

ORIGINAL

IN THE SUPREME COURT OF OHIO

In re Adoption of : G.V.

Supreme Court Case No. 2009-2355

Jason and Christy Vaughn

On Appeal from the  
Lucas County Court of Appeals,  
Sixth Appellate District

Appellants

Court of Appeals  
Case No. L-09-1160

Benjamin Wyrembek

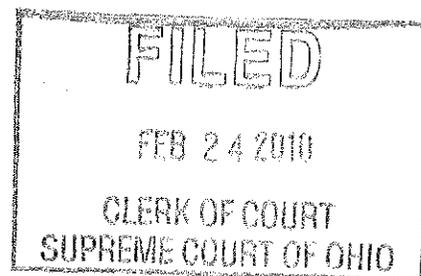
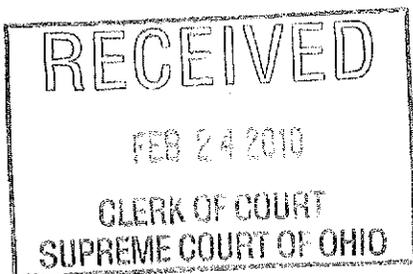
Appellee

Trial Court No. 2008 ADP 000010  
Lucas County Probate Court

MEMORANDUM BY APPELLANTS  
IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS

Michael R. Voorhees (0039293)  
Voorhees & 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 Appellants Jason and Christy Vaughn

Alan J. Lchenbauer (0023941)  
The McQuades Co. LPA  
105 Lincoln Ave., P.O. Box 237  
Swanton, Ohio 43558  
(419) 826-0055 phone  
(419) 825-3871 fax  
Attorney for Appellee Benjamin Wyrembek



Now come Appellants, Jason and Christy Vaughn, and request that this Supreme Court strike or deny Appellee's Motion to Dismiss and hereby submit the following:

Appellee's Motion to Dismiss is inappropriate, untimely, and without merit. Appellee's Motion contains so many misstatements that it is not even credible. Pursuant to S.Ct. Prac. R. 3.1, Appellants filed their Memorandum in Support of Jurisdiction. Pursuant to S.Ct. Prac. R. 3.2, Appellee filed his Memorandum in Response. Pursuant to S.Ct. Prac. R. 3.3, there is a prohibition against supplemental and reply memoranda. Appellee's Motion to Dismiss again requests this Court to decline jurisdiction and is nothing more than supplemental and reply memoranda that is prohibited by S.Ct. Prac. R. 3.3. This Supreme Court has already fully considered this matter and decided to accept the jurisdiction to review this case on its merits. There are no relevant facts or procedures to reverse that decision. S.Ct. Prac. R. 3.6 provides that if the case is accepted, as this case has been accepted, then the case shall be briefed and heard on its merits. There is nothing in the rules that allows a motion to dismiss after this Court has granted jurisdiction. On February 10, 2010, this Court ordered the appellate court to transmit the record within 20 days and on an expedited basis. Briefing has already begun and this case needs to be heard on its merits.

Appellee now claims that the issues on appeal are moot. Appellants have continuously and repeatedly requested a remand to the Probate Court so that the statutory adoption procedures may be followed. There are no "change in circumstances," as alleged by Appellee. The child is still in the permanent custody of the Ohio agency. The child is still in the adoptive placement with Appellants that is ICPC approved. Appellants continue to allege that the consent of Appellee is not required pursuant to R.C. 3107.07(B). There were numerous filings in more than one court for one reason. That reason is that the Lucas County Probate Court failed to follow the clear statutory procedures by refusing to address the allegations made under R.C. 3107.07(B), which is

the issue on this appeal. Appellants have overwhelming evidence that Appellee abandoned the birth-mother during her pregnancy. However, Appellants have never been given any opportunity to present any evidence in any court in Lucas County, Ohio. The request in this appeal is for a remand so that the statutory scheme for adoption proceedings, as set forth in the Ohio Revised Code, may be followed.

