

IN THE SUPREME COURT OF OHIO

In re Adoption of: G.V.	:	Case No. 2009-2355
	:	
	:	
	:	On Appeal from the
Jason and Christy Vaughn	:	Lucas County Court of Appeals,
	:	Sixth Appellate District
	:	
Appellants	:	Court of Appeals
	:	Case No. L-09-1160
	:	(Entry Date: November 30, 2009)
	:	
Benjamin Wyrembek	:	
	:	Trial Court No.2008 ADP 000010
Appellee	:	Lucas County Probate Court
	:	

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MOTION TO DISMISS  
OF APPELLEE, BENJAMIN WYREMBEK

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Michael R. Voorhees (0039293)  
 Voorhees & Levy LLC  
 11159 Kenwood Road  
 Cincinnati, OH 45242  
 Phone: (513) 489-2555  
 FAX: (513) 489-2556

Alan J. Lehenbauer (0023941)  
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Attorney for Appellants,  
 Jason and Christy Vaughn

Attorney for Appellee,  
 Benjamin Wyrembek

FILED  
*2010 ak*  
 FEB 16 2010  
 CLERK OF COURT  
 SUPREME COURT OF OHIO

RECEIVED  
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 CLERK OF COURT  
 SUPREME COURT OF OHIO

Now comes Appellee, Benjamin Wyrembek, by and through counsel. and moves this Court for an Order dismissing this case. The grounds for this motion is that changes in circumstances have rendered Appellants' Proposition of Law No. 1 moot, so as to preclude consideration of the merits.

An appellate court may review only live controversies. See 5 Ohio Jurisprudence 3d (2009) 123, Appellate Review §386, citing *Sunkin v. Collision Pro, Inc.*, 174 Ohio App.3d 57, 2007 Ohio 6046, 880 N.E.2d 947. When circumstances prevent an appellate court from granting relief in a case, the mootness doctrine precludes consideration of the issues in the case. *Id.*, citing *Schwab v. Lattimore*, 166 Ohio App.3d 12, 2006 Ohio 1372, 848 N.E.2d 912. Thus, where, by a changed in circumstances, the questions that would be presented to the reviewing court have become purely academic or abstract, and any judgment that the court might render thereon would in no way avail, or be beneficial to, any party, the proceeding will be dismissed, because it is not the duty or responsibility of the court to answer moot questions. *Id.*, citing *Dudek v. United Mine Workers of America* (1955), 164 Ohio St. 227, 130 N.E.2d 700. The proceeding will be dismissed if the judgment that the appellant seeks to reverse, not having been stayed, has been carried out or if the thing that he seeks to prevent or avoid has been accomplished, and the situation is such that reversal would be wholly ineffectual to reestablish the status quo or to afford any relief to the appellant. *Id.* at 124, citing *Commercial Motor Freight v. Public Utilities Commission* (1954), 161 Ohio St. 58, 117 N.E.2d 695. Where an appellant has no legitimate interest to protect by an appeal, such appeal is moot so far as such appellant is concerned and will be dismissed. *Id.*, citing *Mid-American Tel. Co. v. PUC* (1962), 173 Ohio St. 333, 182 N.E.2d 319.

**1. Custody Order has rendered the appeal moot.**

On February 3, 2010, Judge Denise Navarre Cubbon of the Lucas County Juvenile Court issued a judgment entry (Exhibit A) adopting and affirming the January 11, 2010 Magistrate's Decision (Exhibit B), whereby "Benjamin Wyrembek is designated as the residential parent and legal custodian of the child[,]" Grayson Thomas Bocvarov. In addition, Appellants Vaughn's most recent jurisdictional challenge against Judge Cubbon was dismissed by this Ohio Supreme Court on February 10, 2010, in Ohio S.Ct. Case No. 2009-2349 (Exhibit C). The record reflects that Adoption by Gentle Care had no right to take the child and thus no right to place this child with Appellants. Adoption by Gentle Care only had a purported permanent surrender from the birth-mother, Drucilla Bocvarov. There was no permanent surrender from the birth-father, Appellee Wyrembek. The purported surrender of the legal father, Jovan Bocvarov, was not valid as he did not have custody of the child, as required in *Adoption Link, Inc. v. Suver*, 112 Ohio St.3d 166, 2006 Ohio 6528, 858 N.E.2d 424.

Appellants seek to reverse the judgment dismissing their petition for adoption. The child has been ordered to be in the custody of someone other than Appellants. The child is no longer available to be adopted. Appellants are legal strangers to the child. The reversal of the underlying judgment would be wholly ineffectual to reestablish the child as available for adoption. Appellants have no legitimate interest to protect by this appeal.

**2. Adoption Petition filed in Indiana has rendered appeal moot.**

On December 22, 2009, Jason and Christy Vaughn filed a verified petition for adoption of the child, Grayson Thomas, in the Circuit Court of Floyd County, Indiana (Exhibit D). In so

filing, Appellants Vaughn have voluntarily relinquished or abandoned their adoption petition filed in Ohio. Appellants are barred, under the waiver doctrine, from appealing the judgment of the Lucas County Probate Court dismissing their adoption petition. The reversal of the underlying Ohio judgment would be wholly ineffectual in that the Vaughns are now seeking to adopt the child through the Indiana judicial system.

***3. Federal Civil Rights Case has rendered appeal moot.***

On January 14, 2010, the birth-mother, Drucilla Bocvarov, and Jason and Christy Vaughn filed a federal civil rights action against Benjamin Wyrembek and against Judge Jack Puffenberger, the Lucas County Probate Judge who dismissed the Vaughns' adoption petition (Exhibit E). In the federal action, the birth-mother and the Vaughns claim that their protected rights were violated by Judge Puffenberger's actions "under the color of law," i.e. the judge's application of Ohio adoption law. The birth-mother and the Vaughns claim that their protected rights were also violated by Benjamin Wyrembek when he filed objections to the adoption pursuant to Ohio law. The Vaughns and the birth-mother have asked the federal court to determine their constitutional rights in the underlying adoption proceeding in Lucas County Probate Court and such a decision would require the federal court to hold that Ohio adoption statutes are unconstitutional.

On February 10, 2010, this Supreme Court accepted the instant appeal on Proposition of Law No. 1. In this appeal, the Vaughns have asked this Court to determine the statutory rights of an unwed, biological father in an adoption proceeding. The Vaughns have not challenged the constitutionality of any Ohio adoption statute. Nevertheless, the issues in the state and federal courts are "two sides of the same coin." The constitutional rights of

the birth-mother and the Vaughns as determined by the federal court may determine the statutory rights of the biological father.

Under the Supremacy Clause of the United States Constitution, Article VI, clause 2, federal rights have priority whenever they come in conflict with state law. The Vaughns filed their federal case prior to the acceptance of this appeal. The federal court would have jurisdiction to the exclusion of this state Court.

**CONCLUSION**

For any or all of the foregoing reasons, this appeal is moot. Appellee asks this Court to dismiss this case.

Respectfully submitted,



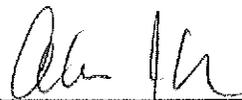
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Alan J. Lehenbauer  
The McQuades Co., L.P.A.  
P. O. Box 237  
Swanton, Ohio 43558  
Phone: (419) 826-0055  
FAX: (419) 825-3871

Attorney for Appellee,  
Benjamin Wyrembek

**PROOF OF SERVICE**

I hereby certify that a copy of the foregoing Motion to Dismiss, was sent by ordinary U.S. Mail this 15<sup>th</sup> day of February, 2010, to: Michael R. Voorhees, 11159 Kenwood Road, Cincinnati, OH 45242.



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Alan J. Lehenbauer  
Attorney for Appellee,  
Benjamin Wyrembek

**EXHIBIT A**

IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

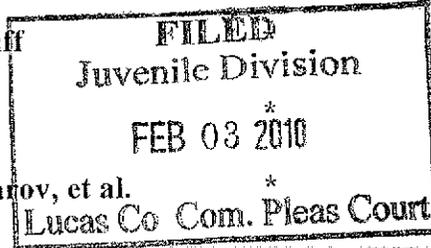
JUVENILE DIVISION

Benjamin J. Wyrembek,

\*

Case No. JC 08-180254

Plaintiff



vs.

Drucilla Banner-Bocvarov, et al.

\*

Defendant

JUDGMENT ENTRY

\* \* \* \* \*

This matter is before the Court on an "Objection to Magistrate's Decision entered on January 11, 2010 with an automatic stay" filed January 22, 2010 by counsel for Jason and Christy Vaughn. Counsel states that he objects to the Magistrate's Decision "without submitting to the jurisdiction of this Court". No hearing was held on the objection.

