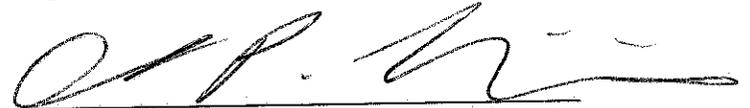


MOTION

Respondent, Judge Thomas J. Capper of the Clark County Common Pleas Court, Domestic Relations Division, Juvenile Section, by and through counsel, hereby submits the attached evidence in the form of exhibits and the Affidavit of Deputy Clerk Jayne Woodruff, verifying these to be true and accurate copies of the documents filed in the case captioned Todd S. (Tad) Roccaro v. Rachel E. Roccaro, n.k.a. Arnold, Clark C.P. No. 2010-JUV-0536. Only those documents from the file necessary to this Court's decision have been included. The Affidavit and Exhibits referenced below are attached and incorporated herein by reference.

Respectfully submitted,



ANDREW P. PICKERING #0068770
ASST. CLARK COUNTY PROSECUTOR
50 East Columbia St., 4th Floor
P.O. Box 1608
Springfield, OH 45501
(937) 521-1770
Fax (937) 328-2657
E-mail: apickering@clarkcountyohio.gov
Counsel for Respondent

CERTIFICATE OF SERVICE

This is to certify that a copy of Respondent's Notice of Filing of Presentation of Evidence, with attachments, was served upon Michael R. Voorhees, Esq., Counsel for Relators, by U.S. first class mail to 11159 Kenwood Road, Cincinnati, OH 45242, on this 15th day of March, 2012.



ANDREW P. PICKERING #0068770
ASST. CLARK COUNTY PROSECUTOR
Counsel for Respondent

COUNTY OF CLARK)
)
STATE OF OHIO) SS

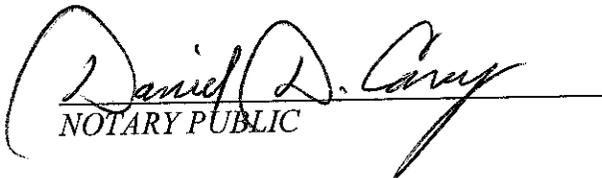
I, Jayne Woodruff, being sworn according to law, depose and state that I have personal knowledge of the following:

1. I am employed as a Deputy Clerk with the Clark County Clerk of Courts, Juvenile Section.
2. All of the documents marked as Exhibits A through R, inclusive, that accompany this Affidavit and are part of the evidence submitted to the Ohio Supreme Court as part of Case No. 2012-0133, *State ex rel. Doe v. Capper*, are true and accurate copies of the documents contained in the file for the case captioned Todd S. (Tad) Roccaro v. Rachel E. Roccaro, n.k.a. Arnold, Clark C.P. No. 2010-JUV-0536.

Further affiant saith naught.


Jayne Woodruff
Deputy Clerk

Subscribed and sworn to before me, this 15th day of March, 2012.


NOTARY PUBLIC



DANIEL D. CAREY
NOTARY PUBLIC, STATE OF OHIO
My commission has no expiration date
Section 147.03 R.C.

List of Exhibits:

- A. Complaint to Establish Paternity, filed October 6, 2010.
- B. Instructions for Service (Certified Mail), filed October 6, 2010.
- C. Praecipe for Service (Personal), filed November 8, 2010.
- D. Magistrate's Order, filed June 1, 2011.
- E. Defendant Rachel Arnold's Motion to Dismiss (faxed version), filed June 20, 2011.
- F. Plaintiff's Response to Defendant's Motion to Dismiss, filed June 23, 2011.
- G. Consent to Jurisdiction, filed June 27, 2011.
- H. Plaintiff's Motion for Rule 60(A) Entry, filed June 27, 2011.
- I. Defendant Rachel Arnold's Motion to Dismiss (original), filed June 27, 2011.
- J. Rule 60(A) Entry Correcting Clerical Error, filed August 4, 2011.
- K. Journal Entry and Magistrate's Findings and Orders, filed August 23, 2011.
- L. Defendant Rachel Arnold's Objections to Magistrate's Decision (faxed version), filed September 2, 2011.
- M. Magistrate's Order, filed September 7, 2011.
- N. Defendant Rachel Arnold's Objections to Magistrate's Decision (original), filed September 8, 2011.
- O. Plaintiff's Response to Defendant's Objections to Magistrate's Decision, filed September 16, 2011.
- P. Entry on Objections on Magistrate's Decision, filed November 9, 2011.
- Q. Notice to Court, filed January 26, 2012.
- R. Entry Staying Proceedings, filed February 1, 2012.

EXHIBIT A

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

TODD S. ROCCARO
601 Keysian Road
Cheyenne, WY 82007
DOB: 10/29/81

Plaintiff

v.

RACHEL E. ROCCARO
103 Third Street
Medway, OH 45341
DOB: 02/13/81

Defendant

CASE N O. 2010 536

COMPLAINT TO ESTABLISH
PATERNITY

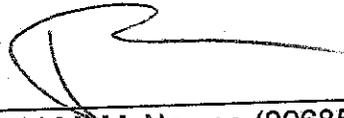
Now comes the Plaintiff, by and through counsel, and hereby moves the Court as follows:

1. Upon a relationship, the Defendant was formerly pregnant;
2. The Plaintiff believes that he is the biological Father of said child, who is now born;
3. The minor child was born in Clark County, Ohio;
4. The minor child resides in Clark County, Ohio.

WHEREFORE, based upon the foregoing, the Plaintiff hereby demands Judgment to declare him to be the biological Father of said child; that the Plaintiff be designated as the sole and residential custodial parent of the minor child; and Order issue regarding child support for said minor child; an Order to issue assessing the obligation providing health care, insurance, and expenses; and for such other and further relief to which the Plaintiff may be entitled.

Respectfully submitted,

MCNAMEE LAW OFFICE, L.L.C.



David M. McNamee (0068582)
Attorney for Father
42 Woodcroft Trail, Ste. D
Beavercreek, OH 45430
(937)427-9650
(937)427-9659 Fax

JOSEPH N. MOYNIHAN
JUDGE

2010 OCT -6 A 8:46

CLARK COUNTY OHIO
COMMON PLEAS COURT
DOMESTIC RELATIONS
DIVISION
JUVENILE DIVISION

EXHIBIT B

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

TODD S. ROCCARO
601 Keysian Road
Cheyenne, WY 82007
DOB: 10/29/81

Plaintiff

v.

RACHEL E. ROCCARO
103 Third Street
Medway, OH 45341
DOB: 02/13/81

Defendant

CASE NO.

2010 536

INSTRUCTIONS FOR SERVICE

TO THE CLERK:

Please issue service upon the Defendant, Rachel E. Roccaro, 103 Third Street, Medway, Ohio 45341, by Certified Mail with a copy of the Complaint to Establish Paternity.

Respectfully submitted,

MCNAMEE LAW OFFICE, L.L.C.



David M. McNamee (0068582)
Attorney for Father
42 Woodcroft Trail, Ste. D
Beavercreek, OH 45430
(937)427-9650
(937)427-9659 Fax

JOSEPH N. MORRIS
JUDGE

2006 OCT - 6 1 A 8:46

CLARK COUNTY OHIO
COMMON PLEAS COURT
DOMESTIC RELATIONS
DIVISION
JUVENILE DIVISION

EXHIBIT C

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

TAD S. ROCCARO
601 Artesian Road
Cheyenne, WY 82007
DOB: 10/29/81

Plaintiff

v.

RACHEL E. ARNOLD
103 Third Street
Medway, OH 45341
DOB: 02/13/81

Defendant

* CASE NO. 2010 536
*
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*

PRAECIPE FOR SERVICE

TO THE CLERK OF COURTS:

Please issue service of process of the within matter and of the Summons and following documents upon Defendant/Mother, Rachel E. Arnold, by personal service, special process server at the address listed above.

1. Complaint for Paternity

Respectfully submitted,

MCNAMEE-LAW OFFICE, L.L.C.


