final Order On Petition to Modify.

STATEMENT OF THE CASE AND FACTS

STATEMENT OF THE CASE

This case originated with a non-custodial parent Raymond F. Richardson/Petitioner, filing for custody of his daughter Ashleigh E. Richardson, who is now eight years old. The primary residential custodian at that time and since the couple's divorce in 1994 and until February 25, 1998 was the mother Adrienne E. Richardson/ Respondent and now Appellant. The Petitioner filed for a change of custody, he subsequently withdrew his petition and stated to the court he would like his parents to have custody. The petitioner's Parents', the Paternal Grandparents/ Interveners and now Appellees Raymond E. Richardson and Charlene Richardson were awarded primary residential custody of Ashleigh E. Richardson on February 25, 1998 pursuant to Florida Statute 61.13(7)

Raymond F. Richardson and Adrienne E. Richardson were married on March, 08 1988 and divorced on April 4, 1994. They have one minor child Ashleigh E. Richardson who was born on December 29, 1989.

All of the Information in this paragraph comes directly from The Final ORDER ON PETITIONS TO MODIFY and will include page and line numbers. In July of 1993, Raymond F. Richardson "was arrested and charged with domestic violence upon the mother" (pg. 15, line 9) The incident occurred on July 4, 1993 and led to separation and finally divorce , Raymond F. Richardson pled nolo contendere to the charge. On October 1, 1993 The Petitioner Filed his Petition for Dissolution of Marriage (pg. 2, line 1), October 4, 1993 The Petitioner filed and was granted Ex Parte, An Order Requiring Minor Child Not Be Removed From Florida, specifically Escambia and Santa Rosa Counties (pg. 2, line 7), October 11, 1993 The Grandparents filed a Complaint For Leave To Intervene (pg. 2, line 11). October 11, 1993, The Grandparents filed a Motion To Expand Terms Of Residence for Child to include Okaloosa County. (pg. 3, line 1), October 20, 1993 Judge Skievaski appointed a Guardian Ad Litem (pg. 3, line 3) who had "...no significant involvement because of the entry of the Final Judgment adopting the Marital Settlement Agreement" (pg. 5 line 2), November 22, 1993 The Grandparents filed A Motion For Special Grandparent Visitation (pg. 3, line 6), March 30, 1994 The Grandparents filed their Withdrawal of Complaint for Leave To Intervene (pg. 4, line 2), March 30, 1994 A Marital Settlement Agreement was Executed, Approved

and Adopted (pg. 3, line 6) In July of 1994, Raymond F. Richardson was arrested for Child Abuse after leaving several and severe bruises on his daughter's back and buttocks, he also pled nolo contendere to these charges. On December 14, 1996 (pg. 15 last 2 lines & pg. 16 lines 1-3). The Mother and primary residential custodian of Ashleigh E. Richardson moved to North Carolina along with her daughter Ashleigh, approximately six months after she informed the Father and Grandparents of her intentions to move (pg. 37, line 1; pg. 26, lines 13, 14, 15 & 21-23; and pg. 27 lines 1 & 2). On January 02, 1997 The Petitioner filed a Petition to Modify Primary Residence/Custody Of Child, along with a Uniform Child Custody Jurisdiction Act (UCCJA) Affidavit, and a Motion For Temporary Injunction To Prevent Removal Of Child. The Motions dated January 02, 1997 were "...presented "ex parte" to this Court on Monday, January 06, 1997." (pg. 7, line 3). On January 06, 1997 "The Court declined to issue an order directing Ashleigh's custody be given to the Grandparents and instead issued it's Order To Show Cause to the Mother". (pg. 7, line 4). In addition the father "subsequently filed a Motion for Psychological Evaluation of Minor Child....and a Motion for Appointment of Guardian Ad Litem" (pg. 7 , lines 9-14) A hearing was set for January 21, 1997, the Court held it's hearing on that date and pronounced it's ruling on the Order to Show Cause, the written Order was entered February 4, 1997. The reasons for the decision are on the entire page number 8 of the Final Order. The "Court denied the Petition for Temporary Injunction, ... declined to enter any further orders restricting the movement of the Mother with the child" (pg. 7 entire last paragraph and pg. 9 first paragraph). "On January 27, 1997, the mother filed her answer to the Father's Petition." , in which she admitted a substantial change had occurred, but that it was not in the child's best interest to change the designation of primary residential parent. (pg. 9 line 5). "On February 11, 1997, the Grandparents filed their Motion to Intervene and Petition to Modify Primary Residency/Custody of Child" (pg. 9, line 7). On March 18, 1997 the Court allowed the Grandparents to Intervene upon the "finding that Ashleigh had resided with the Grandparents in a stable relationship prior to the filing of the Motion to Intervene" (pg. 9, lines 10-12). On July 14, 1997, the court re-appointed a Guardian Ad Litem. (pg. 9, lines 13 -14) who to the best of the Mother's knowledge did no further investigation, at least at the Mother's home. All parties involved unsuccessfully tried to Mediate the Case and the a non-jury trial hearing date of September 8 & 9, 1997 was set. During the trial the Petitioner

withdrew his request to Modify Custody and took the position that the Appellees should have primary Residential Custody of his daughter. On September 8, 1997 the Grandparents filed their First Amended Petition To Modify Parental Rights and Responsibilities and for Other Relief. The trial lasted two days. On February 25, 1998 The Court found it would be in Ashleigh's "Best Interest" to reside with her Grandparents in Destin, Florida and Ordered the Appellant to turn her daughter over to her paternal grandparents on April, 12 1998, the mother complied with that order .

STATEMENT OF THE FACTS

THE PARTIES

The parties in this case are Adrienne E. Richardson, Mother and possibly Raymond F. Richardson, Father and Original Petitioner who withdrew his Petition To Modify Custody, and the Petitioner's parents Raymond E. and Charlene Richardson, Paternal Grandparents, and Appellees in this case.

THE NATURE OF THE CASE

This is A Modification Of Custody Case in Which the paternal grandparents were allowed to intervene and gain custody of their grandchild under Florida Statute 61.13(7). The Father Initiated the Chapter 61 action against the Mother and later Withdrew his Petition, and "took the position that the Grandparents should be designated primary residential parent" (pg. 10, line 16, F.O.)

THE COURSE OF THE PROCEEDINGS

The course of events which led up to the decision are as follows: When the Mother/Appellant lived in Florida she lived in Pensacola Florida which is about an hour and a half drive from the Paternal Grandparents/Appellees home in Destin Florida. The Mother had no tangible job skills, and during her marriage she only finished the first two years of her four year degree. The Grandparents approached the Mother with an offer to help her finish school (pg.29, Exhibit L-1). She wanted the best for her daughter and decided that it would be in her family's best interest to continue her education. The grandparents had offered on several other occasions to help the mother and father in the past with respect to child care to which the mother both appreciated and accepted. The mother was plagued with misfortune during her year and a half attendance at the university, and her grades suffered. During the summer of 1996, the Mother approached both the Petitioner and Appellees to discuss her poor grades, along with her desire to move back home to North Carolina, The Petitioner appeared to agree with her decision, the Appellees did not. The Mother who had been served twice with Court Orders restricting her movement had sufficient reason to believe that if the Petitioner or Appellees didn't agree with her idea to move that she would be served again with more restrictive orders. (pg. 2, line 7 & pg. 3, line 1) She was not given any restrictions on movement with her daughter, she was however, offered a large sum of money

approximately $50,000 if she would give the Appellees custody of her child, she declined to sell her child to the Appellees and did not speak to them about her idea again, nor by law did she have any reason to inform the Grandparents of anything because at the time they did not even have visitation rights (pg. 26, line 21). The Mother left Florida and moved home on December 14th 1996, one day after she finished her finals during the fall semester of 1996. On January 02, 1997 The Petitioner Filed his Petition To Modify Custody which began a chain of events which led to the Appellees gaining primary residential custody.

THE DISPOSITION IN THE LOWER TRIBUNAL

The Court ruled that it would be in Ashleigh E. Richardson's "Best Interest" if her Paternal Grandparents had Primary Residential Custody.

ISSUES ON APPEAL

ISSUE I

WHETHER THE COURT ERRED IN ALLOWING THE APPELLEES TO INTERVENE UNDER FLORIDA STATUTE 61.13(7)?

Florida Statute 61.13(7), "which began as Florida House Bill 699 , provides:

> In any case where the child is actually residing with a grandparent in a stable relationship, whether the court has awarded custody to the grandparent or not, the court may recognize the grandparents as having the same standing as parents for evaluating what custody arrangements are in the best interest of the child.
>
> In a summary of the bill, the sponsors noted:
>
> This bill authorizes the court to recognize grandparents as having the same standing as parents for purposes of ordering custody in dissolution proceedings in cases where the child actually resides with a grandparent in a stable relationship. The effect of the bill is to give the court a third option in ordering custody which is in the best interest of the minor child as a result of a dissolution proceeding. Fla. House Comm. on Judiciary, Final Bill Analysis & Economic Impact Statement, HB 699 at 1 (April 19, 1993) " Babb v. Begines 701 So.2d 616 (Fla.App. 4 Dist. 1997).

