

ORIGINAL

IN THE SUPREME COURT OF OHIO

In re Adoption of: G.V.	:	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
	:	(Entry Date: November 30, 2009)
	:	
Benjamin Wyrembek	:	
	:	
Appellee	:	Trial Court No.2008 ADP 000010
	:	Lucas County Probate Court
	:	

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MEMORANDUM IN OPPOSITION BY APPELLEE, BENJAMIN WYREMBEK,  
 TO MOTION FOR RECONSIDERATION BY  
 APPELLANTS, JASON AND CHRISTY VAUGHN

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 AUG 09 2010  
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 SUPREME COURT OF OHIO

**FILED**  
 AUG 09 2010  
 CLERK OF COURT  
 SUPREME COURT OF OHIO

Now comes Appellee, Benjamin Wyrembek, by and through counsel, and pursuant to S.Ct. Prac. R. 11.3, hereby requests that this Supreme Court of Ohio deny the Motion for Reconsideration By Appellants Jason and Christy Vaughn.

The Ohio Supreme Court has used its reconsideration authority under S.Ct.Prac.R. 11 to "correct decisions which, upon reflection, are deemed to have been made in error." *State ex rel. Shemo v. Mayfield Hts.*, 96 Ohio St.3d 379, 380, 2002 Ohio 4905, 775 N.E.2d 493, ¶5, quoting *Buckeye Community Hope Found. v. Cuyahoga Falls* (1998), 82 Ohio St.3d 539, 541, 697 N.E.2d 181.

The slip opinion of this Supreme Court on July 22, 2010 was not made in error. Appellants raise several claims in support of reconsideration. Appellants' claims are misplaced as the underlying decision was correct and without error.

**1. The Pushcar decision controls.**

Relying upon the decision of *In re Adoption of Pushcar*, 110 Ohio St.3d 332, 2006 Ohio 4572, 853 N.E.2d 647, the majority stated at ¶1 of its decision:

In *In re Adoption of Pushcar*, 110 Ohio St.3d 332, 2006 Ohio 4572, 853 N.E.2d 647, this court stated, "The issue presented for our review is whether a probate court must refrain from proceeding with the adoption of a child when an issue concerning the parenting of that child is pending in the juvenile court. We hold that, in such circumstances, the probate court must defer to the juvenile court and refrain from addressing the matter until adjudication in the juvenile court." *Id.* at P 8. We consider our holding in *Pushcar* to be dispositive of the issue before us and affirm the judgment of the court of appeals.

The majority determined the present case based on the jurisdictional priority rule, or rather the "sufficiently similar" exception to that rule. The jurisdictional priority rule provides that "[a]s between [state] courts of concurrent jurisdiction, the tribunal whose power is first invoked by the institution of proper

proceedings acquires jurisdiction to the exclusion of all other tribunals, to adjudicate upon the whole issue and to settle the rights of the parties." *State ex rel. Sellers v Gerken*, 72 Ohio St.3d 115, 117, 1995 Ohio 247, 647 N.E.2d 807, citing *State ex rel. Racing Guild of Ohio v. Morgan* (1985), 17 Ohio St.3d 54, 56, 17 OBR 45, 46, 476 N.E.2d 1060, 1062. In general, it is a condition of the operation of the state jurisdictional priority rule that the claims or causes of action be the same in both cases, and "[i]f the second case is not for the same cause of action, nor between the same parties, the former suit will not prevent the latter." *State ex rel. Sellers* at 118.

Nevertheless, this Court has applied the jurisdiction priority rule in cases where the two lawsuits were not identical but were sufficiently similar. *State ex rel. Racing Guild of Ohio v. Morgan* (1985), 17 Ohio St.3d 54, 476 N.E.2d 1060 (injunction suits involving picketing at same premises); *State ex rel. Phillips v. Polcar* (1977), 50 Ohio St. 2d 279, 364 N.E.2d 33 (actions for damages and for rescission based on same real estate purchase agreement); *John Weenink & Sons Co. v. Court of Common Pleas* (1948), 150 Ohio St. 349, 82 N.E.2d 730 (actions for damages and for declaratory judgment based on same rodeo proceeds); *In re Adoption of Asente* (2000), 90 Ohio St.3d 91, 92, 734 N.E.2d 1224 (actions for the care and custody of the same minor child). This Court applied the first filed principle since the two lawsuits in each case comprised a part of the same whole issue under consideration. *State ex rel. Charron-Krofta v. Judge Corrigan*, 8th Dist. No. 69434, 1995 Ohio App. Lexis 4520, \*7-8.