The Court has reviewed the objection, the record, and applicable law and finds as follows. Ohio Juvenile Rule 40(D)(3)(b)(i) states, "A party may file written objections to a magistrate's decision within fourteen days of the filing of the decision, whether or not the court has adopted the decision during that fourteen-day period as permitted by Juv. R. 40(D)(4)(e)(i)." The Court in its January 8, 2010 Judgment Entry ruled that Jason and Christy Vaughn are not parties to this action. As of the date of this Judgment Entry, no party has filed an objection to the January 11, 2010 Magistrate's Decision.

Ohio Juvenile Rule 40(D)(3)(b)(iii) states, "An objection to a factual finding \* \* \* shall be supported by a transcript of all the evidence submitted to the magistrate relevant to that finding or an affidavit of that evidence if a transcript is not available." Juv. R. 40(D)(3)(b)(iii). Counsel objects to most of the Magistrate's fifteen (15) findings of fact yet he failed to provide a transcript of the January 8, 2010 hearing to support the objection. Without a transcript of the Magistrate's hearing, the Court has no evidence or other information on what factors the Magistrate may have considered for her findings or her decision. Therefore, the Court must rely on the Magistrate's Decision.

Counsel argues that pursuant to Juvenile Rule 40(D)(4)(e)(i), there is an automatic stay on the January 11, 2010 Magistrate's Decision. Rule 40(D)(4)(e)(i) states, "The

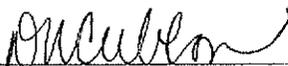
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court may enter a judgment either during the fourteen days permitted by Juv. R. 40(D)(3)(b)(i) for the filing of objections to a magistrate's decision or after the fourteen days have expired. If the court enters a judgment during the fourteen days permitted by Juv. R. 40(D)(3)(b)(i) for the filing of objections, the timely filing of objections to the magistrate's decision shall operate as an automatic stay of execution of the judgment until the court disposes of those objections and vacates, modifies, or adheres to the judgment previously entered." Counsel's interpretation of the language in this rule is misdirected. No "automatic stay" of the Magistrate's Decision is or was in effect under this rule. This Judgment Entry disposes of counsel's January 22, 2010 objection and adopts the January 11, 2010 Magistrate's Decision.

The record reflects that notice of the January 8, 2010 hearing was provided to the Vaughns and their counsel; none of them appeared for the hearing. The Court finds that the Vaughns and their counsel had the opportunity to appear at the Magistrate's hearing and to be heard on the issues they now raise in the objection, but they failed to appear. The Court also finds that the Magistrate's Decision must have been based on evidence and testimony presented at the hearing. Therefore, the Court finds that the objection presents no evidence to show a mistake of fact, an error of law, or an abuse of discretion by the Magistrate.

It is, therefore, **ORDERED, ADJUDGED and DECREED** that the January 22, 2010 Objection to Magistrate's Decision is found not well taken and is hereby denied. The Court hereby adopts and affirms the January 11, 2010 Magistrate's Decision.

  
\_\_\_\_\_  
DENISE NAVARRE CUBBON, Judge

Copies delivered/mailed to:  
Benjamin J. Wyrembek  
Alan J. Lehenbauer, Esq.  
John Cameron  
A. Patrick Hamilton, Esq.  
Anthony J. Calamunci, Esq.  
Jason and Christy Vaughn  
Michael R. Voorhees, Esq.  
Drucilla Banner-Bocvarov  
Jovan Bocvarov  
Heather Fournier, Esq.

**EXHIBIT B**



on November 30, 2009, L-09-1160. Ben filed the Motion for Custody on 12/10/09 which is the subject of this hearing.

Testimony was given by the Plaintiff, Ben Wyrembek. Plaintiff's Exhibit 1, Complaint for Writ of Prohibition filed in the Supreme Court of Ohio on 12/29/2009 in case 09-2349, Vaughn v Cubbon was admitted into evidence without objection.

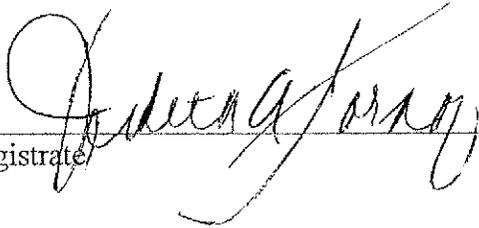
Findings of Fact:

1. Plaintiff, Ben Wyrembek is the father of the child.
2. Plaintiff first filed for custody of the child in December, 2007 in Fulton County, Ohio. Fulton County transferred its case to this court.
3. At the time of the child's birth, the mother, Drucilla Bocvarov was not married. She had been divorced from Jovan Bocvarov.
4. Ben Wyrembek has met with the Guardian ad litem four times, twice in her office and twice at his home.
5. Defendant mother executed a permanent surrender document regarding the child. The adoption proceeding was dismissed. The child has been residing in the home of the potential adoptive parents, Jason and Christy Vaughn, in Indiana since shortly after the child's birth, having been placed there by Adoption by Gentle Care and through the Interstate Compact. Adoption by Gentle Care held custody of the child for the sole purpose of obtaining adoption of the child. (R.C. 5103.15 (B)(2).
6. There is no adoption.
7. Plaintiff has not heard anything from Drucilla concerning the child.
8. Plaintiff has made efforts to obtain possession and custody of the child since December, 2007. He was granted visitation and there was an interim agreement for visitation resulting from a mediation held at this Court. The Vaughns were present, participated in the mediation and agreed to an interim order for visitation. A subsequent mediation was scheduled to which the Vaughns failed to appear.
9. Plaintiff has been able to see his son only once, on August 8, 2009 for 4 hours.
10. Plaintiff is employed and lives independently.
11. Plaintiff has the ability to financially and emotionally care for the child.
12. Plaintiff has had the child covered on his insurance since he found out that he is the biological father.
13. Plaintiff is the legal, biological father of this child. His parental rights were never terminated.
14. It is in the best interest of this child that custody be awarded to Plaintiff and that he be designated as the residential parent and legal custodian of the child. Any further delays in these proceedings do not serve the best interest of the child.
15. No evidence was presented as to the child support obligation of the defendant/mother.

Decision:

Plaintiff, Ben Wyrembek is designated as the residential parent and legal custodian of the child, pending submission of a favorable home study of Ben Wyrembek by the Guardian ad litem. The home study shall be submitted to the Court by February 4, 2010 with copies provided to Attorneys Lehenbauer and Calamunci. If the home study is favorable, Adoption by Gentle Care shall place the child with Ben Wyrembek by February 8, 2010. Adoption by Gentle Care shall remain a party to this action for the limited purpose of facilitating the transfer of possession of the child to his father.

The issue of child support is continued to the call of any party.

  
Magistrate Date: 1/8/10

Parties may file written objections to this decision with fourteen (14) days from the date it is filed in the Juvenile Clerk's office. Objections must be specific and state all particular grounds for objection. If the objection is to a factual finding, the objection shall be supported by an affidavit of the evidence. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law, unless the party timely and specifically objects to that factual finding or legal conclusion as required by Juvenile Rule 40, Civil Rule 53, and Criminal Rule 19.

**EXHIBIT C**

# The Supreme Court of Ohio

FILED

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CLERK OF COURT  
SUPREME COURT OF OHIO

State of Ohio, ex rel. Jason Edward  
Vaughn and Christy Lynn Vaughn

Case No. 2009-2349

v.

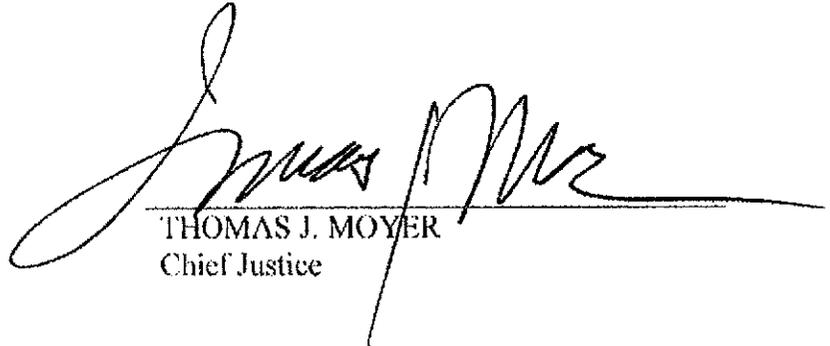
IN PROHIBITION

Judge Denise Navarre Cubbon

ENTRY

This cause originated in this Court on the filing of a complaint for a writ of prohibition involving termination of parental rights/adoption. Upon consideration pursuant to S.Ct. Prac. R. 10.5,

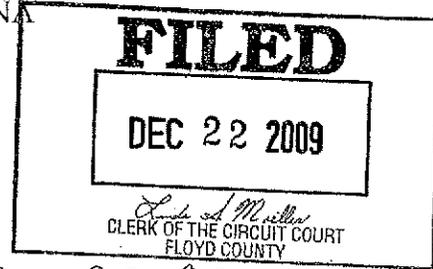
It is ordered by the Court that this cause is dismissed.



