

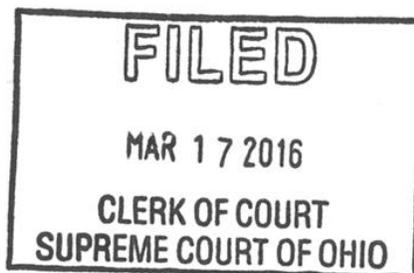
SUPREME COURT OF OHIO

In re: (C.C.S.),	:	
	:	Case No. 16-0395
Petitioner-Appellant,	:	
	:	Appeal from Franklin County
vs.	:	Court of Appeals Tenth Appellate District
ADOPTION BY GENTLE	:	
CARE,	:	Case No: 15-AP-000884
	:	
Respondent-Appellee.:	:	

JURISDICTIONAL BRIEF OF APPELLANT
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Appellant's Proposition of Law One: 7
**The failure to discuss the options available to
the parent in lieu of permanently surrendering
a child for adoption as required by OAC:
5101:2-42-09(B) is a denial of the parent's right
to due process and renders a permanent
surrender void.**

Appellant's Proposition of Law Two: 10
**State intervention to provide for the
termination of the relationship between a child
and its parent require that all statutes and
regulations be meticulously followed and
failure to do so renders any termination void by
any agency seeking to terminate that
relationship.**

Appellant's Proposition of Law Three: 12
**When determining if a parent is voluntarily
relinquishing custody of her child it is
imperative that all steps be taken to insure that
such relinquishment is given without duress
and duress is particular to that individual at
the time she makes her decision. The fiduciary
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Appellant.**

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**EXPLANATION OF WHY THIS CASE PRESENTS A SUBSTANTIAL
CONSTITUTIONAL QUESTION**

It is a well-established principle that the relationship between parent and child is a constitutionally protected liberty interest. *Quilloin v. Walcott* (1978), 434 U.S. 246, 255, 98 S.Ct. 549, 554, 54 L.Ed.2d 511, 519. As stated by the United States Supreme Court in *Lehr* at 257-258, 103 S.Ct. at 2991, 77 L.Ed.2d at 624, " 'the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.' '[S]tate intervention to terminate [such a] relationship * * * must be accomplished by procedures meeting the requisites of the Due Process Clause.' "

Due Process is violated when the process enforced by the Court falls short of the mandates contained within the regulations to be applied by the Court. The Court should be mindful that when an independent agency brokers the sale of a child, all regulations and statutes are meticulously followed.

Certainly, at this point the minor child, Camden, in addition to his mother, had a right to due process since he was a living breathing human citizen of the United States of America and no longer a non-person and the failure of this protection violated Camden's right to due process.

**EXPLANATION OF WHY THIS INVOLVES THE
TERMINATION OF PARENTAL RIGHTS**

The trial court and the appellate court chose not to enforce a strict compliance with the Ohio Administrative Code when permanently terminating the parent child relationship thereby taking the mother's inherent right to rear her child.

**EXPLANATION OF WHY THIS IS A QUESTION
OF GREAT PUBLIC AND GENERAL INTEREST**

Private agencies that are regulated by chapter 5101 of the Ohio Administrative Code which obtain children for adoption must be held to a strict compliance with both law and equity. These agencies such as Adoption by Gentle Care are entrusted with an unusual fiduciary responsibility since they provide both representations for the mother and for the person(s) who wish to obtain a child.

The employee chosen by Gentle Care to represent the child's mother strives to endear herself as a trusted confidant and protector of the mother while all of the time insuring that Gentle Care gets over \$30,000.00 from the an adoptive family to finance the very salaries of those who are supposed to be protecting the child and the child's mother. Gentle Care had 42 families willing to pay the fees of over \$30,000.00 for a child.

In the past Ohio entrusted the Probate Court to protect the rights of the mother and child and to insure that all rights and obligations were properly afforded. With the advent of private adoption companies such as Gentle Care and any failure to exact strict compliance we leave both mother and child in the hands of a company for hire.

STATEMENT OF THE CASE AND FACTS

Adoption by Gentle Care is a licensed, private child placing agency located in Ohio with an executive director and seven full-time staff members. Gentle Care promises mothers that the social worker assigned to her case will "explore" and "inform [her] of all [her] adoption options," and "educate [her] on Ohio adoption law." The relationship between mother and agency is therefore one of trust, the mother being a "client" and the social worker being the "advocate" for her and her child.