In the case at bar, the causes of action were not the same. An adoption proceeding was in the Lucas County Probate Court and a parentage action was in the Lucas County Juvenile Court.

Nevertheless, both cases comprise a part of the same whole issue, i.e. the long term fate of the minor child, G.V.

In their motion for reconsideration, Appellants contend that the jurisdictional priority rule should apply in their favor. Appellants argue that since Appellee commenced his paternity action in Fulton County Juvenile Court, it was an improper proceeding and no jurisdiction attached. Appellants also argue that they undertook the adoption process prior to Appellee's registration as a putative father and prior to Appellee's filing a paternity action. Based on these two arguments, Appellants conclude that the Lucas County Probate Court had jurisdiction prior to the Lucas County Juvenile Court.

Appellants' arguments do not justify applying the priority rule in Appellants' favor. First, R.C. 3111.06(A) permits a paternity action to be brought in the juvenile court of the county in which the alleged father resides. Appellee is and was a resident of Fulton County. In addition, Appellants were served with process of the paternity action in Fulton County. Service of process is a condition precedent to the operation of the concurrent jurisdiction priority rule. *State ex rel. Balson v. Harnishfeger* (1978), 55 Ohio St.2d 38, 377 N.E.2d 750. Appellee therefore properly filed his paternity action in Fulton County. Second, the preliminary steps in the adoption process--the filing of permanent surrenders and the Ohio ICPC filing--did not result in any service of process upon Appellee. Therefore, jurisdiction on the probate court was not invoked by these preliminary steps.

This Court and the courts below resolved this case by rendering the statutory definition of "putative father" in R.C. 3107.01(H) irrelevant to the facts in the instant case. This Court and the courts below acted within their judicial authority.

The slip opinion is not "judicial legislation." Under the *Pushcar* decision and the jurisdiction priority rule, Appellee is the father of the minor child. Therefore, in the adoption case, Appellee is a father subject to R.C. 3107.07(A), and Appellee is not a "putative father" subject to R.C. 3107.07(B).

For these reasons, this Court did not error by disposing of this case based upon its decision in *Pushcar*.

**2. There is no inconsistency between the decision in this case and the decision in *In re Adoption of J.A.S.***

The policies underlying the decisions in the present case and in *In re Adoption of J.A.S.*, Slip Opinion No. 2010 Ohio 3270, are identical. In both cases, this Court sought to protect the fundamental right of natural parents to the care and custody of their children and to preserve due process rights which allow natural parents the opportunity to be heard when that fundamental right is subject to termination by a petition for adoption. A strict construction of the statutory requirements in R.C. 5103.16(D) protected the natural parents' rights. However, the strict construction of "putative father" in R.C. 3107.01(H) and of the consent-to-adoption exceptions for a "putative father" violate the rights of a natural father like Appellee Wyrembek who has a parentage action pending in juvenile court when the adoption petition is filed.

This Court and the courts below permitted the adoption proceedings to be suspended so that the juvenile court could determine whether Appellee was a parent subject to the exception under R.C. 3107.07(A) or a "putative father" subject to the exception under R.C. 3107.07(B)(2)(a). In so doing, this Court and the courts below simply regarded the other exceptions in R.C. 3107.07(B)(1), (B)(2)(b), and (B)(2)(c) as irrelevant to the facts

in the present case. In so doing, this Court and the courts below adhered to the decision in *In re Schoeppner's Adoption* (1976), 46 Ohio St.2d 21, 24, and strictly construed the exceptions in R.C. 3107.07 so as to protect the right of a natural parent to raise and nurture his child.

**3. A strict construction of the definition of "putative father" renders R.C. Chapter 3107 unconstitutional.**

If the majority's opinion is reconsidered and the decisions of the courts below reversed, the probate court will have to find the adoption statutes unconstitutional. Under the definition of "putative father" in R.C. 3107.01(H), an alleged father with a parentage action pending in juvenile court would be subject to R.C. 3107.07(B) under Appellants' position. The imposition of "putative father" status on an alleged father with a parentage action pending in juvenile court, violates the constitutional rights of that alleged father to due process and equal protection.

