State of New Hampshire
Supreme Court

NO. 2020-0079

2020 TERM

AUGUST SESSION

Guardianship of Lunsford Children

RULE 7 APPEAL OF FINAL DECISION OF THE
NEWPORT FAMILY DIVISION

BRIEF OF SANDRA & CLYDE LUNSFORD

[REDACTED]

August 21, 2020

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I. Did the court err in dismissing the grandparents' guardianship petition without a hearing?

Preserved: *Trn*. 7-12.

II. Did the court improperly determine that the Lunsfords were ineligible as guardians?

Preserved: *Trn*. 7-12.

III. Did the court insufficiently consider the best interests of the children in dismissing the guardianship petition?

Preserved: *Trn*. 7-12.

IV. Did the court erroneously deny the Lunsfords request for access to records incorporated by reference in DCYF's pleadings?

Preserved: MOTION FOR ACCESS (Mar. 4, 2020), *Appx*. at 34; MOTION FOR PRODUCTION (July 22, 2020), *Appx*. at 42.

STATEMENT OF FACTS

Sandra and Clyde Lunsford are the paternal grandparents of three children, KL, AL, and AL. The Lunsfords identify as Black; the children are biracial.

The children were the subject of a neglect proceeding, in which the New Hampshire Department of Children, Youth, and Families (DCYF) gained custody of the children. Following that, the parental rights of the parents – the Lunsford's son and the children's mother – were terminated. The children were placed with foster parents.

The Lunsfords tried to intervene in all those proceedings, but were denied. The Lunsford then filed, in January 2020, a guardianship petition in an attempt to gain custody – and ultimately adopt – when KL was almost 6 and the twins, AL and AL, were 3. PETITIONS FOR GUARDIANSHIP (Jan 3, 2020), *Appx*. at 3, 9, & 15.

At DCYF's request, the court dismissed the guardianship petitions, and the Lunsfords appealed.

The following statement of facts is a full reprint, *verbatim,* of an affidavit proffered in the lower court by the Lunsfords. AFFIDAVIT (with photo attachments A, B, C, & D) (July 22, 2020), *Appx*. at 48. Because their guardianship petition was dismissed without a hearing, the affidavit is the only sworn evidence in the available record. The affidavit also constitutes the nature, scope, and tenor of issues the Lunsfords would have testified to, had the case gone to a hearing. Following the reprinted affidavit are also reprinted four photographs which were attached to the affidavit when it was filed in the family court.

I. Introduction

We are Sandra and Clyde Lunsford. We are in our mid 60s. We have been married for 43 years. We reside at 922, Sunstone Drive, Durham, North Carolina. We have attached a photo of us, exhibit A [*infra* at 19] taken January 2019 at a communion service at our church.

We are both college educated. Clyde has a college degree in history, and Sandra has an associates degree. Two of our three children earned college degrees.

Sandra was employed for 34 years with Blue Cross and Blue Shield of North Carolina (BCBS). Sandra was a credentialing specialist. My job involved investigations of doctors who were being considered as providers for BCBS. I am now retired.

Clyde was employed as a Special Agent (counter-intelligence) for the United States Department of Defense, and as a Special Agent for the United States Office of Personnel Management. I conducted investigations on individuals seeking security clearances for confidential, secret and top-secret clearances. Among my duties was testimony in federal courts regarding individuals denied security clearances. I am now retired.

We are financially stable through pension plans from our former employers, social security benefits, and investment savings. We have health coverage through Blue Cross Blue Shield Federal Employees Program. Clyde has five siblings all residing in Durham, North Carolina. They all have extended families who reside locally. Sandra has one sister who resides locally.

Since retiring, we have been active in our community. Clyde is a Deacon and Sandra is a Deaconess of our church, Orange Grove

Missionary Baptist Church, in Durham, NC. We are involved in an array of volunteer programs through the church.

We have been licensed by the Durham County Department of Social Services, Foster Care and Licensing Unit, Durham, NC. Our home has been inspected by the Fire Marshall as a requirement for licensing. We have taken CPR training for certification as a requirement for licensing. While final certification has been delayed due to COVID 19, it should be completed in August 2020. We have quarterly inspections of our home for accommodations and safety as a requirement for licensing. Our training has prepared us for the arrival of our grandchildren. We've learned how to recognize children's stress and how to help the children to adjust as easily as possible. Our home is safe and ready to welcome our grandchildren.

II. Our Community

Clyde is a lifetime resident of Durham, North Carolina. Sandra was born in eastern North Carolina but has resided in Durham for 45 years.

From 2007 to April 2017, we resided in Rougemont, North Carolina, a rural community in northern Durham County. Our home was listed for sale in April 2017, and sold after one showing, so we had to move out sooner than expected. We put property in storage and moved into a one bedroom apartment in Durham. We resided in the apartment from April 2017 to September 2018 while our current residence was under construction.

We moved to our current location at 922 Sunstone Drive in September 2018. We moved here in order to be closer to family and grandchildren. Our residence is a new construction on a tree-lined street

in a quiet neighborhood. To the left of us resides a mixed race couple, he's white and she's black. To the right resides a black family. Directly across the street is a white family and next to him is a white. This is typical makeup of our integrated neighborhood. When we leave for our home to travel, we let each of our nearby neighbors know we are leaving and when we should be back. They in turn notify us when that will be out of town. This comes from trust and mutual respect through diversity.

Durham is part of the Triangle which is made up by Raleigh, Durham, and Chapel Hill. These three cities combined make this area the second largest metropolis in North Carolina, behind Charlotte. The Triangle is home of three major research universities, the University of North Carolina, North Carolina State University, and Duke University, all within 25 miles of each other. Duke University Medical Center is consistently listed in the top five medical centers in the United States. The Triangle is considered to have the highest concentration of PhDs in the U.S. Foreign students, researchers, teachers and others add to the diversity of this area. These universities together formed Research Triangle Park, one of the leading research and technology areas in the U.S.

III. Diversity

Educational experts agree that diversity is very important in a child's development. New Hampshire has an African-American population of 1.2%. Statistics show that most New Hampshire residents have never had a personal relationship by an African-American. Their opinions of African-Americans are based largely on what is viewed on television. Is this the best location for our grandchildren to learn and develop?

North Carolina is the ninth largest state in the U.S.

African-Americans comprise 22% of the NC population. North Carolina also has a Hispanic/Latino population of 9%. Diversity abound in our schools, in the workplace, in the neighborhoods. Is this more suitable for our grandchildren's development? Will they get off to great start in life in NH? What NH is going through now is very much similar to what NC went through 50 or 60 years ago during forced integration. I fear my grandchildren will become targets of bullying and racism. Recent racist events in New Hampshire involving children include a mock lynching. NC is not immune from racist events, but these types of incidents are not common when it comes to children due to diversity.