Carri lived with a significant other for six and on half years with her four children. Her children thrived achieving academic success and participating in many sports. Her pregnancy

with Camden was not the child of the significant other (Jeff) and for eight and one half months Jeff was agreeable to welcome a new baby into their household. When Jeff was told that Carri was dilating and the child could come at any time, he suddenly changed his mind and would not allow the new baby into his home and if Carri intended to bring Camden home Carri and her children would be evicted. In fact he did file eviction but Carri had already relocated with her children and remained in the same school district and schools.

The Meeting at Bob Evans Restaurant

Carri met with Gentle Care in person for the first time four days before the birth when she and Kelly Schumaker had lunch at Bob Evans restaurant on March 27, 2014. At that meeting, Carri again told Ms. Schumaker that Jeff was pressuring her and leaving her with no choice. Ms. Schumaker ignoring her own guidelines and simply handed Carri an extensive packet of papers, but there **was no discussion as to her alternatives.**

The Birth

On March 31, 2014 and Carri checked into the hospital and gave birth to Camden by C-section that evening. Carri left the hospital the next day, April 1, under heavy sedation for pain.

The Permanent Surrender

The meeting for the signing of the permanent surrender agreement occurred on April 4, with Carri, Ms. Schumaker, and another Gentle Care social worker, Beth Simmons, present. Gentle Care brought a recorder which they controlled and turned off and on as they chose. Only part of the meeting was digitally recorded with the recording device being stopped and started by Gentle Care without any representation of what was said when the recording was restarted. After a break in the recording, Carri's answers to questions about why she was surrendering Camden suddenly grew unintelligible. For example, when Ms. Schumaker asked Carri if she

was surrendering Camden so that he would have a stable environment, Carri said “Yeah. But I don’t want to (unintelligible).” To which Ms. Schumaker said: “Yeah. And that’s not to say that you wouldn’t.” Another unintelligible response came from Carri when Ms. Schumaker asked Carri if she had questions about the voluntariness of her signing the permanent surrender agreement.

Ms. Schumaker solicited Carri’s trust and Carri put her trust in Ms. Schumaker. Carri’s problem was time to find did not timely and adequately discuss the options available to the Appellant in lieu of surrendering the child as required by OAC: 5101:2-42-09(B). Had the 30 day option been discussed with her it would have been a cure to her problem and she would have taken it. Carri’s dilemma was caused by the suddenness of Jeff’s change of heart and had she simply had a little time (30 days) she was able to relocated her family with minimal disruption to their lives.

On April 13, Carri reminded Ms. Schumaker that the decision to surrender Camden was never hers to make and Carri then asked Ms. Schumaker to return Camden to her. Camden was residing with the adoptive family and when Gentle Care made the adoptive family aware of Carri’s decision to rear Camden, the adoptive family immediately returned Camden with the admonition that Camden belonged with his mother.

The juvenile court held a hearing on July 28 - 31 and August 19, 2014.

(Journal Entry of Sep. 12, 2014, T.d.116.)

Near the end of the first day of trial, when Carrie was asked on direct examination why she began to consider adoption during the pregnancy, the following exchange occurred:

A: I—I never considered adoption until March, the middle of March.

Q: Why did you begin to consider it then?

A: Because I was ready to give birth and my significant other told me that I had to choose—

A: —because I felt like I didn't have a choice.

Q: You didn't have a choice to do what?

A: Other than adoption at that day—that point.

Early the next day, when Carri was asked again why she began to consider adoption it because of family pressure which left her with no choice.

At no time was there any consideration given to the constitutional rights of Camden. Obviously Gentle Care considered him a commodity to be sold and not a human being with rights. These rights could not be waived by a minor child. Camden was ignored with no one acting in loco parentis.

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

Appellant's Proposition of Law One:

The failure to discuss the options available to the parent in lieu of permanently surrendering a child for adoption as required by OAC: 5101:2-42-09(B) is a denial of the parent's right to due process and renders a permanent surrender void.

A permanent surrender agreement “shall not be executed until at least 72 hours after the birth has elapsed.” OAC: 5101:2-42-09(A). At least 72 hours before the permanent surrender agreement is even executed, however, the adoption assessor “shall meet” with the parent to “discuss options available to her in lieu of surrendering the child.” OAC: 5101:2-42-09(B)(1).