THOMAS J. MOYER  
Chief Justice

**EXHIBIT D**

IN THE CIRCUIT COURT OF INDIANA  
FOR FLOYD COUNTY



IN THE INTEREST OF:

GRAYSON THOMAS BOCVAROV )  
(a/k/a Grayson Thomas Vaughn), )  
a minor in the possession of )  
Jason and Christy Vaughn )  
)

CASE # 22001-0912-AD-30  
JUDGE J. TERRENCE CODY

JASON EDWARD VAUGHN  
And  
CHRISTY LYN VAUGHN

PETITIONERS

Vs. VERIFIED PETITION FOR ADOPTION

BENJAMIN WYREMBEK  
112 Bassett St.  
Swanton, OH 43558

And

ADOPTION BY GENTLE CARE  
380 1/2 East Town Street  
Columbus, OH 43215

RESPONDENTS

SERVE: Gentle Care Adoption Services  
389 Library Park South  
Columbus, OH 43215

\*\*\* \*\*

Come the Petitioners, Jason Edward Vaughn and Christy Lyn Vaughn, and for their  
Petition for Adoption of Grayson Thomas Bocvarov a/k/a Grayson Thomas Vaughn, state as  
follows:

1. Jason Edward Vaughn and Christy Lyn Vaughn are husband and wife,  
having been married on June 26,1999, in Shelby County, Kentucky. Petitioners reside together  
in Floyd County, Indiana, and have done so continuously since December, 2002. Venue is  
proper in this court because Jason and Christy Vaughn, the prospective adoptive parents of

Grayson Thomas Bocvarov, now known as Grayson Thomas Vaughn, have been continuously residing in Floyd County, Indiana for more than one year before the filing of this Petition, and are actual bona fide residents of Floyd County, Indiana. Petitioners' mailing address is 2821 Plantation Court, Sellersburg, Indiana 47172.

2. Grayson Thomas Bocvarov a/k/a Grayson Thomas Vaughn, is a minor child, having been born in Lucas County, Ohio on October 29, 2007. The minor child is and has been a resident of Floyd County, Indiana since November 8, 2007.

3. Drucilla Bocvarov is the natural mother of Grayson Thomas Bocvarov a/k/a Grayson Thomas Vaughn. On November 1, 2007, Drucilla Bocvarov signed her permanent surrender of parental rights, and requested Adoption by Gentle Care, a duly licensed Ohio private child placing agency, as defined in § 2151.011(A)(3) of the Ohio Revised code, to take permanent custody of the child.

4. The husband of Drucilla Bocvarov at the time of birth of the child was Jovan Bocvarov. Under Ohio law, Jovan Bocvarov was presumed to be the natural father of Grayson Thomas Bocvarov. On November 4, 2007, Jovan Bocvarov signed his permanent surrender of parental rights, and also requested Adoption by Gentle Care to take permanent custody of the child.

5. Benjamin Wyrembek, Respondent herein, is the biological father of Grayson Thomas Bocvarov. Benjamin Wyrembek has never been married to Drucilla Bocvarov, the mother of Grayson Thomas Bocvarov, nor has he ever had a parent-child relationship with Grayson Thomas Bocvarov. Benjamin Wyrembek has never made any substantial contribution to the support of Grayson Thomas Bocvarov, other than \$25.00 on or about Grayson's first

birthday, and two (2) one hundred dollar payments (\$100.00), subsequent to this court's grant of temporary emergency custody of Grayson to Petitioners.

6. In accordance with the statutory procedures set forth in § 5103.15 of the Ohio Revised Code, Adoption by Gentle Care accepted permanent custody of Grayson Thomas Bocvarov on November 4, 2007. On that same date, Adoption by Gentle Care placed the child in an adoptive placement with Petitioners, Jason and Christy Vaughn. The placement of Grayson Thomas Bocvarov with Jason and Christy Vaughn received Interstate Compact on the Placement of Children (hereinafter, "ICPC") approval on November 8, 2007.

7. Grayson Thomas Bocvarov has resided in the home of Jason and Christy Vaughn in Floyd County, Indiana in a supervised adoptive placement since the ICPC approval date of November 8, 2007.

8. Petitioners have been the primary caregiver for, and financial support of, Grayson Thomas Bocvarov who is less than three (3) years of age and has resided with them since birth. Petitioners have had the sole physical custody of Grayson Thomas Bocvarov, and have provided the sole physical care and supervision of the child since birth.

9. Consent to adoption by the biological father Benjamin Wyrembek is not required pursuant to IC 31-19-9-8 because he has abandoned or deserted Grayson for at least six (6) months immediately preceding the date of the filing of the petition for adoption. Any efforts by the biological father Benjamin Wyrembek to support or to communicate with the child have only been token efforts and the court should declare the child abandoned by the biological father Benjamin Wyrembek. Further, consent to adoption by the biological father Benjamin Wyrembek is not required pursuant to IC 31-19-9-8 because, for a period of at least one (1) year, he has failed without justifiable cause to communicate significantly with the child when able to do so.

Further, consent to adoption by the biological father Benjamin Wyrembek is not required pursuant to IC 31-19-9-8 because, for a period of at least one (1) year, he has knowingly failed to provide for the care and support of the child when able to do so as required by law. Further, consent to adoption by the biological father Benjamin Wyrembek is not required pursuant to IC 31-19-9-8 because he is unfit to be a parent and the best interests of the child sought to be adopted would be served if the court dispensed with the parent's consent.

10. Petitioners desire to adopt said infant, Grayson Thomas Bocvarov, as their heir-at-law and establish and fix the name of said infant as Grayson Thomas Vaughn, and gain joint parental care, custody and control of said infant.

11. The infant, Grayson Thomas Bocvarov, owns no real or personal property known to Petitioners.

12. Petitioners are the fit and proper persons to adopt said infant, Grayson Thomas Bocvarov, to have in their care, custody and control. Petitioners are of good moral character, are of reputable standing in the community, and are financially able to and will properly rear, maintain and educate Grayson Thomas Bocvarov.

13. Grayson Thomas Bocvarov is suitable for adoption and it would be in the best interest of said child to permit Petitioners to adopt said infant.

WHEREFORE, Petitioners respectfully request the following relief:

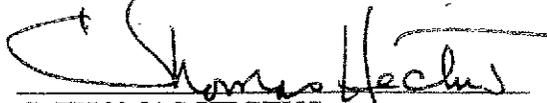
1. That the Court enter an order adjudging the adoption of the infant, Grayson Thomas Bocvarov;
2. That said infant be decreed to be the lawful child and heir-at-law of Petitioners, and as such, capable of inheriting as though said child was their natural and legitimate child;
3. That Petitioners be granted parental care, custody and control of said infant child;

4. That said infant child now be designated by the name of Grayson Thomas Vaughn;

and

5. Any and all other relief to which they may be entitled.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "C. Thomas Hectus", written over a horizontal line.

C. THOMAS HECTUS

Indiana Bar No. 11846-10

**Hectus & Strause PLLC**

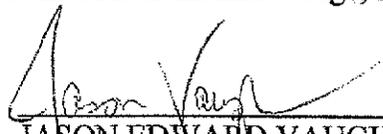
804 Stone Creek Parkway, Suite 1

Louisville, Kentucky 40223

**Counsel for Petitioners**

VERIFICATION

The Petitioner, Jason Edward Vaughn, states that he has read the foregoing Petition for Adoption, and the facts contained therein are true to the best of his knowledge, information and belief.

  
\_\_\_\_\_  
JASON EDWARD VAUGHN

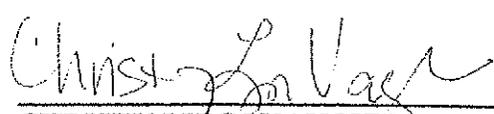
STATE OF INDIANA )  
 ) SS  
COUNTY OF FLOYD )

Subscribed, sworn to, and acknowledged before me by Jason Edward Vaughn, this \_\_\_<sup>th</sup> day of December, 2009.