IV. Our Grandchildren

We learned that our grandchildren needed a home in about September 2017 after being contacted by DCYF. We were residing temporarily in a one bedroom apartment when we were notified. We resided in the apartment from May 2017 to September 2018. Our stay in the apartment was extended by construction delays and problems with contractors. We moved into our current residence in September 2018. We donated much of our household furniture to people in need in order to make room for new bedroom furniture for the grandchildren. As a requirement for licensing, we were required to have our home set up to receive the children.

The Durham County Department of Health and Human Services (DCDHHS) has received medical clearance from our Doctors that we are mentally and physically capable of caring for our grandchildren. In addition we provided a contingency plan in case something happens to us. Our daughter, A[redacted] L[redacted], age 37, is on record as being the person to care for the children in the event that we can't.

We were contacted by Alan Menard, [New Hampshire] DCYF, twice between September 2017 and December 2017. He asked both times if we would take the children. We explained our circumstance and told Menard that we would take the children after we moved into our permanent residence. Apparently DCYF thought we were lying because we saw court records that reflect that we offered no help, which is not true. We have rental records and mortgage records as proof.

The father of our grandchildren is our son, S[redacted] Lunsford, age 32, who currently resides in Durham, North Carolina. S[redacted] did not complete High School.

The mother is T[redacted] D[redacted], age unknown, current location unknown. T[redacted], from Claremont, New Hampshire, moved to Durham, North Carolina, to live with one of her relatives on an unknown date. We are not certain but I believe it was her grandmother.

T[redacted] met S[redacted] in NC and they rented an apartment together in Durham, North Carolina. Their daughter, [redacted] [KL], was born [redacted], 2014 at UNC Hospital, Chapel Hill, North Carolina. [redacted] was born with hyper mobility and insufficient muscle development around her joints. T[redacted] was born with the same condition. [redacted]'s muscles developed slowly and K[redacted] became active like any other child her age. K[redacted] was also born with a hearing deficiency as her mother was. We have attached a photo of T[redacted], S[redacted], and K[redacted], exhibit B, [*infra* at 20] taken in October 2016 at the North Carolina State Fair.

T[redacted]a worked a couple unrecalled jobs before she and Steven worked at the same Pizza Restaurant in Durham, NC. While they worked, we kept K[redacted] three or four days a week in our home in

Rougemont. We kept K[redacted] in our home from the time T[redacted] returned to work until they returned to New Hampshire in September 2016.

[redacted] was the joy of our lives. We kept her for free and we looked forward it every time. Our home in Rougemont was in a rural area. This at times presented transportation problems for T[redacted]. We tried to help by purchasing a used car for her.

T[redacted] later became pregnant with twins. S[redacted] was upset when he caught T[redacted] using drugs while she was pregnant with the twins. In addition to telling us, he called T[redacted]'s mother, D[redacted] A[redacted], to report the drug use. D[redacted] caught the first available flight to North Carolina and made a surprise visit. She picked up a drug testing kit to test T[redacted]. T[redacted] tested positive for five illegal drugs which upset us all. S[redacted] and T[redacted]'s relationship seemed to have eroded from that point.

In September 2016, T[redacted], who was seven months pregnant with twins, took K[redacted] and returned to New Hampshire when K[redacted] was 2½ years old. We had kept K[redacted] two days prior. We were not notified or warned of their leaving. We were heartbroken.

Three months after T[redacted] left to New Hampshire, the twins [AL and AL] were born December 16, 2016. T[redacted] kept us in touch with the twins with pictures and videos. In September 2017, we traveled to New Hampshire to see K[redacted] and to meet the twins. We rented two hotel rooms. We stayed in one, and T[redacted] and the three grandchildren stayed in the other. What a joy and delight. The twins were crawling at the time.

Before arriving in New Hampshire we both wondered if K[redacted] would remember us. While sitting on a bed looking at something on an iPad, K[redacted] snuggles up beside me and puts her little arm around my waist. My heart melted that day as we shed tears of joy. That was the last

time that we saw our grandchildren in person. It hurts so much to write about this. T[redacted] was in drug rehab at the time but she was allowed to stay at the hotel during our visit. We have attached a photo of Clyde and the three children at the hotel, exhibit C [*infra* at 21].

Soon after our visit, police found T[redacted] passed out at the steering wheel of a car. The car contained our three grandchildren. It was cold. As a result, the children were taken from T[redacted] and turned over to T[redacted]'s mother, D[redacted]. In December 2017 we mailed Christmas packages to D[redacted]'s address for the children only to discover that the twins had been placed in a different foster home. Our hearts sank as K[redacted] remained with D[redacted] and the children were separated. S[redacted]'s parental rights were terminated because he was financially unable to support and take care of three small children.

Currently K[redacted] resides with her maternal aunt T[redacted] D[redacted] in New Hampshire. T[redacted] (T[redacted]'s sister) is proposing to adopt [redacted]. T[redacted] resided for a while in North Carolina. She is well aware what this area offers in regards to diversity. T[redacted] has been to our home several times to pick up K[redacted] during the two years when we were caring for her several days a week. She would pick up K[redacted] when T[redacted] was unable to due to work. She knows about our living situation and that we are decent people.

Once when we were visiting T[redacted] and S[redacted], we heard T[redacted] (who was pregnant with K[redacted]) engaged in an argument with T[redacted] over the telephone. They were so loud that we were able to hear T[redacted]'s end of the argument over the telephone. We heard T[redacted] as she shouted to T[redacted] "you have no business giving birth to a nigger baby." The nigger baby she was referring to is K[redacted]. T[redacted] is now attempting to adopt

[redacted]. T[redacted] was cooperative in sending us pictures and videos of [redacted] until April 2019.

The twins, A[redacted] and A[redacted], are in the custody of C[redacted] H[redacted], who is unrelated. H[redacted] is a foster parent who resides in New Hampshire. H[redacted], who is attempting to adopt our grandchildren, also sent us pictures and videos of the twins until April 2019. We have attached such a photo of A[redacted] and A[redacted] [AL and AL], exhibit D, [*infra* at 22] with their faces rubbed out. We believe H[redacted] posted the pictures in retaliation after learning that her efforts to adopt the twins had been halted by court action. The picture was posted on social media because she knew from prior postings that we would see it. The picture was posted in April 2019.