David M. McNamee (0068582)
Attorney for Father
42 Woodcroft Trail, Ste. D
Beavercreek, OH 45430
(937)427-9650
(937)427-9659 Fax

JOSEPH H. HOHANN
JUDGE

2010 NOV - 8 PM 2:13

CLARK COUNTY, OHIO
COMMON PLEAS COURT
DOMESTIC RELATIONS
DIVISION
JUVENILE SECTION

IN THE COURT OF COMMON PLEAS OF CLARK COUNTY, OHIO
DOMESTIC RELATIONS DIVISION

TAD ROCCARO
Plaintiff

vs.

RACHEL ARNOLD
Defendant

CASE NO. 10JUV536

Judge Thomas J. Capper
Magistrate Katrine M. Lancaster

MAGISTRATE'S ORDER

This matter was set before the Court as a pre-trial conference on May 31, 2011, on the Complaint to Determine Parentage. Present were the counsel for the Plaintiff, Matthew Brown, the Defendant, Rachel Arnold, and counsel for the Defendant, Stephen Behnke.

The Court Finds that the parties would like to submit briefs on the issue of whether the juvenile court can determine a issue of paternity of a child after the adoption of the child has been completed.

The Court Orders that the Defendant submit a brief on the above issue by June 20, 2011. The Plaintiff shall have fifteen days from June 20, 2011 to submit his own brief in response on the above issue.

Katrine M. Lancaster

Magistrate Katrine M. Lancaster

JOSEPH N. BONNIN
JUDGE

2011 JUN -1 AM 10:12

CLERK OF COURT
DOMESTIC RELATIONS
DIVISION
JUVENILE SECTION

cc:

Attorney for Plaintiff, Matthew Brown
Attorney for Defendant, Stephen Behnke

CLARK COUNTY OHIO
COMMON PLEAS COURT
DOMESTIC RELATIONS
DIVISION
JUVENILE SECTION

2011 JUN 20 PM 3:06

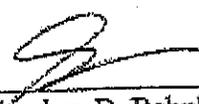
JOSEPH N. MOHANN
JUDGE

**Court of Common Pleas
Domestic Relations Division
Clark County, Ohio**

Tad Rocco	*	Case No. 10 JUV 536
	*	Judge Capper
Plaintiffs	*	Magistrate Lancaster
v.	*	
	*	
Rachel Arnold	*	<u>DEFENDANT, RACHEL ARNOLD'S</u>
	*	<u>MOTION TO DISMISS</u>
Defendant	*	
	*	
	*	
	*	
	*	
	*	

Now comes Rachel Arnold, by and through counsel, and as the birthmother of Baby Doe, and pursuant to Rules 12(B)(1), and 12(B)(6) of the Ohio Rules of Civil Procedure respectfully move this Court to dismiss the matter on the grounds of lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted. A supporting Memorandum is being filed herewith.

BEHNKE, MARTIN & SCHULTE, LLC



 Stephen D. Behnke (0072805)
 812 E. National Road, Suite A
 Vandalia, Ohio 45377
 (937) 435-7500
 Attorney for Defendant, Rachel Arnold

Memorandum in Support

This matter relates to Baby Doe, a child born on November 12, 2009 in Springfield, Ohio. The birth-mother of the child is Defendant, Rachel Arnold. On November 15, 2009, Rachel Arnold signed her Permanent Surrender in accordance with R.C. 5103.15. Thereafter, a duly licensed private child placing agency, as defined in R.C. 2151.011(A)(3), accepted permanent custody consistent with the Permanent Surrender executed by Rachel Arnold. In turn, the permanent custody was filed with and acknowledged by the Juvenile Court in the County in which the private child placing agency is located.

After signing the Permanent Surrender, the child was immediately placed with her adoptive parents. The adoption was finalized on May 26, 2010. The original birth certificate has been sealed and a new birth certificate has been issued naming the adoptive parents as the parents of Baby Doe.

As stated in footnote 1, *supra*, the Defendant would respectfully request that the Court conduct an *in camera* inspection of the Permanent Surrender and Juvenile Court records related to the adoption should it choose to do so to confirm the chronology set forth herein. As set forth below, the Plaintiff has not established that he would have any right to challenge the adoption of Baby Doe. Therefore, Defendant respectfully requests that the Plaintiff be denied access to these private documents as the Plaintiff may use this information in a manner detrimental to the peace, best interests, and well being of Baby Doe and/or her adoptive parents. In sum, as set forth below, the Plaintiff cannot establish any reason that he should be entitled to this information.

The Complaint to Determine Parent Child Relationship was filed in this Clark County

¹ The baby's name has not been identified in this pleading. Similarly, the identity of the adoption agency, adoptive parents, and County where the adoption was filed are not being identified. Defendant is willing to provide this information to the Court for an *in camera* inspection to confirm that the child was born on November 12, 2009, placed for adoption on November 15, 2009 and that the adoption was finalized on May 26, 2010.

Domestic Relations Court on October 6, 2010, which was several months after the adoption was already final. The legal effect of an adoption is set forth in R.C. 3107.15 and provides that the adoption relieves the biological parents of the adopted person of all parental rights and responsibilities, and terminates all legal relationships between the adopted person and the adopted person's biological parents, and creates the relationship of parent and child between the adoptive parents and the adopted person, as if the adopted person were a legitimate blood descendant of each of the adoptive parents. Therefore, on the date the Complaint was filed with this Court (October 6, 2010), Rachel Arnold was not the mother of the child, and the adoptive parents are the mother and father of the child.

Pursuant to R.C. 3107.19 and R.C. 3705.12, the original birth record was sealed and the new birth certificate has been issued naming the adoptive parents as the parents of Baby Doe. Tad Roccaro cannot be added to the child's birth certificate as the father because the adoptive father is the named father of Baby Doe on the child's birth certificate. The original birth record is already sealed and this Court has no jurisdiction to unseal the original birth record or to remove the adoptive father as the father from the existing birth certificate.

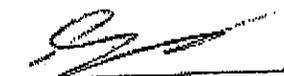
Even if one assumes the truth of any of Plaintiff's allegations about the acts or omissions of Defendant concerning her pregnancy and of Baby Doe, such allegations are irrelevant. The Plaintiff has failed to register for the putative father registry of Ohio. Plaintiff has also alleged that the child was conceived in Colorado. Upon information and belief, Defendant failed to register for the putative father registry of Colorado. In sum, the Plaintiff cannot point to any law of Colorado or Ohio that would give him any standing to challenge the adoption of Baby Doe, so it does not matter if this Court analyzes this matter under the law of Ohio or of Colorado.

If this case is not dismissed, presumably, Baby Doe would have to be taken from her adoptive parents and would have to submit to genetic testing. Since the identity of the father cannot be changed and Plaintiff has no right to challenge the adoption of Baby Doe, this court should deny the Plaintiff's request to determine the paternity of Baby Doe and dismiss this case.

If the Complaint had been filed prior to the finalization of the adoption, the Plaintiff may have had the right to establish paternity for the sole and limited purpose of completing the social and medical history pursuant to R.C. 3107.09 and R.C. 3107.091 and filing the social and medical history with the Probate Court. See *State ex rel. Furnas v. Monnin* (2008) 120 Ohio St. 3d 279, 2008 Ohio 5569. However, no such right exists in this matter.

WHEREFORE, Defendant, Rachel Arnold, by and through counsel, and as the biological mother of Baby Doe, respectfully move this Court to dismiss this action for the reasons set forth above.

BEHNKE, MARTIN & SCHULTE, LLC



Stephen D. Behnke (0072805)
812 E. National Road, Suite A
Vandalia, Ohio 45377
(937) 435-7500
Attorney for Defendant, Rachel Arnold

Certificate of Service

I hereby certify that a copy of the foregoing has been served by regular U.S. mail this 17th
day of June, 2011 upon: David McNamee, 42 Woodcroft Trail, Suite D, Beavercreek, Ohio 45430.



Stephen D. Behnke

EXHIBIT F

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

TAD S. ROCCARO
601 Artesian Rd.
Cheyenne, WY 82007
DOB: 10/29/11

Plaintiff

v.

RACHEL E. ARNOLD
103 Third Street
Medway, Ohio 45341
DOB: 02/13/81

Defendant

* CASE NO. 2010 536
* Judge CAPPER
* MAGISTRATE LANCASTER

*

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*

PLAINTIFF'S RESPONSE TO
DEFENDANT'S MOTION TO
DISMISS

Now comes the Plaintiff, by through Counsel, and hereby submits his response to Defendant's Motion to Dismiss Plaintiff's Complaint for Paternity. Memorandum support is submitted below.