  
\_\_\_\_\_  
NOTARY PUBLIC,  
STATE AT LARGE

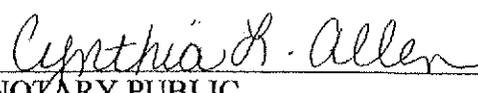
My Commission Expires: Notary Public, State at Large, IN  
~~My commission expires Nov. 27, 2014~~

The Petitioner, Christy Lynn Vaughn, states that she has read the foregoing Petition for Adoption, and the facts contained therein are true to the best of her knowledge, information and belief.

  
\_\_\_\_\_  
CHRISTY LYNN VAUGHN

STATE OF INDIANA )  
 ) SS  
COUNTY OF FLOYD )

Subscribed, sworn to, and acknowledged before me by Christy Lynn Vaughn, this \_\_\_<sup>th</sup> day of December, 2009.

  
\_\_\_\_\_  
NOTARY PUBLIC,  
STATE AT LARGE

My Commission Expires: Notary Public, State at Large, IN  
~~My commission expires Nov. 27, 2014~~

**EXHIBIT E**

FILED  
JAMES BONINI  
CLERK

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

10 JAN 14 PM 12:59

U.S. DISTRICT COURT  
SOUTHERN DIST. OHIO  
EAST. DIV. COLUMBUS

DRUCILLA BOCVAROV  
6725 Worth Avenue  
Sylvania, Ohio 43560

and

JASON VAUGHN and  
CHRISTY VAUGHN  
2821 Plantation Court  
Sellersburg, Indiana 47172

PLAINTIFFS

vs.

JUDGE JACK PUFFENBERGER  
Lucas County Probate Court  
700 Adams Street, Suite 200  
Toledo, Ohio 43624

and

BENJAMIN WYREMBEK  
112 Bassett Avenue  
Swanton, Ohio 43558

DEFENDANTS

CASE NO: **2:10 cv 039**

~~JUDGE SARGUS~~

Judge \_\_\_\_\_

**MAGISTRATE JUDGE KING**

Magistrate Judge \_\_\_\_\_

COMPLAINT

Now come the Plaintiffs, Drucilla Bocvarov and Jason and Christy Vaughn, and for their complaint against the Defendants, Judge Jack Puffenberger and Benjamin Wyrembek, state as follows:

**Parties**

1. Plaintiff Drucilla Bocvarov is an individual citizen, who resides in the State of Ohio at 6725 Worth Avenue, Sylvania, Ohio 43560. Plaintiff Drucilla Bocvarov is the birth-mother of Grayson Thomas Bocvarov, a child born in Lucas County, Ohio on October 29, 2007.

2. Plaintiffs Jason and Christy Vaughn are individual citizens, who are husband and wife and who reside together in the State of Indiana at 2821 Plantation Court, Sellersburg, Indiana 47172. Plaintiffs Jason and Christy Vaughn are the prospective adoptive parents and physical custodians of Grayson Thomas Bocvarov.

3. Defendant Judge Jack Puffenberger is and at all relevant times has been the Judge of the Probate Court, Lucas County, Ohio located at 700 Adams Street, Suite 200, Toledo, Ohio 43624.

4. Defendant Benjamin Wyrembek is an individual citizen, who resides in the State of Ohio at 112 Bassett Avenue, Swanton, Ohio 43558. Defendant Benjamin Wyrembek is the biological father of Grayson Thomas Bocvarov.

**Jurisdiction and Venue**

5. This action arises under the Due Process Clause of the Fourteenth Amendment to the United States Constitution and under the Fourth Amendment to the United States Constitution, and under the Civil Rights Act of 1871, 42 U.S.C. §§ 1983 and 1988.

6. Jurisdiction is conferred on this Court by Article III, Section 2 of the United States Constitution and 28 U.S.C. §§ 1331 and 1343.

7. Jurisdiction over Ohio state law claims is founded upon pendant jurisdiction.

8. Venue for all causes of action stated is appropriate in the Southern District of the State of Ohio as the child is in the permanent custody of Adoption By Gentle Care, which is an Ohio corporation with its statutory agent located within in the Southern District of the State of Ohio. Adoption By Gentle Care is an Ohio corporation and a duly licensed private child placing agency, as defined in § 2151.011(A)(3) of the Ohio Revised Code, located at 380½ East Town Street, Columbus, Ohio 43215. Adoption By Gentle Care has permanent custody of Grayson Thomas Bocvarov, and has placed the child with Plaintiffs Jason and Christy Vaughn, and has consented to the adoption of this child by Plaintiffs Jason and Christy Vaughn.

**Statement of Facts**

9. Grayson Thomas Bocvarov, was born on October 29, 2007 in Lucas County, Ohio. The birth-mother of Grayson is Plaintiff Drucilla Bocvarov. The legal father of the child at the time of birth was Jovan Bocvarov (a copy of the birth certificate is attached to and filed with this Complaint as Exhibit A).

10. On November 1, 2007, Plaintiff Drucilla Bocvarov signed her permanent surrender requesting Adoption By Gentle Care take permanent custody of the child (a copy of the permanent surrender is attached to and filed with this Complaint as Exhibit B).

11. On November 4, 2007, Jovan Bocvarov signed his permanent surrender requesting Adoption By Gentle Care to take permanent custody of the child (a copy of the permanent surrender is attached to and filed with this Complaint as Exhibit C).

12. In accordance with the statutory procedures set forth in § 5103.15 of the Ohio Revised Code, Adoption By Gentle Care accepted permanent custody of the child on November 4, 2007. On that same date of November 4, 2007, Adoption By Gentle Care placed the child in an adoptive placement with Plaintiffs Jason and Christy Vaughn. The placement received ICPC

(Interstate Compact on the Placement of Children) approval on November 8, 2007 (a copy of the ICPC approval is attached to and filed with this Complaint as Exhibit D). The child has resided in the Indiana home of Plaintiffs Jason and Christy Vaughn in a supervised adoptive placement since the ICPC approval date of November 8, 2007.

13. On January 16, 2008, Plaintiffs Jason and Christy Vaughn filed a Petition for Adoption in the Lucas County Probate Court (a copy of the Petition is attached to and filed with this Complaint as Exhibit E).

14. Defendant Benjamin Wyrembek filed an objection to the adoption and continues to attempt to disrupt the adoptive placement and the adoption plan made by Plaintiff Drucilla Bocvarov.

15. Defendant Judge Jack Puffenberger refused to address the allegation set forth in the Petition for Adoption that the birth-mother has a constitutional right to make this adoption plan (a copy of his decision is attached to and filed with this Complaint as Exhibit F).

#### Cause of Action

16. Plaintiffs hereby incorporate all prior paragraphs of the Complaint as if fully restated herein.

17. Plaintiff Drucilla Bocvarov has the right of privacy and the right to make decisions concerning the adoptive placement of her child at birth, which are rights and liberty interests protected by the Due Process Clause of the Fourteenth Amendment of the United States Constitution, as recognized by the United States Supreme Court in *Roe v. Wade* (1973), 410 U.S. 113, 35 L. Ed. 2d 147, 93 S. Ct. 705, *Planned Parenthood of Southeastern Pennsylvania v. Casey* (1992), 505 U.S. 833, 120 L. Ed. 2d 674, 112 S. Ct. 2791, *Planned Parenthood of Central Mo. v. Danforth* (1976), 428 U.S. 52, 49 L. Ed. 2d 788, 96 S. Ct. 2831, *Stanley v. Illinois* (1972),

405 U.S. 645, 31 L. Ed. 2d 551, 92 S. Ct. 1208, *Quilloin v. Walcott* (1978), 434 U.S. 246, 54 L. Ed. 2d 511, 98 S. Ct. 549, *Caban v. Mohammed* (1979), 441 U.S. 380, 60 L. Ed. 2d 297, 99 S. Ct. 1760, *Lehr v. Robertson* (1983), 463 U.S. 248, 77 L. Ed. 2d 614, 103 S. Ct. 2985, and *Michael H. v. Gerald D.* (1989), 491 U.S. 110, 105 L. Ed. 2d 91, 109 S. Ct. 2333.