V. Treatment by New Hampshire

The [New Hampshire DCYF] social worker, Greer Isaacs, never viewed us as a threat to her plans to allow these individuals to adopt our grandchildren. It was April 2019 when the children became eligible for adoption. Isaacs started adoption procedures for T[redacted] and H[redacted] without saying a word to us even though she knew we were attempting to adopt our grandchildren and to bring them to NC to live under one roof as siblings. In about May 2018 Isaacs discovered that my [New Hampshire] attorney, [Lisa] Wellman-Ally, had filed court papers that prevented anyone from adopting our grandchildren.

After discovering we had blocked her efforts, Isaacs led an effort to completely remove us from the children's lives. All pictures and videos stopped. Social media pictures stopped. Its not just coincidence that both foster parents stopped communicating with us in April 2019. For a period following April 2019, we checked social media posts with hope of getting

to view a picture of the children. It was not going to happen. We have never heard the children speak. We have absolutely no idea of what their likes and dislikes are. We have been completely shut out of their lives since April 2019.

We received a call from Isaacs's assistant in May 2019 under the pretense of an interview. She mentioned that Isaacs was on the phone as well. The interview consisted of questions like: do you know what this involves (the fostering process); you know that everything will be checked; arrests for drugs, sexual abuse, etc. We were the targets of condescending remarks from Isaacs and her assistant. They asked nothing about us.

We first contacted Greer Isaacs in January 2018 by telephone. Isaacs identified herself as the children's social worker. We made it clear to Isaacs our intention of adopting the three grandchildren and that they should not be considered for adoption. Isaacs stated that it was her job to place the children in an adoptive home and if we desired to have a word in the proceedings we should hire an attorney. We tried to intervene in the prior abuse and neglect proceedings, asked for visitation in the prior abuse and neglect proceedings, petitioned for guardianship of the children, and petitioned to participate in the adoption cases regarding the children.

The New Hampshire social worker Greer Isaacs led the effort to separate us from our grandchildren, and also managed to keep anything favorable about us out of court. The judge would not allow us to say a single word during the taking of our grandchildren. Everything was already known about the opposing side.

We know of no reason that we are not qualified or suitable to be guardians or adoptive parents of our grandchildren.

We believe the State of New Hampshire has not adequately considered our character, our credentials, or our ability to provide a high quality of life in a community that appreciates the children, and has not taken into account the best interests of the children in maintaining inter-sibling relationships, and in preserving family ties.

We've been ignored and marginalized. The reasons we perceive is either because we are grandparents, and New Hampshire has violated our family's rights, or that it is the result of systemic racism, also in violation of our family's rights. We believe that records possessed by DYCF show the extent to which we've been dismissed.

We will never give up on our grandchildren. I was told by a friend that there is a special love that is shared between a grandparent and a grandchild. He went on to say that he could not describe it and that I would only understand when I became a grandparent. He was right. This is a special love that I cannot compare to any other kind of love. I love my grandchildren.

Exh. A

[REDACTED]

[REDACTED]

[REDACTED]

STATEMENT OF THE CASE

I. Guardianship Proceeding

The children were removed from their parents' custody in a neglect proceeding, and the parents' parental rights were later terminated, in the Newport, New Hampshire Family Division. The Lunsfords sought to become parties to those proceedings, but were denied. The children were placed with two separate foster families.[1] Thereafter, the Lunsfords heard that the foster arrangements would morph into adoptions.

On January 3, 2020, the Lunsford filed three petitions for guardianship of the persons – one for each child. The petitions state that the Lunsfords ultimately plan to adopt, and are not seeking financial support. PETITIONS FOR GUARDIANSHIP ¶¶ 18, 20 (Jan 3, 2020), *Appx*. at 3, 9, & 15. The reasons the Lunsfords explained that guardianship by them would be in the "best interests of the minor" are:

> Our grandchildren have been in foster care with DCYF. We are the paternal grandparents and have completed foster parent training and certification in North Carolina so that the children can live with us. We have always had a close relationship with our grandchildren until they were placed in foster care. DCYF has not cooperated with our efforts to maintain contact or to be considered as placement option for the children. We are capable of taking care of the children.

Id. ¶ 28. The guardianship petitions were filed two weeks before any adoptions were consummated by the foster families. *Trn.* at 27.

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[1]Because the Lunsfords have been denied access to the record, there is no documentary support for these procedural notations.

On January 9, DCYF filed a short motion to dismiss the petitions. MOTION TO DISMISS (Jan 9, 2020), *Addendum* at 51. DCYF argued:

> The Petition fails to state a claim upon which relief may be granted. [The children are] in the Guardianship of NH DCYF. The petition cannot be read to allege that substitution of care is needed to provide for [their] essential needs. See RSA 463:8.
>
> The Court can take judicial notice of 662-2017-JV-33-35 which reflects that all interested relatives were considered for placement of [the children] and that current placement best meets [their] needs. See attached.[2]

Id. ¶2. DCYF requested that the court:

> Dismiss the petition[s] for Guardianship based on the insufficiency of the pleading.
>
> Find that the neglect matter referred to in the petition involved consideration of all relatives, consideration of the ICPC home study of the petitioners, consideration of the children's long standing connection to their maternal relatives.
>
> Find that Guardianship with the paternal grandparents is not consistent with the permanent [sic] plan and is not consistent with [the children's] best interest.

Id. ¶3.

On January 13, the Newport Family Division (*Bruce A. Cardello*, J.) held a 17-minute non-evidentiary hearing, in which the Lunsfords participated by telephone, against whom four members of DCYF and a CASA personally appeared. *Trn.* at 4; ORDER OF NOTICE (Jan. 3, 2020), *Appx*. at 25 (allotting 15

[2]Despite the notation of "[s]ee attached," there was nothing attached to the copy of the motion provided by the family court to appellate counsel.

minutes); MOTION TO APPEAR BY TELEPHONE (Jan. 8, 2020), *Appx*. at 28 (granted in margin order); PERSONS PRESENT (Jan. 13, 2020), *Appx*. at 32.

At the hearing, DCYF noted that the various foster families were ready to adopt, and that DCYF would consent to those adoptions. *Trn.* at 5-6. Adoption of the twins would be by a foster family, and adoption of K[redacted] would be by maternal aunt T[redacted]. *Trn*. at 6.

The Lunsford's lawyer pointed out that they had tried to intervene in all the various cases, and that they were never given an opportunity in any proceeding to express why custody and adoption by them is in the best interest of their grandchildren. The Lunsfords argued that they were qualified to take custody of, and ultimately adopt, all three children, which would be in the children's best interests. *Trn.* at 7-12.