Those options include the parent keeping the child and surrendering the child temporarily for up to 30 days without judicial approval. See R.C. 5103.15(A). This option was not discussed

This agency was required to follow OAC: 5101:2-42-09 and they did not. Both sections of the administrative rule direct the agency with the word “shall,” and because section (A) cannot begin until the fulfillment of section (B), a permanent surrender is invalid without the previous fulfillment of section (B). Temporary surrender constitutes an option under the administrative rule because it is the only option mentioned in 5103.15 besides permanent surrender.

Gentle Care failed to comply with section (B)(1) of OAC: 5101:2-42-09 because the assessor, Ms. Schumaker, did not discuss the options available to Carri under R.C. 5103.15 when they met at Bob Evans restaurant on March 27, 2014. Carri met with Gentle Care in person for the first time four days before the birth when she and Kelly Schumaker had lunch at Bob Evans restaurant on March 27, 2014. They did not meet personally after that until the permanent surrender was presented to Carri on April 1, 2014. At that meeting, at Bob Evans, Carri again told Ms. Schumaker that Jeff was pressuring her and leaving her with no choice. Still there was no discussion of the availability of a temporary (30 day) agreement. It was clear that the sudden announcement of the expulsion from her and her family’s home of six and one half years would have been cured by the mere thirty day hiatus that should have been communicated in compliance with section (B)(1) of OAC: 5101:2-42-09.

The trial court found on page 27 of its September 23, 2015 decision:

According, an agency lacks authority to accept the agreement until special requirements of OAC 5101:2-42-09 are met. OAC:5101:2-42-04(B)(3) and (C)(1). One of those requirements is the agency must “discuss with the parent... other options available in lieu of surrendering the child.” OAC:5101:2-42-09(B)(1). After the discussion, 72 hours must pass before the permanent surrender agreement can be executed. OAC 5101:2-42-09(C)(1). Those

requirements are separate from the agency's need to discuss Ohio Law and Adoption materials and to question the parent when executing the permanent surrender later on. OAC:5101:2-42-09(B)(5)

On pages 27 and 28 of the trial court decision of September 23, 2015 the trial court defines “ ‘Discuss’ means ‘to speak with another or others about; talk over.’ The options an agency must discuss include keeping the child, placing the child with nonrelatives temporarily, and placing the child in temporary custody/foster care.” This discussion never happened. Therefore, the Appellee never complied with the regulations that required a discussion. There simply was no discussion as demanded by OAC:5101:2-42-09. On page 29 the trial court concedes that the chance to discuss or ask questions is insufficient the regulations demand an actual verbal explanation of the options by the assessor which includes the 30 day agreements.

Private adoption agencies can assume and retain custody of children through an “agreement for temporary custody of child” or through a “permanent surrender of child.” R.C. 5103.15; OAC: 5101:2—1-01(B)(12); 5101:2-42-04(B)(3) and (5). An agreement for temporary custody lets the agency keep custody of the child up to 30 days. R.C. 5103.15(A)(1); OAC: 5101:2-42-08(F). Either party may terminate the custody before the agreed time, and the child will be returned to the parent. OAC: 5101:2-42-06(B).

A “permanent surrender of child,” in contrast, presumes adoption being pursued. Because of that grave consequence, an agency lacks authority to accept the surrender agreement until it “discuss[es] with the parent . . . other options available in lieu of surrendering the child.” OAC: 5101:2-42-04(B)(3) and (C)(1); OAC: 5101:2-42-09(B)(1). Seventy-two hours must then pass before the permanent surrender agreement can be executed. OAC: 5101:2-42-09(C)(1). Those requirements are separate from the agency's need to discuss Ohio Law and Adoption

materials, to question the parent when executing the permanent surrender later on, and giving the parent a pamphlet about options. OAC: 5101:2-42-09(B)(5); R.C. 3107.082(A); 3107.083(A)(1)(a).

Gentle Care failed to discuss the surrender options as required by OAC: 5101:2-42-09(B)(1), leaving it without authority to execute the permanent surrender agreement and doing so was to deny the basic right of Carri to due process. Administrative rules have the force of law. *Columbus & S. Ohio Elec. Co. v. Indus. Comm.*, 64 Ohio St.3d 119 (1992). The administrative rule required Gentle Care to “discuss” the non-surrender options Carri had available to her. OAC: 5101:2-42-09(B)(1). “Discuss” means “to consider or examine by argument, comment, etc.; talk over or write about, especially to explore solutions. . .” Options an agency must discuss include keeping the child, placing the child with non-relatives temporarily, and placing the child in temporary custody/foster care.