18. Plaintiff Drucilla Bocvarov and Jovan Bocvarov, who was the husband of Plaintiff Drucilla Bocvarov when the child was conceived and who is the legal father under Ohio law, have the right of privacy as a marital unit relating to decisions concerning the adoptive placement of the child at birth, which are rights and liberty interests protected by the Due Process Clause of the Fourteenth Amendment of the United States Constitution, as recognized by the United States Supreme Court in *Michael H. v. Gerald D.* (1989), 491 U.S. 110, 105 L. Ed. 2d 91, 109 S. Ct. 2333.

19. Based upon the constitutional right of Plaintiff Drucilla Bocvarov, Adoption By Gentle Care has the right to make an adoptive placement of the child in accordance with the wishes of Plaintiff Drucilla Bocvarov in the exercise of her constitutional rights.

20. Based upon the constitutional right of Plaintiff Drucilla Bocvarov, Plaintiffs Jason and Christy Vaughn have the right to finalize their adoption in accordance with the wishes of Plaintiff Drucilla Bocvarov in the exercise of her constitutional rights.

21. The actions of Defendant Judge Jack Puffenberger were under the color of law and were reckless and callously indifferent to the federally protected rights of the Plaintiffs.

22. Defendant Judge Jack Puffenberger has violated the constitutional rights of the Plaintiffs by his refusal to even address or consider the allegations set forth in the Petition for Adoption.

23. Defendant Benjamin Wyrembek has violated the constitutional rights of the Plaintiffs by attempting to disrupt the adoptive placement and the adoption plan made by Plaintiff Drucilla Bocvarov.

**Prayer for Relief**

**WHEREFORE**, Plaintiffs Drucilla Bocvarov and Jason and Christy Vaughn pray for judgment against Defendant Benjamin Wyrembek as follows:

(A) That this Court find that Plaintiff Drucilla Bocvarov has the constitutional right to place her newborn child and make an adoption plan for her newborn, which is a right protected by the Due Process Clause of the Fourteenth Amendment of the United States Constitution;

(B) That this Court find that Adoption By Gentle Care has the right to make an adoptive placement of the child in accordance with the wishes of Plaintiff Drucilla Bocvarov in the exercise of her constitutional rights;

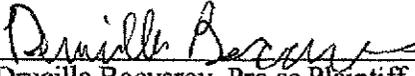
(C) That this Court find that Plaintiffs Jason and Christy Vaughn have the right to finalize their adoption in accordance with the wishes of Plaintiff Drucilla Bocvarov in the exercise of her constitutional rights;

(D) That this Court find that Defendant Judge Jack Puffenberger violated the constitutional rights of the Plaintiffs by his refusal to even address or consider the allegations set forth in the Petition for Adoption;

(E) That this Court find that any and all attempts by Defendant Benjamin Wyrembek to disrupt the adoptive placement and the adoption plan made by Plaintiff Drucilla Bocvarov are acts that infringe upon the constitutional rights of Plaintiff Drucilla Bocvarov and therefore, Defendant Benjamin Wyrembek has no right to object to the adoption; and

(F) That this Court grant Plaintiffs such other and further relief as may be just and equitable.

Respectfully submitted,

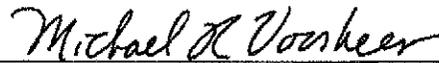


Drucilla Bocvarov, Pro se Plaintiff

6725 Worth Avenue

Sylvania, Ohio 43560

(419) 882-6347 phone



Michael R. Voorhees (Ohio # 0039293)

Voorhees and Levy LLC

11159 Kenwood Road

Cincinnati, Ohio 45242

(513) 489-2555 phone

(513) 489-2556 fax

[mike@ohioadoptionlawyer.com](mailto:mike@ohioadoptionlawyer.com)

Attorney for Plaintiffs Jason & Christy Vaughn

**EXHIBIT A**

VERIFY PRESENCE OF ODH WATERMARK

HOLD TO LIGHT TO VIEW

HEREBY CERTIFY THIS DOCUMENT IS AN EXACT COPY OF THE RECORD ON FILE WITH THE OHIO DEPARTMENT OF HEALTH.

AP 28 09 05 45 8 P

*Judith B. Nagy*

JUDITH B. NAGY, STATE REGISTRAR  
OFFICE OF VITAL STATISTICS  
WITNESS MY SIGNATURE & SEAL



Ohio Department of Health  
VITAL STATISTICS

Reg. Dist. No. 4802

Primary Reg. Dist. No. 4802

Registrar's No. 4800-200708715

CERTIFICATE OF LIVE BIRTH

Certificate No. 134-2007-127781

<b>CHILD</b>		1. CHILD'S NAME (First, Middle, Last, Suffix) GRAYSON THOMAS BOCVAROV	
2. TIME OF BIRTH (24hr) 11:40	3. SEX Male	4. DATE OF BIRTH (Mo/Day/Yr) 10/29/2007	
5a. FACILITY NAME (If not inclusion, give street and number) ST LUKES HOSPITAL			
5b. CITY, TOWN OR LOCATION OF BIRTH MAUMEE		5c. COUNTY OF BIRTH LUCAS	
<b>ATTENDANT</b>		6a. ATTENDANT'S NAME KAREN ADAMS-FERGUSON	
		6b. ATTENDANT'S TITLE MD	
6c. I certify that the above named child was born alive at the place and time on the date stated above.		6d. DATE SIGNED (Mo/Day/Yr) 11/9/08	
<b>MOTHER</b>		7b. DATE OF BIRTH (Mo/Day/Yr) 12/01/1968	
7a. MOTHER'S CURRENT LEGAL NAME (First, Middle, Last, Suffix) DRUGILLA ROSE BOCVAROV		7d. BIRTHPLACE (State, Territory, or Foreign Country) TEXAS	
7c. MOTHER'S MARRIAGE PRIOR TO FIRST MARRIAGE BANNERS		7e. STREET AND NUMBER OF MOTHER'S RESIDENCE 2045 CHRISTIE ST	
7f. STATE, TERRITORY, OR FOREIGN COUNTRY UNKNOWN		8a. APT. NO.	8c. CITY, TOWN OR LOCATION TOLEDO
		8b. ZIP CODE 43606	8f. COUNTY
<b>FATHER</b>		9a. FATHER'S CURRENT LEGAL NAME (First, Middle, Last, Suffix) JOVAN BOCVAROV	
9b. DATE OF BIRTH (Mo/Day/Yr) 01/20/1972		9c. BIRTHPLACE (State, Territory, or Foreign Country) MACEDONIA	
<b>ACKNOWLEDGEMENT OF FILING</b>		10a. REGISTRAR'S SIGNATURE <i>Sergiy Pangyan</i>	
		10b. DATE FILED BY REGISTRAR (Mo/Day/Yr) JAN 17 2008	

**EXHIBIT B**

12-28-07 13:54 FROM-Gentle Care Adoption 614-621-2229

T-844 P002/069 F-670

**PERMANENT SURRENDER OF CHILD**

I, Drucilla Rose Backarov, am 38 years old and am the Parent/Guardian of Grayson Thomas Vaughn  
full name child's name  
 born on 10/29/07 in Maumee, Lucas, OHIO  
date of birth city of birth county of birth state of birth  
 who currently lives at 3045 Christie Street, Toledo, Ohio 43606 sign this permanent surrender  
parent's street address/city/state  
 as the child's  mother,  father,  putative father,  guardian, and hereby request Adoption By Gentle Care  
agency name

to take permanent custody and control of the child. I am unable to care for said child for the following reasons: I am a single parent, and due to finances, I am currently parenting two other children

The Assessor has provided the following counseling and discussed alternatives to the surrender: Pre & Post Adoption Options  
Temporary Custody w/ Foster Care, Reviewed & Signed the Ohio Laws & Adoption  
Materials Form  
 Date on which this was provided: 10/14/07 Name of Assessor: Megan Kennedy, LSW

I agree and understand that under Ohio law, signing this document means:

- All my rights as a parent to the above named child will end. This includes, but is not limited to, all rights to visitation, communication, support, religious affiliation and the right to consent to the child's adoption.
- The Agency shall have permanent custody of the child and shall have the right to place the child in any adoptive home or other substitute care settings it finds in the child's best interest (Ohio Revised Code Sections 3107.01 and 3107.06).

This permanent surrender was taken at 11:20  AM  PM, on the 1 of November 20 07 in  
time day month year  
 the following location: Maumee, Ohio

I have read this permanent surrender or it was read to me before I signed it. I was given the opportunity to ask questions concerning this permanent surrender and those questions were fully answered to my satisfaction. I understand and agree to the terms of this permanent surrender of my child. I am signing this permanent surrender of my child voluntarily and at least 72 hours after the birth of the child.