From the bench, the court granted DCYF's motion to dismiss, saying in full:

> COURT'S RULING
>
> Guardianship petitions are required under 463:5-V to specifically allege, as needed under the statute, the basis for guardianship. The motion to dismiss in this case alleges that the petitions are insufficient as a matter of law because they do not articulate and state any claim as to why substitution of care is needed to provide for the children's essential needs.
>
> The guardianship petitions appear, frankly, to have been filed as a way to address what the Supreme Court of New Hampshire made clear in the matter of In Re: A.D., decided July 26th, 2019, where it made clear that an adoption petition – if there were competing adoption petitions here in the Lunsford file, the Court made it clear that in order for a competing adoption petition to be granted, and for that adoption to take place,

DCYF must consent to it by surrendering its care, custody, and control of the child to the Petitioner here.

After consideration, I find that DCYF has chosen other, or the maternal aunt, and the long-term foster mother as potential adoptive parents. And although asked to consider, and apparently giving consideration to the Lunsford's, determined, ultimately, that DCYF was not in a position to consent to their potential request to adopt and was unwilling to surrender its care, custody, and control of the children to the paternal grandparents.

And the Supreme Court made it clear where DCYF does not intend to execute such a surrender and does not intend to consent, that no adoption could take place. And therefore, the petition for guardian was filed, in my view, as a way to collaterally attack the judgment of DCYF and to collaterally attack the pending adoptions.

The petitions for guardianship do not allege any mistreatment or care or inability of anyone to care for the children, but rather a dissatisfaction with the outcome of the cases that have, for a long time, been pending in this case. The petition for guardianship, in the part of the petitions that say, "A statement must included describing specific facts concerning actions or omissions or actual incidents involving the minor, which are claimed to demonstrate that guardianship is in the best interest of the minor."

And that's right from RSA 463:5-V and the responsive part of the petition is "DCYF has not cooperated with our efforts to maintain contact or to be considered as placement options for the children. We are capable of taking care of the children."

> None of that, in this Court's judgment, is a reason for, or a basis for, awarding them guardianship. It's their dissatisfaction, and they may have very good reasons to be unhappy with the outcome, but the adoption statute is to be strictly construed.
>
> The underlying cases have gone forward and are, [in] fact, scheduled for final hearing on the adoption of the petitions today. And rather than articulating specific facts concerning acts or omissions or actual incidents involving the minors, which demonstrate that there's a need for guardianship in the hands of the grandparents, the petitions rather appear to be a way to delay and prevent adoption – delay adoption and prevent the pending petitions from going forward.
>
> And I do find that the petitions do fail to state a claim under the statute as required. And for those reasons, and all the reasons stated in the pleadings in the arguments here today, the motion to dismiss the guardianship petitions before the Court is granted.

Trn. at 13-15, *Addendum* at 53; *see also* NOTICE OF DECISION (Jan. 14, 2020), *Appx*. at 33 ("motion to dismiss guardianship petition: granted"); MOTION TO DISMISS (margin order "motion granted").

The Lunsfords appealed that guardianship ruling to this court.

Having then heard that adoptions by the foster families had been completed, the Lunsfords petitioned to set them aside, to which DCYF objected, and the Newport Family Division (*Bruce A. Cardello*, J.), denied. An appeal was rejected by this court. ORDER, N.H. Sup.Ct. No. 2020-0210 (May 28, 2020).

II. Denial of Access to Records

After this appeal was accepted for review, the Lunsfords filed several motions for access to the record, for the purpose of prosecuting this appeal.

The first sought the record in all related cases, to which DCYF objected. MOTION FOR ACCESS (Mar. 4, 2020), *Appx*. at 34; OBJECTION (Mar. 13, 2020), *Appx*. at 37; RESPONSE TO OBJECTION (Mar. 22, 2020), *Appx*. at 39. The Newport Family Division (*Bruce A. Cardello*, J.) partially granted the motion, but limited the Lunsfords access to only those documents "which are contained in this Court's files" in the guardianship cases. MARGIN ORDER (Mar. 23, 2020), *Appx*. at 36.

A review of the records to which the Lunsfords were allowed access revealed that DCYF's pleadings in the family court had named and incorporated by reference the files in the neglect cases, and also a document called "ICPC."

When the transcript was prepared for this guardianship appeal, it became apparent the extent to which the Newport Family Division took cognizance of, and based its decision in the guardianship case on, its knowledge of all the "underlying cases." *Trn.* at 15. Thus the Lunsfords filed in this court a request for access to the documents DCYF had incorporated by reference in its motion to dismiss. MOTION TO COMPEL (July 9, 2020).

DCYF objected, suggesting instead that the Lunsfords should file in the family court an affidavit pursuant to RSA 169-C:25, I(b), which specifies that "[a] grandparent seeking access to court records" should proceed by filing an affidavit "stating the reasons for requesting access."[3]

[3]This court briefly suspended the briefing scheduled to allow time for the Lunsford's RSA 169-C:25, I(b) motion. ORDER (July 17, 2020).

Accordingly, the Lunsfords filed such an affidavit in the family court, AFFIDAVIT (July 22, 2020), *Appx*. at 48 (which *verbatim* and in full comprises the statement of facts section of this brief), along with a request to produce the incorporated-by-reference records, to which DCYF objected. MOTION FOR PRODUCTION (July 22, 2020), *Appx*. at 42; OBJECTION (July 27, 2020), *Appx*. at 60; RESPONSE TO OBJECTION (July 29, 2020), *Appx*. at 62.

On August 7, the Newport Family Division (*Bruce A. Cardello*, J.), issued a written order denying production:

> The court does not find the confidential records from the abuse/neglect case to be relevant to the guardianship issue(s) on appeal, and does not find that the pending motion and affidavit establish that access to the sought-after 169-C records is required under the circumstances. The court does not find good cause has been shown to grant the grandparents access to the confidential records of the other proceedings.

ORDER (Aug. 7, 2020), *Addendum* at 59.

Meanwhile, this court issued an order allowing the Lunsfords "to argue in their brief … that the trial court erroneously denied a timely request for access to those records." ORDER (July 29, 2020).

SUMMARY OF ARGUMENT

The Lunsfords first argue that DCYF never fairly assessed their interest in becoming guardians, and eventual adopters, of their grandchildren, and were biased against them based on race. Instead of favoring grandparents and keeping siblings together, as New Hampshire statutes require, DCYF separated the children and placed them with other caregivers. They further argue that in dismissing their petition for guardianship without a hearing, the court erred by applying a standard that does not pertain to this case.