Hearing nothing about the relative placement or temporary custody agreement options, Carri then signed the forms in Shumaker’s packet fearing that Camden would necessarily go into an indefinite “foster care” if the adoption did not go through, an image scary to Carri. In fact since the adoptive parents did return Camden to be placed back with Carri, Camden has resided in foster care for over two years. Had the Appellee simply followed the law and gave Carri her due process, Camden would be with his mother and his forever family now.

Appellant’s Proposition of Law Two

State intervention to provide for the termination of the relationship between a child and its parent require that all statutes and regulations be meticulously followed and failure to do so renders any termination void by any agency seeking to terminate that relationship.

It is a well-established principle that the relationship between parent and child is a constitutionally protected liberty interest. *Quilloin v. Walcott* (1978), 434 U.S. 246, 255, 98 S.Ct. 549, 554, 54 L.Ed.2d 511, 519. As stated by the United States Supreme Court in *Lehr* at 257-258, 103 S.Ct. at 2991, 77 L.Ed.2d at 624, " 'the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.' '[S]tate intervention to terminate [such a] relationship * * * must be accomplished by procedures meeting the requisites of the Due Process Clause.' "

Due Process is violated when the process falls short of the mandates contained within the regulations to be applied when an independent agency brokers the sale of a child. Certainly, at this point a right to due process existed for both mother and child since they were living breathing humans and citizens of the United States of America and no longer relegated to a non-person status.

The arguments set forth in Proposition of Law One are hereby adopted as if fully rewritten herein.

Appellant's Proposition of Law Three

When determining if a parent is voluntarily relinquishing custody of her child it is imperative that all steps be taken to insure that such relinquishment is given without duress and duress is particular to that individual at the time she makes her decision. The fiduciary provided by the Appellee must protect the Appellant.

There was introduced into evidence the records of the Appellee which was designated Exhibit K and it shows just what Gentle Care and Ms. Schumaker knew at the time they had her sign documents at the prodding of her fiduciary, Ms. Schumaker:

1. The Petitioner told Adoption by Gentle Care that “I don’t think I have a choice”.
2. The Petitioner’s Aunt reported to Adoption by Gentle Care that the Petitioner was struggling with this decision and wanted to make sure she had all of the **right information.**
3. The Petitioner expressed her duress and undue influence to Adoption by Gentle Care when she told Adoption by Gentle Care that her other children’s great life was in jeopardy because her significant other was too hurt to allow Camden to come home.
4. The Petitioner told Adoption by Gentle Care that “she does not want to place this baby for adoption but feels she has no other choice.”
5. On April 3rd the Petitioner explained to the Social Worker that she was in pain and sleepy. This was a red flag to the Social Worker that the Petitioner was on pain medications not able to make any decision regarding her baby.
6. On April 3rd Adoption by Gentle Care recorded only a selected portion of the surrender interview and held at least one if not more conversations off the record. The off the record conversation included the Petitioner being told not to mention her Native American heritage or anything that would in any way delay the adoption procedure being used by Adoption by Gentle Care.
7. On April 12, 2014 the Petitioner left a voice mail explaining that she was off her pain medication and did not want to give up her baby. She made it clear that Jeff had pressured her into giving up her baby for adoption and she wanted her baby back.

8. Adoption by Gentle Care received the medical records for the Petitioner and verified the pain medications that the Petitioner was taking before and on April 3rd when the permanent surrender was presented for signature.
9. Adoption by Gentle Care posted the profile of the adoptive family on their website making public the names and address of the adoptive family.
10. The adoptive family was concerned about the life long ramifications of parenting a child whose biological parent wants him.
11. Adoption by Gentle Care went to Cleveland to retrieve the baby from the adoptive family. They were placing him in foster care and acknowledged that the end result would be to return the baby to the Petitioner.
12. Adoption by Gentle Care went so far as to discuss the preparation of the documentation they would have the Petitioner sign when they gave her back her baby.
13. Adoption by Gentle Care became concerned over social media and not the baby or the undue influence suffered by the Petitioner.
14. Adoption by Gentle Care became increasingly concerned with social media to the point of asking the Steve Lump (the biological father) to contact the Petitioner and explain how this was delaying the process which at this point was returning the baby to the Petitioner. Adoption by Gentle Care saw this as a “complicating factor”.
15. Adoption by Gentle Care on approximately May 22, 2014 moved the baby from one foster home but due to these foster parents going on vacation the baby was moved to another, making the third move in one and a half months.

