

IN THE SUPREME COURT OF OHIO

Adoption Link, Inc.

Appellant

v.

Robert Suver, Director
Clark County Department of
Job and Family Services

Appellee

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CASE NO. 06-1646

Appeal from the Ohio Court
of Appeals, Second Appellate
District, Clark County

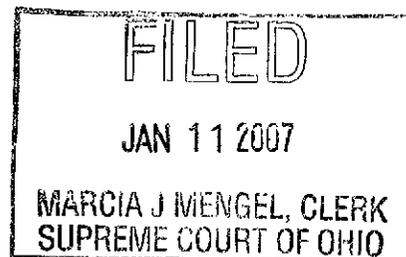
MEMORANDUM IN OPPOSITION OF MOTION TO RECONSIDER

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MEMORANDUM

Now comes the Appellee, Robert Suver, Director, Clark County Department of Job and Family Services, by and through counsel, in opposition to the Motion for Reconsideration filed by the Appellant, Adoption Link, Inc. on January 4th, 2007 in the above captioned case. The Appellee respectfully requests this Supreme Court to deny the Motion for Reconsideration for the reasons set forth below.

First, the Motion for Reconsideration does not conform to the Rules of Practice put forth by the Supreme Court of Ohio. S. Ct. Prac. R. XI, Section 2 specifically states that a Motion for Reconsideration “shall not constitute a reargument of the case.” As will be shown below, every reason put forth by the Appellant for reconsideration has been argued previously. This Court has taken the opportunity to review the decision set forth by the court of appeals, which made its decision based upon the same arguments set forth before this court both initially and upon the current motion, and reached the same conclusion that the court of appeals did, thus unanimously affirming that court’s ruling on the matter. Thus, the arguments set forth in the Appellant’s Motion for Reconsideration have been previously raised and disposed of, and the motion constitutes an attempt to reargue the case yet again.

Second, the arguments set forth by the Appellant are without merit and have been addressed by this Court. Addressing the arguments put forth by the Appellant in the order presented, the Appellant first asserts that “permanent custody was obtained by law, not by court order.” The Appellant focuses on the language this Court used in the decision stating that the “Greene County Juvenile Court approved the permanent-surrender agreements and granted permanent custody of T.J. to Adoption Link.” According to the Appellant, this is a misstatement that is critical because the permanent surrenders are simply journalized by the juvenile court, and they operate as a function of law.

Appellant’s argument would have merit if there had not been prior jurisdiction existing with the Clark County Juvenile Court and if the parents had maintained legal custody of the child. As this Court correctly concluded in affirming the court of appeals, the fact that the Clark County Juvenile Court obtained and maintained jurisdiction meant that court was the only appropriate court to “hear and determine requests....of permanent

custody agreements pursuant to section 5103.15 of the Revised Code,” pursuant to R.C. 2151.23(A)(2) and (9).

Further, the fact that the parents did not have legal custody and were thus unable to properly execute the permanent-surrender documents is a completely different issue from the question of whether the juvenile court “approved” or simply “journalized” the documents. Certainly, both this Court and the Court of appeals concluded that the only logical manner in which to read R.C. 5103.15(B)(2) is in context with the remaining portions of that statute. Doing so leads to the inescapable conclusion that legal custody is a prerequisite for the parents to execute a permanent surrender. Likewise, nothing on the face of R.C. 5103.15(B)(2) indicates that it is to operate to the exclusion of or supersedes the other applicable laws discussed by this Court. Given the specific jurisdiction granted to the Clark County Juvenile Court by R.C.2151.23(A), the logical conclusion, plain reading and settled law is that the general language of R.C. 5103.15(B)(2) cannot and does not override R.C.2151.23(A).

For the above reasons, this Court has already ruled on the first argument put forth by the Appellant, and the renewal here constitutes a reargument. Further, as explained, the argument as presented continues to be without merit.

Appellant’s second argument was also presented to both the court of appeals and this Court. The second argument is that jurisdiction, or lack thereof, is not relevant to the case. The Appellant continues to rely on the wording of R.C. 5103.15(B)(2) to the exclusion of every other applicable statute. The Appellant argues, by way of analogy, that juvenile courts lose jurisdiction all the time, due to juveniles reaching their majority. R.C.2151.23(A) lists specific ways in which a juvenile court obtains and maintains jurisdiction over a juvenile, and also specifically lists methods in which the jurisdiction can be relinquished. Yet, the Appellant is still unable to point to a specific portion of any statute that would strip the jurisdiction granted by R.C.2151.23(A).

Ironically, the Appellant attempts to cite a portion of R.C. 5103.15 in support of the conclusion that R.C. 5103.15(B)(2) should be controlling and read to the exclusion of every other relevant statute on the matter. The Appellant states that, upon the execution of the permanent surrenders, the Clark County Juvenile Court no longer had 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.*” (emphasis added) Appellant refuses to acknowledge that the jurisdiction of the Clark County Juvenile Court was wholly unrelated to R.C.5103.15, and came about as the result of the dependency action filed by the Clark County Department of Job and Family Services, pursuant to R.C.2151.23(A)(1).