The Lunsfords believe that had they been allowed to present their situation to DCYF and the court, their qualifications would have been manifest; they would have been appointed guardians and would have ultimately been able to adopt all of their grandchildren.

The Lunsfords also argue that the family court unlawfully denied them access to court records underlying this matter, such that they are unable to fully demonstrate DCYF's and the court's errors, and such that DCYF is likewise unable to meet its burden that it and the court acted in the best interest of the children.

ARGUMENT

I. DCYF Failed its Obligations, and the Court Failed its Oversight

When DCYF places children, it is obligated to "[p]reserve the unity of the family," RSA 169-C:2, II(c), and keep children "in a family environment." RSA 169-C:2, III(b). This means maintaining "sibling relationships," RSA 169-C:18, V, and attempting placement "with a fit and willing relative," RSA 169-C:3, XXI-c, including grandparents. RSA 169-C:3, XXVI.

In some circumstances, New Hampshire law favors grandparents over all others. When children have been removed from their home due to a "parent's substance abuse or dependence," the court "shall give a preference to any grandparent of the minor who seeks appointment as guardian." RSA 463:10, V (eff. Jan. 1, 2018).

In proceedings concerning children, the court's role is to provide oversight of DCYF, and not merely rubber-stamp its biases.[4] RSA 169-C:2, III(c) (Court's role is "[t]o provide effective judicial procedures through which the provisions of this chapter are executed and enforced and which recognize and enforce the constitutional and other rights of the parties and assures them a fair hearing."); RSA 169-C:16 (preliminary disposition); RSA 169-C:18 (adjudicatory hearing); RSA 169-C:19 (dispositional hearing); RSA 169-C:21 (final order); RSA 169-C:22 (modification of dispositional orders); RSA 169-

[4]Contemporaneous with the events in this matter, the Office of the Child Advocate, an agency with oversight of DCYF pursuant to RSA 170-G:18, released two reports. It criticized DCYF for many failures, including knowledge gaps, uneven enforcement, lack of follow-through, and several types of "biased decision making." Moira O'Neill, State of New Hampshire Office of Child Advocate, *2019 System Learning Review Summary Report* (Oct. 30, 2019) at 29 & *passim* <https://childadvocate.nh.gov/documents/reports/2019-System-Learning-Review-Summary-Report.pdf>; Moira O'Neill, State of New Hampshire Office of Child Advocate, *2019 Annual Report* (Feb. 14, 2020) at 46 ("The OCA found evidence that bias may affect decision-making and ultimately child outcomes.") <https://childadvocate.nh.gov/documents/reports/2019-Annual-Report.pdf>.

C:24 (periodic review hearings); RSA 169-C:24-b (permanency hearings); RSA 169-C:24-c (post-permanency hearings).

In this case, DCYF and the court failed their obligations.

For several years when T[redacted] was living in North Carolina, the Lunsfords took care of their grandchild while T[redacted], the mother, was at work. In 2016, T[redacted], then pregnant with twins, took the child to New Hampshire. T[redacted] had trouble with drugs, leading the father, the Lunsfords' son, to leave her. AFFIDAVIT, *supra* at 10-11.

On a cold day in September 2017, New Hampshire police found T[redacted], with all three children, passed out at the wheel of her car, leading DCYF to remove them from her. *Supra* at 11-12. DCYF called the Lunsfords looking for an emergency placement; the Lunsfords told DCYF they were temporarily living in a small apartment awaiting the delayed completion of their new suburban home, but would in a few months be able to accommodate all three children. *Supra* at 7-10.

In January 2018, the Lunsfords contacted Greer Isaacs, DCYF social worker, and told DCYF they could accommodate the children in September, with the intention of eventually adopting all three. *Supra* at 7, 9, 14. At the same time, the Lunsfords attempted to get involved in all New Hampshire legal proceedings concerning the children. *Supra* at 14.

The Lunsford's son had his parental rights terminated because he was financially unable to provide for the children, and all three siblings became eligible for adoption in April 2019. *Supra* at 12, 13. In May 2019, DCYF called the Lunsfords, for what the Lunsfords thought was an interview. However, DCYF did not ask them questions, instead spending the interview disparaging them, and it conducted no further investigation of the Lunsford's eligibility to adopt. *Supra* at 14-15.

It is apparent to the Lunsfords that DCYF never fairly assessed them as potential adopters. Instead, DCYF started adoption proceedings with other adults, splitting the children among two separate families, without informing the Lunsfords, or even asking if they were available. DCYF did this knowing the Lunsfords were ready, willing, and able to adopt all three together. *Supra* at 13.

DCYF has actively stymied communication between the Lunsfords and their grandchildren. The Lunsfords were in regular contact with the foster families, but were suddenly blocked in April 2019, coincident with the beginning of DCYF's furtive adoption proceedings. *Supra* at 13.

It is apparent to the Lunsfords that DCYF lied about them. Court records of which the Lunsfords are aware say the Lunsfords did not offer any help in taking care of the children, which the Lunsfords know to be untrue. DCYF said nothing favorable about the Lunsfords in court, despite obvious favorable facts, showing DCYF to be inaccurate and dishonest about the Lunsford's situation. *Supra* at 10, 14.

When the Lunsfords complained about being ignored and marginalized, they were told to hire an attorney, which to the Lunsfords suggested hostility, and a lack of proactive concern for their involvement. *Supra* at 14, 15.

This has resulted in placing one of the children, who are obviously biracial, with another relative who the Lunsfords have direct reason to know applies racist language to the child. *Supra* at 12. DCYF elected to split up the children rather than place them together, with the Lunsfords, who are family, and who can provide their grandchildren a safe, verdant, diverse neighborhood in a prosperous, well-educated area. *Supra* at 9, 15.

DCYF failed its statutory obligations to place the children among family, to keep siblings together, and to favor grandparents. RSA 463:10, V; *see*

also RSA 169-C:2, II(c); RSA 169-C:2, III(b); RSA 169-C:3, XXI-c; RSA 169-C:3, XXVI; RSA 169-C:18, V.

The Lunsfords believe DCYF's failures are a result of systemic racism, which this court has held is an impermissible basis for government action. *State v. Jones*, 172 N.H. 774, 780 (2020). The court, by never allowing the Lunsfords, over a period of nearly four years, any opportunity to advocate for themselves, appears lackadaisical, camouflaging DCYF's failures. *Supra* at 14, 15.