Appellee suggest that the questions on this appeal are academic or abstract. There is a child who is still in the permanent custody of the Ohio agency and is still in the adoptive placement and is in the custody of Appellants. If this Supreme Court reverses the lower courts and allows the statutory procedures to be followed, there will be a remand and the parties in this appeal will be back in Probate Court. The issues in this appeal must be clarified and decided for the parties in this appeal and for all parties in adoption proceedings in Ohio. Appellants are entitled to their day in court, which was denied by the Lucas County Probate Court. Appellants believe that the evidence will establish that the consent of Appellee is not required and that the adoption is in the child's best interest. The granting of the adoption will establish Appellants as the legal parents of the child and the rights of Appellee will terminate. These are all real facts and real issues that must be heard and decided by this Supreme Court.

The Ohio agency obtained permanent custody of the child through the statutory procedures set forth in R.C. 5103.15(B)(2). Permanent surrenders were obtained by both legal parents and remain valid permanent surrenders. The validity of the surrenders have never been addressed by any court. A permanent surrender can only be set aside based upon a finding that there was some fraud, undue influence, or some other consent-vitiating factor that would invalidate the surrender because the signing party "was denied the exercise of his or her free will." *In re Adoption of Zschach* (1996), 75 Ohio St. 3d 648; 665 N.E.2d 1070, 1078-1079. That is not an issue in this case and there is absolutely no evidence that would invalidate the surrenders. The consent or involvement

of the putative father is never required for placement. The issue of the putative father first arises in the adoption proceeding after the placement has been made and the petition has been filed. The issue then before the Probate Court is whether or not the consent of the putative father is required. The fact that the Probate Court failed to even address the R.C. 3107.07(B) allegations is the issue now before this Supreme Court.

Appellee states that the custody order from the Lucas County Juvenile Court has rendered this appeal moot. This statement is totally without merit for several reasons. First, Appellants have consistently challenged the jurisdiction of the Lucas County Juvenile Court. Second, this Supreme Court has never made a finding that the Lucas County Juvenile Court has jurisdiction. Third, the orders entered by the Lucas County Juvenile Court are invalid and are void ab initio and have been appealed. Fourth, Adoption by Gentle Care properly obtained permanent custody of the child through the statutory procedures and the child remains in the permanent custody of the agency. Fifth, the child is still in a proper adoptive placement with Appellants. Sixth, the Indiana court in the county in which the child and Appellants reside issued a custody order on September 11, 2009, which acknowledged the permanent custody of the Ohio agency and named Appellants as the de facto custodians. (Exhibit A) Seven, Appellee never challenged the Indiana custody order. The Indiana custody order protects the child in his prospective adoptive home during the time that the Ohio adoption proceeding is concluded. That Ohio adoption proceeding includes this appeal and any remand to the Ohio Probate Court.

Appellee states that the adoption petition filed in Indiana has rendered this appeal moot. This statement is totally without merit for several reasons. Appellants have never relinquished or abandoned their adoption petition in Ohio. Appellants continue to pursue this appeal and their request for a remand to the Ohio Probate Court. The Indiana court has stayed the adoption petition filed in its court pending the outcome of the Ohio adoption proceeding, which includes this appeal.

(Exhibit B) A party always has a right to file another adoption petition based on other allegations that may arise during pending litigation. There can be separate and independent grounds on which to file for adoption. The separate and independent grounds do not affect the initial grounds alleged and the right to pursue such initial grounds. The petition in Indiana was filed under separate and independent grounds and was filed to protect the rights of the prospective adoptive parents and the child. In any event, the Indiana adoption petition has been stayed and has no relevance to this appeal.