David M. McNamee (0068582)
Attorney for Plaintiff
42 Woodcroft Trail, Ste. D
Beavercreek, OH 45430
(937)427-9650
(937)427-9659 Fax

JOSEPH N. MONNIN
JUDGE

2015 JUN 23 PM 3:29

CLARK COUNTY DIVISION
COMMON PLEAS COURT
DOMESTIC RELATIONS
DIVISION
JUVENILE SECTION

MEMORANDUM

This matter comes before the Court pursuant to Plaintiff's Complaint to Establish Paternity filed October 6, 2010. As background, Defendant has refused to provide Plaintiff with any information. Plaintiff, through Defendant's Motion to Dismiss, has just now learned of a birth date, and adoption date. However, proof has still not been provided although requested through counsel.

Plaintiff and Defendant were dating and living together in Wyoming. The two decided to end the relationship. Prior to that determination, the two discovered the Defendant was pregnant. Both Plaintiff and Defendant went to the hospital to see the child's heartbeat. Before the Defendant left, she stated she was going to put the child up for adoption. The Plaintiff stated he wanted to keep his child.

Once the Defendant arrived in Ohio, Defendant stopped returning the Plaintiff's phone calls and eventually changed her phone number. Before the Defendant changed her phone number, she told the Plaintiff she was going to have the child aborted. The Plaintiff then attempted to contact the Defendant's family to obtain information. These attempts were unsuccessful.

Sometime later, the Plaintiff learned the Defendant may not have aborted the child. The Plaintiff then initiated a paternity action in the Clark County Ohio Juvenile Court. The Plaintiff has also consented to the Clark County Ohio Juvenile Court exercising jurisdiction over the issue of paternity.

In The State Ex Rel. Furnas Et. Al. v. Monnin, (2008) 120 Ohio St. 3d 279, 2008 Ohio 5569, the Ohio Supreme Court held that although a child has been adopted, the Juvenile Court retains jurisdiction to establish paternity of that child.

The Court reasoned that O.R.C. 2151.23(B) states "the juvenile court has original jurisdiction under the Revised Code : (2) To determine the paternity of any child alleged to have been born out of wedlock pursuant to sections 3111.01 to 3111.18 of the revised code." Id. The Court goes on to say although O.R.C. 3107.15(A) states a Decree of Adoption acts "to relieve the biological or other legal parents of the adopted person of all parental rights and responsibilities, and to terminate all legal relationships between the adopted person and the adopted persons relatives..." there is still reason a Juvenile Court shall retain jurisdiction over paternity of an adopted child. Id.

The Court states that "biological parents have a right to request forms to provide their social and medical history even after an adoption decree has been finalized." Id. O.R.C. 3107.09(D) states in part "...A Biological parent may cause the histories to be corrected or expanded even if the biological parent did not provide any information to the assessor at the time the histories were prepared."

The Court found "a final decree of adoption does not patently and unambiguously divests a juvenile court of jurisdiction to determine paternity solely for the limited purpose of allowing the putative father to establish that he is the biological father so that he can exercise his statutory rights under R.C. 3107.09 and 3107.097 to provide information regarding his social and medical history for placement in the child's adoption records."

The State Ex. Rel. Furnas Et. Al. v. Monnin

Presumably like in The State Ex. Rel. Furnas Et. Al. v. Monnin, a child in this case has been born and subsequently adopted. Further, the Court made it very clear at pre-trial the Juvenile Court has no authority over the adoption or any parenting issues, only paternity. Pursuant to The State Ex. Rel. Furnas Et. Al. v. Monnin, O.R.C.

2151.23(B) and O.R.C. 3107.09(D), the court must deny Defendant's Motion to Dismiss Plaintiff's Complaint for Paternity.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon Stephen Behnke, 812 E. National Rd., Vandalia, Ohio 45377, by Regular U.S. Mail, this 22 day of June, 2011.



David M. McNamee (0068582)
Attorney for Plaintiff

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

TAD S. ROCCARO
601 Artesian Rd.
Cheyenne, WY 82007
DOB: 10/29/11

Plaintiff

v.

RACHEL E. ARNOLD
103 Third Street
Medway, Ohio 45341
DOB: 02/13/81

Defendant

* CASE NO. 2010 536
* Judge CAPPER
* MAGISTRATE LANCASTER

CONSENT TO JURISDICTION

Now comes the Defendant, and hereby consents to the State of Ohio and the County of Clark exercising jurisdiction over the issue a paternity in the above referenced case.

CLARK COUNTY
JUVENILE DIVISION
JUN 27 AM 10:36
JUDITH H. MONNIN
JUDGE

Tad S. Roccaro

Tad S. Roccaro, Plaintiff

State of Wyoming County of Laramie
Subscribed and sworn before me
on 6/13/11
(Date) *Lori Brandon*

Notary Signature

LORI BRANDON - NOTARY PUBLIC
County of Laramie State of Wyoming
My Commission Expires December 27, 2014

2011 JUN 22 PM 4:07
FILED
RON J. FLEMING, CLERK
COMMON PLEAS COURT
CLARK COUNTY, OHIO

CLERK OF COURT
JUVENILE SECTION

2011 JUN 27 AM 10:36

JOSEPH H. MONNIN
JUDGE



David M. McNamee (0068582)
Attorney for Plaintiff
42 Woodcroft Trail, Ste. D
Beavercreek, OH 45430
(937)427-9650
(937)427-9659 Fax

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon Stephen Behnke, 812 E. National Rd., Vandalia, Ohio 45377, by Regular U.S. Mail, this 20th day of June, 2011.

CLERK OF COURT
JUVENILE SECTION

2011 JUN 27 AM 10:36

JOSEPH H. MONNIN
JUDGE



David M. McNamee (0068582)
Attorney for Plaintiff

EXHIBIT H

IN THE COMMON PLEAS COURT OF CLARK COUNTY, OHIO

Domestic Relations Division

TAD S. ROCCARO
601 Artesian Rd.
Cheyenne, WY 82007
DOB: 10/29/11

Plaintiff,

vs.

RACHEL E. ARNOLD
103 Third Street
Medway, Ohio 45341
DOB: 02/13/81

Defendant.

*
*
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*
*

CASE NO. 2010 536

Judge Capper
Magistrate Lancaster

PLAINTIFF'S MOTION FOR
RULE 60(A) ENTRY

2011 JUN 22 PM 4:06
FILED
RON VAHRENT, CLERK
COMMON PLEAS COURT
CLARK COUNTY, OHIO

Now comes the undersigned, and hereby respectfully moves this Court for a 60(A) Order correcting the Consent To Jurisdiction. Body of said consent states Defendant consents to the State of Ohio and County of Clark exercising jurisdiction. The entry should read the Plaintiff consents.

Wherefore, Counsel would respectfully request that this Court issue an Entry correcting this issue.

Respectfully submitted,

MCNAMEE LAW OFFICE, L.P.C.



David M. McNamee (0068582)
Attorney for Plaintiff
42 Woodcroft Trail, Suite D
Beavercreek, Ohio 45430
(937) 427-9650
(937) 427-9659 (fax)

JOSEPH N. MONNIN
JUDGE

2011 JUN 27 AM 10:36

CLARKE COUNTY COURT
JUVENILE SECTION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon Stephen Behnke, 812 E. National Rd., Vandalia, Ohio 45377, by Registered U.S. Mail, this _____ day of June, 2011.



David M. McNamee (0068582)
Attorney for Plaintiff

JOSEPH N. MONNIN
JUDGE

2011 JUN 27 AM 10:36

CLARKE COUNTY COURT
JUVENILE SECTION

FILED
2011 JUN 22 PM 4:06
CLERK
COMMON PLEAS COURT
CLARKE COUNTY, OHIO

EXHIBIT I

**Court of Common Pleas
Domestic Relations Division
Clark County, Ohio**

Tad Rocco

Plaintiffs

v.