The risk of termination of parental rights of a natural parent exists in this adoption action. Given this risk, the Lucas County Probate Court in this adoption proceeding was required to provide Appellee "with fundamentally fair procedures in accordance with the Fourteenth Amendment Due Process Clause and Section 16, Article I of the Ohio Constitution." See *In re My'kavellie E.*, 6th Dist. No. L-07-1129, 2007 Ohio 7102, at ¶18. Due process of law applied to Appellee even though he had not established parentage. *Id.* The probate court in the adoption proceeding was required to give Appellee a level of due process protection that correlated to his actions. *Id.*

Appellee timely registered with the Ohio Putative Father Registry. Appellee filed a parentage complaint 60 days after the child's birth and 17 days prior to the date on which Appellants

filed their petition for adoption.

The probate court ordered that Appellee be given notice of the filing of the petition and of the hearing. In so doing, the probate court afforded due process rights in accordance with Appellee's timely registration with the putative father registry. R.C. 3107.11(A). The probate court also ordered that its jurisdiction in the adoption proceeding be deferred until the juvenile court resolved the pending parenting issue. In so doing, the probate court afforded due process protection that correlated to Appellee's prompt filing of a parentage action within 60 days of the child's birth. In so doing, the probate court acknowledged that the limited due process afforded Appellee under Ohio adoption statutes and the putative father registry did not provide Appellee with an opportunity to be heard on the pending parenting issue.

If the probate court did not defer jurisdiction and if it proceeded with the adoption case, the probate court would define Appellee's parental status based on adoption law, i.e., a "putative father" as defined in R.C. 3107.01(H)(3). Appellee would be limited to the forum of the probate court and to the requirements of Ohio adoption law. Appellee would be denied the opportunity to be heard at a meaningful time and in a meaningful manner on the parenting issue. See *In re My'kavellie E.* at ¶19. Appellee's due process right to a judicial ascertainment of paternity would have been violated.

Appellee did everything legally possible to establish he was the child's father. He should not be treated differently than a man who acknowledged parentage in a situation where the birth mother was cooperative in finalizing a child's parentage. Such a disparate treatment would violate the equal protection guarantees of the Ohio and United States Constitutions.

4. The majority's decision does not disrupt the purpose of the Putative Father Registry nor totally destroy the adoption process. Rather, the decision suspends the adoption process in order to protect the rights of an interested and diligent father. The majority's decision is consistent with *Lear v Robertson*.

Appellants and the American Academy of Adoption Attorneys ("the Academy") argue that the rights and interests of the father are sufficiently protected by the Ohio Putative Father Registry. They contend that the "mere filing" of a paternity action, even if filed before the adoption petition, should still restrict the father to "putative father" status and to the consent-to-adoption exceptions contained in R.C. 3107.07(B)(2).

When the alleged father merely registers with the putative father registry, he waits for the administrative, judicial and/or adoptive processes to find him through the registry. His status and responsibilities are dependent upon the action of others.

In contrast, the act of filing a paternity action is a demonstrative step to establishing a custodial and supportive relationship with the child. A parentage action shows a commitment to the child and to the responsibilities of parenthood. By filing such an action, the father voluntarily submits himself to court orders concerning the child. By filing such an action and serving process on pertinent parties, the father states to the birth-mother, the prospective adoptive parents, the adoption agency and to the courts that he is present and ready to be tested for parentage and examined for fitness to the care of his child. Further, the filing a paternity action should be given greater significance where the child at issue was a newborn.

When Appellee filed his parentage action the child, G.V., was only two months old. Appellee's parentage action was then repeatedly delayed by the Appellants and/or the private child

placing agency ("PCPA"). These delays included the following: the jurisdictional transfer to Lucas County Juvenile Court; Appellants' refusal to produce the child for genetic testing; Appellants' appeal of the DNA order; Appellants' attempts to limit genetic testing to medical or historical purposes; Appellants' multiple complaints for writs of prohibition challenging the jurisdiction of the juvenile court; Appellants' multiple appeals of non-final, non-appealable orders; Appellants' refusal to produce the child for visitation with Appellee; and the PCPA's refusal to produce the child pursuant to the custody order of Lucas County Juvenile Court.