16. Adoption by Gentle Care's reason for not returning the baby to the Petitioner became a battle of ego and concern not over this situation but a concern over the financial impact it might have on Adoption by Gentle Care for future adoptions.
17. Adoption by Gentle Care knew that the only gain they would have in continuing to oppose the Petitioner would be a fee. Adoption by Gentle Care believed that they could run the Petitioner out of money to pursue the case that they believed would ultimately result in the Petitioner receiving the baby and might result in the surrender being declared invalid as in fact due to undue influence between Jeff, the pain, the pain killers and the natural biological dump of hormones there was no ability for the Petitioner to make an informed and voluntary decision.
18. Although some of the board members of Adoption by Gentle Care believed that the Court should consider the best interest of the child the only evidence of the Petitioner's ability to parent was positive towards her.

Ms. Schumaker violated Gentle Care's policy of declining permanent surrender agreements when it is evident that the mother is surrendering involuntarily or being pressured by a third party. Gentle Care's social workers assume a fiduciary relationship with mothers and are promoted as being their available advocates. The contravention of that duty turned Ms. Schumaker into an advocate for the monetary enhancement of Gentle Care and not for the protection of Carri. She violated her fiduciary duty to Carri. Had Ms. Schumaker remained true to her duty no litigation would have ensued and Carri and Camden would have been united.

Dr. Amato's testimony of July 29, 2014 was most telling. Dr. Amato was concerned about the biological father's induced stress; that Appellant was not giving real thought to her choice; and she was on the narcotic vicodin. Dr. Amato noted that the Appellant was not to make any

important decisions while on vicodin. In the Appellant's situation the effects of vicodin would be compounded. There was a hormonal dump that really hits approximately 48 hours after birth which causes postpartum blues and depression specifically in the Appellant's situation of not going home with her child. This was not just depression but **major depression**. Dr. Amato as the only expert to testify did not believe that Carri had the ability to make a decision regarding giving up her child. Since Vicodin, Norco and Percocet all have Tylenol in them it makes these narcotics even more controlling of the Appellant's inability to voluntarily consent. Dr. Amato's testimony was not rebutted.

Once Carri regained her faculties she recanted her agreement. On April 12, 2014 the Carri left a voice mail at Gentle Care explaining that she was off her pain medication and did not want to give up her baby. She made it clear that Jeff had pressured her into giving up her baby for adoption and she wanted her baby back. The trial court referred to it as buyer's remorse. This crass analogy is not worthy of the trial court since we are dealing with a child and not a used car. This belittling of both parent and child and reducing a child to no more than property to be traded and sold by Gentle Care shows an overt denial of Due Process to which all citizens are entitled.

CONCLUSION

This Court should accept the jurisdiction over this case to correct the constitutional wrongs done to both parent and child. It is necessary that this Court require that all adoptions in the future comply with the statutes and regulations governing adoptions and failure to do so voids the surrender and is a denial of due process and equal protection under the law.

The representations by a private adoption agency such as Gentle Care who professes to provide a fiduciary to help the parent through the surrender of her child must in fact represent the parent and act in her best interests.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Notice of Appeal was served upon:

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17th day of March, 2016.

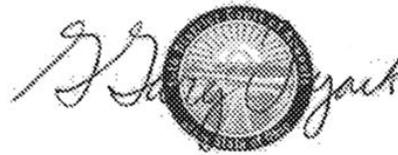


Steven E. Hillman

Tenth District Court of Appeals

Date: 02-08-2016
Case Title: IN THE MATTER OF: CAMDEN C STEARNS
Case Number: 15AP000884
Type: JEJ - JUDGMENT ENTRY

So Ordered

A handwritten signature in cursive script, appearing to read "G. Gary Tyack", is written over a circular seal. The seal features a central emblem, possibly a scale of justice, surrounded by text that is partially obscured by the signature.

/s/ Judge G. Gary Tyack

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

In re: [C.C.S.],	:	
[C.L.S.],	:	No. 15AP-884
	:	(C.P.C. No. 14JU07-8823)
Petitioner-Appellant,	:	(REGULAR CALENDAR)
v.	:	
Adoption by Gentle Care,	:	
Respondent-Appellee.	:	

DECISION

Rendered on February 4, 2016

Steven E. Hillman, for appellant.