Rachel Arnold

Defendant

* Case No. 10 JUV 536

* Judge Capper
Magistrate Lancaster

*

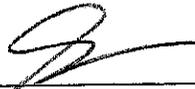
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**DEFENDANT, RACHEL ARNOLD'S
MOTION TO DISMISS**

* * * * *

Now comes Rachel Arnold, by and through counsel, and as the birthmother of Baby Doe, and pursuant to Rules 12(B)(1), and 12(B)(6) of the Ohio Rules of Civil Procedure respectfully move this Court to dismiss the matter on the grounds of lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted. A supporting Memorandum is being filed herewith.

BEHNKE, MARTIN & SCHULTE, LLC



Stephen D. Behnke (0072805)
812 E. National Road, Suite A
Vandalia, Ohio 45377
(937) 435-7500

Attorney for Defendant, Rachel Arnold

JOSEPH N. MONNIN
JUDGE

2011 JUN 27 AM 10:07

JUVENILE SECTION



Memorandum in Support

This matter relates to Baby Doe¹ a child born on November 12, 2009 in Springfield, Ohio. The birth-mother of the child is Defendant, Rachel Arnold. On November 15, 2009, Rachel Arnold signed her Permanent Surrender in accordance with R.C. 5103.15. Thereafter, a duly licensed private child placing agency, as defined in R.C. 2151.011(A)(3), accepted permanent custody consistent with the Permanent Surrender executed by Rachel Arnold. In turn, the permanent custody was filed with and acknowledged by the Juvenile Court in the County in which the private child placing agency is located.

After signing the Permanent Surrender, the child was immediately placed with her adoptive parents. The adoption was finalized on May 26, 2010. The original birth certificate has been sealed and a new birth certificate has been issued naming the adoptive parents as the parents of Baby Doe.

As stated in footnote 1, *supra*, the Defendant would respectfully request that the Court conduct an *in camera* inspection of the Permanent Surrender and Juvenile Court records related to the adoption should it choose to do so to confirm the chronology set forth herein. As set forth below, the Plaintiff has not established that he would have any right to challenge the adoption of Baby Doe. Therefore, Defendant respectfully requests that the Plaintiff be denied access to these private documents as the Plaintiff may use this information in a manner detrimental to the peace, best interests, and well being of Baby Doe and/or her adoptive parents. In sum, as set forth below, the Plaintiff cannot establish any reason that he should be entitled to this information.

~~The Complaint to Determine Parent Child Relationship was filed in this Clark County~~

¹ The baby's name has not been identified in this pleading. Similarly, the identity of the adoption agency, adoptive parents, and County where the adoption was filed are not being identified. Defendant is willing to provide this information to the Court for an *in camera* inspection to confirm that the child was born on November 12, 2009, placed for adoption on November 15, 2009 and that the adoption was finalized on May 26, 2010.

Domestic Relations Court on October 6, 2010, which was several months after the adoption was already final. The legal effect of an adoption is set forth in R.C. 3107.15 and provides that the adoption relieves the biological parents of the adopted person of all parental rights and responsibilities, and terminates all legal relationships between the adopted person and the adopted person's biological parents, and creates the relationship of parent and child between the adoptive parents and the adopted person, as if the adopted person were a legitimate blood descendant of each of the adoptive parents. Therefore, on the date the Complaint was filed with this Court (October 6, 2010), Rachel Arnold was not the mother of the child, and the adoptive parents are the mother and father of the child.

Pursuant to R.C. 3107.19 and R.C. 3705.12, the original birth record was sealed and the new birth certificate has been issued naming the adoptive parents as the parents of Baby Doe. Tad Roccaro cannot be added to the child's birth certificate as the father because the adoptive father is the named father of Baby Doe on the child's birth certificate. The original birth record is already sealed and this Court has no jurisdiction to unseal the original birth record or to remove the adoptive father as the father from the existing birth certificate.

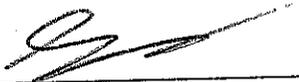
Even if one assumes the truth of any of Plaintiff's allegations about the acts or omissions of Defendant concerning her pregnancy and of Baby Doe, such allegations are irrelevant. The Plaintiff has failed to register for the putative father registry of Ohio. Plaintiff has also alleged that the child was conceived in Colorado. Upon information and belief, Defendant failed to register for the putative father registry of Colorado. In sum, the Plaintiff cannot point to any law of Colorado or Ohio that would give him any standing to challenge the adoption of Baby Doe, so it does not matter if this Court analyzes this matter under the law of Ohio or of Colorado.

If this case is not dismissed, presumably, Baby Doe would have to be taken from her adoptive parents and would have to submit to genetic testing. Since the identity of the father cannot be changed and Plaintiff has no right to challenge the adoption of Baby Doe, this court should deny the Plaintiff's request to determine the paternity of Baby Doe and dismiss this case.

If the Complaint had been filed prior to the finalization of the adoption, the Plaintiff may have had the right to establish paternity for the sole and limited purpose of completing the social and medical history pursuant to R.C. 3107.09 and R.C. 3107.091 and filing the social and medical history with the Probate Court. See *State ex rel. Furnas v. Monnin* (2008) 120 Ohio St. 3d 279, 2008 Ohio 5569. However, no such right exists in this matter.

WHEREFORE, Defendant, Rachel Arnold, by and through counsel, and as the biological mother of Baby Doe, respectfully move this Court to dismiss this action for the reasons set forth above.

BEHNKE, MARTIN & SCHULTE, LLC



Stephen D. Behnke (0072805)
812 E. National Road, Suite A
Vandalia, Ohio 45377
(937) 435-7500
Attorney for Defendant, Rachel Arnold

JOSEPH N. MONNIN
JUDGE

2011 JUN 27 AM 10:07

JUVENILE SECTION

Certificate of Service

I hereby certify that a copy of the foregoing has been served by regular U.S. mail this 17th
day of June, 2011 upon: David McNamee, 42 Woodcroft Trail, Suite D, Beavercreek, Ohio 45430.



Stephen D. Behnke

2011 JUN 27 AM 10: 07
JOSEPH N. HONNIN
JUDGE
JUVENILE SECRETARIAN

IN THE COMMON PLEAS COURT OF CLARK COUNTY, OHIO

Domestic Relations Division

TAD S. ROCCARO
601 Artesian Rd.
Cheyenne, WY 82007
DOB: 10/29/11

Plaintiff,

vs.

RACHEL E. ARNOLD
103 Third Street
Medway, Ohio 45341
DOB: 02/13/81

Defendant.

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*
*
*

CASE NO. 2010 536

Judge Capper
Magistrate Lancaster

RULE 60(A) ENTRY
CORRECTING CLERICAL
ERROR

This matter having come before the Court upon Motion of counsel for Plaintiff and for good cause having been shown, the record shall reflect the Plaintiff has consented to the State of Ohio and the County of Clark exercising jurisdiction over this matter.

IT IS SO ORDERED.



JUDGE CAPPER

CC: David M. McNamee
Stephen Behnke

CLERK OF COURT
DOMESTIC RELATIONS
DIVISION
JUVENILE SECTION
2011 AUG -4 PM 2:47
JUDGE
JOSEPH N. MONNIN

EXHIBIT K

IN THE COURT OF COMMON PLEAS OF CLARK COUNTY, OHIO
DOMESTIC RELATIONS DIVISION

TAD ROCCARO

Plaintiff

CASE NO. 2010JUV536

vs.

RACHEL ARNOLD

Defendant

JOURNAL ENTRY

FINAL APPEALABLE ORDER

The Magistrate's Findings and Orders attached herewith are adopted and ratified by this Court in their entirety and therefore made a final Order of this Court.

This is a Final Appealable Order.

A party shall not assign as error on appeal the Court's adoption of any findings of fact or conclusions of law in that decision unless the party timely and specifically objects to that finding or conclusion as required by Ohio Civil Rule 53(E)(3).



Judge Thomas Capper

CLARK COUNTY
DOMESTIC RELATIONS
JUVENILE SECTION
2010 AUG 23 PM 2:00
JUDGE THOMAS CAPPER

cc:

Attorney for Plaintiff, David McNamee (Matthew Brown)

Attorney for Defendant, Stephen Behnke

IN THE COURT OF COMMON PLEAS OF CLARK COUNTY, OHIO
DOMESTIC RELATIONS DIVISION

TAD ROCCARO
Plaintiff

CASE NO. 2010JUV536

vs.