In addition, Appellants have filed numerous actions in other courts. Appellants filed a temporary emergency motion for custody and then an adoption petition in an Indiana court. They filed in Franklin County, Ohio, a request for registration of the Indiana temporary custody order, then failed to appear at the magistrate's hearing and then filed objections to the magistrate's decision. Appellants filed in federal court in Columbus, Ohio, a civil rights complaint against the Lucas County Probate Judge and against Appellee. Appellants filed a second adoption petition in Lucas County Probate Court based on R.C. 3107.07(A).

Appellee has appeared in each of these courts and defended his rights and his responsibilities to his child. According to Appellants and the Academy, Appellee's efforts to establish a parent-child relationship since the child's birth are not "enough." Appellants and the Academy insist that Appellee is to be judged by the "putative father" test of R.C. 3107.07(B)(2)(c). They argue that Appellee failed to establish a relationship with G.V. while G.V. was *in utero*, and therefore Appellee is presumed unlikely to provide for the child post birth. In so doing,

Appellants label Appellee an unfit parent and disregard Appellee's commitment to his child in multiple courts. In so doing, Appellants, conveniently and with duplicity, render irrelevant their efforts to prevent a post-birth relationship between G.V. and Appellee.

The juvenile court, not the probate court, is the court best able to resolve parentage issues raised prior to the filing of an adoption petition. The juvenile court, not the probate court, directs the administration of DNA testing and the determination of parental fitness. The juvenile court, not the probate court, receives notice of permanent surrender agreements pursuant to R.C. 5103.15(B)(2).

The juvenile court, however, needs to be more than the depository for R.C. 5103.15(B)(2) notices. The putative father registry must be reviewed by a judicial or administrative official whenever R.C. 5103.15(B)(2) notices are filed. The review must occur at least 30 days after the birth of the subject child and therefore after the expiration of the 30-day period for putative father registration. The PCPA cannot be trusted to undertake such a review because its interest is for the adoption, not the rights of a putative father. In this case, a review of the registry would have disclosed that Appellee was registered as a putative father.

In addition, the juvenile court must have authority to invalidate R.C. 5103.15(B)(2) agreements if the PCPA and/or the prospective adoptive parents contest or delay an order for DNA testing of the child. In this case, the opportunity to resolve the parentage issues while the child was still an infant was destroyed by the delays of Appellants and the PCPA. Under the current laws, Appellants and the PCPA have nothing to lose by

delaying the parentage and custody proceedings of the juvenile court. In fact, as a result of their delays, Appellants manufacture the argument that the child has bonded with them and that removal from their home is not in the child's best interests. If the juvenile court is not given greater oversight of R.C. 5103.15(B)(2) agreements, the rights of a natural parent and the best interests of the child will continue to be manipulated by prospective adoptive parents and the PCPA.

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

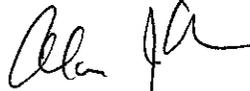
On February 3, 2010, Judge Cubbon of the Lucas County Juvenile Court issued a judgment entry (Exhibit A) adopting and affirming the 01/11/2010 Magistrate's Decision (Exhibit B), whereby "Benjamin Wyrembek is designated as the residential parent and legal custodian of the child[,]". After the Guardian ad Litem gave a favorable report to Appellee, the Magistrate affirmed the 01/11/2010 Magistrate's Decision (Exhibit C). On March 24, 2010, Judge Cubbon accepted the favorable report and affirmed the 01/11/2010 Magistrate's Decision (Exhibit D). In addition, on July 12, 2010, the Lucas County Juvenile Court found Adoption By Gentle Care in contempt for failure to comply with the February 3, 2010 order, and ordered all parties to appear on September 2, 2010, for the Motion to Execute Sentence Hearing (Exhibit E).

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. A reconsideration of the underlying judgment would be wholly ineffectual to reestablish the child as available for adoption. Appellants have no legitimate interest to protect in their motion for reconsideration.

**CONCLUSION**

For the foregoing reasons and for the reasons previously set forth in his briefs and at oral argument, Appellee respectfully asks this Supreme Court to DENY Appellants' motion for reconsideration.

Respectfully submitted,

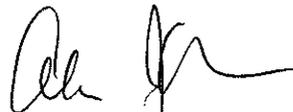


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum in Opposition was sent by ordinary U.S. Mail this 6<sup>th</sup> day of August, 2010, to: Michael R. Voorhees, 11159 Kenwood Road, Cincinnati, OH 45242; Susan Garner Eisenman, 3363 Tremont Rd., Ste. 304, Columbus, OH 43221; and Mary Beck, Univ. of Missouri at Columbia, 104 Hulston Hall, Columbia, MO 65211.