On March 18, 1997, the Court Granted the Appellees' Motion To Intervene pursuant to Florida Statute 61.13(7). It is my belief that the Court Erred in its decision to grant the Appellees' Motion to Intervene, because the Appellees failed to meet the requirements to Intervene under Florida Statute 61.13(7). I request this Court to Reverse the Trial Court's decision to allow the Grandparent's Motion To Intervene and to Order The Immediate Return of Ashleigh E. Richardson, to the Appellant.

On December 14, 1996, the Appellant relocated her family to Boone, North Carolina, her home-town (pg. 25, line 7, F.O.). On January 02, 1997, almost three weeks after the Appellant relocated, the Petitioner, filed a Petition to Modify Primary Residence/Custody Of Child, a Uniform Child Custody Jurisdiction Act (UCCJA) Affidavit, and a Motion For Temporary Injunction To Prevent Removal Of Child In which the Father requested the Court to order the Mother to return their child to the father's parents (pg. 6 and pg 7, line 1 F.O.). A hearing was held ex-parte on January 06, 1997, and the Court declined to enter an order directing the Appellant to return her daughter to the Appellees as the had Petitioner requested, and instead set a date for a hearing to Show Cause as to why the Appellant failed to comply with the Christmas Visitation Schedule. In the actual hearing on The Order to Show Cause on January 21, 1997, the Court did not Order the Appellant and her child back to Florida, nor did the Court order the

Appellant to return her child to the Appellees as requested by the Petitioner. The Court in its decision reasoned that the Appellees have not even established Visitation rights (pg. 7, line 4 & pg 8, line 1, F.O.). On February 10, 1997, almost two months after the Appellant relocated her family and one-week after the court entered its Written Order to Show Cause on February 4; 1997, the Appellees Filed A Motion To Intervene. A grandparent should not be able to intervene on a custody proceeding involving two parents, one of whom initiated the proceedings for the grandparent, two months after the mother relocates. On March 17, 1997 the Court Granted the Appellees Motion to Intervene.

In the Court's decision to Grant the Appellees Motion to Intervene, the Court notes: " On March 17, 1997, this Court entered its order finding that Ashleigh had resided with the Grandparents in a stable relationship prior to the filing of the Motion to Intervene and therefore, granted the motion." (pg 9, line 10). Furthermore, on page 12, line 4 of the Final Order, the Court again explains its decision to allow the Intervention in stating: "However, section 61.13(7) gives grandparents the identical standing as parents in a custody proceeding where there is an initial showing that the child has actually resided with the grandparents in a stable relationship." The Court was specific in that it used past living arrangements in its decision allow the Appellees to Intervene and Florida Statute 61.13(7) is equally specific in using present living arrangements. The Court cited cases in which grandparents were allowed to Intervene and stated that, " Those cases have held, essentially that there was an initial showing that the child is actually residing with the grandparent in a stable relationship" (page 12, line 18, F.O.). However, unlike my case, and in each case the Court cited below in determining the grandparents eligibility to intervene, the child "Is" actually residing with a grandparent in a stable relationship at the time a chapter 61 action was initiated . In the case of S.G. v. G.G. 666 So, 2d 203 (Fla 2d DCA 1995) The child is residing with the grandparent at the time the mother initiated a chapter 61 action, In the case of Anderson v. Garcia 673 So.2d 111(Fla. 4th DCA 1996) the child is residing with the maternal grandparent when the father initiated a chapter 61 action, in the case of Russo v. Burgos 675 So. 2d 216 (Fla 4th DCA 1996) the child is residing with the maternal grandparent when the father initiated a chapter 61 action, and in the case of Carpenter v. Berge 686 So. 2d 759 (Fla 5th DCA 1997) the child is residing with the grandparent at the time the mother initiated a chapter 61 action, the grandparent in this case actually had temporary

custody of their grandchild when the Chapter 61 action was initiated. Florida Statute 61.13(7), which begins: " In any case where the child is actually residing with a grandparent in a stable relationship," requires that a child is actually residing with a grandparent when that grandparent Intervenes. The residence-in-a-stable-relationship-predicate is fundamental in determining a grandparent's eligibility to Intervene under Florida Statute 61.13(7) and the statute does not address a child's past or prior living arrangements or such issues as "....had resided with...prior..." or " has actually resided with", both of those statements used by the Court in its decision refer to past living arrangements. The Statute is straightforward in it's use of the word " is" which means "to be" and it refers to the word "is" in the present tense, not the past tense of the word "is" which is, "was" , and certainly nowhere in the statute do the words "was", "had" or "has" appear. The statute does not reference past living arrangements at all. The statute is clear in that it refers to the present tense "is" and I believe its intention is to assure a child residential stability in dissolution proceedings where the child is actually residing with a grandparent. However, I do not believe that the statute was intended to allow a grandparent to intervene when their grandchild is not residing with them. Therefore, I ask this Court to Reverse the Trial Court's decision to allow the Grandparents to Intervene and Order the Immediate Return Of Ashleigh E. Richardson to her Mother, the Appellant.

Ashleigh E. Richardson, the Appellants daughter was not residing with the grandparents at the time the petitioner filed his petition to modify custody. The petitioner through his sworn UCCJA affidavit submitted to the court "ex parte" On January 06, 1997 (pg. 7, line 3, F.O.) would like to make it appear that Ashleigh was actually residing with the grandparents at the time the petitioner filed by fraudulently mis-stating under oath that Ashleigh was residing with the Grandparents on January, 02, 1997, but she was actually residing with her Mother in North Carolina at the time and had been for twenty days (pg. 25, line 7, F.O.). Furthermore, the Appellees waited until February 11, 1997 (pg. 9 line 7, F.O.), seven days after the written Order to Show Cause was entered, in which the Court did not order the Appellant back to Florida (pg. 7 final paragraph, entire page 8, and 9 first 2 paragraphs, F.O.) , and a total of sixty days after the Mother had relocated to North Carolina with her child, before they even filed to Intervene. The Appellees essentially waited to file to Intervene until after the hearing on The Order To Show Cause to

see if the Court would comply with the Father's Petition for Custody, in which he requested the Court to Order the mother to return her child to his parents . The Appellees have failed to meet the requirements to Intervene under the statute, because Ashleigh was not residing with them either at the time the Petitioner filed his petitions on January 02, 1997 or on February 11, 1997, when the grandparents actually filed to intervene. Florida Statute 61.13(7) clearly was not intended to break-up a family unit or to provide the grandparents the means to legally intervene and take custody of a child when that child's custodial parent has relocated with the child especially when those grandparents did not have any court ordered rights to the child, and when the child's stay with the grandparent was know to all parties to be temporary while the Appellant attempted to finish her education.

For the reasons stated above, I believe the Court Erred in its decision to allow the grandparents to Intervene. The Appellees failed to meet the requirements to Intervene under Florida Statute 61.13(7) and I ask the Court to Reverse the Trial Court's decision to allow The Motion To Intervene, and to Order The Immediate Return of Ashleigh E. Richardson, to the Appellant.

ISSUE II

SHOULD A PARENT WHO DOES NOT WANT CUSTODY OF HIS CHILD BE ABLE TO INITIATE A CHAPTER 61 ACTION FOR THE PURPOSE OF ALLOWING A GRANDPARENT TO INTERVENE UNDER FLORIDA STATUTE 61.13(7) ALTERNATIVELY, SHOULD A GRANDPARENT BE ALLOWED TO INTERVENE IN A CHAPTER 61 PROCEEDING WHERE A PARENT INITIATED THE CHAPTER 61 PROCEEDING FOR THE GRANDPARENT OR FOR THE PURPOSE OF ALLOWING THAT GRANDPARENT TO INTERVENE, AND SHOULD GUIDELINES BE ESTABLISHED TO PREVENT SUCH OCCURRENCES?

Although it is obvious now that the Father did not want custody of his child when he petitioned the Court for custody, and this assertion is made evident by his request to Withdraw his petition for Modification of Custody; the Father initially petitioned the Court for custody of his child to effectuate the Appellees ability to intervene. Occurrences such as this where a parent initiates an action for a grandparent to be given an opportunity to intervene and essentially give them contestant standing when they otherwise would not be given that standing or any other consideration should not be an acceptable legal standard for a grandparent to intervene. I ask this court to consider the evidence that I will present and reverse the lower court decision to allow the grandparents to intervene based on the fraudulent and collusive tactics of the Petitioner and Appellees used to allow them to Intervene, and request that this court establish some guidelines to protect a custodial parent and his or her child from such occurrences.