Tucker Ellis LLP, Jon W. Oebker; and A. Patrick Hamilton,
for appellee Adoption by Gentle Care.

APPEAL from the Franklin County Court of Common Pleas,
Division of Domestic Relations, Juvenile Branch.

TYACK, J.

{¶ 1} Petitioner-appellant, C.L.S., appeals the decision and judgment of the Franklin County Court of Common Pleas to grant respondent-appellee, Adoption by Gentle Care's ("Gentle Care"), motion for involuntary dismissal under Civ.R. 41(B)(2) and to dismiss C.L.S.'s petition for a writ of habeas corpus. C.L.S. seeks the return of the child, C.C.S., after signing a "Permanent Surrender Agreement" a few days after the child's birth on March 31, 2014. The trial court found the permanent surrender to be valid and granted a motion for involuntary dismissal. For the following reasons, we affirm the trial court's decision and judgment.

Franklin County Ohio Court of Appeals Clerk of Courts- 2016 Feb 04 12:03 PM-15AP000884

{¶ 2} Appellant, C.L.S. assigns four errors for our consideration:

[I.] The Petitioner did not have the capacity to contractually permanently surrender her newborn child due to duress, undue influence, or fraud and the cumulative affects [sic] of the physical limitations from surgery, hormonal dump and effects of narcotics prescribed for pain associated with surgery.

[II.] The trial court erred to the Appellant's prejudice by improperly excluding evidence of communications between Appellant and her domestic partner that would show how Appellant was coerced into surrendering her child.

[III.] The trial court erred in granting a "directed verdict" in a bench trial erred by not first determining whether evidence of substantial, probative value supports each element of the plaintiff's claims. If the plaintiff has indeed presented such evidence and the trial court nevertheless granted a "directed verdict" without weighing the evidence and determining the credibility of the witnesses, then an appellate court cannot treat the "directed verdict" as a Civ.R. 41(B)(2) involuntary dismissal.

[IV.] The trial court erred in dismissing the petition for habeas corpus because the Appellee did not timely and adequately discuss the options available to the Appellant in lieu of surrendering the child as required by OAC: 5101:2-42-09(B).

Facts and Procedural History

{¶ 3} The factual history of this case is well-documented in our prior decision, *In re C.C.S. v. Adoption by Gentle Care*, 10th Dist. No. 14AP-739, 2015-Ohio-2126, and the subsequent decision of the trial court, *In re [C.C.S.]*, Franklin C.P. No. 14JU-8823 (Sept. 14, 2015). C.L.S. and her five children lived with J.G. beginning in 2008. J.G. worked to support the household while appellant stayed home and tended to the children. In 2013, C.L.S. became pregnant by an "old friend," S.L. In March 2014, J.G., who is not the father of any of C.L.S.'s five children, told C.L.S. that she could not bring the new baby into the home.

{¶ 4} On March 15, 2014, C.L.S. contacted Gentle Care, a licensed, private child placement agency. At the time she contacted Gentle Care, appellant was a 38-year old

high school graduate who had attended The Ohio State University and Columbus State Community College.

{¶ 5} On March 27, 2014, C.L.S. met with a Gentle Care social worker, Kelly Schumaker, at a Bob Evans restaurant. At the meeting, C.L.S. was provided with pamphlets and packets of information about adoption including information about birth parents' rights and options. Alternatives to surrender were also discussed as well as pre- and post-adoption options, temporary custody, and foster care. After the meeting, C.L.S. texted Ms. Schumaker and Ms. Schumaker texted that "it's completely up to you, it has to be your decision," to which C.L.S. responded later that night, "I know it's late but I want you to know I'm a hundred percent choosing adoption." (July 30, 2014 Tr. 54.)

{¶ 6} C.L.S. signed papers acknowledging that she knew her rights and obligations. She also selected a couple to adopt her child before giving birth to the child on March 31, 2014. C.L.S. did not request to see the child at the hospital and left the hospital the next day on April 1, 2014.

{¶ 7} On April 4, 2014, after waiting one day longer than the statutorily-required 72 hours, C.L.S. signed the permanent surrender agreement. C.L.S. made no request for counseling and affirmatively stated that no one was forcing her to go through with the adoption. The permanent surrender agreement also stated that, by signing, she was given the opportunity to ask questions and that she was surrendering the child voluntarily. C.L.S. also signed an "Affidavit of Relinquishment" which stated, "I have the right to seek the counsel of any attorney * * * I have the absolute right to refuse to place my child for adoption." (July 29, 2014 Tr. 44.)