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Alan J. Lehenbauer  
Attorney for Appellee 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

FILED  
Juvenile Division  
\*  
FEB 03 2010  
\*  
Lucas Co. Com. Pleas Court

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:  
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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**

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

Plaintiff:  
Wyrembek, Benjamin

Defendant:  
Bocvarov, Jovan

SETS#:  
08180254                      160367

SETS#:  
08180254                      170600 08180254

160370

Defendant:  
Banner-Bocvarov, Drucilla

Defendant:  
Adoption By, Gentle Care

FILED  
JUVENILE DIVISION

SETS#:  
08180254                      160368

SETS#:  
08180254                      174419

JAN 11 2010

Defendant:  
Vaughn, Christy

Defendant:  
Cameron, John

Lucas Co. Com. Pleas Cot

SETS#:  
08180254                      160373

SETS#:  
08180254                      171520

Defendant:  
Vaughn, Jason

MAGISTRATE'S DECISION

SETS#:  
08180254                      160371

This matter came on for consideration of the Motion for Custody filed on 12/10/09 by Plaintiff, Ben Wyrembek. Present for hearing were Benjamin Wyrembek represented by Attorney Alan Lehenbauer; John Cameron of Adoption by Gentle Care, by telephone, and his counsel, Attorney Anthony Calamunci. Although notice was provided to the Guardian ad litem, Attorney Heather Fournier; Jason and Christy Vaughn; Jovan Bocvarov, and Drucilla Bocvarov, none of them appeared for hearing.

A brief history of the essence of this case is in order. On [REDACTED] Drucilla Banner-Bocvarov gave birth to the child in Lucas County, Ohio. Ben filed a Complaint in Parentage and Allocation of Parental Rights in Fulton County Juvenile Court on 12/28/07. The Fulton County Court transferred the case to this court. Drucilla was married at the time of the conception to Jovan Bocvarov. Upon results of genetic testing, this court found Ben Wyrembek to be the father of the child on March 17, 2009.

Drucilla and Jovan, indicating on the document that he was not the biological father, had signed permanent surrender documents for the purposes of adoption agreeing to permanent custody to Adoption by Gentle Care, a private child placing agency. The documents were filed with this court pursuant to O.R.C. 5103.15 (B)(2). Adoption by Gentle Care placed the child, through the Interstate Compact, with Jason and Christy Vaughn in Indiana. An adoption proceeding was filed in Lucas County Probate Court and was later dismissed. The dismissal was upheld by the 6<sup>th</sup> District Court of Appeals

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.

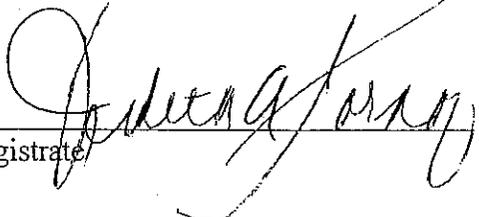
Findings of Fact:

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**

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

Plaintiff:

Wyrembek, Benjamin

SETS#:

08180254

160367

Defendant:

Adoption By, Gentle Care

SETS#:

08180254

174419

Defendant:

Banner-Bocvarov, Drucilla

SETS#:

08180254

160368

SETS#:

08180254

160370

Defendant:

Cameron, John

SETS#:

08180254

171520

MAGISTRATE'S DECISION

FILED  
JUVENILE DIVISION  
JUVENILE DIVISION

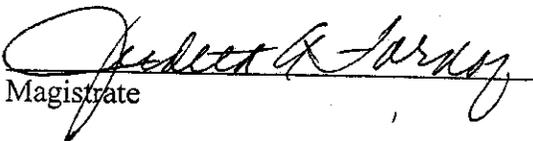
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FEB 03 2010

Lucas Co. Com. Pleas Court  
Lucas Co. Com. Pleas Court

This matter comes on for consideration of the Guardian ad Litem Report filed February 1, 2010. The homestudy ordered to be conducted of Ben Wyrembek is not pursuant to an adoption nor pursuant to foster placement and, therefore, does not fall within the statutory provisions referred to by the Guardian ad Litem.