Witness <u>Megan Kennedy, LSW</u>	Date <u>11-1-07</u>	Signature of Parent/Guardian <u>Drucilla Rose Backarov</u>	Date <u>11-1-07</u>
--------------------------------------	------------------------	---	------------------------

By my signature below, John E. Cameron by virtue of my authority as Executive Director of Adoption By Gentle Care  
agency representative's name agency representative's title agency name  
 which is an agency duly authorized pursuant to Ohio Revised Code Sections 5103.03 and 5153.16, to accept permanent custody of children by surrender, hereby accept permanent custody of Grayson Thomas Vaughn from Drucilla Rose Backarov  
child's name parent's name

Witness <u>Megan Kennedy, LSW</u>	Date <u>11-1-07</u>	Signature of Authorized Agency Representative <u>John E. Cameron</u>	Date <u>11-1-07</u>
--------------------------------------	------------------------	---	------------------------

Under Ohio law, Ohio Revised Code Section 5103.15(B), approval of the juvenile court is required if this agreement is entered into by a public children service agency or is executed by a private child placing agency for a child six months of age or older.

By my signature, below, I hereby approve the transfer of permanent custody of (child's name) \_\_\_\_\_  
 by the child's parent/guardian to the (agency name) \_\_\_\_\_

I find that continuation in the home is contrary to the best interest of the child and that the placement is in the best interest of the child.

Name of Court	Signature of Judge	Date
---------------	--------------------	------

This has been duly recorded on page number \_\_\_\_\_ of volume number \_\_\_\_\_ of the records of this court.

**EXHIBIT C**

12-28-'07 13:54 FROM-Gentle Care Adoption 614-621-2229

T-844 P003/069 F-670

**PERMANENT SURRENDER OF CHILD**

I, Jovan Bocvarov am 35 years old and am the <sup>Legal</sup> Parent/Guardian of Grayson Thomas <sup>child's name</sup> Vaughn  
 born on 10/29/07 in Maumee, Lucas Ohio  
date of birth city of birth county of birth state of birth  
 who currently lives at 4840 Wick Reed Green #6 Sylvania, Ohio 43360  
parent's street address/city/state sign this permanent surrender  
 as the child's  mother,  <sup>Legal</sup> father,  putative father,  guardian, and hereby request Adoption By Gentle Care  
agency name  
 to take permanent custody and control of the child. I am unable to care for said child for the following reasons: I am not the biological father

The Assessor has provided the following counseling and discussed alternatives to the surrender: Pre & Post Adoption Options  
Temporary Custody w/ Foster Care, Reviewed & Signed Ohio laws & Adoption  
materials form  
 Date on which this was provided: 11/1/07 Name of Assessor: Megan Kennedy, LSW

- I agree and understand that under Ohio law, signing this document means:
1. All my rights as a <sup>Legal</sup> parent to the above named child will end. This includes, but is not limited to, all rights to visitation, communication, support, religious affiliation and the right to consent to the child's adoption.
  2. The Agency shall have permanent custody of the child and shall have the right to place the child in any adoptive home or other substitute care settings it finds in the child's best interest (Ohio Revised Code Sections 3107.01 and 3107.06).

This permanent surrender was taken at 1:27  AM  PM, on the 4 of November, 2007 in  
time day month year  
 the following location: Toledo, Ohio

I have read this permanent surrender or it was read to me before I signed it. I was given the opportunity to ask questions concerning this permanent surrender and those questions were fully answered to my satisfaction. I understand and agree to the terms of this permanent surrender of my child. I am signing this permanent surrender of my child voluntarily and at least 72 hours after the birth of the child.

Witness <u>Megan Kennedy</u>	Date <u>11/4/07</u>	Signature of Parent/Guardian <u>Jovan Bocvarov</u>	Date <u>11/04/07</u>
---------------------------------	------------------------	---	-------------------------

By my signature below, I John E. Cameron by virtue of my authority as Executive Director Adoption By  
agency representative's name agency representative's title agency name  
Gentle Care  
 which is an agency duly authorized pursuant to Ohio Revised Code Sections 5103.03 and 5153.16, to accept permanent custody of  
 children by surrender, hereby accept permanent custody of Grayson Thomas Vaughn from Jovan Bocvarov  
child's name parent's name

Witness <u>Megan Kennedy, LSW</u>	Date <u>11/4/07</u>	Signature of Authorized Agency Representative <u>John E. Cameron</u>	Date <u>11/4/07</u>
--------------------------------------	------------------------	---	------------------------

Under Ohio law, Ohio Revised Code Section 5103.15(B), approval of the juvenile court is required if this agreement is entered into by a public children service agency or is executed by a private child placing agency for a child six months of age or older.  
 By my signature, below, I hereby approve the transfer of permanent custody of (child's name) \_\_\_\_\_  
 by the child's parent/guardian to the (agency name) \_\_\_\_\_

I find that continuation in the home is contrary to the best interest of the child and that the placement is in the best interest of the child.

Name of Court	Signature of Judge	Date
---------------	--------------------	------

This has been duly recorded on page number \_\_\_\_\_ of volume number \_\_\_\_\_ of the records of this court.

**EXHIBIT D**

Ohio Department of Job and Family Services  
 INTERSTATE COMPACT PLACEMENT REQUEST (ICPC 100-A)

95779

TO: (Home and Address of ICPC Administrator in Receiving State) Deputy Compact Adm. Programs Services Div. MS 08 402 W. Washington St. Rm W-364 Indianapolis, IN 46204-2739	FROM: ODJFS ICPC OFFICE P.O. Box 182709 COLUMBUS OH 43218-2709 614-466-1213
--	--

SECTION 1: IDENTIFYING INFORMATION

Child's Name Grayson Thomas Vaughn	Date of Birth 10/29/07	<input checked="" type="checkbox"/> Male <input type="checkbox"/> Female	Ethnic Group Hispanic/ Caucasian
Mother's Name T.P.R.	Father's Name T.P.R.		
Name of Agency or Person Responsible for Planning for Child Adoption By Gentle Care			Telephone (614) 469-0007
Address, City, State, Zip Code 380 1/2 E. Town Street Columbus, Ohio 43215			
Name of Agency or Person Financially Responsible for Child Adoption By Gentle Care			Telephone (614) 469-0007
Address, City, State, Zip Code 380 1/2 E. Town Street Columbus, Ohio 43215			

SECTION 2: PLACEMENT INFORMATION (CHECKED BOX APPLIES)

Name of Person(s) or Facility Child is To Be Placed With Jason & Christy Vaughn	Telephone (812) 246-0416
Address, City, State, Zip Code 2821 Plantation Court Sellersburg, IN 47172	
Type of Care (Check One)	
<input type="checkbox"/> Foster Family Care	<input type="checkbox"/> Parent
<input type="checkbox"/> Group Home Care	<input type="checkbox"/> Relative (Relationship)
<input type="checkbox"/> Residential Treatment	<input checked="" type="checkbox"/> Adoption
<input type="checkbox"/> Child-Caring Institution	<input type="checkbox"/> Other:
<input type="checkbox"/> Institutional Care Article VI	
Legal Status (Check One)	
<input type="checkbox"/> Sending Agency Custody/Guardianship	<input checked="" type="checkbox"/> Parental Rights Terminated - Right to Place for Adoption
<input type="checkbox"/> Parent/Relative Custody/Guardianship	<input type="checkbox"/> Unaccompanied Refugee Minor
<input type="checkbox"/> Court Jurisdiction Only	<input type="checkbox"/> Other:
Financial Status (Check all Applicable Items)	
<input type="checkbox"/> IV-Eligible	<input type="checkbox"/> IV-E Adoption Assistance
<input type="checkbox"/> IV-E Foster Care Maintenance	<input type="checkbox"/> Other:

SECTION 3: SERVICES REQUESTED (CHECKED BOX APPLIES)

Initial Report (If Applicable)	Supervisory Services	Supervisory Reports
<input type="checkbox"/> Adoption Home Study	<input checked="" type="checkbox"/> Another Agency Agreed to Supervise	<input type="checkbox"/> Monthly
<input type="checkbox"/> Foster Home Study	<input type="checkbox"/> Request Receiving State to Supervise	<input type="checkbox"/> Quarterly
<input type="checkbox"/> Parent Home Study	<input type="checkbox"/> Sending Agency Agreed to Supervise	<input type="checkbox"/> Upon Request
<input type="checkbox"/> Relative Home Study		<input checked="" type="checkbox"/> Other: monthly visits over 6 mos until finalization.