Appellee states that the case filed in federal court has rendered this appeal moot. This Supreme Court has accepted jurisdiction to hear Proposition of Law No. I, which stated: “The Ohio Revised Code sets forth a statutory scheme for adoption proceedings, which includes the Putative Father Registry and the definition of a putative father.” Appellants had included a Proposition of Law No. II, which stated: “The parties in an adoption proceeding have the due process right to have all raised issues to be addressed by the Probate Court. The failure to address the issues is a due process violation.” This Supreme Court is not reviewing Proposition of Law No. II. The federal suit filed by Appellants and the birth-mother has no relevance to the issues to be heard and decided by this Supreme Court under Proposition of Law No. I. Likewise, the federal case has nothing to do with the review of the proper application of the Ohio statutory scheme for adoption proceedings. Appellants did challenge the constitutionality of the Ohio statute giving the putative father the right to object to the adoption. However, that is not an issue currently before this Supreme Court. There is no conflict between the federal suit and this appeal. Appellee’s arguments are without merit.

Wherefore, for the reasons set forth above, Appellants respectfully request that this Supreme Court strike or deny Appellee’s Motion to Dismiss.

Respectfully submitted,

*Michael R. Voorhees*

Michael R. Voorhees (0039293)

Voorhees & Levy LLC

11159 Kenwood Road

Cincinnati, Ohio 45242

(513) 489-2555 phone

(513) 489-2556 fax

mike@ohioadoptionlawyer.com

Attorney for Appellants Jason and Christy Vaughn

**Certificate of Service**

I hereby certify that a copy of the foregoing Memorandum has been sent by regular U.S. mail or by fax this 23<sup>d</sup> day of February, 2010 to: Alan J. Lehenbauer, Attorney for Appellee, The McQuades Co. LPA, P.O. Box 237, Swanton, Ohio 43558 (fax # 419-825-3871).

*Michael R. Voorhees*

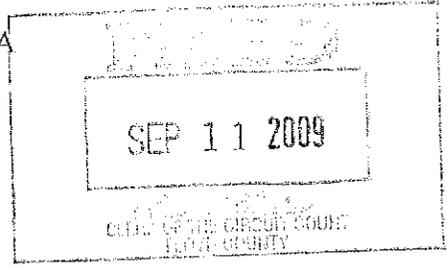
Michael R. Voorhees (0039293)

**EXHIBIT A**

---



IN THE CIRCUIT COURT OF INDIANA  
FOR FLOYD COUNTY



IN RE:

GRAYSON THOMAS BOCVAROV )  
(a/k/a Grayson Thomas Vaughn), )  
a minor in the possession of )  
Jason and Christy Vaughn )  
2821 Plantation Court )  
Sellersburg, Indiana 47172 )  
)  
*Petitioners* )

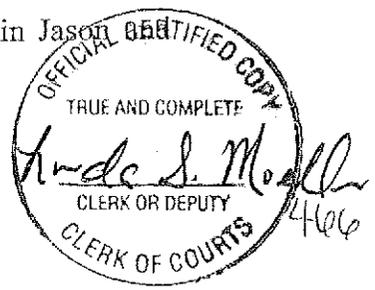
CASE # 22C01-0908-DR-688  
JUDGE J. TERRENCE CODY

\*\*\* \*\*

**ORDER GRANTING EMERGENCY PETITION FOR  
TEMPORARY CUSTODY OF GRAYSON THOMAS BOCVAROV,  
A/K/A GRAYSON THOMAS VAUGHN  
(SEPTEMBER 3, 2009)**

Upon the *ex parte* Petition of Grayson Thomas Bocvarov, also known as Grayson Thomas Vaughn (hereinafter, "Grayson"), by and through his next friends and prospective adoptive parents, Jason Edward Vaughn and Christy Lynn Vaughn, requesting this Court to enter an Order granting temporary custody of Grayson to Jason and Christy Vaughn, and the Court having conducted a hearing and taken evidence on September 3, 2009, the Court hereby finds as follows:

1. Grayson is a minor child, having been born in Lucas County, Ohio on October 29, 2007.
2. Grayson has been a resident of Floyd County, Indiana, without interruption, since approximately November 8, 2007. Grayson has been in Jason Christy Vaughn's care since birth, and is healthy, active, and flourishing.