The Report of the Guardian ad Litem is favorable and contains information sufficient to apprise the court that Ben Wyrembek has adequate housing for this child. The Report satisfies the Court's Order.

THEREFORE, the Magistrate's Decision filed on 1/11/2010 is affirmed. Adoption by Gentle Care shall have the child present at the hearing that is already scheduled for 2/8/2010 at 11:00 a.m., so that he may be placed with Plaintiff, Ben Wyrembek.

  
Magistrate

Date: 2/3/10

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 D**

COURT OF COMMON PLEAS  
LUCAS COUNTY, OHIO  
JUVENILE DIVISION

PLAINTIFF  
WYREMBEK, BENJAMIN  
XXX-XX-

\* JUDGMENT ENTRY  
\* CASE NO.: 08180254  
\*

DEFENDANT  
BANNER-BOCVAROV, DRUCILLA  
XXX-XX-

\*  
\*  
\*

DEFENDANT  
ADOPTION BY, GENTLE CARE  
XXX-XX-

\*  
\*  
\*

DEFENDANT  
CAMERON, JOHN  
XXX-XX-

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\* \* \*

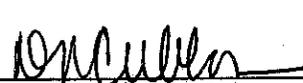
FILED  
JUVENILE DIVISION

MAR 24 2010

Lucas Co. Com. Pleas Court

THIS MATTER COMES BEFORE THE COURT FOR INDEPENDENT REVIEW OF THE DECISION OF MAGISTRATE JUDITH A. FORNOF SIGNED ON 02/08/2010. HAVING REVIEWED THE DECISION, AND FINDING NO ERROR OF LAW OR OTHER DEFECT, IT IS THEREFORE ORDERED ADJUDGED, AND DECREED THAT THE MAGISTRATE DECISION SIGNED HEREIN ON 02/08/2010 IS ADOPTED BY THE COURT; FOLLOWING AN EVIDENTIARY HEARING HELD ON 01/08/10 CUSTODY DECISION WAS RENDERED ON 01/11/10 AND THE GUARDIAN AD LITEM WAS ORDERED TO SUBMIT A WRITTEN REPORT. THE REPORT OF THE GUARDIAN AD LITEM FILED 02/01/10 IS ACCEPTED. THE DECISION OF 01/11/10 IS AFFIRMED. THE COURT DIRECTS THE CLERK TO SERVE UPON ALL PARTIES, NOTICE OF THIS JUDGMENT AND ITS ENTRY UPON THE JOURNAL ON THIS DATE.

Journalized  
Date: 03/24/10  
Entry: 22

  
\_\_\_\_\_  
Judge Denise Navarre Cubbon

**EXHIBIT E**

JOURNALIZING DEPT.  
JUL 12 2010  
Lucas Co. Com. Pleas Court

IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

JUVENILE DIVISION

Benjamin J. Wyrembek,

\*

Case No. JC08-180254

Plaintiff

\*

vs.

\*

Drucilla R. Banner-Bocvarov, et al.,

\*

Defendant

\*

JUDGMENT ENTRY

\* \* \* \* \*

This matter was before the Court on June 16, 2010 on Plaintiff's Motion to Show Cause, filed March 4, 2010, against Adoption by Gentle Care for its failure to comply with the Court's February 3, 2010 Magistrate's Decision. Plaintiff's counsel requests that the Court issue a finding of contempt against Adoption by Gentle Care and grant Plaintiff "attorney fees, court costs, and such other further relief as this court deems just and proper." During the June 16, 2010 show cause hearing, Plaintiff's counsel asked the Court to hold Adoption by Gentle Care in contempt and suspend the jail sentence with the condition that the Agency produce the child within a week.

Defendant, Adoption by Gentle Care, through counsel, filed a Memorandum in Opposition to Motion to Show Cause on March 9, 2010. On April 20, 2010, Plaintiff's counsel filed a Reply to Adoption by Gentle Care's Memorandum in Opposition. The initial show cause hearing date of April 14, 2010 was continued at the request of Adoption by Gentle Care and rescheduled for April 26, 2010. The matter was rescheduled again until June 16, 2010.

Parties present for the hearing were Plaintiff and his counsel; John Cameron, Executive Director of Adoption by Gentle Care, and his counsel; and Heather Fournier, Guardian *ad litem* (GAL).