RACHEL ARNOLD
Defendant

MAGISTRATE'S DECISION
AND ORDERS

This matter is before the Court on upon a Complaint to Establish Paternity and Defendant's Motion to Dismiss.

The Court makes the following findings:

1. The relevant facts for this determination are not at issue. The Defendant, Rachel Arnold, gave birth to a child on November 12, 2009 in Clark County, Ohio. The child was subsequently adopted through a private adoption service after Ms. Arnold executed the Permanent Surrender. The adoption was finalized on May 26, 2010. The Plaintiff, Tad Roccaro, now requests that this Court establish the biological parentage of the child born to Rachel Arnold on November 12, 2009 as he believes he is the father of that child.
2. The parties both submitted briefs on the issue of whether the juvenile court has jurisdiction to order genetic testing to determine parentage of a child after an adoption of that child has occurred.
3. Ohio Revised Code, section 2151.23(B) gives the juvenile court original jurisdiction to determine the parentage of a child. Ohio Revised Code, sections 3111.01 to 3111.18 allows a man who believes he maybe the father of a child the right to request a determination of the father-child relationship. Ohio Revised Code, section 3107.15(A) terminates the parental rights of the biological parents and creates parental rights for the

adoptive parents. Ohio Revised Code, section 3107.09 allows a biological parent to provide his/her social and medical history even after the finalization of the adoption of a minor child.

4. The Defendant argues that the juvenile court has no jurisdiction to determine paternity because the adoption of the child in question here has been finalized. The Ohio Supreme Court in *State ex rel. Furnas, et al. vs. Judge Monnin*, 120 Ohio St 3rd 279 (2008), 898 N.E.2nd 773 determined, " a juvenile court judge does not patently and unambiguously lack jurisdiction to determine paternity solely for the limited purpose of allowing the putative father to exercise his statutory rights under R.C. 3107.09 and 3107.091 if he is determined to be the biological father. Those statutes allow a biological father to provide information regarding his social and medical history for placement in the child's adoption records." As in the instant case, the adoption of the minor child had been finalized in *Furnas* at the time the genetic tests were ordered.

5. This Court has jurisdiction to determine the paternity issue of the minor child. The Plaintiff's Complaint requests that the Court designate him as the sole residential and custodial parent and issue orders regarding child support and health insurance. Those requests are denied due to the fact that the adoption has been finalized and the biological parents rights have been terminated. The Court has the attached an entry from the Probate Court in Clark County, Ohio, Case No. 20075035, regarding the affect of parentage proceeding on the adoption proceedings.

The Court makes the following orders:

1. The Defendant's Motion to Dismiss are overruled.

2. The Court will proceed on the issue of paternity only. The Plaintiff's requests to determine custody and other issues relating to the child are denied.
3. The Defendant shall provide the Plaintiff with the identity of the adoption agency and the adoptive parents within ten (10) days of the filing of this entry.
4. A fifteen (15) minute attorney pre-trial will be held on

August 30, 2011 at 11:45 a.m.


Magistrate Katrine M. Lancaster

JOSEPH J. JOHNSON
2011 AUG 23 PM 2:01
JUVENILE SECTION

IN THE COURT OF COMMON PLEAS

JAN - 2 2008

PROBATE DIVISION

RICHARD P. CAREY
PROBATE JUDGE

CLARK COUNTY, OHIO

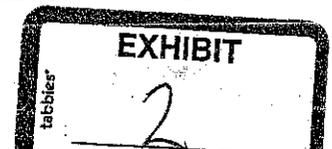
In the Matter of:
The Adoption of Baby Boy Doe
(Sonny Frederick, Putative Father)

Case No. 20075035

Decision and Entry

This matter came before this Court at the instance of the Petitioners herein to review this Court's prior entry granting a Stay in the adoption proceedings currently pending herein. The Court, having been notified of the pendency of parentage proceedings in the Juvenile Court regarding the determination of the biological father, ordered all proceedings Stayed on the authority of In Re Application of Pushcar (2006), 110 Ohio St.3d 332. The Petitioners contend that the Pushcar decision should not apply to the case at bar; and request this Court to reconsider its Order staying the proceedings.

Some history. Baby Boy Doe was born on July 14, 2007. The single, birth mother appeared before this Court on August 7, 2007 and requested this Court to place this child with a married couple for the purpose of adoption---a petition for which was filed on even date. This Court granted this request pursuant to ORC Sec. 5103.16. On September 17, 2007, the Court received an Ohio Putative Father Registry Certification representing that, as of August 16, 2007, no putative father had timely registered pursuant to ORC Sec. 3107.061 et. seq. On November 14, 2007, the Court received an "Objection to Adoption and Motion for Stay and Notice of Non-consent" filed on behalf of Sonny Frederick, who was described to be the "Putative Father." It was represented that a Complaint to Determine Parentage had been filed in the Common Pleas Court of Clark County, Ohio, Domestic Relations Division---Juvenile Section. This Court now takes



FILED

CLARK COUNTY PROBATE COURT

judicial notice that this Complaint was filed *after* the filing of the aforementioned placement and adoption petitions.

JAN - 2 2008

RICHARD P. CAREY
PROBATE JUDGE

The Supreme Court, in the Pushcar decision, reaffirmed "the bedrock proposition that once a court of competent jurisdiction has begun the task of deciding the long-term fate of a child, all other courts are to refrain from exercising jurisdiction over that matter." In re Adoption of Asente (2000), 90 Ohio St.3d 91, 92. To that end, they ruled that when an issue concerning the parenting of a minor child is pending in the juvenile court, a probate court must refrain from proceeding with the adoption of that child. In doing so, the Supreme Court again acknowledged that natural parents have a fundamental right to the care and custody of their children. In re Adoption of Masa (1986), 23 Ohio St.3d 163, 165, citing Santosky v. Kramer (1982), 455 U.S. 745, 753. Because adoption terminates those fundamental rights, any exception to the requirement of parental consent to adoption must be strictly construed. And, the Court suggested, a pre-requisite to this was a judicial ascertainment of paternity. "Therefore, a mother who relies on R.C. 3107.07(A) to divest a natural father of his parental rights carries the obligation of establishing paternity...." (See Pushcar, *supra*, p. 335).

It might appear at first glance that this decision would be dispositive of the case before this Court---that is, that the probate court should permit the juvenile court's paternity action to conclude before proceeding with the adoption petition. However, a closer review suggests that the Supreme Court was limiting its decision to "consent"

issues presented under ORC Sec. 3107.07(A):

" The ability of a court to dispense with the consent requirement under *R. C. 3107.07(A)* is dependent upon the establishment of the parent-child relationship. In re Adoption of Sunderhaus (1992), 63 Ohio St.3d 127, 130, 585 N.E.2d 418.

87

Establishing the parent-child relationship requires "judicial ascertainment of paternity." Id. at 131, 585 N.E.2d 418. We further explained that "[i]nterpreting R.C. 3107.07(A) as requiring a paternity determination prior to the running of the one-year period comports with the requirements of due process and the plain meaning of its provisions." Id. at 132, 585 N.E.2d 418. (emphasis added).

JAN - 2 2008

RICHARD P. CAREY
PROBATE JUDGE

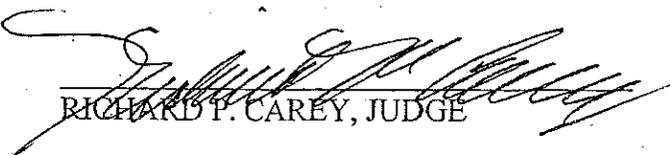
The matter before this Court does not involve ORC Sec. 3107.07(A); but rather, Sec. 3107.07(B). Under paragraph (B), the consent of a "putative father" to an adoption is not a necessary pre-requisite to the Court's consideration of the petition if the putative father fails to register with the "putative father registry" within thirty (30) days of the birth of the child. As noted above, no putative father timely registered with said registry. Under these circumstances, it becomes irrelevant to the adoption proceedings that any man should thereafter come forward and claim paternity:

"A man who has sexual intercourse with a woman is on notice that if a child is born as a result and the man is the putative father, the child may be adopted without his consent pursuant to division (B) of section 3107.07 of the Revised Code." (ORC Sec. 3107.061).