3. For purposes of IC 31-21-2-16, Jason and Christy Vaughn have had "physical custody" of Grayson, having been the sole providers of the physical care and supervision of the child, since birth.

4. Under IC 31-21-2-14, Jason and Christy Vaughn are each a "person acting as a parent" of Grayson because they have had physical custody of the child for a period of at least six (6) consecutive months preceding the commencement of this proceeding.

5. Pursuant to IC 31-21-2-8, Indiana is the "home state" of Grayson, because he has lived with persons acting as parents for at least six (6) consecutive months immediately before the commencement of this proceeding.

6. This Court has jurisdiction of this matter pursuant to IC 31-21-5-4, which provides that an Indiana court has temporary emergency jurisdiction if the child is present in Indiana and it is necessary to protect the child because the child is subject to mistreatment or abuse.

7. Venue is proper in this court in that the minor child, Grayson Thomas Bocvarov, and Jason and Christy Vaughn, whose mailing address is 2821 Plantation Court, Sellersburg, Indiana 47172, are husband and wife and are the prospective adoptive parents of Grayson, reside together in Floyd County, Indiana.

8. Jason and Christy Vaughn are also de facto custodians of Grayson, pursuant to IC 31-9-2-35, because they have been the primary caregiver for, and financial support of, Grayson, who is less than three (3) years of age and has resided with them for at least six (6) months.

9. The birth-mother of Grayson, Drucilla Bocvarov, signed her permanent surrender of parental rights, and requested Adoption by Gentle Care, a duly licensed Ohio

467

private child placing agency, to take permanent custody of Grayson and consented to placement of Grayson for purpose of adoption.

10. The husband of the birth mother at the time of Grayson's birth, Jovan Bocvarov, who was presumed to be the natural father of Grayson, signed his permanent surrender of parental rights on November 4, 2007 and also requested Adoption by Gentle Care to take permanent custody of Grayson, and consented to placement of Grayson for purpose of adoption.

11. 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 on November 4, 2007. On that same date of November 4, 2007, Adoption by Gentle Care placed Grayson in an adoptive placement with Jason and Christy Vaughn, who were and are residents of Floyd County, Indiana.

12. Adoption by Gentle Care approved the placement of Grayson with Jason and Christy Vaughn. The Vaughn's had physical possession of Grayson since the day he was born, the Vaughn's having obtained a room at the hospital in Toledo, Ohio for the first five days of Grayson's life, and thereafter, having obtained a hotel room in Cincinnati, Ohio for the following five days, awaiting approval by the Interstate Compact on the Placement of Children (hereinafter, "ICPC").<sup>1</sup>

---

<sup>1</sup> The Interstate Compact on the Placement of Children outlines the process that states use to ensure consistent protection and services to children who are placed across state lines. The Compact is a uniform law that has been enacted by all 50 states, the District of Columbia, and the U.S. Virgin Islands. The Compact establishes orderly procedures for the interstate placement of children and defines the responsibilities of both the state that is placing the child and of the state in which the child is residing. Placement with an out-of-state resource cannot occur until approval is provided through the state placing the child (in this case, Ohio), and the new state of residence (in this case, Indiana).

13. The ICPC was required to approve the placement, and Grayson's placement did receive ICPC approval on November 8, 2007. This placement has never been rescinded by any court in Ohio, by the adoption agency (Adoption by Gentle Care), or by the ICPC. Therefore, Grayson's placement with Jason and Christy Vaughn was, and remains, the only approved lawful placement of Grayson.

14. Grayson 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.

15. On January 16, 2008, Jason and Christy Vaughn filed a Petition for Adoption in the Lucas County, Ohio Probate Court.

16. Benjamin Wyrembek is Grayson's putative father, as defined by ORC 3107.01(H). Mr. Wyrembeck's paternity was not determined prior to the date the adoption petition was filed.