The fact that the Judge who was presiding over the case was the same Judge who married the Petitioner and his new wife was hidden from the Mother until after he allowed the Grandparents to Intervene. The Judge in this case, the Honorable Michael T. Jones, performed the wedding for the Petitioner and his current wife in April of 1994. This vital piece of information was kept from the Mother until long after the Judge granted the Grandparents Motion to Intervene. Had the Mother realized the fact that the Judge, not only had been a guest at the Grandparents home, but also performed their son's (the Petitioner's) wedding ceremony on the Grandparents Yacht , she would have asked the judge to recuse himself before he was allowed to make major life altering decisions, especially when the Courts decision might be affected by a conscious or sub-conscious pre-disposition of the Court to find in favor of the Father or Grandparents. The Father and the Grandparents intentionally kept this information from the Mother. It was the Father and Grandparents intention to use their relationship with the Judge to their advantage.

The Grandparents made their offer of day care appear to be a situation in which Ashleigh was residing with them when she was not. The Grandparents had offered to help the Mother and Father with respect to child care (pg 29, ln line 4, F.O.). The Mother and her daughter preferred that the daughter stay with family as opposed to strangers at a day care facility. "The Grandparents offered to keep Ashleigh during the week while the parents were in school in order to avoid extensive day care costs" (pg 29, ln 4, F.O.). Ashleigh stayed with her grandparents for three nights per week (pg 29, ln 8, F.O.). While the Mother appreciated the Grandparents offer of day-care, it was clearly not considered to be a situation in which either Mother or Father considered the offer to be anything other a day care situation, and certainly not a residency situation for their daughter. The Father/Petitioners viewpoint is clear, in the Petitioner's own UCCJA affidavit dated October 1, 1993 (pg 2, line 1, F.O.) and his subsequent UCCJA affidavit dated January 2, 1997 (pg 6, bottom of page and pg 7 top of page, F.O.). The Father never considered Ashleigh to be residing with the Grandparents until December of 1994, the fact is the Grandparents assured both parents that it was a temporary day care situation. Neither of Ashleigh's parents considered the Grandparents offer as anything more than a kind offer by family members to help with day-care. The Grandparents were always aware of the temporary nature of the day-care situations in which they initiated. With regards to the intention of their offer of day care the Grandmother in her deposition, stated that she has always felt that Ashleigh should reside with the Grandparents, since Ashleigh was born (pg 12, ln 13, 14, 15 &16). The Court was mis-lead into believing that Ashleigh had spent the Majority of her life with the Grandparents, when actually she has spent the majority of her life with her Mother. It has become painfully obvious to the Mother that the Grandparents offer of day care was nothing more than a means to an end with respect to them turning around a day care situation into something it was not, a residency situation.

The the amount of time the Petitioner spends with his daughter has increased since she relocated to North Carolina. In June of 1995, the Grandparents approached the Mother with an offer to help the her to finish her education (pg 29, ln 16, F.O.). However, it did not work out that way. The Mothers grades started failing, she missed her child, her child missed her, and in the summer of 1996 the Mother informed the Father and Grandparents that she wanted to relocate to Boone, North Carolina to be

near her family and she expressed her concerns over her grades. The Father appeared to agree with the Mother and the Grandparents responded by offering a large sum of money in exchange for custody of their Grandchild. The Mother did not speak to them about this idea again. When the Mother relocated to North Carolina the Father had more visitation than he had ever exercised before. The Father even asked the Mother not to bring Ashleigh to visit him on one of his make-up visits because his wife was due to give birth to the Father's 3rd son sometime in the coming weeks. At the hearing on the Order to Show Cause on January 21st 1997, the Father grossly over exaggerated his bi- weekly visits with his daughter as essentially being every other weekend (Pg 8, #2, F.O.). The fact is that since the time of his arrest in July of 1994 for child abuse and until after the Mother moved to North Carolina on December 14th , 1997 the did Father did not exercise his right to have overnight visits with his daughter at all (pg 28, ln 11, F.O.), and the Father and or Grandparents often times hindered the Mothers ability to exercise her rights to see her child when the Father for whatever reason couldn't (pg 34, ln 6, F.O.) and it was found that the father visited only occasionally with his daughter prior to the Mother's relocation and usually at the Grandparents house. During his summer visit in 1997, the Father gave his daughter to the Grandparents for half of his summer visit. The Father called his daughter in Boone, rarely before the trial (probably once every other week or less). After the trial on September 8th and 9th, the Father has not called or spoken to his daughter once since Christmas 1997 through April 12th 1997, when Ashleigh was taken by her Grandparents. During Christmas visitation in December of 1997, the Father spent one night with his daughter and allowed his parents, the Grandparents, to keep her the remainder of the visit. The move has created positive improvements in the Fathers relationship with his daughter, he enjoyed greater visitation, and his daughters behavior has improved since she moved to North Carolina.

The Petitioner never intended to actually take custody of his daughter. The Petitioner originally asked the court to Order the Mother to return his child to his parents, when that didn't work he decided he wanted custody, finally he decided to withdraw his petition altogether and again stated to the Court that his parents should have custody. The Petitioner and his parents through their attorney (In the beginning of this case the petitioner and appellees had the same attorney and that attorney was paid for with funds provided by the Appellees to secure their chance to intervene) Mr. Susko, Initiated the proceedings for

the petitioners and/or his parents, the Petitioners intentions were clear in that he requested his daughter be returned to his parents. On January 02, 1997 the petitioner fraudulently stated under oath in his sworn affidavit that Ashleigh E. Richardson was residing with his parents on the day he filed his motions to have his daughter returned to his parents. It has been shown that Ashleigh was residing with her mother on that date. I believe this discrepancy in dates was a blatant attempt on the petitioners behalf to try to make it appear to the Court that Ashleigh was residing with the grandparents when he filed for custody of his daughter. A child must be residing with a grandparent in order for those grandparents to have standing to intervene.

Florida Statute 61.13(7), provides:

> In any case where the child is actually residing with a grandparent in a stable relationship, whether the court has awarded custody to the grandparent or not, the court may recognize the grandparents as having the same standing as parents for evaluating what custody arrangements are in the best interest of the child.

The petitioner, appellees and their attorney must have been aware of Florida Statute 61.13(2)(b) which states: "The court shall consider evidence of spousal or child abuse as evidence of detriment to the child.", when he filed his petition to modify custody. The petitioner has been arrested and plead nolo contendre to both spousal and child abuse charges involving both his daughter Ashleigh E. Richardson and the Appellant, his ex-wife. He knew or must have known that in order to improve his chances of actually gaining custody for his parents, or to improve the Grandparents' chance to intervene, he would have to state that Ashleigh was residing with his parents at the time he filed his motion to change custody and they would have to make it appear that Ashleigh had been residing with them at the time he filed. He did that. He lied under oath.

The Petitioners child support obligation and fear of losing his inheritance seem more important than his daughter. The Petitioner originally filed for his parents to gain custody, then it appeared that he wanted custody himself; however, when certain statements made by the petitioner are looked at it becomes obvious that he had no intention of wanting custody of his daughter, and that his child support

obligation appears to be a major concern for him. Dr. DeMaria testified that the Petitioner stated, "he 'would not be thrilled' if they (his parents) received custody of Ashleigh, and their 'zeal for having custody of Ashleigh has to do with that is the only real thing they can save'." He added that his parents told him that if he ever lets Ashleigh live with him, he 'is out of the will'." (Pg 37, first paragraph, F.O.) The Petitioner also made several observations about how his relationship with his daughter had improved since she moved to North Carolina (pg 36, second paragraph, F.O.) "He told Dr. DeMaria that he feels his relationship with his parents and the rest of the family would be better if they were not so 'possessed with possessing my daughter'", (pg 37, line 6 &7, F.O.). In the Petitioners Deposition dated August 4th 1997, page 10, line 8, The father said "We were designed to live with, you know, parents who work" . He stated under oath that children were designed to live with parents. Then later in Court, he Withdrew his Petition and took the position his parents have custody. He was asked about his discipline methods and stated, "Actually, I haven't had many discipline problems with her in the past six months, year" (pg 13, line 12,13,14) The Appellant had relocated to Boone, North Carolina with Ashleigh for eight months. Clearly, Ashleigh's relationship with her father had improved since she moved to North Carolina with her mother. Later, in the deposition when the Petitioner was asked in what way the appellant was not taking care of Ashleigh now, he responded, "I don't know. I don't know that she is not taking care of Ashleigh now, I just do not personally think she will continue after this court action is resolved." (Pg, 15, lines 9,10,11,12). The fact is, the Mother had been and continued to care for her child until the Court Ordered the Mother to give her child to the Grandparents, whereas, the Father himself, had stopped all contact with his daughter. The Father had not been in touch with his daughter since her one day Christmas visit until her return to Florida on April 12th, 1998. The petitioner in his deposition seemed to object to the fact that his parents were watching Ashleigh during the school week because the Mother was cashing his child support checks. There is no mention in his deposition that the mother was not taking proper care of Ashleigh in Boone, nor was there any mention of any other objections to the mother having custody of Ashleigh with the exception of the mother cashing child support checks (pg 14 ln 13-25, and 15 ln 1-2, Deposition). The concern for having to pay child support coupled with the fact that the Petitioner might lose his inheritance are the reasons the father filed for a change of custody.