{¶ 8} On April 13, 2014, C.L.S. told Ms. Schumaker that the decision to surrender the child had never been hers to make. She stated that her boyfriend, J.G., with whom she and her other five children were living, had wanted the adoption, and J.G. regretted asking her to allow the adoption. C.L.S. requested that the child be returned to her.

{¶ 9} C.L.S. petitioned the Franklin County Probate Court to revoke the permanent surrender agreement. Before a hearing was held on that petition, the prospective adoptive parents dismissed their adoption petition voluntarily and returned the child to Gentle Care. One reason for the dismissal was concern the prospective adoptive parents had about the lifelong ramifications of parenting a child whose biological

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mother wanted the child returned. Gentle Care refused to return the child to C.L.S., compelling C.L.S. to file for a writ of habeas corpus, thereby challenging the validity of the permanent surrender agreement.

{¶ 10} Before the trial court, C.L.S. claimed the permanent surrender was made involuntarily, as a result of duress, undue influence, misrepresentations, and failure of Gentle Care to provide the necessary information for C.L.S. to give a valid consent.

{¶ 11} The trial court heard many days of testimony. The permanent surrender agreement, the affidavit of relinquishment, and the recorded colloquy of the permanent surrender were all read into the record. The trial court also heard testimony from C.L.S. and from a witness who testified about the personality of C.L.S. The court also heard testimony from employees of Gentle Care and from the child's biological father.

{¶ 12} After C.L.S. had presented her case, Gentle Care moved for an involuntary dismissal under Civ.R. 41(B)(2). On August 22, 2014, the trial court granted the motion for involuntary dismissal. C.L.S. appealed to this court.

{¶ 13} On June 2, 2015, in a split decision, we found "[t]he trial court's entry does not inform us that it was able or permitted to enter a directed verdict for Gentle Care and involuntarily dismiss the matter pursuant to Civ.R. 41(B)(2) because the findings required to support such action do not exist in the court's judgment entry denying appellant's petition." *In re C.C.S.*, 10th Dist. No. 14AP-739, 2015-Ohio-2126, at ¶ 14. The matter was remanded to the trial court to "explicate and weigh the circumstances and pressures it previously found" C.L.S. to have been under that allowed the trial court to grant an involuntary dismissal pursuant Civ.R. 41(B)(2). *Id.* at ¶ 15.

{¶ 14} The trial court responded with a 35-page decision detailing both the facts of the case and the court's reasoning. The trial court concluded that C.L.S. was not sufficiently credible and therefore did not meet her burden of proof for granting the requested habeas corpus. The trial court concluded, after examining the law and the evidence presented in her case-in-chief, that C.L.S. really had a choice and the execution of the permanent surrender was the product of her freedom of exercising her will. (Sept. 14, 2015 Judgment Entry). The trial court granted Gentle Care's motion for involuntary dismissal under Civ.R. 41(B)(2). C.L.S. has timely appealed once again.

Involuntary Dismissal Under Civ.R. 41(B)(2)

{¶ 15} Involuntary dismissal under Civ.R. 41(B)(2) has been thoroughly addressed by this court:

Civ.R. 41(B)(2) allows a trial court to determine the facts by weighing the evidence and resolving any conflicts therein. *Whitestone Co. [v. Stittsworth*, 10th Dist. No. 06AP-371, 2007-Ohio-233,] ¶ 13; *Sharaf [v. Yougman*, 10th Dist. No. 02AP-1415, 2003-Ohio-4825,] ¶ 8. If, after evaluating the evidence, a trial court finds that the plaintiff has failed to meet her burden of proof, then the trial court may enter judgment in the defendant's favor. *Daugherty [v. Dune*, 10th Dist. No. 98AP-1580 (Dec. 30, 1999)]. Therefore, even if the plaintiff has presented evidence on each element of her claims, a trial court may still order a dismissal if it finds that the plaintiff's evidence is not persuasive or credible enough to satisfy her burden of proof. *Tillman [v. Watson*, 2nd Dist. No. 06-CA-10, 2007-Ohio-2429,] ¶ 11. An appellate court will not overturn a Civ.R. 41(B)(2) involuntary dismissal unless it is contrary to law or against the manifest weight of the evidence. *Whitestone Co.*, at ¶ 13; *Sharaf*, at ¶ 8.