17. Although the adoption proceeding was dismissed by the Lucas County, Ohio Probate Court, an appeal is pending in the Sixth District Court of Appeals in Ohio. Thus, the adoption proceeding is subject to remand to the Lucas County Probate Court.

18. On August 6, 2009, the Lucas County Juvenile Court, on motion of Benjamin Wyrembek, ordered Jason and Christy Vaughn to bring the child from Indiana to Ohio for a four hour visit every Saturday in the Ohio home of Benjamin Wyrembek.

19. Jason and Christy Vaughn have not submitted to the jurisdiction of the Lucas County Juvenile Court.

20. In this case, Mr. Wyrembek's paternity was not established until over 1 year after the surrender of parental rights of the birth mother and her husband, custody was given to the adoption agency, and placement of Grayson was granted to Jason and Christy Vaughn. Mr. Wyrembek has also chosen not to financially or emotionally support Grayson. While due-process principles may give unmarried fathers the right to an opportunity to develop relationships with their biological children, there is nothing in the state or federal constitutions that compels a state to protect that right at all costs. In this case, the putative father's interest is not paramount to the competing interest of the child.

21. It appears that the Lucas County Juvenile Court is attempting to exercise jurisdiction in violation of both the ICPC and the Uniform Child Custody Jurisdiction and Enforcement Act (hereinafter, "UCCJEA"), by issuing visitation orders in the action filed by Benjamin Wyrembeck. The minor child is in a proper and lawful adoptive placement in the State of Indiana, with the consent of the child's lawful custodian, and the adoption proceeding has not yet concluded.

22. The Lucas County Juvenile Court has wrongfully issued orders that wrongfully restrain Grayson, as well as Jason and Christy Vaughn, in violation of their liberty rights. The Lucas County Juvenile Court's action in ordering visitation without an evidentiary hearing, without a psychological evaluation, without drug testing, without a background check of Benjamin Wyrembek, and without Jason and Christy Vaughn having been afforded an opportunity to be heard, constitutes a deprivation of Petitioners' rights under the ICPC and the UCCJEA, as well as their rights to due process under the Indiana Constitution and the Fourteenth Amendment to the United States Constitution. Based upon the evidence presented at the hearing in this case, it appears that Mr.

Wyrembek has a criminal history, including drug offenses, that he has not agreed to submit to random drug testing, that he has not undergone psychological evaluation, and he has not contributed to the financial support of Grayson. In addition, it appears that, during the one 4 hour visitation which has already occurred, Mr. Wyrembek engaged in conduct detrimental to Grayson's emotional well-being. According to Mr. Vaughn, Grayson, who will be only 2 years old in October, 2009, was told by Mr. Wyrembek, in the presence of Jason Vaughn and apparently in response to Grayson running to Jason and saying "Daddy," "Your Dada is right here," meaning Mr. Wyrembek. Mr. Wyrembek's mother then said "Your Daddy's right here," also indicating Mr. Wyrembek. This court also notes that the testimony of Jason Vaughn established that Dr. Kathleen Kirby, a psychologist licensed in the State of Indiana who performed an evaluation of the Vaughn family unit, has determined that Grayson's emotional and social development would be harmed by visitation with the putative father at this time.<sup>2</sup>

23. Under IC 31-21-5-1, this court has jurisdiction to make an initial child custody determination because Indiana is the home state of the child on the date of the commencement of this proceeding, and was the home state of the child for six (6) months before the commencement of the proceeding, and the persons acting as parents live in Indiana. The child and persons acting as parents have significant connections with Indiana other than mere physical presence, and substantial evidence is available in Indiana concerning the child's care, protection, training, and personal relationships.

24. In view of the child's significant emotional bond with Jason and Christy Vaughn, whom the child responds to as parents, as well as the significant bonding of

---

<sup>2</sup> Although the Court did not permit the introduction of the report prepared by Dr. Kirby, Mr. Vaughn was allowed to testify concerning Dr. Kirby's conclusions.

