IN THE SUPREME COURT OF OHIO

Adoption Link, Inc.	:	**Case No. 06-1646**
Appellant	:	**On Appeal from the Greene County Court of Appeals, Second Appellate District**
v.	:	**Court of Appeals Case No. 06-CA-81**
Robert Suver, Director Clark County Department of Job and Family Services	:	
Appellee	:	

MOTION FOR RECONSIDERATION BY APPELLANT ADOPTION LINK, INC.

Michael R. Voorhees (#0039293)
Voorhees & Levy LLC
11159 Kenwood Road
Cincinnati, Ohio 45242
Telephone: (513) 489-2555
Facsimile: (513) 489-2556
mike@ohioadoptionlawyer.com

COUNSEL FOR APPELLANT,
ADOPTION LINK, INC.

Roger A. Ward (#0065394)
Assistant Prosecuting Attorney
50 East Columbia Street, 4th Floor
Springfield, Ohio 45502
Telephone: (937) 328-2574
Facsimile: (937) 328-2657

COUNSEL FOR APPELLEE,
CLARK COUNTY DEPARTMENT OF
JOB & FAMILY SERVICES

FILED
JAN 04 2007
MARCIA J MENGEL, CLERK
SUPREME COURT OF OHIO

Motion for Reconsideration by Appellant Adoption Link, Inc.

Now comes Appellant Adoption Link, Inc., by and through counsel, and pursuant to S. Ct. Prac. R. XI, Section 2(A)(4) hereby moves this Supreme Court to reconsider its decision of December 27, 2006. A memorandum in support of this Motion for Reconsideration is included below and filed herewith.

Memorandum in Support of Motion for Reconsideration

In support of this Motion for Reconsideration, Appellant hereby requests this Supreme Court to reconsider its decision of December 27, 2006 due to the errors set forth in the decision, which are as follows:

1. permanent custody was obtained by law, not by court order;
2. prior jurisdiction of a court is not relevant in this case;
3. the valid order of the Greene County Juvenile Court was ignored; and
4. R.C. 5103.15(B)(2) is the applicable statute.

1. Permanent custody was obtained by law, not by court order.

This Court stated in ¶ 2 of its decision that the "Greene County Juvenile Court approved the permanent-surrender agreements and granted permanent custody of T.J. to Adoption Link." That is an incorrect statement. No court approval was required for Appellant to obtain permanent custody of this child. In fact, the juvenile court had no authority to approve or to disapprove of the permanent surrenders. Pursuant to R.C. 5103.15(B)(2), the birth-parents of a child less than six months of age may execute their permanent surrenders and the approval of the court is not required. The private child placing agency is only required to notify the juvenile court in the county where the agency is

located. The juvenile court then journalizes the permanent surrenders. Regardless of its wording, the document from the Greene County Juvenile Court dated April 26, 2006 was not a grant of permanent custody, but rather it was evidence of the compliance of the notice and journal requirements of R.C. 5103.15(B)(2). The April 26, 2006 court document did not have the legal effect of granting permanent custody, but rather it was an acknowledgement of permanent custody that already existed. The permanent custody was created by the statutory authority set forth in the applicable statutory provisions of R.C. 2151.011(B)(30), R.C. 2151.011(B)(31), R.C. 2151.011(B)(45) [re-numbered R.C. 2151.011(B)(46)], and R.C. 5103.15(B)(2). This critical misstatement was the basis for the incorrect decision by this Court.

2. Prior jurisdiction of a court is not relevant in this case.

This Court mistakenly held in ¶ 8 of its decision that the "Greene County Juvenile Court lacked jurisdiction to grant custody of T.J. to Adoption Link." The issue of jurisdiction or lack of jurisdiction of any court is not relevant in this case. The Greene County Juvenile Court did not grant custody of this child to Adoption Link. This is not a matter of what court was first involved with this child. This is a matter of permanent custody vs. temporary custody. Upon the execution of the permanent surrenders by the birth-parents pursuant to R.C. 5103.15(B)(2), the permanent custody vested in Adoption Link all parental rights, duties, and obligations. All previous placements and custody arrangements immediately became meaningless, divested, and superceded. This permanent custody was by operation of law. By law, this child was no longer a ward of the Clark County Juvenile Court. By analogy, courts lose jurisdiction all the time by operation of law when a child reaches the age of majority. The Clark County Juvenile Court no longer had any authority to "hear and determine requests for the extension of temporary custody agreements, and requests for court approval of permanent custody agreements, that are filed pursuant to section 5103.15 of the Revised Code." The child was no longer in need of any temporary custody arrangement because he

was in the permanent custody of Adoption Link. Court approval was not required for this permanent custody agreement. Therefore, not only did the Clark County Juvenile Court no longer have any authority, that Court was not even needed for any purpose. Appellee was obligated to immediately relinquish the physical custody of the child to Appellant and to close its case.