Clearly, the Ohio legislature, in writing this section, was seeking to balance the fundamental right of a father to raise his child with the interests of that child to have that father timely step forward. It is the legislature that chose the cutoff date to be thirty days. This Court is bound by that choice.

For the forgoing reasons, this Court vacates its previous Stay of the adoption proceedings herein.

IT IS SO ORDERED.



RICHARD P. CAREY, JUDGE

PP

**Court Of Common Pleas
Domestic Relations Division
Clark County, Ohio**

Tad Rocco

Plaintiffs

V.

Rachel Arnold

Defendant

* Case No. 10 JUV 536

* Judge Capper
Magistrate Lancaster.

* **DEFENDANT, RACHEL ARNOLD'S**
* **OBJECTIONS TO MAGISTRATE'S**
* **DECISION**

* * * * *

Now comes Rachel Arnold, by and through counsel, and as the birthmother of Baby Doe, and files her Objections to the Magistrate's Decision filed August 23, 2011, a copy of which is attached hereto as Exhibit A. To the best of Defendant's knowledge, there is no transcript of any proceedings related to this matter, as this matter was ruled upon after considering the parties' written pleadings. To the extent, Defendant may be incorrect, Defendant reserves the right to supplement the record with a copy of any such transcript that may exist. A Supporting Memorandum is being filed herewith.

BEHNKE, MARTIN & SCHULTE, LLC



Stephen D. Behnke (0072805)
812 E. National Road, Suite A
Vandalia, Ohio 45377
(937) 435-7500
Attorney For Defendant, Rachel Arnold

2011 SEP -2 AM 10:09
FILED
RECORDS SECTION
CLERK OF COURT
JOSEPH R. DOMININ
JUDGE

Memorandum In Support

Assignment Of Error 1: The Magistrate Erred When Denied The Defendant's Motion To Dismiss Since She Has No Legal Relationship To The Minor Child.

The Court determined that Rachel Arnold gave birth to a child on November 12, 2009, placed the child through a private adoption service, that led to an adoption that was finalized on May 26, 2010. With this finding, Defendant respectfully submits that the Magistrate should have dismissed this case.

As set forth in Defendant's Motion To Dismiss, the legal effect of an adoption is set forth in R.C. 3107.15 and provides that the adoption relieves the biological parents of the adopted person of all parental rights and responsibilities, and terminates all legal relationships between the adopted person and the adopted person's biological parents, and creates the relationship of parent and child between the adoptive parents and the adopted person, as if the adopted person were a legitimate blood descendant of each of the adoptive parents. Therefore, on the date the Complaint was filed with this Court (October 6, 2010), Rachel Arnold was not the Mother of the Child, and the adoptive parents are the Mother and Father of the Child.

Rachel Arnold is simply not a proper Defendant. In *State Ex Rel. Furnas v. Monnin* (2008) 120 Ohio St. 3d 279, 2008 Ohio 5569, it appears that the adoptive parents were named as parties by the biological father. The adoptive parents are the only persons in the instant case who would have any duty or authority to present Baby Doe for genetic testing. Therefore, this case differs significantly from *Furnas* since Rachel Arnold has no rights to the Child, she is not a proper Defendant and the Magistrate should have dismissed the case once Rachel Arnold established that she placed Baby Doe for adoption and that the adoption was completed and final.

Assignment Of Error Number 2: The Magistrate Erred When She Ordered "[T]he Defendant To

Provide The Plaintiff With The Identity Of The Adoption Agency And The Adoptive Parents Within Ten (10) Days Of The Filing Of This Entry."

Among other things, the Magistrate ordered the Defendant to provide the Plaintiff with the identity of the adoption agency and the adoptive parents within 10 days of the filing of its Entry. The Magistrate did not provide any legal authority to support its right to order the Defendant to provide this information to the Plaintiff. In fact, the Defendant respectfully posits that by doing so, the Magistrate is ordering the Defendant to commit a criminal offense.

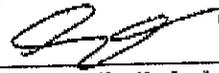
Ohio Revised Code Section 3107.17(B)(1) states that no person or governmental entity shall knowingly reveal any information contained in a paper, book, or record pertaining to an adoption that is part of the permanent record of a court or maintained by the department of job and family services, an agency, or attorney without the consent of a court. In turn, Ohio Revised Code Section 3107.99 establishes that any person who violates division (B)(1) of 3107.17 is guilty of a misdemeanor of the third degree.

For the foregoing reasons, Defendant objects to the Magistrate's Order that she turn over information regarding the adoption to the Plaintiff because the Magistrate has no legal authority to make this order and because to do so would constitute a criminal offense.

Conclusion

For the foregoing reasons, Defendant objects to the Magistrate's decision and asks this court to reverse that decision and dismiss this case.

BEHNKE, MARTIN & SCHULTE, LLC



Stephen D. Behnke (0072805)
812 E. National Road, Suite A
Vandalia, Ohio 45377
(937) 435-7500
Attorney for Defendant, Rachel Arnold

JOSEPH J. PUNNIN
JUDGE

2011 SEP -2 AM 10:09

JUVENILE SECTION

Certificate Of Service

I hereby certify that a copy of the foregoing has been served by regular U.S. mail this 2nd
day of September, 2011 upon: David Mcnamee, 42 Woodcroft Trail, Suite D, Beavercreek, Ohio
45430.



Stephen D. Behnke, Esquire

JOSEPH J. PUNNIN
JUDGE

2011 SEP -2 AM 10:09

JUVENILE SECTION

EXHIBIT M

**IN THE COMMON PLEAS COURT OF CLARK COUNTY, OHIO
DOMESTIC RELATIONS DIVISION
JUVENILE SECTION**

TAD ROCCARO : Case No. 2010-0536
Plaintiff : Judge Capper
vs. : Magistrate Lancaster
RACHEL ARNOLD : **MAGISTRATE'S ORDER**
Defendant :

This matter was before the Court on August 30, 2011.

IT IS HEREBY ORDERED that this case will be reviewed by the undersigned Magistrate on September 16, 2011, to determine if either party has filed an objection to the Magistrate's Decision and Orders.


Magistrate Katrine M. Lancaster

KML:vb

cc: David McNamee/Matthew Brown, Attorneys for Plaintiff, 42 Woodcroft Trail, Suite D,
Beavercreek, Ohio 45430
Stephen D. Behnke, Attorney for Defendant, 812 E. National Road, Suite A, Vandalia,
Ohio 45377

2011 SEP -7 PM 4:28
JUDGE
DIVISION
JUVENILE SECTION

EXHIBIT N

**Court Of Common Pleas
Domestic Relations Division
Clark County, Ohio**

Tad Rocco

Plaintiffs

V.

Rachel Arnold

Defendant

* Case No. 10 JUV 536

* Judge Capper
Magistrate Lancaster

*

*

**DEFENDANT, RACHEL ARNOLD'S
OBJECTIONS TO MAGISTRATE'S
DECISION**

* * * * *

Now comes Rachel Arnold, by and through counsel, and as the birthmother of Baby Doe, and files her Objections to the Magistrate's Decision filed August 23, 2011, a copy of which is attached hereto as Exhibit A. To the best of Defendant's knowledge, there is no transcript of any proceedings related to this matter, as this matter was ruled upon after considering the parties' written pleadings. To the extent, Defendant may be incorrect, Defendant reserves the right to supplement the record with a copy of any such transcript that may exist. A Supporting Memorandum is being filed herewith.

BEHNKE, MARTIN & SCHULTE, LLC



Stephen D. Behnke (0072805)
812 E. National Road, Suite A
Vandalia, Ohio 45377
(937) 435-7500
Attorney For Defendant, Rachel Arnold

JOSEPH A. DONNARD
JUDGE

2011 SEP -8 AM 9:21

DOMESTIC RELATIONS
DIVISION
JUVENILE SECTION

Memorandum In Support

Assignment Of Error 1: The Magistrate Erred When Denied The Defendant's Motion To Dismiss Since She Has No Legal Relationship To The Minor Child.

The Court determined that Rachel Arnold gave birth to a child o November 12, 2009, placed the child through a private adoption service, that led to an adoption that was finalized on May 26, 2010. With this finding, Defendant respectfully submits that the Magistrate should have dismissed this case.