Again, the second argument presented by the Appellant constitutes a reargument of the original case on appeal. The Clark County Juvenile Court’s exclusive original jurisdiction was vested by operation of R.C.2151.23(A)(1) , and nothing within R.C. 5103.15(B) serves to divest that jurisdiction. Thus, this Court was correct in concluding that the Clark County Juvenile Court had such jurisdiction and that the permanent surrenders were improperly taken by the Greene County Juvenile Court and were void because the parents lacked the authority to do execute the surrenders.

The Appellant’s third argument is that the valid order of the Greene County Juvenile Court was ignored. Again, this assertion has been argued at both the court of appeals and before this Court. The Appellee contends that the Appellee agreed to submit the issue as a matter of law to the Greene County Juvenile Court, then totally ignored the decision of that court. Simply put, this is false. It is true that counsel for the Appellee did agree that the issue was a matter of law, and did agree to brief the matter in order to attempt to help the Greene County Juvenile Court understand the issue at hand .

However, it has always been the position of the Appellee that the Clark County Juvenile Court is the only court with “original exclusive jurisdiction.” Because the Appellee has always maintained that the Clark County Juvenile Court was the only juvenile court capable of making orders regarding the custody of T.J., the Appellee had no authority to comply with an order from another juvenile court without an order to do so from the Clark County Juvenile Court. The Appellee had no alternative but to follow the existing orders of the Clark County Juvenile Court, pursuant to R.C. 3107.06 (E), which specifically states consent must be given by “[t]he juvenile court that has jurisdiction to determine custody of the minor, if the legal guardian or custodian of the minor is not authorized by law or court order to consent to the adoption.” To suggest that

the Appellee should have done otherwise, given the stated belief, since affirmed by both the court of appeals and this Court, defies any reason or logic.

The Appellant further takes this Court to task, asserting that the Court misapplied R.C. 2725.04(D), stating that the only pertinent entries and documents were the permanent surrenders executed by the parents and the May 23, 2006 entry from the Greene County Juvenile Court. R.C. 2725.04(D) reads “A copy of the commitment or cause of detention of such person shall be exhibited, if it can be procured without impairing the efficiency of the remedy; or, if the imprisonment or detention is without legal authority, such fact must appear.” Clearly, where there is a contention as to the legal authority in question, and the “commitment or cause of detention” is specifically at issue, then the documents which cause the detention are pertinent in that they belong to and are directly related to the matter at hand.

The Appellant’s third argument regarding the Green County Juvenile Court Order was presented to both the court of appeals and to this Court and is being reargued here. Both the court of appeals and this Court found the Greene County Order to be without authority. The Appellant further argues that the materials this Court deemed pertinent to the Petition for a Writ of Habeas were not, in fact necessary. However, the clear reading of the applicable statute establishes the pertinence of the documents this Court lists.

The Appellant’s final argument is that this Court misapplied R.C.5103.15 by holding that a person must have legal custody of the child to have the right to place the child for adoption. The Appellant argues, that this Court, like the court of appeals, failed to address the “residual parental rights” of the birth parents pursuant to R.C. 2151.011(B)(45). The Appellant proceeds to explain how the Court’s decision in this matter would yield much confusion and potentially lead to serious due process violations. The Appellant claims that this decision will be interpreted to stand for the proposition that birth parents and putative fathers will lack the authority to consent to place a child for adoption, and that those without legal custody do not have any rights regarding the child. The argument presented is an expansion of an argument presented in the Appellant’s merit brief to this court. Such a reading of the decision is inaccurate and illogical, and does not take into account the written statutes on point.

If anything, this Court's decision clarifies the law regarding the jurisdiction of juvenile courts, and whose consent is required for an adoption to occur. The decision of this Court in no way eliminates the need for notice and consent as required by R.C. 3107.06, and to assert otherwise is to misread and misrepresent what this Court has written. This Court's decision stands for two things: First, that once a juvenile court obtains original exclusive jurisdiction, it maintains that jurisdiction until relinquished as provided for by statute; Second, that parents who do not have legal custody of a child due to juvenile court involvement or for other reasons cannot enter into an agreement to surrender the child for adoption without the consent of the juvenile court and other necessary parties. It is important to note that any attempts by legal custodians to adopt a child would still be subject to the consent requirements outlined within R.C. 3107.06 as well as other applicable statutes. Nothing this Court has written will change that fact.

The Appellant's final argument regarding the decision of this Court elaborates on a prior argument, and is characterized by a misreading of the Court's decision coupled with an absence of the application of other existing law. It is without logic or foundation and should be found to be without merit.

In conclusion, the Appellant's motion constitutes nothing more than arguments that have previously been presented to this Court and to the court of appeals, and are thus not appropriately before this Court pursuant to S. Ct. Prac. R. XI, Section 2, which states that a motion for reconsideration shall not constitute reargument of the case. Further, the arguments within the motion are without merit, because the Clark County Juvenile Court possessed exclusive original jurisdiction regarding T.J., and the parents had no authority to execute permanent surrenders without the agreement and consent of the Clark County Juvenile Court. For all of these reasons, the Appellee respectfully requests this Supreme Court to deny the motion to reconsider filed by the Appellant.

Respectfully submitted,



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ASSISTANT PROSECUTING ATTORNEY
ATTORNEY FOR CCDJFS

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Respondent's Brief was served upon Mr. Michael Voorhees, Esq. by facsimile transmission this 11th day of January, 2007:



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ASSISTANT PROSECUTING ATTORNEY
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