3. The valid order of the Greene County Juvenile Court was ignored.

This Court misapplied R.C. 2725.04(D) in ¶ 10 of its decision when it criticized Appellant for not attaching certain entries from the Clark Court Juvenile Court. There were no entries from the Clark County Juvenile Court that were "pertinent." Attached to Appellant's Petition for Writ of Habeas Corpus were copies of the permanent surrenders and a copy of the May 23, 2006 entry from the Greene County Juvenile Court, which ordered Appellee to relinquish physical custody of the child to Adoption Link. Those were, and still are, the only documents that are "pertinent." Appellee filed a motion in the Greene County Juvenile Court, agreed to submit the issue as a matter of law to the Greene County Juvenile Court, and then totally ignored the decision of the Greene County Juvenile Court. This Supreme Court failed to address the fact that Appellee did not appeal the decision of the Greene County Juvenile Court, which was a decision resulting from a motion filed in that Court by the Appellee. This Supreme Court has done exactly what Appellee has done, which is to totally ignore the valid order of the Greene County Juvenile Court, entered on May 23, 2006 and never appealed.

4. R.C. 5103.15(B)(2) is the applicable statute

This Court clearly misinterpreted R.C. 5103.15 in ¶ 9 of its decision by holding that a person must have legal custody of the child to have the right to place the child for adoption. This Court relied heavily on the language in R.C. 5103.15(B)(1) that refers to "parents, guardian, or other persons having the custody of a child" as the parties who may enter into a permanent-surrender

agreement. First, this Court has misinterpreted the statutory language in that "having custody" modifies "other persons" and does not modify "parents." Second, and most important, this Court ignored the clear exception of (B)(2) contained in R.C. 5103.15(B)(1). The applicable part of R.C. 5103.15 to this case is R.C. 5103.15(B)(2). R.C. 5103.15(A) relates only to temporary custody and is irrelevant to this case. R.C. 5103.15(B)(1) is also irrelevant in that it relates to situations that are not excepted out by R.C. 5103.15(B)(2). This Court has misinterpreted R.C. 5103.15(B)(2).

To hold that a parent must have legal custody of the child to have the authority to place the child for adoption makes no sense. This Court failed to address the "residual parental rights" of the birth-parents under R.C. 2151.011(B)(45)[re-numbered R.C. 2151.011(B)(46)]. If the decision of this Court stands, it will be interpreted as a reason for finding that the rights of the birth-parents are essentially and effectively terminated upon the temporary custody order of a juvenile court. If birth-parents, who do not have legal custody of the child, lack the authority to place the child for adoption, then such birth-parents are without the right to object to an adoption of the child.

Pursuant to R.C. 3109.042, the unmarried birth-mother is the sole residential parent and legal custodian of her child. The putative father can never have legal custody of the child. To obtain legal custody, the putative father must first change his status by establishing paternity, thereby no longer being a putative father. He then must file for custody and be awarded custody by the court. Only then will the unmarried birth-father have legal custody of the child. If the decision of this Court stands, it will be interpreted as a reason for finding that the consent of the putative father is never required because he does not have legal custody and is without any authority. It will no longer be necessary to even check the Putative Father Registry. If the decision of this Court stands, the decision can only be read to mean that birth-parents without legal custody of the child are persons without rights. Undoubtedly, this decision will create much confusion and will have the potential to lead to serious due process violations.

Until their parental rights are terminated, the parents have the right to make an adoption plan. This decision eliminates that right, unless they still have legal custody of the child. This decision will eliminate many voluntary permanent surrender opportunities. This decision will create many more lengthy, adversarial termination cases that will linger in our already overcrowded courts. Children will linger in our already overcrowded and inadequate foster care system. The worst impact of this decision is that it will deny many children the opportunity to have a permanent and stable home in the most expeditious manner possible. The long-term effect will be devastating, in both economic and social terms, in that this decision will perpetuate the cycle of troubled children becoming troubled adults and creating more troubled children. The urgent need to reconsider this decision can not be exaggerated.

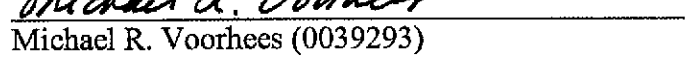
For the reasons set forth above, Appellant respectfully requests that this Supreme Court reconsider its decision entered on December 27, 2006, vacate its decision of December 27, 2006, and enter a new decision, which REVERSES the decision of the Greene County Court of Appeals by finding that: the birth-parents still had their residual parental rights when they executed their permanent surrenders; the execution of the permanent surrenders by the birth-parents resulted in the child being in the permanent custody of the Appellant by operation of law; permanent custody is superior to temporary custody and the court that granted temporary custody of the child to the public agency no longer has jurisdiction; and the requested writ of habeas corpus is appropriate in the present case. Further, Appellant respectfully requests this Supreme Court to grant the petition for a writ of habeas corpus and to issue an order to the Clark County Department of Job & Family Services to immediately transfer the physical custody of Tyre Joseph Jones to Adoption Link, Inc.

Respectfully submitted,

Michael R. Voorhees (#0039293)
Voorhees & Levy LLC
11159 Kenwood Road
Cincinnati, Ohio 45242
(513) 489-2555 phone
(513) 489-2556 fax
Counsel for Appellant Adoption Link, Inc.

Certificate of Service

I hereby certify that a copy of the foregoing Motion for Reconsideration has been sent by regular U.S. mail this 4th day of January, 2007 to: Roger A. Ward, Counsel for Appellee Clark County DJFS, 50 East Columbia Street, 4th Floor, Springfield, Ohio 45502.



Michael R. Voorhees (0039293)