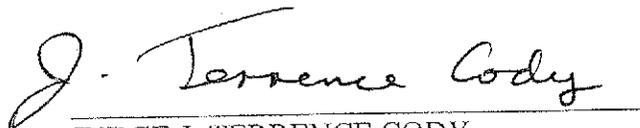
Grayson with two prospective siblings, Grayson's interests are best served by continuing his placement with Jason and Christy Vaughn, without visitation with Benjamin Wyrembeck. This Court also finds, based on the Brief of "Adoption by Gentle Care," attached as an Exhibit to the Petition herein and previously filed in the Lucas County (Ohio) Juvenile Court, No. JC08-180254, that Adoption by Gentle Care contests that court's jurisdiction to interfere with the placement of Grayson by ordering visitation with Mr. Wyrembeck.

25. Notwithstanding any presumption in favor of a biological parent, placement with Jason and Christy Vaughn represents a substantial and significant advantage to the minor child. This court has the discretion to continue the placement of the child with Jason and Christy Vaughn, without visitation to the natural father, and without being required to find unfitness, abandonment, or acquiescence on the part of Mr. Wyrembeck.

26. This court finds, based upon the evidence presented, that Grayson and the Vaughn's may be irreparably harmed if this Court does not grant the Petition for an emergency custody Order.

IT IS THEREFORE ORDERED that the Petition of Grayson Thomas Bocvarov, now known as Grayson Thomas Vaughn, and Jason Edward Vaughn and Christy Lynn Vaughn, for an Order of emergency temporary custody, pending conclusion of any and all proceedings relating to the adoption of Grayson Thomas Bocvarov, including any and all appeals, is GRANTED.

SEP 11 2009

  
\_\_\_\_\_  
JUDGE J. TERRENCE CODY  
FLOYD CIRCUIT COURT

472

SEP 11 2009

DATE OF ENTRY

---

Distribution:

C. Thomas Hectus [ ]  
**HECTUS & STRAUSE PLLC**  
804 Stone Creek Parkway, Suite One  
Louisville, Kentucky 40223  
**Counsel for Petitioners**

Judge Denise Navarre Cubbon [ ]  
Lucas County Court of Common Pleas  
Juvenile Division  
1801 Spielbusch Ave.  
Toledo, OH 43604

Heather J. Fournier [ ]  
Herschel, Accettola & Associates  
615 Adams Street  
Toledo, OH 43604

Benjamin Wyrembek [ ]  
112 Bassett Ave.  
Swanton, OH 43558

Alan J. Lehenbauer [ ]  
The McQuades Co., L.P.A.  
P.O. Box 237  
Swanton, OH 43558  
**Counsel for Benjamin Wyrembek**

A. Patrick Hamilton [ ]  
One Americana  
Suite 103  
400 South Fifth Street  
Columbus, OH 43215  
**Counsel for Adoption by Gentle Care**

473

**EXHIBIT B**

---

FAMILY NOTICE  
FLOYD CIRCUIT COURT

In Re the Adoption of Grayson Bocvarov

22C01-0912-AD-00030

To: Charles Thomas Hectus  
804 Stone Creek Parkway  
Suite 1  
Louisville KY 40223

ATTORNEYS	PARTIES
	PETITIONER
Charles Thomas Hectus; Charles Thomas Hectus	Jason E Vaughn; Christy Vaughn
	RESPONDENT
Joni L Grayson	Benjamin Wyrembek

EVENTS:

Entry Date	File Stamp/ Order Signed	Event and Comments
02/01/2010	02/01/2010	Administrative Event (Court vacates hearing scheduled for 3/15/2010 at 9:00 am. Court will not schedule a Hearing in this case until such time as the court receives verifiable information that the Ohio appellate proceedings regarding the Adoption of G T B are fully and Finally concluded
01/29/2010	01/29/2010	Copy of C/C/S entry to C.T. Hectus, J Grayson) Objection Filed (Objection to Motion for Appointment of Guardian Ad Litem and Second Motion for Sanctions )