In its order dismissing the Lunsford's guardianship petition, the court failed to exercise its oversight duties. It wrote DCYF was "asked to consider, and apparently giving consideration to the Lunsfords," determined that the Lunsfords were not appropriate caregivers. *Trn*. at 14. The court recognized that DCYF "apparently" considered the Lunsfords, but did not imply any evidence that DCYF actually considered them. Rather than being an independent judicial reviewer of DCYF's actions, the court regarded the Lunsford's efforts as merely a "collaterally attack [on] the judgment of DCYF." The court thus assumed away its duty to provide judicial oversight. The court also did not apply the statutory preference for grandparents. RSA 463:10, V.

This court has an opportunity to prevent biases from determining placement, ensure the family court properly exercises its judicial role by complying with preference statutes and considering evidence rather than merely repeating DCYF's conclusory statements, require a showing of evidence to support DCYF's determinations, and provide the Lunsfords an opportunity to present their qualifications to be guardians and adoptive parents.

Accordingly, this court should reverse the dismissal of the guardianship, and provide the Lunsfords access to underlying court records.

II. The Lunsford's Guardianship Petition Should Not Have Been Dismissed

The purpose of minor guardianships is to secure the "stability and security" of the child "when such appointment is in the best interests of the minor." RSA 463:1. Any person "interested in the welfare of the minor" may petition for guardianship. RSA 463:5, II.

> In reviewing [a] motion to dismiss, our standard of review is whether the allegations in the petitioner's pleadings are reasonably susceptible of a construction that would permit recovery. We assume the pleadings to be true and construe all reasonable inferences in the light most favorable to the petitioner.... We then engage in a threshold inquiry that tests the facts in the petition against the applicable law, and if the allegations do not constitute a basis for legal relief, we must uphold the granting of the motion.

Elter-Nodvin v. Nodvin, 163 N.H. 678, 680 (2012) (citations omitted).

A petition for guardianship must identify the parties, "[s]tate that the appointment is in the best interests of the minor," RSA 463:5, III, disclose other proceedings concerning the minors to the extent they are known, RSA 463:5, IV(c), and indicate whether ultimate adoption is intended. RSA 463:5, IV(e). In addition:

> The petition shall include a statement describing specific facts concerning actions or omissions or actual occurrences involving the minor which are claimed to demonstrate that the guardianship of the person ... is in the best interests of the minor.

RSA 463:5, V.

The family court dismissed the Lunsford's guardianship petition on the grounds that it failed to comply with RSA 463:5, V.

In their petitions, the Lunsfords identified themselves, the parents, and

the minors. PETITIONS FOR GUARDIANSHIP ¶¶ 1-4, 8 (Jan 3, 2020), *Appx*. at 3, 9, & 15. They disclosed proceedings they knew of, *id.* ¶¶ 11, 22, stated they ultimately intended adoption, *id.* ¶ 18, and explained that guardianship with them would be in their grandchildren's best interest. *Id.* ¶ 28. The Lunsfords further asserted that, despite being qualified, "DCYF has not cooperated with our efforts to maintain contact or to be considered as placement option for the children." *Id.* ¶ 28 (Jan 3, 2020).

While not overly specific, the petitions thus alleged two omissions – DCYF's lack of cooperation, and DCYF's failure to consider the Lunsfords home as a placement option. *See* RSA 169-C:3, XXI-c & XXVI (preference for placement in home of relative, including grandparent).

Accordingly, the petitions were "reasonably susceptible of a construction that would permit recovery." *Nodvin*, 163 N.H. at 680.

The family court's error was in confusing the statute addressing adequacy of the petition, with the statute specifying sufficiency of proof. The court cited RSA 463:5, V – the statute addressing what must be contained in a petition – and dismissed the petitions because they "do not allege any mistreatment or care or inability of anyone to care for the children." *Trn*. at 14. Referring to the allegations in the Lunsford's petition, the court said: "None of that, in this Court's judgment, is a reason for, or a basis for, *awarding* them guardianship." *Trn*. at 15 (emphasis added).

There is a separate portion of the guardianship statute which specifies what a guardianship petitioner must prove at an evidentiary hearing. RSA 463:8. That section says that the court may appoint a guardian if the "guardianship is in the best interests of the minor … and the person nominated is appropriate." RSA 463:8, VII(a).

The proof required differs depending upon whether the parents consent

or object to the guardianship. If the parent consents, the petition must only "establish by a preponderance of the evidence that a guardianship … is in the best interests of the minor." RSA 463:8, III(a). If the parent objects, the petitioner has the burden to:

> establish by clear and convincing evidence that the best interests of the minor require substitution or supplementation of parental care and supervision to provide for the *essential physical and safety needs of the minor or to prevent specific, significant psychological harm* to the minor.

RSA 463:8, III(b) (emphasis added). In either case, such proof would occur at an evidentiary hearing, which was never held in this case.[5]

It appears that the family court lifted the statutory language from RSA 463:8, III, which governs the sufficiency of proof at a hearing, and used it as though it governed the adequacy of the guardianship petition. Moreover, while being couched as a dismissal based on an incomplete petition, the court's refusal to hear the Lunsfords claim appears more as impatience with the Lunsfords' interference with what it and DCYF regarded as preordained adoptions by the foster parents.[6]

Requiring a showing of harm to merely ask for a guardianship would

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[5]In its order, the court cited *In re A.D.*, 172 N.H. 438 (2019), regarding the effect of DCYF non-consenting to an adoption. Because this is a guardianship case, governed by a separate statute with its own definitions and specific consent provisions, *A.D.* is inapposite. Moreover, the adoption petitioner in *In re A.D.* was undoubtedly unsuitable – clearly distinguished from the Lunsford's conspicuous qualifications.

[6]DCYF argued that guardianship by the Lunsfords was inconsistent with the "Permanency Plan" which is required by the Child Protection Act. MOTION TO DISMISS GUARDIANSHIP PETITION (Jan 9, 2020), *Addendum* at 51. The argument is circular. DCYF and the court promulgate permanency plans. *See* RSA 169-C:3, XXI-b; RSA 169-C:24-b. Because the Lunsfords were preventing from any role in fashioning it, it is unsurprising that the Permanency Plan does not address their views.

decrease transparency and allow DCYF to hide bad behavior. Even if harm were the standard, blocking the children from their grandparents, especially in light of the statute favoring grandparents, constitutes harm.

The family court dismissed the petitions for failure to state a claim, even though the Lunsfords complied with the statute designating what a guardianship petition must contain, thus depriving the Lunsfords of their statutory opportunity to state their proof. The court also failed its obligation to favor grandparents when parents are unfit due to drug abuse. RSA 463:10, V. The court therefore erred, and this court should reverse.