Name and Address of Supervising Agency in Receiving State Childplace, 2420 E. 10th Street, Jeffersonville, IN 47130		
Enclosed Documents (Check all Applicable Items)		
<input checked="" type="checkbox"/> Child's Social History	<input type="checkbox"/> Court Order	<input checked="" type="checkbox"/> Other Enclosures
<input checked="" type="checkbox"/> Home Study Placement Resource		
Signature of Sending Agency or Person <i>John E. Carver</i>		Date Signed 11/3/07
Signature of Sending State ICPC Administrator or Alternate <i>Eric [Signature]</i>		Date Signed 11/3/07

SECTION 4: ACTION BY RECEIVING STATE

<input checked="" type="checkbox"/> Placement May Be Made	<input type="checkbox"/> Shall not Be Made	REMARKS 42
Signature of Receiving State ICPC Administrator or Alternate <i>[Signature]</i>		Date Signed 11/3/07

DISTRIBUTION: Sending Agency Retains One (1) Copy and Forwards Five (5) Copies to Ohio's ICPC Office

**EXHIBIT E**

**COPY**

PROBATE COURT OF LUCAS COUNTY, OHIO

IN THE MATTER OF THE ADOPTION OF GRAYSON THOMAS VAUGHN

(Name after adoption)

CASE NO. 2008 ADP 030512

**FILED**

JAN 16 2008

PETITION FOR ADOPTION OF MINOR

[R.C. 3107.05]

LUCAS CO. PROBATE COURT  
JACK R. PUFFENBERGER  
JUDGE

The undersigned petitions to adopt Grayson Thomas Vaughn, a minor,  
and to change the name of the minor to Grayson Thomas Vaughn.

The petitioner states the following:

**PETITIONER**

Full Name: Jason Edward Vaughn Age 36

Full Name: Christy Lynn Vaughn Age 33

Place of Residence: 2821 Plantation Court  
Street Address

Sellersburg Floyd  
City or Village or Township if unincorporated area County

Indiana 47172 6 years  
Post Office State Zip Code Duration of residence

Marital Status: married Date and Place of Marriage: June 26, 1999 - Shelbyville, Kentucky

Relationship of Minor to Petitioner: None

The petitioner has facilities and resources suitable to provide for the nurture and care of the minor and it is the desire of the petitioner to establish the relationship of parent and child with the minor.

**MINOR TO BE ADOPTED**

Birth Name: Grayson Thomas Vaughn Date of Birth: October 29, 2007

Place of Birth: St. Luke Hospital, Maumee, Ohio Property and Value: none

The minor is living in the home of the petitioner, and was placed therein for adoption on the 1st day of November, 2007 by Adoption By Gentle Care

The minor is not living in the home of the petitioner, and resides at \_\_\_\_\_

The minor will be an adopted person as defined in R.C. 3107.39;

The minor will be an adopted person as defined in R.C. 3107.45;

A certified copy of the birth certificate of the minor is filed with this petition or is not available due to the following:

A Preliminary Estimate Account (Form 18.9), if required, is filed with this petition.

The minor is in the permanent custody of Adoption By Gentle Care

whose address is 380 1/2 East Town Street, Columbus, Ohio 43215

**PERSONS OR AGENCIES WHOSE CONSENT TO THE ADOPTION IS REQUIRED**

Adoption By Gentle Care \_\_\_\_\_, the agency has permanent custody of the minor  
 filed under \_\_\_\_\_  Consent filed

**PERSONS WHOSE CONSENT TO THE ADOPTION IS NOT REQUIRED**

- A The consent of Drucilla Rose Bocvarov \_\_\_\_\_ birth-mother  
Name Address Relationship
- B The consent of Jovan Bocvarov \_\_\_\_\_ legal father  
Name Address Relationship
- C The consent of \_\_\_\_\_ putative father  
Name Address Relationship

are not required because:

birth-mother and legal father entered into voluntary permanent surrender agreements with Adoption By Gentle Care and their consents are not required pursuant R.C. 3107.07(C); the consent of the putative father is not required based on any of the following: a) the husband of the birth-mother is the presumed legal father pursuant to R.C. 3111.03(A)(1) and the putative father has no standing in this adoption proceeding and is not entitled to any notice of this adoption proceeding; b) the putative father is not the father of the minor; c) the putative father has willfully abandoned or failed to care for and support the minor; d) the putative father has willfully abandoned the mother of the minor during her pregnancy and up to the time of her surrender of the minor, or the minor's placement in the home of the petitioner; e) R.C. 3107.06(C), which states that "Unless consent is not required under section 3107.07 of the Revised Code, a petition to adopt a minor may be granted only if written consent to the adoption has been executed by all of the following:...(C) The putative father of the minor; ." is unconstitutional in its application to this placement and petition, where the right of the birth-mother to place this infant at birth for adoption is a liberty interest protected by the Due Process Clause of the Fourteenth Amendment of the United States Constitution; f) the biological parent must have legal custody of the minor to have any rights and the putative father, by definition, cannot have legal custody and therefore has no rights; g) the adoption is in the best interest of the child

Michael R. Voorhees  
 Attorney for Petitioner

Michael R. Voorhees  
 Typed or Printed Name

11159 Kenwood Road  
 Street Address

Cincinnati Ohio 45242  
 City State Zip Code

(513) 489-2555  
 Phone Number (include area code)

Attorney Registration No. 0039293

Jason Vaughn  
 Petitioner

Jason Edward Vaughn  
 Typed or Printed Name

Christy Vaughn  
 Petitioner

Christy Lynn Vaughn  
 Typed or Printed Name

2821 Plantation Court  
 Street Address

Sellersburg Indiana 47172  
 City State Zip Code

(812) 246-0416  
 Phone Number (include area code)

**EXHIBIT F**

FILED  
LUCAS CO. PROBATE COURT  
JACK R. PUFFENBERGER, JUDGE

2009 JUN -4 P 1:36

IN THE COMMON PLEAS COURT OF LUCAS COUNTY, OHIO  
PROBATE DIVISION

IN THE MATTER OF:	*	CASE NO. 2008 ADP 000010
	*	
THE ADOPTION OF	*	
GRAYSON THOMAS VAUGHN	*	JUDGMENT ENTRY

This matter comes before the Court pursuant to a Petition For Adoption of Minor filed January 16, 2008 by Attorney Michael R. Voorhees on behalf of petitioners Jason and Christy Vaughn (Vaughns).

The child who is the subject of this adoption petition was born on October 29, 2007 in Lucas County, Ohio. On November 1, 2007 the child's birth mother, Drucilla Rose Bocvarov, executed a permanent surrender of this child to Adoption By Gentle Care, which is a private child placing agency (PCPA). Her former husband, Jovan Bocvarov, also executed a permanent surrender to the PCPA on November 4, 2007. Drucilla's permanent surrender indicated that at the time of surrender she was a "single parent" and Jovan's permanent surrender indicated that he was "not the biological father" of this child. The Bocvarovs had been divorced during the time of Drucilla's pregnancy, however since they were married at the time of conception of this child, Mr. Bocvarov is deemed to be the presumed natural father of this child. R.C. 3111.03(A)(1). Adoption By Gentle Care accepted the surrenders and forthwith placed the child with the Vaughns for purpose of adoption. The child has remained with the Vaughns since early November of 2007.

On November 20, 2007, Benjamin Wyrembek timely registered with the Ohio Putative Father Registry, seeking to initiate parental rights relative to the child herein. Also, on December 28, 2007, Mr. Wyrembek filed a Parentage Complaint; Petition to Establish Parental Rights and for other relief in the Fulton County Court of Common Pleas, Juvenile Division. The Vaughns filed a motion in Fulton County Juvenile Court on January 28, 2008 requesting dismissal of Benjamin Wyrembek's parentage complaint. Fulton County Juvenile Court

**JOURNALIZED**

**JUN - 4 2009**

transferred the proceedings initiated by Benjamin Wyrembek to the Lucas County Court of Common Pleas, Juvenile Division, pursuant to Juvenile Rule 11 on February 21, 2008.

Petitioners herein filed a Motion for Declaratory Judgment on January 16, 2008 which was denied by this Court. In denying this motion in its Judgment Entry of March 14, 2008, the Court specifically ordered the putative father to be served with notice of the Petition for Adoption. Benjamin Wyrembek was served and thereafter filed an objection to the adoption in the Lucas County Probate Court on April 23, 2008.