As set forth in Defendant's Motion To Dismiss, the legal effect of an adoption is set forth in R.C. 3107.15 and provides that the adoption relieves the biological parents of the adopted person of all parental rights and responsibilities, and terminates all legal relationships between the adopted person and the adopted person's biological parents, and creates the relationship of parent and child between the adoptive parents and the adopted person, as if the adopted person were a legitimate blood descendant of each of the adoptive parents. Therefore, on the date the Complaint was filed with this Court (October 6, 2010), Rachel Arnold was not the Mother of the Child, and the adoptive parents are the Mother and Father of the Child.

Rachel Arnold is simply not a proper Defendant. In *State Ex Rel. Furnas v. Monnin* (2008) 120 Ohio St. 3d 279, 2008 Ohio 5569, it appears that the adoptive parents were named as parties by the biological father. The adoptive parents are the only persons in the instant case who would have any duty or authority to present Baby Doe for genetic testing. Therefore, this case differs significantly from *Furnas* since Rachel Arnold has no rights to the Child, she is not a proper Defendant and the Magistrate should have dismissed the case once Rachel Arnold established that she placed Baby Doe for adoption and that the adoption was completed and final.

Assignment Of Error Number 2: The Magistrate Erred When She Ordered "[T]He Defendant To

Provide The Plaintiff With The Identity Of The Adoption Agency And The Adoptive Parents Within Ten (10) Days Of The Filing Of This Entry.”

Among other things, the Magistrate ordered the Defendant to provide the Plaintiff with the identity of the adoption agency and the adoptive parents within 10 days of the filing of its Entry. The Magistrate did not provide any legal authority to support its right to order the Defendant to provide this information to the Plaintiff. In fact, the Defendant respectfully posits that by doing so, the Magistrate is ordering the Defendant to commit a criminal offense.

Ohio Revised Code Section 3107.17(B)(1) states that no person or governmental entity shall knowingly reveal any information contained in a paper, book, or record pertaining to an adoption that is part of the permanent record of a court or maintained by the department of job and family services, an agency, or attorney without the consent of a court. In turn, Ohio Revised Code Section 3107.99 establishes that any person who violates division (B)(1) of 3107.17 is guilty of a misdemeanor of the third degree.

For the foregoing reasons, Defendant objects to the Magistrate's Order that she turn over information regarding the adoption to the Plaintiff because the Magistrate has no legal authority to make this order and because to do so would constitute a criminal offense.

Conclusion

For the foregoing reasons, Defendant objects to the Magistrate's decision and asks this court to reverse that decision and dismiss this case.

BEHNKE, MARTIN & SCHULTE, LLC


Stephen D. Behnke (0072805)
812 E. National Road, Suite A
Vandalia, Ohio 45377
(937) 435-7500
Attorney for Defendant, Rachel Arnold

JOSEPH M. MOWMAN
JUDGE

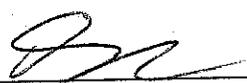
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PROBATION RELATIONS
DIVISION
JUVENILE SECTION

Certificate Of Service

I hereby certify that a copy of the foregoing has been served by regular U.S. mail this 2nd

day of September, 2011 upon: David Mcnamee, 42 Woodcroft Trail, Suite D, Beavercreek, Ohio
45430.


Stephen D. Behnke, Esquire

JOSEPH M. MOWMAN
JUDGE

2011 SEP -8 AM 9:21

PROBATION RELATIONS
DIVISION
JUVENILE SECTION

EXHIBIT O

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

TAD S. ROCCARO
601 Artesian Rd.
Cheyenne, WY 82007
DOB: 10/29/11

Plaintiff

v.

RACHEL E. ARNOLD
103 Third Street
Medway, Ohio 45341
DOB: 02/13/81

Defendant

* CASE NO. 2010 536
* Judge CAPPER
* MAGISTRATE LANCASTER

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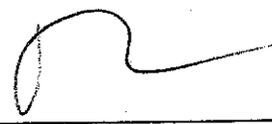
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PLAINTIFF'S RESPONSE TO
DEFENDANT'S OBJECTIONS
TO MAGISTRATE'S DECISION

Now comes the Plaintiff, by through Counsel, and hereby submits his response
to Defendant's Objection to the Magistrate's Journal Entry and Final Appealable Order.



David M. McNamee (0068582)
Attorney for Plaintiff
42 Woodcroft Trail, Ste. D
Beavercreek, OH 45430
(937)427-9650
(937)427-9659 Fax

2010 SEP 15 PM 3:50
JUDGE CAPPER
MAGISTRATE LANCASTER

MEMORANDUM

STANDARD OF REVIEW

In Daley v. Daley (1997), Miami App. No. 96 CA 14, unreported, the Second District Court of Appeals explained the Standard of review when objections are made to a Magistrates Decision.

The Court stated "In accordance with Civ. R. 53, the trial court must conduct an independent de novo review of the facts and conclusions contained in the magistrate's report and recommendations and enter its own judgment. Dayton v. Whiting (March 29, 1996). Montgomery App. No 15432, unreported."

ARGUMENT

The Court must overrule Defendant's Objections filed herein as the Court correctly applied the facts of this case to the correct law and case law. Defendant's Objections are simply a tactic to delay the case.

This matter comes before the Court pursuant to Plaintiff's Complaint to Establish Paternity filed October 6, 2010. As background, Defendant has refused to provide Plaintiff with any information. Plaintiff, through Defendant's Motion to Dismiss, has just now learned of a birth date, and adoption date. However, proof has still not been provided although requested through counsel.

Plaintiff and Defendant were dating and living together in Wyoming. The two decided to end the relationship. Prior to that determination, the two discovered the Defendant was pregnant. Both Plaintiff and Defendant went to the hospital to see the

child's heartbeat. Before the Defendant left, she stated she was going to put the child up for adoption. The Plaintiff stated he wanted to keep his child.

Once the Defendant arrived in Ohio, Defendant stopped returning the Plaintiff's phone calls and eventually changed her phone number. Before the Defendant changed her phone number, she told the Plaintiff she was going to have the child aborted. The Plaintiff then attempted to contact the Defendant's family to obtain information. These attempts were unsuccessful.

Sometime later, the Plaintiff learned the Defendant may not have aborted the child. The Plaintiff then initiated a paternity action in the Clark County Ohio Juvenile Court. The Plaintiff has also consented to the Clark County Ohio Juvenile Court exercising jurisdiction over the issue of paternity.

The Court Correctly determined it retained jurisdiction over the issue of paternity of the child pursuant to The State Ex Rel. Furnas Et. Al. v. Monnin, (2008) 120 Ohio St. 3d 279, 2008 Ohio 5569.

In The State Ex Rel.. Furnas Et. Al. v. Monnin, (2008) 120 Ohio St. 3d 279, 2008 Ohio 5569, the Ohio Supreme Court held that although a child has been adopted, the Juvenile Court retains jurisdiction to establish paternity of that child.

The Court reasoned that O.R.C. 2151.23(B) states "the juvenile court has original jurisdiction under the Revised Code : (2) To determine the paternity of any child alleged to have been born out of wedlock pursuant to sections 3111.01 to 3111.18 of the revised code." Id. The Court goes on to say although O.R.C. 3107.15(A) states a Decree of Adoption acts "to relieve the biological or other legal parents of the adopted person of all parental rights and responsibilities, and to terminate all legal relationships

between the adopted person and the adopted persons relatives..." there is still reason a Juvenile Court shall retain jurisdiction over paternity of an adopted child. Id.

The Court states that "biological parents have a right to request forms to provide their social and medical history even after an adoption decree has been finalized." Id. O.R.C. 3107.09(D) states in part "...A Biological parent may cause the histories to be corrected or expanded even if the biological parent did not provide any information to the assessor at the time the histories were prepared."

The Court found "a final decree of adoption does not patently and unambiguously divests a juvenile court of jurisdiction to determine paternity solely for the limited purpose of allowing the putative father to establish that he is the biological father so that he can exercise his statutory rights under R.C. 3107.09 and 3107.097 to provide information regarding his social and medical history for placement in the child's adoption records."