Upon review of the record and applicable law, the Court finds as follows. First, the parties argued the issue of jurisdiction in an interstate custody dispute extensively in their briefs. The purpose of the show cause hearing was not to address the issue of jurisdiction. This Court still maintains that it has jurisdiction to proceed in this matter and this Court addressed this issue at length in its January 8, 2010 Judgment Entry.

JOURNALIZED

Date 7-12-10

JE 1097 - PG 241

Further, the Court has not received an order to stay any proceedings or prevent this Court from continuing to hear and determine the issues before it.

Second, Defendant's counsel argues that it can not comply with this Court's order because there is a conflicting custody order from an Indiana court concerning the minor child in this matter. Counsel argues that Adoption by Gentle Care faces the possibility of contempt in the Indiana court, and/or civil or criminal liability if it complies with this Court's order. Counsel's arguments are found not well taken. Adoption by Gentle Care failed to provide evidence of an existing Indiana court order requiring the Agency to act in any manner contrary to this Court's order. At the time of the June 16, 2010 show cause hearing, this Court heard testimony concerning only this Court's order for Adoption by Gentle Care to produce the minor child. Again, this Court maintains that it has jurisdiction to proceed in this matter and this Court has issued orders that apply to Defendant, Adoption by Gentle Care.

Third, this Court issued a Magistrate's Decision on January 11, 2010 designating Plaintiff, Benjamin Wyrembek, as the residential parent and legal custodian of the minor child, [REDACTED] pending a favorable home study of Benjamin Wyrembek by the GAL. The GAL Report was favorable and the February 3, 2010 Magistrate's Decision ordered Adoption by Gentle Care to produce the minor child in Court on February 8, 2010 at 10:00 a.m. for a previously scheduled hearing. The Court finds that Adoption by Gentle Care has not complied with this Court's order to produce the child.

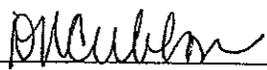
The record is clear that Adoption by Gentle Care and Mr. John Cameron's actions have been insufficient to demonstrate that the Agency has complied, or even attempted to comply, with this Court's order to produce the child. This Court's February 3, 2010 order awarded legal custody of [REDACTED] to his biological father, Benjamin Wyrembek, and ordered Adoption by Gentle Care to produce the child and place him with Mr. Wyrembek. Adoption by Gentle Care, through the actions and/or inactions of its Executive Director, John Cameron, has failed to comply with this Court's order.

At the hearing on July 2, 2010, the Court announced its decision to find Mr. Cameron in contempt. Mr. Cameron failed to appear for the scheduled hearing and did not request a continuance of the hearing date. Counsel for Adoption by Gentle Care

appeared for the hearing without his client. The matter was rescheduled for July 6, 2010 at 3:30 p.m. to announce this decision with Mr. Cameron present.

It is, therefore, **ORDERED, ADJUDGED and DECREED** that Adoption by Gentle Care, through its Executive Director, John Cameron, is hereby found in contempt for failure to comply with the Court's February 3, 2010 order. Plaintiff's Motion to Show Cause is resolved by the terms of this Judgment Entry. Defendant, John Cameron, is ordered to pay Plaintiff's attorney fees and any court costs incurred in pursuing this Show Cause action. Defendant, John Cameron, is sentenced to thirty (30) days in CCNO, which sentence is suspended on the condition that Defendant complies with the purge provision herein. Defendant, John Cameron, may purge himself of contempt by delivering the minor child, [REDACTED] to Plaintiff Benjamin Wyrembek, the child's residential parent and legal custodian. Adoption by Gentle Care and John Cameron are hereby ordered to work with Heather Fournier, the Guardian *ad litem* in this case, and the Vaughn family to plan and facilitate the transfer of the minor child to Mr. Wyrembek in a manner that is in the child's best interest. This Judgment Entry applies to the Vaughn family to the extent necessary to facilitate the return of the child, who is placed with the Vaughns, to the placement agency, Adoption by Gentle Care.

This matter is scheduled for a Motion to Execute Sentence Hearing on September 2, 2010 at 10:00 a.m. before Judge Denise Navarre Cubbon. All parties are hereby to ordered to appear for the Motion to Execute Sentence Hearing. Parties are also ordered to inform the Court of any decision rendered by the Ohio Supreme Court that impacts this case.

  
\_\_\_\_\_  
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.