This Court further ruled on May 19, 2008 that this adoption matter should be deferred until the issue of paternity of the child, which was pending in juvenile court prior to the filing of this adoption petition, was determined. *In re Adoption of Joshua Tai T*, OT-07-055, Ohio Sixth Appellate District, 2008. Accordingly, the Court held this matter in abeyance pending the parentage determination. On March 17, 2009, the Lucas County Court of Common Pleas, Juvenile Division, issued a Judgment Entry declaring Benjamin Wyrembek to be the father of the child who is the subject of this adoption petition. (JC08-180254)

This Court then conducted a telephonic pre-trial on April 2, 2009, wherein all legal arguments and evidentiary hearings were to commence June 2, 2009.

This matter comes before the Court pursuant to an amended objection and two complaints for declaratory judgment filed April 7, 2009 by Attorney Alan J. Lehenbauer on behalf of Benjamin Wyrembek. Responsive pleadings were filed by Attorney Michael Voorhees on behalf of petitioners Jason Edward Vaughn and Christy Lynn Vaughn. In addition, Mr. Lehenbauer filed a Supplemental Memorandum in Support of Complaint for Declaratory Judgment on May 27, 2009. Pursuant to this Court's order of April 2, 2009, these legal issues were scheduled for hearing on June 2, 2009, prior to an evidentiary hearing on the petition and determination of best interest of the child.

Case called for hearing. Attorney Michael R. Voorhees present with petitioners Jason Edward Vaughn and Christy Lynn Vaughn. Attorney Alan J. Lehenbauer present with Benjamin J. Wyrembek. Attorney Heather Fournier, who was appointed by this Court as guardian ad litem of the child, also present. Arguments held relative to all pending legal issues.

After due consideration of the legal arguments presented, the Court hereby finds as follows: The parties have provided voluminous cases and statutes for the Court to consider in rendering a decision relative to the pending legal motions. In addition to the well known cases of *In re Adoption of Sunderhaus*, (1992) 63 Ohio St.3d, 127, and *In re Adoption of Pushcar*, (2006) 110 Ohio St.3d 332, the Court has considered numerous other relevant cases. The case of *Nale v. Robertson*, (1994) 871 S.W.2d 674, was decided by the Supreme Court of Tennessee. The *Nale* case provides an excellent history of various aspects of adoption law in the United States. The *Nale* case tracks many of the cases cited by counsel in this matter including *Stanley v. Illinois*, (1972) 405 U.S. 645 and *Lehr v. Robertson*, (1983) 463 U.S. 248. As stated in the *Nale* case, *supra*, parents, including parents of children born out of wedlock, have a fundamental liberty interest in the care and custody of their children. The United States Supreme Court has addressed several cases relating to the issue of a father's liberty in his relationship with a child born out of wedlock. *Stanley, supra*, and *Lehr v. Robertson, supra*. Specifically the *Nale* case stated, "no parent should be denied the privilege of parenthood merely because of birth out of wedlock." In the *Nale* case, the court found that Robertson had made every reasonable effort to establish a personal as well as legal relationship between himself and his son. He therefore has established fundamental liberty interests in the child. The right of a natural parent to the care and custody of his children is one of the most precious and fundamental in law. *Santosky v. Kramer* (1982), 455 U.S. 745, 753, 102 S.Ct. 1388. Adoption terminates those fundamental rights. See 3107.15(A)(1). For this reason, "any exception to the requirement of parental consent (to adoption) must be strictly construed so as to protect the right of natural parents to raise and nurture their children". *In re Schoepner's Adoption* (1976), 46 Ohio St.2d 21, 24. The Court of Appeals for the Sixth District of Ohio has stated in the case of *In re Smith* (1991), 77 Ohio App.3d 1, 16, that the termination of parental rights is the family law equivalent of the death penalty in a criminal case. The parties to such an action must be afforded every procedural and substantive protection the law allows.

The parties in this matter have agreed that the probate court has original and exclusive jurisdiction over this adoption proceeding. This Court relied on the *Pushcar* decision in its order of May 19, 2008 and specifically reiterates that the parentage action in this matter was filed prior to and was pending at the time the adoption petition was filed in this court. Accordingly, the Court refrained from proceeding with the adoption petition during the pendency of the parentage action. It is the opinion of this Court that it now has jurisdiction to consider the petition for adoption since the juvenile court has adjudicated the parentage matter to its conclusion. In this matter, the parties have a difference of opinion in relation to which adoption statute should be applied relative to the necessity of Mr. Wyrembek's consent. Petitioners allege that R.C. 3107.07(B)(2)(c) applies since Mr. Wyrembek was a putative father when the petition was filed. Petitioners further allege that Mr. Wyrembek is unable to elevate himself to the

level of a legal father once the adoption case has been commenced. Counsel for Mr. Wyrembek argues that this Court should consider the finding of parentage in the juvenile court, and therefore utilize the provisions of R.C. 3107.07(A) in determining whether Mr. Wyrembek's consent is required. It should be noted that R.C. 3107.07(B) relates to the consent of putative fathers and Section 3107.07(A) relates to the consent of legal fathers. Were the Court to proceed in this matter under R.C. 3107.07(B), the issue would be whether Mr. Wyrembek abandoned the birth mother during the time of her pregnancy and up to her time of her surrender of the child. Should the Court rule that Section 3107.07(A) applies, the issue would be whether Mr. Wyrembek failed to communicate with the minor or to provide for the maintenance and support of the minor as required by law or judicial decree for a period of at least one year immediately preceding the filing of the adoption petition without justifiable cause.

This Court finds the facts in the instant matter strikingly similar to the facts *In the Matter of the Adoption of JLM*, Case Number 200678, decided in the Probate Court of Stark County, Ohio on April 8, 2008. In *JLM*, as in this case, the father timely registered with the Putative Father Registry and filed a complaint to establish paternity prior to the filing of the Petition for Adoption. The Probate Court in *JLM* deferred to the juvenile court to establish paternity pursuant to *Pushcar, supra*. Upon the order of the juvenile court finding the parent-child relationship, the probate court dismissed the Petition for Adoption applying *Sunderhaus, supra*. The court held that the duty to communicate and support referred to in R.C. 3107.07(A) commenced upon the establishment of paternity. Since one-year had not passed since the paternity determination, the petition was considered premature and therefore dismissal was required.

This Court finds that when a parentage action is pending prior to the filing of the adoption petition, the Court must apply *Pushcar*. It must be logically assumed that the Supreme Court of Ohio intended the probate court to consider the findings of the juvenile court made while the adoption proceeding is being held in abeyance. In this case, the juvenile court has ruled that Mr. Wyrembek is the father of the child who is the subject of this adoption proceeding, therefore the Court hereby rules that for purposes of determining the necessity of Mr. Wyrembek's consent, he is to be deemed a legal father.

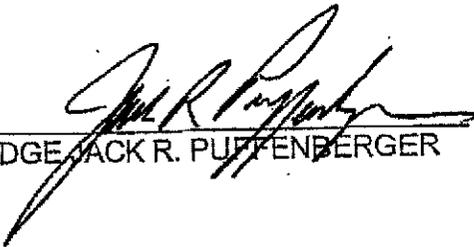
Accordingly, the Court rules that Section 3107.07(B) no longer applies to Mr. Wyrembek although he was a putative father when the petition was filed by virtue of his putative father registration. The judicial determination of a parentage action filed prior to the petition for adoption changes his status in this matter and he is now a legal father and falls under the provisions of R.C. 3107.07(A). In this regard, the Court notes that the one-year period prescribed by Revised Code Section 3107.07(A) commenced on the date that parentage has been judicially

established. *In re Adoption of Sunderhaus (1992)*, 63 Ohio St.3d 127, 132. Since one year had not expired prior to the placement of the child or the filing of the petition and one year has not expired since the paternity finding, it is impossible to show that Mr. Wyrembek's consent is not required pursuant to Section 3107.07(A). Accordingly, the Court finds the Petition for Adoption has been filed prematurely and therefore it is hereby dismissed.

Therefore, the Court hereby grants Mr. Lehenbauer's Complaint for Declaratory Judgment in part; specifically ruling that Mr. Wyrembek is now a legal father subject to the provisions of Section 3107.07(A) in this adoption proceeding. The Court further finds that all other legal issues pending, including the constitutionality of Chapter 3107, to be moot based upon the above ruling.

It is so ordered.

6/4/09  
DATE

  
JUDGE JACK R. PUFFENBERGER

Copies mailed this date to:

Attorney Alan J. Lehenbauer  
Attorney Michael R. Voorhees  
Attorney Heather J. Fournier