The Petitioner's wife was not at any hearing. Given her/Mrs. Richardson's criminal history, I can see why. The first time the Mother ever met the Petitioners wife was on the first court ordered visitation in 1997. The Mother was invited to a dinner hosted by Mrs. Richardson and The Petitioner. The dinner went well. The Mother's prior knowledge of this woman consisted of someone who ran screaming from her home and when questioned about Ashleigh's abuse by the HRS, or someone who drove herself and family into a tree while intoxicated (pg. 27, line 21&22, pg 28 line 1-4) . Mrs. Richardson, would surely have seemed a detriment to the Appellants daughter, and was not brought into this hearing due to that fact. She was hospitalized for several days after her drunken accident. Given the Petitioner's spousal and child abuse history, and his current wife's criminal history which included her lying about her own extensive criminal history which includes, worthless checks, uttering a forged document, and her near fatal DUI tragedy involving both her husband and child, it becomes clear why she would not be in Court. And if in fact this was the Father Petitioning for his parents and not himself, Mrs. Richardson's presence in court would not be required.

Finally, the issue of child abuse. "Photos were introduced into evidence which revealed substantial bruising and discoloration" (pg 34, line 19). The Child Protective Investigator, noted, " multiple bruising hand prints and fingerprints all over Ashleigh's buttocks" (pg 34, line 18). The Grandmothers testimony would somehow blame the beating on the Mother because Ashleigh, "was very difficult to deal with after she visited her Mother" (pg 34, line 15 &16). The Father in his deposition on page 13, stated when asked if that was a normal spanking, "I did not at the time see anything unusual about it" (line 6 & 7), then he went on to explain, "her behavior has not warranted any serious discipline" (line 17 &18). It makes one wonder what serious discipline might include, because the Father did not feel that a beating which left such substantial bruising was unusual. The Fathers wife, Mrs. Richardson, was there when the Father beat Ashleigh and when asked if the incident was blown out of proportion in her deposition, "Yes, I do. She was spanked on the bottom; as far as I know where you are supposed to spank children" (pg 8, line 16,17 &18). Then she went on to explain how she had only been arrested twice, it was later found she lied about a recent DUI conviction, (page 27, line 21, F.O). When the Grandfather was asked in his deposition about his son's arrest he testified that it was, "Unjustified" (Pg 13, In 12), when the

Grandfather was asked to explain why he felt the arrest was unjustified he stated, "Because I saw bruises on her , and to me it was a spanking." (pg. 13, ln 14 &15). When the Grandmother was asked in her deposition if she thought the arrest was blown out of proportion she stated, "Yes, I did" (pg 15, line 13). The only people who considered Ashleigh's beatings that day to be excessive were the police, the HRS, and the Mother and Ashleigh. The Father, his wife, and the Grandparents failed to see that anything except a normal spanking had occurred.

What has actually happened since the Move to North Carolina is the Father sees improvement in his relationship with his daughter, the Mother and child are together and the Father has had greater visitation than ever before, it leaves little doubt that the Father cares more about his finances than his daughter. The Father chose to not take his weekend visit, split his summers, and virtually gave up his Christmas visit to his parents, and the fact that he withdrew his petition to Modify custody in favor of his parents, indicate that the Father never wanted custody of his daughter. According to Dr. DeMaria, an expert in child psychology, "There is no doubt that the primary emotional bond is with the mom", (pg 40, ln 11 &12, F.O.) And "I can clearly say, because of the strength and the primary bond being with mom, it's not warranted or indicated to change full custody to the grandparents or dad that I can see at this point, because that's going to cause a lot of difficulties for Ashleigh....I would say that would cause harm, if she was removed from that..."(pg 42, ln 16-20, F.O.). When such a strong bond exists between Mother and Child, and the Petitioners own psychologist insists that a change of custody will harm the child, the Petitioner demonstrates his lack of concern for his daughters emotional well being when he withdrew his petition for custody in favor of his parents.

Given the fact that the move to North Carolina has brought Ashleigh closer to her Mother and Father, and that the Father initiated the proceedings for his parents, the Appellees, I ask the court to reverse the lower court's decision to allow the Grandparents to intervene and order the immediate return of Ashleigh to her Mother.

ISSUE III

IS FLORIDA STATUTE 61.13(7) UNCONSTITUTIONAL BECAUSE IT VIOLATES A PARENT(S) CONSTITUTIONALLY PROTECTED LIBERTY INTEREST GUARANTEED BY THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND OR ARTICLE I, SECTION 23, OF THE FLORIDA CONSTITUTION?

Florida Statute 61.13(7) which allows a grandparent to intervene in a custody proceeding and have the same standing as parents in child custody cases is Unconstitutional because the Statute Violates Article I, Section 23, of the Florida Constitution and a parent's Constitutionally Protected Liberty Interest Guaranteed by The Due Process Clause of The Fourteenth Amendment of The United States Constitution. The statute enables the Courts to rely on best interest when determining custody of a child between a parent and a grandparent and that parent does not have to be shown to be unfit when their child is taken from their custody.

In a case similar to my case, a Kansas Court awarded custody of a child to a grandparent when the Mother was not found to be unfit and where the Court relied on "best interest" to determine who should have primary residential custody of the child. This case was later overturned by the Kansas Supreme Court. Sheppard v. Sheppard, 630 P.2d 1121 (Kansas 1981). In the Kansas Supreme Court's explanation of its decision the court declared: "Under the law of the land the welfare and best interests of children are primarily the concern of their parents, and it is only when parents are unfit to have custody, rearing and education of children, that the state as parens patriae, with it's court and judges, steps in to find fitting custodians in loco parentium..." Sheppard v. Sheppard, 630 P.2d 1121 (Kansas 1981) at 1124, which quotes In Re Kailer, 123 Kan. 229,, 230, 231, 255 p.41 (1927). Similarly, Florida Statute 61.13 (7), violates parents constitutionally protected rights to raise their children especially in the absence of a finding that a parent is unfit. I ask this Court to find this Statute unconstitutional and reverse the trail courts decision.

In Quilloin v. Walcott, 434 U.S. 246 at 255 and Smith v. Organization of Foster Families, 431 U.S. 816, 862-863 (1977) the Court notes:

> "We have little doubt that the Due Process Clause would be offended "[i]f a State were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interest.".

In custody proceedings involving a parent and a third party it has been established that, "the test

must include consideration of the right of a natural parent to enjoy the custody, fellowship and companionship of his offspring...This is a rule older than common law itself." In Re: The Guardianship of D.A. McW.v McWhite, 460 So. 2d 368, 370 (Fla 1984), and in In Re: The Guardianship of D.A. McW.v McWhite, 460 So. 2d 368, 370 (Fla 1984) Judge Anstead of the Fourth District distinguished between the rights of parents and a third party in custody proceedings by stating: "When a custody dispute is between two parents, where both are fit and have equal rights to the custody, the test involves only the determination of the best interests of the child" at 369 and 370 However, "[w]hen a custody dispute is between a natural parent and a third party,... custody should be denied to the natural parent only when such an award will, in fact, be detrimental to the welfare to the child." at 370. To give a third party custody of a child in the absence of parental unfitness or detriment to the child and to base a decision merely on best interest violates both the Article I, Section 23 of The Florida Constitution as well as the Fourteenth Amendment Due Process Clause of the United States Constitution. The rights of parents to raise their children have been upheld in The United States Supreme Court and that freedom has been firmly established as a constitutionally protected liberty interest "freedom of personal choice in matters of . . . family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment." Cleveland Board of Education v. LaFleur, 414 U.S. 632, 639-640 (1974). And in Beagle v. Beagle, 678 So. 2d 1260 (Fla. 1st DCA 1995) (a case which found some grandparent visitation unconstitutional) Florida Statute 61.13(7) is likewise unconstitutional in that it violates a parents rights to raise their children because the "best interests" test is the appropriate standard only when a court is confronted with a custody or visitation dispute between two parents and it was established that Article I, Section 23 protects the privacy rights of all family units in the same way, regardless of the marital status of the parents.