The State Ex. Rel. Furnas Et. Al. v. Monnin

Presumably like in The State Ex. Rel. Furnas Et. Al. v. Monnin, a child in this case has been born and subsequently adopted. Further, the Court made it very clear at pre-trial the Juvenile Court has no authority over the adoption or any parenting issues, only paternity. Pursuant to The State Ex. Rel. Furnas Et. Al. v. Monnin, O.R.C. 2151.23(B) and O.R.C. 3107.09(D), the court must deny Defendant's Motion to Dismiss Plaintiff's Complaint for Paternity.

The crux of Defendant's argument is that she is no longer the child's mother and thus not a correct father. Legally, Defendant is not the child's mother, however she is still the biological mother and thus a necessary party to determine paternity.

The Defendant also argues pursuant to 3107.17(B)(1) which states in pertinent part, "no person or government entity shall knowingly reveal any information contained in a paper, book, or record pertaining to an adoption that is part of the permanent record of a court or maintained by the department of job and family services, an agency, or attorney without the consent of a court." In this case, not only does the Defendant have the consent of a court, the Defendant has an Order of a Court.

Based upon the foregoing, the Court must overrule the Defendant's objections.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon Stephen Behnke, 812 E. National Rd., Vandalia, Ohio 45377, by Regular U.S. Mail, this _____ day of September, 2011.



David M. McNamee (0068582)
Attorney for Plaintiff

JOSEPH ...
2011 SEP 15 PM 3:50
JUVENILE ...

EXHIBIT P

**IN THE COMMON PLEAS COURT OF CLARK COUNTY, OHIO
DOMESTIC RELATIONS DIVISION
JUVENILE SECTION**

TAD S. ROCCARO	:	CASE NO. 2010-JUV-0536
Plaintiff	:	
Vs.	:	
RACHEL E. ARNOLD	:	<u>ENTRY</u>
Defendant	:	

This matter came on before the Court on the 3rd day of November, 2011 for a final Objection hearing upon the Objections filed on behalf of the Defendant, Rachel Arnold, on September 8, 2011 concerning the Magistrate's Decision filed August 23, 2011. Present at said Objection hearing was attorney Matthew Brown on behalf of the Plaintiff, Tad Roccaro, and also present was attorney Stephen Behnke on behalf of the Defendant, Rachel Arnold.

This Court has conducted a de novo review of all prior pleadings and Orders filed in the within matter and the Court has considered statements made by counsel for each of the parties herein.

In consideration of the foregoing, the Court finds that it is appropriate to order genetic testing to take place in the within matter and the Court also finds that it is appropriate to defer ruling upon the Defendant's Objections filed September 8, 2011 until after the genetic test results are received concerning the issue of parentage.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that both of the parties in this case and the minor child who is the subject of this litigation (whose identity has not yet been disclosed) shall submit to genetic testing which will be facilitated by Michelle Bender, Paternity Specialist, (937) 327-3690, whose office is located at 1346 Lagonda Avenue, Springfield, Ohio 45503. To this end, the Plaintiff shall submit to genetic testing with an accredited facility located near his residence at 601 Artesian Road, Cheyenne, Wyoming 82077, which shall be coordinated with Michelle Bender. The Defendant, Rachel Arnold, shall also have an affirmative duty to coordinate genetic for herself and the child who is the subject of this action with Ms. Bender at the Clark County Child Support Enforcement Agency at the address set forth herein. It is further **ORDERED** that all costs associated with the genetic testing herein shall be paid by the Plaintiff, Tad Roccaro, and all results shall be sent to counsel for each of the respective parties and to this Court at the addresses set forth in this Entry.

IT IS FURTHER ORDERED that, at this point in time and until further Order of this Court the identity or personal identification information relating to the minor child who is the subject of this action shall not be disclosed to the Plaintiff, Tad Roccaro, or his legal counsel.

IT IS FURTHER ORDERED that all normal identification precautions shall be utilized by the CSEA and the lab contracting with them to perform the aforementioned genetic testing upon the unnamed child who is the subject of this action.

IT IS FURTHER ORDERED that this matter shall be and is herewith rescheduled for a non-evidentiary review hearing on **January 26, 2012 at 8:30 a.m.**

ALL UNTIL FURTHER ORDER OF THIS COURT.


THOMAS J. CAPPER, JUDGE

DOMESTIC RELATIONS
DIVISION
JUVENILE SECTION
2011 NOV -9 PM 1:51
JOSEPH N. ROMANIA
JUDGE

Copies:

Michelle Bender, Paternity Specialist, CSEA
Matthew Brown, Attorney for Plaintiff, 42 Woodcroft Trail, Suite D,
Beavercreek, Ohio 45430
Stephen Behnke, Attorney for Defendant, 812 East National Road,
Suite A, Vandalia, Ohio 45377
The Honorable Thomas J. Capper, Clark County Common Pleas Court,
Domestic Relations Division, 101 North Limestone Street, Springfield,
Ohio 45502

EXHIBIT Q

IN THE COMMON PLEAS COURT OF CLARK COUNTY, OHIO
DOMESTIC RELATIONS DIVISION – JUVENILE SECTION

TAD S. ROCCARO
PLAINTIFF

CASE NO. 2010JUV0536
SETS NO.

vs.

NOTICE TO COURT

RACHEL E. ARNOLD
DEFENDANT

Now comes the Clark County Child Support Enforcement Agency (hereinafter CSEA) and hereby gives this court notice that Tad S. Roccaro has submitted to DNA testing. Rachel Arnold was scheduled for testing on December 14, 2011 and failed to appear. No information has been obtained to schedule the child. The sample obtained is held at Laboratory Corporation of America. The cost of the testing is \$30.00 for the sample collected.


NICHOL R. SMITH #0074301
ATTORNEY FOR CCDJFS-CSEA
1346 LAGONDA AVE
SPRINGFIELD, OH 45503

JOSEPH N. MONNIN
JUDGE

2012 JAN 26 AM 10:05

CLERK OF COURT
DOMESTIC RELATIONS
DIVISION
JUVENILE SECTION

REQUEST

TO THE CLERK:

Please issue a copy of the foregoing Notice by REGULAR MAIL to the following parties:

Attorney for Plaintiff: Matthew Brown, 42 Woodcroft Train, Suite D, Beaver Creek, OH 45420 and

Attorney for Defendant: Stephen Behnke, 812 East National Road, Suite A, Vandalia, OH 45377


NICHOL R. SMITH #0074301
ATTORNEY FOR CCDJFS-CSEA

JOSEPH N. MONNIN
JUDGE

2012 JAN 26 AM 10:06

CLERK OF COURT
DOMESTIC RELATIONS
DIVISION
JUVENILE SECTION

**IN THE COMMON PLEAS COURT OF CLARK COUNTY, OHIO
DOMESTIC RELATIONS DIVISION
JUVENILE SECTION**

TAD S. ROCCARO : CASE NO. 2010-JUV-0536
Plaintiff :
Vs. :
RACHEL E. ARNOLD : ENTRY
Defendant :

This matter came on the 26th day of January, 2012 for a telephone pre-trial conference. Present, by phone, was attorney Matthew Brown on behalf of the Plaintiff, Tad Roccaro, and also present, by phone, was attorney Stephen Behnke on behalf of the Defendant, Rachel Arnold.

Upon discussing this matter with counsel for each of the respective parties, the Court finds that it is appropriate to stay the temporary orders filed in the within matter on November 9, 2011 which obligated the parties and the minor child herein to submit to genetic testing until further Order of this Court.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Entry filed in the within matter on November 9, 2011 which obligated the parties and the minor child herein to participate in genetic testing shall be and is herewith stayed until further Order of this Court.

IT IS FURTHER ORDERED that the within matter shall be and is herewith rescheduled for a telephone status conference on the **March 30, 2012 at 8:30 a.m.**

ALL UNTIL FURTHER ORDER OF THIS COURT.


THOMAS J. CAPPER, JUDGE

Copies:

Matthew Brown, Attorney for Plaintiff, 42 Woodcroft Trail, Suite
Beavercreek, Ohio 45430
Stephen Behnke, Attorney for Defendant, 812 East National Road
Suite A, Vandalia, Ohio 45377

JOSEPH N. MONNIN
JUDGE

2012 FEB - 1 AM 11:39

COURT CLERK'S OFFICE
DOMESTIC RELATIONS
DIVISION
JUVENILE SECTION