III. Had the Family Court Held a Hearing, the Lunsfords Would Have Demonstrated They Are Appropriate Guardians For Their Grandchildren

Had the court held a hearing, the Lunsfords would have testified in accord with their later-filed affidavit (which *verbatim* and in full comprises the statement of facts section of this brief).

They would have introduced themselves, their background, their home, and their community, and shown that they are stable, competent, and financially able. They would have explained the nature of their relationships with the children, described troubles involving their son and the children's mother, and listed their negative experiences with T[redacted]. They would have disclosed the various State certifications they have achieved, and the efforts taken to achieve them. They would have demonstrated how DCYF did not adequately consider them, and would have expounded on harmful "actions or omissions or actual occurrences" involving the children. They would have emphasized that they are family, would keep the three siblings together, and care deeply about their grandchildren. They would have suggested that the children are not so old, nor so long separated, that a transition would be destructive. They would have proved theirs is the best home.

It is apparent that these facts, even if DCYF were to quibble with some details, are sufficient to award the Lunsfords guardianship over their grandchildren. Whether DCYF's failure to give the Lunsfords fair consideration by DCYF was motivated by "systemic racism," as the Lunsfords allege, institutional bias, or some other reason, it is not apparent that any person can act more in the interest of the children than the Lunsfords.

Further, the Lunsfords believe their position would have been bolstered over other placement options on two statutory grounds. First, guardianship of all three children with them would "[p]reserve the unity of the family," RSA

169-C:2, II(c), and maintain "sibling relationships." RSA 169-C:18, V. Second, as grandparents of children removed due to drug abuse by their mother, they are favored as guardians. RSA 463:10, V.

It is apparent that the Lunsfords are qualified caregivers. Neither DCYF nor the family court has provided any substantial reason that the Lunsfords should not be or were not considered, or are ineligible or inadequate. DCYF instead stands behind an opaque assertion that placement with foster parents "reflects that all interested relatives were considered for placement … and that current placement best meets [their] needs." MOTION TO DISMISS. It refuses, however, to offer or release any evidence to substantiate that assertion.

That the adoptions by foster parents were consummated should not be a barrier. The family court allowed the adoptions to go forward, and approved the adoptions, on the same day it dismissed the Lunsford's guardianship petitions, despite the Lunsford's repeated pre-adoption efforts to express their eligibility.

Accordingly, this court should reverse the dismissal, and order the family court to hold a hearing to determine whether the Lunsfords should be appointed their grandchildren's guardians.

IV. Court Records of Underlying Cases Should Be Available to the Lunsfords

The Lunsfords seek access to court records of the underlying neglect cases and the "ICPC home study."

For the Lunsfords to show that DCYF and the court made inadequate determinations in the guardianship case (and presumably for DCYF to show it did), the court record involving the neglect determinations is crucial.

Without them, it is anticipated this court could summarily deny the Lunsfords appellate contentions, because without the underlying records there is no basis on which to review DCYF's actions and considerations. *Rix v. Kinderworks Corp.*, 136 N.H. 548, 553 (1992) ("The moving party … is responsible for presenting a record sufficient to allow the court to decide the issue presented on appeal."

The consequence of failing to present the record is that this court will "assume that the evidence … supported the trial court's findings." *Id.*; *see also In re Lynn*, 158 N.H. 615, 618 (2009) ("[T]he sparse record before us does not include a transcript of the hearing for our review. … For this … reason, we must assume that the evidence does not support the [appellant's] argument."); SUP.CT.R. 13(3) ("The supreme court will not ordinarily review any part of the record that has not been provided to it."); SUP.CT.R. 14(1) (appellant shall "assemble and transmit the record of proceedings in the trial court"); N.H. CONST., pt. I, art. 15 ("Every subject shall have a right to produce all proofs that may be favorable to himself.").

The family court's denial of access was erroneous for several reasons.

A. The Lunsfords Have a Right to Access to Records That Were Incorporated by Reference

In DCYF's motion to dismiss the Lunsford's guardianship petitions, DCYF asked the family court to "take judicial notice of 662-2017-JV-33-35," and find that DCYF took "consideration of the ICPC home study" of the Lunsfords. MOTION TO DISMISS ¶¶ 2, 3 (Jan 9, 2020), *Addendum* at 51.

The docket numbers refer to the neglect cases involving the three children. "ICPC" refers to the Interstate Compact on the Placement of Children (which allows for the interstate transport of children for a foster or adoption placement) and is believed to have been necessary because the Lunsfords live in North Carolina.

"To incorporate a separate document by reference is to declare that the former document shall be taken as part of the document in which the declaration is made, as much as if it were set out at length therein." *Booker v. Everhart*, 240 S.E.2d 360, 363 (N.C. 1978)

DCYF's motion specifically mentioned the three neglect proceedings and the ICPC home study, inviting the court to take "judicial notice." *See In re Omega Entertainment, LLC*, 156 N.H. 282, 285 (2007) ("Omega filed an amended motion for rehearing, which incorporated by reference its earlier motion for rehearing.").

As noted, the family court's initial order limited the Lunsford's access only to documents "which are contained in this Court's files" in the guardianship proceeding. MOTION FOR ACCESS (Mar. 4, 2020) (margin order, Mar. 25, 2020), *Appx*. at 36. The documents incorporated by reference by DCYF are not contained in the court's files in the guardianship case, but are in separate files, and are therefore unavailable to the Lunsfords.

However, because the documents were incorporated by reference, they

became part of the record in the guardianship case, upon which parties may rely. *Beauchamp v. Federal Home Loan Mortgage Corp.*, 658 F. App'x 202, 207 (6th Cir. 2016) (court could rely on confidential material incorporated by reference in contract filed with court); *Flynn v. Flynn*, 265 P.2d 865, 867 (Cal. 1954) (court could rely on exhibit, no longer in court record, because it was incorporated by reference).

It is apparent from the family court's oral order that it based its decision in the guardianship case, at least in part, on its awareness and understanding of the prior cases, further indicating incorporation. *Trn.* at 14. That the court later said that the records in the prior cases are not "relevant" to the guardianship case, ORDER (Aug. 7, 2020), *Addendum* at 59, does not make them less incorporated.

Accordingly, the family court erred in not providing the Lunsfords the records named in DCYF's motion, and this court should order disclosure.

B. The Lunsfords Have a Constitutional Right of Access to the Court Records

The New Hampshire constitution provides:

> All power residing originally in, and being derived from, the people, all the magistrates and officers of government are their substitutes and agents, and at all times accountable to them. Government, therefore, should be open, accessible, accountable and responsive. To that end, the public's right of access to governmental proceedings and records shall not be unreasonably restricted. The public also has a right to an orderly, lawful, and accountable government.