The Supreme Court has on many occasions emphasized the importance of the family unit. One of the liberties protected by the Due Process Clause, the Court has held, is the freedom to "establish a home and bring up children." Meyer v. Nebraska, 262 U.S. 390, 399 (1923). If a State were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best

interest, I should have little doubt that the State would have intruded impermissibly on "the private realm of family life which the state cannot enter." Prince v. Massachusetts, 321 U.S. 158, 166 (1944). One of the liberties due the citizens of this nation and protected by the Due Process Clause is the freedom to "establish a home and bring up children." and the rights to bear and raise one's children have been deemed "essential," Meyer v. Nebraska, 262 U.S. 390, 399 (1923). The rights to raise one's child are the "basic civil rights of man," Skinner v. Oklahoma, 316 U.S. 535, 541 (1942). These rights are to be considered "far more precious . . . than property rights," May v. Anderson, 345 U.S. 528, 533 (1953). "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." Prince v. Massachusetts, 321 U.S. 158, 166 (1944). The Supreme Court has recognized that the relationship between parent and child is constitutionally protected Wisconsin v. Yoder, 406 U.S. 205, 231-233 (1972), Meyer v. Nebraska., 262 U.S. 390, 399-401 (1923). A parents right to raise his or her child in the absence of a finding to determine parental fitness has been upheld and shown to be a protected liberty interest in Stanley v. Illinois, 405 U.S. 645 (1972). The integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment, Meyer v. Nebraska., 262 U.S. 390, 399 (1923), the Equal Protection Clause of the Fourteenth Amendment Skinner v. Oklahoma, 316 U.S. 535, 541 (1942) and the Ninth Amendment, Griswold v. Connecticut, 381 U.S. 479, 496 (1965).

I request the Court to find that Florida Statute 61.13(7) violates a parent's constitutional right to raise their child in the absence of a finding that the parent is unfit and that the right to raise children is a constitutionally protected Liberty interest and guaranteed right to everyone in our Nation by the Due Process Clause of the Fourteenth Amendment of The United States Constitution. As a mother who has not been shown to be unfit, I should have the right to raise my child without the fear that a court can override my desire to raise my child, and decide that my daughters best interest would be served better by allowing a third party to raise her as opposed to me being given that most basic human right of bearing and raising my child. The right to raise our children is a fundamental right of each citizen and is protected by the Due Process Clause of the Fourteenth Amendment of the United States Constitution and in Florida the citizens of the state voted on November 4, 1980 to amend the Florida Constitution to

include Article I, Section 23 which states in part: "Every natural person has the right to be let alone and free from government intrusion...". "The State registers no gain towards it declared goals when it separates children from the custody of fit parents." Stanley v. Illinois, 405 U.S. 645, 652 (1972). And upon this courts finding that the statute is unconstitutional, I ask the Court to reverse the Lower Courts decision to grant the Appellees intervention and custody of Ashleigh E. Richardson and Order that Ashleigh be, returned to her mother, the Appellant.

Conclusion

In conclusion, I have shown that the Grandparents did not meet the requirements to intervene, and I ask the Court to Reverse the Lower Court's decision to allow the Grandparents to Intervene. I also ask this Court to establish guidelines to Protect a Custodial Parent who allows a Grandparent to perform day-care duties, or otherwise help care for their child on a temporary basis, from Grandparents who use this as an

opportunity to intervene, especially when a parent initiates a Chapter 61 action against the Custodial parent for the purpose of allowing the Grandparents an opportunity to intervene and Reverse the Lower Courts Decision. I also ask this Court to find Florida Statute 61.13(7) Unconstitutional in that it violates a parent's Constitutionally Protected Liberty Interest guaranteed by the Due Process Clause of the Fourteenth Amendment of The United States Constitution, and Reverse the Lower Courts Decision and Order that Ashleigh E. Richardson be returned to her Mother.

Respectfully Submitted,

_____

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CERTIFICATE OF MAILING

I, ADRIENNE RICHARDSON, the undersigned, do hereby certify that on_____, 1998 did place a copy of this Original Appellate Brief in an envelope and mailed via First Class Postage to each of the following parties:

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DISTRICT COURT OF APPEAL,
FIRST DISTRICT
STATE OF FLORIDA

ADRIENNE E. RICHARDSON, Appellant/Mother	:	
	:	
	:	CASE NUMBER: 98-01240
v.	:	
	:	L.T. NUMBER: 93-2830-FL-01
RAYMOND E. RICHARDSON and CHARLENE RICHARDSON, Appellees/Paternal Grandparents	:	

APPELLANTS' REPLY BRIEF

Appeal from the Circuit Court in and for Escambia County Florida
Family Law Division
Case Number 93-2830-FL-01
Honorable Michael Jones, Presiding

ADRIENNE E. RICHARDSON
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APPELLANTS ARGUMENT AND REBUTTAL TO ARGUMENTS PRESENTED IN ANSWER BRIEF

THE APPELLEES SUGGESTION THAT THE APPELLANT PRESENTED NEW AND UNSWORN ALLEGATIONS WHICH ARE UNSUPPORTED BY REFERENCE TO ANY TRANSCRIPT OR OTHER RECORD PROVIDED TO THE COURT

The Appellees suggestion that the Appellant is presenting new evidence may be incorrect. None of the evidence is new and although the Appellant stated to the Court in the Original Initial Brief , "I would like this Court to consider the evidence that I will present", the Appellant did not suggest this Court hear new evidence nor did the Appellant intend to present any. I believe I have fully and completely cited each issue. As the Court is aware, I am not an attorney, I didn't consider evidence of the record, to be new evidence. In accordance with Florida Rules Of Civil Procedure 1.640(b) especially in cases where there is overwhelming evidence of fraud and collusion, I request that the court hear the evidence as it is crucial to my proving fraud and collusion by the Appellees, which may have greatly affected the outcome of the Trial which led to the separation of the Appellant and her daughter.

THE APPELLEES STATEMENT OF THE CASE AND FACTS

In accordance with Florida Rules Of Appellate Procedure, Rule 9.210(c) 1996, Contents of Answer Brief, most of the Appellees Statement Of the Case should be disregarded. The rule states "The answer brief shall be prepared in the same manner as the initial brief; provided that the statement of the case and facts be omitted unless there are areas of disagreement, which should be clearly specified.". Mr. Kimmel in his Answer Brief used the Statement Of the Case And Facts section, as a means to further new unsubstantiated argument that the mother has been deemed unfit by providing bullet-like statements to this Court, as opposed to providing a response to a particular issue of disagreement and disregarded the Appellate rules. Therefore, I ask this Court to disregard his statement of the case and facts section.

APPELLEES SUGGESTION THAT FLORIDA STATUTE 61.13(7) APPLIES AFTER A PARENT REMOVES THE CHILD FROM THE GRANDPARENTS HOME

"Florida Statute 61.13(7), "which began as Florida House Bill 699 , provides:

> In any case where the child is actually residing with a grandparent in a stable relationship, whether the court has awarded custody to the grandparent or not, the court may recognize the grandparents as having the same standing as parents for evaluating what custody arrangements are in the best interest of the child.
>
> In a summary of the bill, the sponsors noted:
>
> This bill authorizes the court to recognize grandparents as having the same standing as parents for purposes of ordering custody in dissolution proceedings in cases where the child actually resides with a grandparent in a stable relationship. The effect of the bill is to give the court a third option in ordering custody which is in the best interest of the minor child as a result of a dissolution proceeding. Fla. House Comm. on Judiciary, Final Bill Analysis & Economic Impact Statement, HB 699 at 1 (April 19, 1993) " Babb v. Begines 701 So.2d 616 (Fla.App. 4 Dist. 1997)."

The Appellant does place significant emphasis on the verb "is" and so did the Sponsors who wrote the House Bill from which Florida Statute 61.13(7) was drafted and into which the word "is" was placed. Neither the House Bill nor Florida Statute 61.13(7) contain language that indicate that a Grandparent should be given the opportunity to intervene when their grandchild is not residing with them. Even given the fact that the Father filed for a Modification of Custody 19 days after the Mother relocated, the Grandparents waited 60 days, or as the Appellees affirm in statement #11 of their Statement of the Case and Facts, "...,but were not of record until five weeks later when they filed their Motion to Intervene". The Grandparents waited for five weeks after the Father Filed for A Modification of Custody to file a Motion to Intervene. The Statute states clearly "is" actually residing with a grandparent, not had stayed with them prior. Unfortunately, the Appellees argument is invalid and should be rejected.

In Mr. Kimmel's second paragraph of this argument in his Answer Brief , he suggests that, "the Court noted that this was no more than the Christmas holidays (Order, bottom p.26)."; however, when this Court reads the Trial Courts actual wording, it will note that Mr. Kimmel mis-stated the paragraph. The Trial Court simply noted that the Mother did not inform Ashleigh's school in Destin that she would not be returning after the Christmas Holidays, The Court should also note that the same paragraph details

the Grandparents knowledge that the Mother had intentions of moving to North Carolina several months prior to her actual relocation.

In Mr. Kimmel's third paragraph, he suggests that a parent who has legal custody of her child who relocates with her child, would be kidnaping her child A parent with full parental rights and custody of their child cannot possibly be accused of kidnaping their child. Even if the court were to accept the Appellees logic, the Court must note that the Appellees waited 60 days after the Mother relocated and five full weeks after the Father initiated a Chapter 61 action to file their Motion to Intervene, Mr. Kimmel on page 11 of his Answer Brief argues "When there is only a brief delay between the time the child ceases to live in the Grandparent's home, and the filing of an appropriate pleading, S 61.13(7) should and will apply". The delay of filing of the Motion to Intervention was not brief as claimed by the Appellees. In cases where children are involved five week or sixty day delays in filing of Motions are certainly not brief and cannot be allowed. To allow a Grandparent a 60 day or five week delay to file a motion to intervene would be altering the basis, meaning and intent and of the Statute itself and defeats the residence-in-a-stable-relationship predicate. The Statute was intended for Grandparents to Intervene when their Grandchild is actually residing with them.

In Mr. Kimmel's fourth paragraph of this argument he states that the Grandparents were side by side with the Father from January 2, 1997. I know they provided the funds for their son's attorney and that their son was requesting that the Court order the Mother to return her Child to his parents; however, they were not parties to the case until five weeks later when they filed their Motion to Intervene. The Grandparents had no legal rights to Ashleigh and had not even established visitation rights. The Grandparents were aware Ashleigh's stay with them was only temporary.

I again reaffirm my initial argument that the Trial Court erred when it allowed the Grandparents to Intervene under Florida Statute 61.13(7) because the Grandparents failed to meet the requirements under Florida Statute 61.13(7). I ask this court to reverse the Trial Court's decision in which the Grandparents were allowed to Intervene and ask this Court to Order the Immediate return of Ashleigh to her Mother.

PSYCHOLOGIST'S RE-EVALUATION ESTABLISHED NEED FOR CHILD TO BE REMOVED FROM MOTHER"S RESIDENCE

Dr. DeMaria 's stated in his report of the separation of Mother and Child, "To Change Custody would constitute a disruption of the primary bond with her mother which could be very damaging to Ashleigh. Ideally it would be wonderful to have Ashleigh in Adrienne's home as the primary caregiver and be in close proximity to her grandparents." (Trial Testimony of Dr. DeMaria, Line 12, page 5). And in Ashleigh's own words quoted from the records of Dr. DeMaria, "I want to live with my mom in North Carolina", (page 27, line 15 and page 28, line 1, Trial Testimony of Amy Cordray). Mr. Kimmel's new argument that the Appellant is "Unfit" or that Dr. DeMaria had established a need for Ashleigh to be removed from her Mother's home are unfounded. Mr. Kimmel alleges that Dr. DeMaria's opinion was that it would be dangerous to not change custody from the mother to the grandparents is unfounded, and mis-quoted. The Appellees are now suggesting that the Psychologist suggested Ashleigh should be removed from her Mother's home and are now claiming that the Appellant has been found to be "an unfit mother" (page 19, 3rd paragraph, Appellees Answer Brief). Neither of those statements are true. It is a completely new and unfounded allegation. This new allegation is false and reprehensible. I ask this court to reject this new unsubstantiated and non-existent issue. The Trial court never addressed the fitness of the Mother, nor was it found, or presented as evidence that Dr. DeMaria established a need for Ashleigh to be removed from her Mother's home. The trial court was bound by Florida Statue 61.13(7) when it allowed the Grandparents to Intervene five weeks after the father initiated the Chapter 61 action. The statute requires that the Grandparents compete on a "best interest" basis with the parents, the Statute does not address parental fitness. The Appellant urged the Trial Court to find that "Section 61.13(7) requires a showing of parental unfitness before a third party, including a grandparent may prevail in a custody dispute (page 13, line 4-6, Final Order) and Judge Jones, bound by law, had to reject the Appellants claim finding that " the instant statute may be distinguishable because it requires a preliminary residence-in-a-stable-relationship finding in order to grant the grandparents standing and a best - interests-of-the-child standard in evaluating the custody claims" (page 13, line 12-16, Final Order). Dr. DeMaria never suggested that Ashleigh should be taken from her Mother's Custody to protect her from

harm, nor did the Court find the Mother unfit, and these new false accusations should not be considered or accepted by this Court.

APPELLANT/MOTHERS ALLEGATION THAT GUARDIAN AD LITEM DID NOT INVESTIGATE HER HOME

Is Correct. The Appellant met the Guardian Ad Litem once while the Appellants family from North Carolina were visiting(page 5, line 5, Trial Testimony). The Final order stated, "Apparently, that Guardian Ad Litem had no significant involvement because of the entry of the Final Judgement adopting the Marital Settlement Agreement." (Page 5, bottom paragraph, Final Order). The Guardian Ad Litem did no further investigation at least at the Mother's home and the Appellees did not present any evidence that she had investigated the Mother's home further. The appellant request this issue not be rejected. The Appellants claim in the Original Initial Brief is correct. If this Court reads the Guardian Ad Litem's testimony, it will find that she had lost all of her records from when she was briefly involved as Guardian Ad Litem 4 years prior, and she relied on her memory and relationship and "almost daily" phone contact with the Grandparents, to form her opinions which she presented to the Court (page 9, line 12-16 and page 7, line 10, Trial testimony of Amy Cordray). As opposed to the Appellees suggestion that I was hiding my lifestyle, Ms. Cordray testified that I did return her phone calls (page 7, line 15, Trial Testimony of Amy Cordray). And Ms. Cordray also testified to the fact that the Grandparents wanted her to hide her involvement and phone contacts with the Grandparents from the Mother, which she did (page 12, lines 3-5, Trial Testimony of Amy Cordray). These secret conversations between her and the Grandparents must have been when she was mistakenly informed or mis-lead into believing that Ashleigh spent 95 percent of the time with the Grandparents,(page 12, line 6) while she never witnessed or saw Ashleigh at the Grandparents house, instead, Ashleigh was with her Mother(page 8, lines 8-12). Ms. Cordray claims to be knowledgeable in the are of child care and children, yet fails to apply her knowledge in this case, that becomes evident when she makes misguided and ignorant statements such as,

> "What I mean, when a child belongs to a person and I'll go into this, in the sense the most abused children have the deepest love for their parents or the abusing person. So it's not always gauged on love and hanging on to. Because a child that's abused, loves that abusing parent more than anything else."

What a statement, it clearly shows that either Ms. Cordray believes that the Father and Ashleigh have a strong bond, or that Ms. Cordray was led into believing that the Mother had abused Ashleigh, through the secretive almost daily phone conversations with the Grandparents, to which she testified to at trial. By requesting the Guardian Ad Litem keep secrets from the Mother which have an impact on Ashleigh and her Mother, the Mother's argument that the Father and Appellees were using fraudulent and collusive tactics in their attempt to gain custody of Ashleigh for the Grandparents is strengthened, and should be allowed as evidence. The Mother has never been shown to have been abusive toward Ashleigh, nor was Ashleigh ever injured in her Mother's care. The Guardian Ad Litem met with the Mother and Child one time and that is all. The Mother worked nights, Ms. Cordray worked days, it was hard to coordinate a meeting with this woman. Obviously the Guardian Ad Litem did not put much effort into investigating the Mother's home when it was easier for her to have secretive, almost daily phone contact with the grandparents. Ms. Cordray admits she got most of her information from the Grandparents (page 16, 21-22, Trial Testimony of Amy Cordray)

IS FLORIDA STATUTE 61.13(7) UNCONSTITUTIONAL?

The Appellees suggestion that the Constitutionality of Florida Statute 61.13(7) has already been addressed is not correct. "The First District Court of Appeal has not directly addressed the application of 61.13(7)" (page 12, line 2, Final Order). Again the new, false, unsworn, unfounded, unsubstantiated, unheard accusation made by the Appellees that the Appellant has been found to be unfit (page 19, paragraph 3, Appellees Answer Brief), are made; therefore, this argument should be rejected by this Court. The Appellees cite Beagle v. Beagle, 678 So.2d 1271 (Fla. 1996) a case which found some Grandparent visitation unconstitutional as if it were going to strengthen their argument, it actually nullifies it. Judge Jones cited Beagle as well, and if the Appellees had read the Final Order page 13, footnote 3, he said himself Beagle does not apply to this case. (Page 13, line 13- 16, and footnote 3). The Appellees suggestion that Florida Statute 61.13(7) was enacted to protect children from harm by their parents (page 19, lines 5-9, Appellees Answer Brief) and that Judge Jones' allowed the Intervention and or transfer of custody from the Mother to the Grandparents as a means to protect Ashleigh are false, and inaccurate.