N.H. CONST. pt. 1, art. 8. Court records are governmental records for the purpose of Article 8. *Petition of Keene Sentinel*, 136 N.H. 121 (1992).

Court records are presumed open to the public. *Id*. "Such access is critical to ensure that court proceedings are conducted fairly and impartially." *In re Union Leader Corp.*, 147 N.H. 603, 604 (2002)."The motivations of the [requestor] are irrelevant to the question of access." *Keene Sentinel*, 136 N.H. at 128.

While the right of access "is not absolute," *Associated Press v. State*, 153 N.H. 120, 129 (2005), the standard to keep court records secret is high. "A party seeking closure or nondisclosure of court records has the burden to demonstrate, with specificity, a sufficiently compelling interest, outweighing the public's right of access." *Union Leader*, 147 N.H. at 604. Moreover, "even where a sufficiently compelling interest is demonstrated, a court record may not be kept sealed unless no reasonable alternative to nondisclosure exists and the least restrictive means available is utilized to serve the interest that compels nondisclosure." *Associated Press*, 153 N.H. at 129-30.

Thus, to prevent disclosure to the Lunsfords of the underlying neglect

case records, DCYF must prove: 1) a compelling interest, 2) that there is some reasonable alternative to disclosure, and 3) nondisclosure is the least restrictive means of serving its asserted compelling interest.

"[A] generalized concern for personal privacy is insufficient to meet the State's burden of demonstrating the existence of a sufficiently compelling reason to prevent public access." *Id.* at 137.

In *In re N.B.*, 169 N.H. 265 (2016), grandmother adopted her grandchildren after the parents' rights were terminated following an abuse case. Grandmother believed the grandchildren might have a cause of action against DCYF for negligence while they were in DCYF's custody, and therefore sought court records from the abuse case. The family court allowed access, but ordered the records could not be made public, and must be kept sealed in connection with any civil suit.

This court assumed that DCYF's asserted interest in preserving the identity of the parties was compelling. *Id.* at 271. It held, however, that the order regarding the status of the records in connection with a civil suit was "over broad, … is not narrowly tailored, nor does it use the least restrictive means to accomplish its purpose." *Id.* at 272.

There is little distinction between the grandmother in *N.B.,* who sought records of suspected wrong-doing by DCYF, and the Lunsfords here, who seek the same records also for suspected wrong-doing.

Blocking the Lunsfords from all access to the records underlying DCYF's and the court's actions regarding their grandchildren is in violation of the constitution. The Lunsfords have a right to the records, subject to reasonable limitations in accord with constitutional standards. *Associated Press*, 153 N.H. at 129-30.

Accordingly, this court should order the family court to disclose the court records underlying this matter.

C. The Lunsfords Have a Right to Access to Court Records Pursuant to RSA 169-C:25

New Hampshire law contains a provision regarding grandparents' access to court records in abuse and neglect cases.

> A grandparent seeking access to court records … shall file a request for access with the court clerk supported by an affidavit signed by the grandparent stating the reasons for requesting access …. Any party to the case or parent may object to the grandparent's request…. If no objection is made, and for good cause shown, the grandparent's request may be granted by the court. If an objection is made, access may be granted only by court order.

RSA 169-C:25, I(b). The existence of the statue recognizes the special place grandparents occupy in the family structure. The standard for disclosure is "good cause." *Id.*

The family court found that the records the Lunsfords sought were not "relevant to the guardianship issue(s) on appeal," and that "good cause has [not] been shown to grant the grandparents access to the confidential records of the other proceedings." ORDER (Aug. 7, 2020), *Addendum* at 59.

Without the records, DCYF cannot show that it and the court acted appropriately, and the Lunsfords cannot prove their claim that DCYF and the court acted wrongly. While relevance is not the statutory standard, the records are nonetheless relevant to the issues on appeal. *See* N.H. R. EVID. 401 ("Evidence is relevant if … it has any tendency to make a fact more or less probable than it would be without the evidence; and … the fact is of consequence in determining the action.").

For the same reason, there is also good cause to disclose the records. *See JP Morgan Chase Bank, NA v. Grimes*, 167 N.H. 536 (2015) (sale of building

"good cause" for terminating lease).

RSA 169-C:25 is of doubtful constitutionality because it puts the burden on the requestor, and because "good cause" does not account for the constitutional requirement that the state prove a compelling interest, a reasonable alternative, and least restrictive means. *Associated Press*, 153 N.H. at 129-30.

Assuming constitutionality however, the Lunsfords' affidavit showed good cause, and this court should order the family court disclose the underlying records to the Lunsfords on reasonable terms that protect the identity of the parties.

CONCLUSION

DCYF did not fairly assess the Lunsford's interest in becoming guardians and eventual adopters of their grandchildren. There is credible evidence that DCYF was biased against them based on race. Instead of favoring grandparents and keeping siblings together, as New Hampshire statutes require, DCYF blocked the Lunsfords, separated the children, and placed them with other caregivers.

Had DCYF properly assessed the Lunsfords, their conspicuous qualifications would have been manifest. They would likely have been appointed guardians, and ultimately been able to adopt all three grandchildren. Moreover, DCYF and the family court denied them access to records, such that biases are concealed.

This court should reverse the dismissal of the Lunsfords' guardianship petitions, require the court divulge the records in the underlying cases, and order the court hold a hearing giving the Lunsfords an opportunity to show that placing their grandchildren with them is in the children's best interests, consistent with New Hampshire statutory preferences.

It is not within New Hampshire statutory policy that DCYF, having taken custody of children, should ignore willing and able grandparents, and place the children elsewhere.

REQUEST FOR ORAL ARGUMENT

The issues raised in this appeal are of concern to all parents, grandparents, children, and grandchildren in New Hampshire. The Lunsfords, who are obviously eligible and able to adopt their grandchildren, have been subject to an injustice, and should be able to tell their story to a decision-making body in New Hampshire.

Respectfully submitted,

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Dated: August 21, 2020

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CERTIFICATIONS

I hereby certify that the decision being appealed is addended to this brief. I further certify that this brief contains no more than 9,157 words, exclusive of the embedded court's ruling, and other portions which are exempted.

I further certify that on August 21, 2020, copies of the foregoing will be forwarded to Laura Lombardi, Esq. Assistant Attorney General.

Dated: August 21, 2020

Joshua L. Gordon, Esq.

ADDENDUM