The trial court was bound by Florida Statue 61.13(7) when it allowed the Grandparents to Intervene five weeks after the father initiated the Chapter 61 action. The statute requires that the Grandparents compete on a "best interest" basis with the parents, the Statute does not address parental fitness. The Appellant urged the Trial Court to find that "Section 61.13(7) requires a showing of parental unfitness before a third party, including a grandparent may prevail in a custody dispute (page 13, line 4-6, Final Order) and Judge Jones, bound by law, had to reject the Appellants request finding " the instant statute may be distinguishable because it requires a preliminary residence-in-a-stable-relationship finding in order to grant the grandparents standing and a best -interests-of-the-child standard in evaluating the custody claims" (page 13, line 12-16, Final Order). Judge Jones explained his decision well when he cited Scottsdale Ins. V. Desalvo, 666 So. 2d 944, 946 (Fla 1st DCA 1995) to reject the mother's request (page 14, lines 3-9, Final Order) to reject the "best interests of the child" standard. Judge Jones explained in great detail exactly why the parental unfitness standard could not be used in determining custody of Ashleigh. However, if this Court finds that Judge Jones' somehow did base its decision on parental unfitness, I would ask this Court to reverse the lower courts decision to allow the grandparents to intervene under Florida Statute 61.13(7) because that statute cannot be properly applied in a parental fitness case. It is a serious and basic defect in the Appellees Argument. "The State registers no gain towards it declared goals when it separates children from the custody of fit parents." Stanley v. Illinois, 405 U.S. 645, 652 (1972).

ALLEGED BIAS OF TRIAL COURT

In my Original Initial Brief, I informed the Court that I had not been informed of the fact that Judge Jones had social contact with all opposing parties when he allowed the Grandparents to Intervene and the Mother was kept unaware of that fact until after the Court granted the Motion to Intervene, as stated in the Appellees Answer Brief, Judge Jones "...having had prior social dealing with some of the parties in this case was plainly, clearly, and fully disclosed to the Appellant/Mother..." (page 20 lines 6-9) The Appellant was made aware of this fact after the Grandparents were allowed to Intervene, which is the basis of my argument. The Father and the Grandparents intentionally kept this information from the

Mother. It was the Father and Grandparents intention to use their relationship with the Judge to their advantage. I did not intend to suggest bias of the Trial Court, I apologize to Judge Jones if I did. It was unintentional, and possibly due to my lack of legal knowledge. I intended to suggest fraud and collusion by the Father and Grandparents. The Father and Grandparents were aware that Judge Jones was a guest at their home, Judge Jones did say that he vaguely remembered the performing the Father and his new wife's wedding in 1994. I don't hold Judge Jones accountable for the failure to disclose this information until after the Grandparents were allowed to intervene, I hold the Appellees accountable.

APPELLANTS USE OF UNITED STATES SUPREME COURT CASES

The Appellant does not feel the Supreme Court Case quotes were taken out of context as the Appellees claim. They should all be considered because they all relate to the Constitutionally Protected Liberty Interests of parents in cases where a third party interferes with the relationship of a parent and child, which is what this case is about. In Meyer v. Nebraska The Supreme Court emphasized the importance of the family unit. One of the liberties protected by the Due Process Clause, the Court has held, is the freedom to "establish a home and bring up children." , Meyer v. Nebraska, 262 U.S. 390, 399 (1923). The Appellant asserts and argues that she should be equally protected by the Due Process Clause in the areas of establishing a home and bringing up children. The Equal Protection Clause of the Fourteenth Amendment has been established in Skinner v. Oklahoma, 316 U.S. 535, 541 (1942) In the case of Skinner v. Oklahoma the rights to raise one's child are considered the "basic civil rights of man". The Appellant asserts and argues her rights to raise her child as they are her basic civil rights. If a State were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interest, I should have little doubt that the State would have intruded impermissibly on "the private realm of family life which the state cannot enter." Prince v. Massachusetts, 321 U.S. 158, 166 (1944). "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." Prince v. Massachusetts, 321 U.S. 158, 166 (1944). The Appellant asserts her argument that she

is entitled to raise her child in the absence of a finding of parental unfitness. The integrity of the family unit has found protection in the Ninth Amendment, Griswold v. Connecticut, 381 U.S. 479, 496 (1965). The Appellant asserts and argues that her family deserves protection under the Ninth Amendment. A parents right to raise his or her child in the absence of a finding to determine parental fitness has been upheld and shown to be a protected liberty interest in Stanley v. Illinois, 405 U.S. 645 (1972). "The State registers no gain towards it declared goals when it separates children from the custody of fit parents." Stanley v. Illinois, 405 U.S. 645, 652 (1972). The Appellant asserts and argues that she has a Constitutionally Protected Interest in raising her child which guarantees her the right to raise her child in the absence of a showing that she is unfit. The Supreme Court has recognized that the relationship between parent and child is constitutionally protected Wisconsin v. Yoder, 406 U.S. 205, 231-233 (1972). The Mother asserts and argues that the relationship between herself and her daughter is constitutionally protected. "Freedom of personal choice in matters of . . . family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment." Cleveland Board of Education v. LaFleur, 414 U.S. 632, 639-640 (1974). Similar to the pregnant woman in this case, the Mother argues and asserts that her liberties protected by the Due Process Clause of the Fourteenth Amendment such as the freedom of personal choice in family matters are denied to the Mother when her choice to raise her child is denied her. In Quilloin v. Walcott, 434 U.S. 246 at 255 and Smith v. Organization of Foster Families, 431U.S. 816, 862-863 (1977) the Court notes:

> "We have little doubt that the Due Process Clause would be offended "[i]f a State were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interest.".

In custody proceedings involving a parent and a third party it has been established that, "the test must include consideration of the right of a natural parent to enjoy the custody, fellowship and companionship of his offspring. This is a rule older than common law itself." In Re: The Guardianship of D.A. McW.v McWhite, 460 So. 2d 368, 370 (Fla 1984), and in In Re: The Guardianship of D.A. McW.v McWhite, 460 So. 2d 368, 370 (Fla 1984) Judge Anstead of the Fourth District distinguished between the rights of

parents and a third party in custody proceedings by stating: "When a custody dispute is between two parents, where both are fit and have equal rights to the custody, the test involves only the determination of the best interests of the child" at 369 and 370 However, "[w]hen a custody dispute is between a natural parent and a third party,... custody should be denied to the natural parent only when such an award will, in fact, be detrimental to the welfare to the child." at 370. To give a third party custody of a child in the absence of parental unfitness or detriment to the child and to base a decision merely on best interest violates both the Article I, Section 23 of The Florida Constitution as well as the Fourteenth Amendment Due Process Clause of the United States Constitution. The Mother asserts and argues that to allow a third party to take custody of a child in the absence of a finding of parental unfitness is violates her rights established in Article I, Section 23 of The Florida Constitution as well as the Fourteenth Amendment Due Process Clause of the United States Constitution. Florida Statute 61.13(7) is unconstitutional.

CONCLUSION

I request of this Court that if it somehow finds the new unfounded allegation that the Mother was deemed "unfit" which she was not, to reverse the Lower Courts decision which allowed the Grandparents to Intervene based on the fact that Florida Statute 61.13(7) by definition cannot not apply in a parental fitness case and to Order the Immediate return of Ashleigh to her Mother. The Mother's Supreme Court references are relevant in that they deal with cases in which a third party interferes with a parent child relationship and custody issues, as well as established rights of parents which the Mother cannot be denied. Ms. Cordray had minimal involvement with the Mother and Child at the Mothers residence, no involvement with the Grandparents and child at the Grandparents house, and virtually relied on what the Grandparents had told her in almost daily, secret conversations with the Grandparents and her memory, because she lost her records. .The allegation that Florida Statute 61.13(7) applies after a child is removed from the Grandparents house is by definition of the Statute, invalid. A five week delay in the Grandparents filing their Motion to Intervene is not a brief delay and unacceptable to me and should not be acceptable to this Court. The allegation that the Mother has been shown to be "unfit" is unfounded.

In conclusion, I have shown that the Grandparents did not meet the requirements to intervene,

and I ask the Court to Reverse the Lower Court's decision to allow the Grandparents to Intervene. I also ask this Court to establish guidelines to Protect a Custodial Parent who allows a Grandparent to perform day-care duties, or otherwise help care for their grandchild on a temporary basis, from Grandparents who use this as an opportunity to intervene, especially when a parent initiates a Chapter 61 action against the Custodial parent for the purpose of allowing the Grandparents an opportunity to intervene and Reverse the Lower Courts Decision. I also ask this Court to find Florida Statute 61.13(7) Unconstitutional in that it violates a parent's Constitutionally Protected Liberty Interest guaranteed by the Due Process Clause of the Fourteenth Amendment of The United States Constitution, and Reverse the Lower Courts Decision and Order that Ashleigh E. Richardson be returned to her Mother.

Respectfully Submitted,

Adrienne Richardson, Appellant
in Pro Se

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Boone, NC 28607
(828) 265-4336

CERTIFICATE OF MAILING

I, ADRIENNE RICHARDSON, the undersigned, do hereby certify that on_____, 1998 did place a copy of this Appellants Reply Brief in an envelope and mailed via First Class Postage to each of the following parties:

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Signed:_____
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In Pro Se

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IN THE DISTRICT COURT OF APPEAL

FIRST DISTRICT, STATE OF FLORIDA

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

ADRIENNE E. RICHARDSON,

Appellant,

v.

CASE NO. 98-1240

RAYMOND E. RICHARDSON and CHARLENE RICHARDSON,,

Appellee.

_____/

Opinion filed January 5, 1999.

An appeal from Circuit Court for Escambia County. Michael Jones, Judge.

Adrienne E. Richardson, Pro Se.

Robert R. Kimmel of Law Offices of Kimmel & Batson, Chartered, Pensacola, for Appellee.

ALLEN, J.

The appellant challenges an order modifying a child custody provision in a preceding marital dissolution decree. Primary residential custody of the appellant's minor child was transferred from the appellant to the appellee grandparents, based on the trial court's application of a best interest standard pursuant to section 61.13(7), Florida Statutes. We conclude that insofar as the statute authorizes a best interest standard in this context, it violates article I, section 23, of the Florida Constitution.

The appellant is the mother of a child who was four years old when the appellant's marriage to the child's father was dissolved. The dissolution order placed the custody and primary residence of the child with the appellant, although the child stayed with the paternal grandparents at various times during the next several years. After the appellant and the child traveled out of state to visit at the home of the appellant's parents, and the appellant informed the paternal grandparents that she intended to remain at that location with the child, the child's father petitioned for modification in Florida. The father subsequently disavowed any interest in obtaining custody of the child, but the grandparents intervened in the Florida proceeding and sought custody.

Section 61.13(7), Fla. Stat. provides that:

> In any case where the child is actually residing with a grandparent in a stable relationship, whether the court has awarded custody to the grandparent or not, the court may recognize the grandparents as having the same standing as parents for evaluating what custody arrangements are in the best interest of the child.

However, the appellant strenuously argued below that to merely apply a best interest standard in evaluating the grandparents' request for custody would be an unconstitutional infringement on her right of familial privacy.

The Florida Supreme Court has addressed essentially the same issue in the context of grandparental visitation. In Von Eiff v. Azricri, 23 FLW S583 (Fla. November 12, 1998), and Beagle v. Beagle, 678 So. 2d 1271 (Fla. 1996), the court indicated that the article I, section 23, privacy provision of the Florida

Constitution encompasses a parent's right to raise a child without unwarranted governmental interference. Further indicating that this zone of familial privacy may not be invaded in the absence of a compelling state interest, Von Eiff and Beagle determined that a grandparental visitation statute violated article I, section 23, by invoking a best interest standard without requiring proof of a substantial threat of significant and demonstrable harm. Section 61.13(7) suffers from the same defect, in permitting evaluation of the grandparents' custody request solely upon a best interest standard. Like the statute in Von Eiff and Beagle, section 61.13(7) thus violates article I, section 23, and is thereby facially unconstitutional.

The appealed order is reversed and the case is remanded.

JOANOS and WEBSTER, JJ., CONCUR.

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA
FAMILY LAW DIVISION

IN RE: The Former Marriage of
RAYMOND F. RICHARDSON,
and ADRIENNE E. RICHARDSON,

CHARLENE RICHARDSON,

Petitioner/Paternal Grandmother,

CASE NO. 93-2830-FL-01
DIVISION "M"

vs.

ADRIENNE E. RICHARDSON,

Respondent/Mother.

ORDER ON REMAND

The Mandate was issued January 21, 1999, from the District Court of Appeal of Florida, First District, regarding the appellate decision rendered in this case on January 5, 1999. In that opinion the appellate court declared unconstitutional the statute under which the grandmother, Charlene Richardson, was awarded custody. At a status conference held February 18, 1999, the Court heard argument of Charlene Richardson, and the Court considered additional argument and case law submitted this morning by counsel for Charlene Richardson, regarding the continued viability of Florida Statute § 61.13(7). This argument posits that the appellate decisions holding portions of the grandparent visitation statute unconstitutional, which decisions form the cited basis of the appellate decision in this case, do not foreclose a placement of custody of a child with a relative third party upon a finding that placement of that child with a parent would constitute harm or detriment to the child. Charlene Richardson's argument further posits that this

Court may either interpret the trial court factual findings in the Order on Petitions to Modify entered February 25, 1998, as support for a finding of harm or detriment to the child or may set a further hearing to consider evidence of harm or detriment. The fatal flaw in this argument is that the entire statutory section has been decreed unconstitutional and the Legislature is the only body which may establish the standing, if any, of a third-party to seek custody of a child and the standard by which that determination is to be made. This Court has no discretion to grant any further relief to Charlene Richardson, a third party. It is, therefore,

ORDERED AND ADJUDGED:

1. The following paragraphs in the Order on Petitions to Modify entered February 25, 1998, are VACATED: paragraphs 2(a, b and c) and 5.

2. ADRIENNE E. RICHARDSON shall be the primary residential parent of the child, ASHLEIGH RICHARDSON.

3. CHARLENE RICHARDSON shall immediately transfer custody of the child, ASHLEIGH RICHARDSON, to ADRIENNE E. RICHARDSON.

4. Jurisdiction is reserved to enforce this order and to address visitation of RAYMOND F. RICHARDSON with the parties' child, upon application of either party.

DONE AND ORDERED at Pensacola, Escambia County, Florida, this 19th day of February, 1999, at 12:40 p.m.

Nancy Gilliam

NANCY GILLIAM, Circuit Judge

COPIES TO:

Mr. Robert R. Kimmel, Attorney for Grandmother, Charlene Richardson
Ms. Adrienne E. Richardson, Respondent/Mother (via fax [828] 265-4336)
259 Furman Road #209, Boone, NC 28607
Mr. Raymond F. Richardson, Father, c/o John C. Susko

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA
FAMILY LAW DIVISION

IN RE: The Former Marriage of
RAYMOND F. RICHARDSON,
and ADRIENNE E. RICHARDSON,

CHARLENE RICHARDSON,

Petitioner/Paternal Grandmother,

CASE NO. 93-2830-FL-01
DIVISION "M"

vs.

ADRIENNE E. RICHARDSON,

Respondent/Mother.

_____/

SUPPLEMENTAL ORDER ON REMAND

To ensure enforcement of the Order on Remand entered February 19, 1999, it is, therefore,

ORDERED AND ADJUDGED:

1. All terms of the Order on Remand entered February 19, 1999, are reaffirmed.

2. Any and all Sheriffs of the State of Florida are hereby directed to deliver to and assist ADRIENNE RICHARDSON in obtaining custody of her daughter, ASHLEIGH RICHARDSON (DOB: 12/19/89), from the Grandmother, CHARLENE RICHARDSON, or any other person or institution who may have the child in his, her or its custody. CHARLENE RICHARDSON'S address is 504 Osceola Drive, Destin, Florida.

3. ADRIENNE RICHARDSON shall not be held responsible for any fees associated with this action and the sheriff shall waive said fees.

DONE AND ORDERED at Pensacola, Escambia County, Florida, this 22nd day of February, 1999, at 8:39 a.m.

NANCY GILLIAM, Circuit Judge

COPIES TO:

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"CERTIFIED TO BE A TRUE COPY
OF THE ORIGINAL ON FILE IN THIS OFFICE
WITNESS MY HAND AND OFFICIAL SEAL
ERNIE LEE MAGAHA, CLERK
CIRCUIT COURT AND COUNTY COURT
ESCAMBIA COUNTY, FLORIDA"
BY:
DATE: 2/22/99

DISTRICT COURT OF APPEAL,
FIRST DISTRICT
STATE OF FLORIDA

ADRIENNE E. RICHARDSON, Appellant/Mother	:	
	:	CASE NUMBER: 98-01240
v.	:	
	:	L.T. NUMBER: 93-2830-FL-01
RAYMOND E. RICHARDSON and CHARLENE RICHARDSON, Appellees/Paternal Grandparents	:	

APPELLANTS' ORIGINAL INITIAL BRIEF

Appeal from the Circuit Court in and for Escambia County Florida
Family Law Division
Case Number 93-2830-FL-01
Honorable Michael Jones, Presiding

ADRIENNE E. RICHARDSON
Appellant, In Pro Se
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Boone, North Carolina 28607
(704)265-4336

IN THE SUPREME COURT OF FLORIDA

CHARLENE RICHARDSON,

Appellant,

v. CASE NO.: 94,810

ADRIENNE RICHARDSON,

Appellee,

---/

CERTIFICATE OF FONT SIZE

In my Appellee's Answer Brief On The Merits, I used Courier New, 12 point, at 10 characters per

inch.

CERTIFICATE OF MAILING

I, ADRIENNE RICHARDSON, the undersigned, do hereby certify that on March 15, 1999 did place a copy of this Certificate Of Font Size in an envelope and mailed via First Class Postage to each of the following parties:

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