Jarupan v. Hanna, 173 Ohio App.3d 284, 2007-Ohio-5081, ¶ 9 (10th Dist.).

{¶ 16} The trial court can grant a Civ.R. 41(B)(2) involuntary dismissal if it, in its role as trier of fact, finds that the plaintiff's evidence fails to satisfy the required burden of proof. *Id.* at ¶ 12. "Judgments supported by some competent, credible evidence going to all essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of evidence." *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279, 280 (1978). Further, " 'a reviewing court must be guided by the presumption that the findings of the trial court are correct, as the trial judge is best able to view the witnesses, observe their demeanor, gestures, voice inflections, and use these observations in weighing the credibility of the proffered testimony.' " *Griffin v. Twin Valley Psychiatric Sys.*, 10th Dist. No. 02AP-744, 2003-Ohio-7024, quoting *Whiting v. Ohio Dept. of Mental Health*, 141 Ohio App.3d 198, 202 (2001).

{¶ 17} This court previously found that the trial court initially failed to explain its reasoning and consideration of the evidence that permitted it to grant the motion for involuntary dismissal. On remand, the trial court responded with a lengthy decision setting forth findings of fact and conclusions of law and also stating what evidence it found to be persuasive and credible.

Standard to Invalidate a Permanent Surrender Agreement

{¶ 18} The central issue in this case is whether the permanent surrender agreement is valid. A permanent surrender agreement constitutes a valid contract if it is accepted and voluntarily entered into without fraud or misrepresentation. *In re Miller*, 61 Ohio St.2d 184, 189 (1980). A permanent surrender agreement constitutes prima facie evidence that the consent to an adoption is valid. *In re Baby Girl E.*, 10th Dist. No. 04AP-932, 2005-Ohio-3565, ¶ 26. "A natural parent's change of heart about an adoption is insufficient to revoke a parent's valid consent to the adoption." *Id.* However, if valid consent is lacking, the adoption decree violates due process of law, and giving effect to the decree then violates the public policy of Ohio. *Id.*; *State ex rel. Smith v. Smith*, 75 Ohio St.3d 418, 421 (1996).

{¶ 19} In determining the validity of consent and how that consent may have been affected by duress or undue influence, the court must determine "whether the party affected really had a choice; whether he had his freedom of exercising his will." *Morrow v. Family & Community Serv. of Catholic Charities, Inc.*, 28 Ohio St.3d 247, 251 (1986); *In re Baby Girl E.* at ¶ 26 ("[I]f a natural parent establishes by clear and convincing evidence that his or her 'consent' was the result of fraud, duress, or some other consent-vitiating factor, the 'consent' is invalid as not freely and voluntarily given and the adoption decree is void."). "Clear and convincing evidence is that measure or degree of proof which will produce in the mind of the trier of facts a firm belief or conviction as to the allegations sought to be established." *Cross v. Ledford*, 161 Ohio St. 469, 477 (1954). It is an intermediate standard, being more than a mere preponderance, but not to the extent of such certainty as is required beyond a reasonable doubt as in criminal cases. *Id.* Clear and convincing "does not mean clear and *unequivocal*." *Id.*, emphasis sic.

{¶ 20} C.L.S. executed a permanent surrender agreement on April 4, 2014 by affixing her signature and in the presence of witnesses. This is prima facie evidence of a valid consent. Therefore, C.L.S. was required to prove by clear and convincing evidence that the consent was not valid due to duress, fraud, or other factor. The trial court's thorough findings of fact and conclusions of law found that the consent was valid. We must not overturn this decision unless it is contrary to law or against the manifest weight of the evidence.

C.L.S. Was Not Under Such Duress That She Could Not Consent

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{¶ 21} In her first assignment of error, C.L.S. alleges that she lacked the capacity to consent to the permanent surrender due to duress, undue influence, or fraud, and the cumulative effects of surgery, hormonal dump, and narcotics. We find the manifest weight of the evidence supports the trial court's finding that C.L.S. failed to present clear and convincing evidence that would overcome the prima facie evidence of her valid consent manifested in her signing the permanent surrender agreement. After we remanded this case, the trial court clearly showed how it weighed the evidence and what evidence it found credible. The trial court cured the error we found in its original August 22, 2014 decision.

{¶ 22} On appeal, C.L.S. does not challenge the legal standard applied or the validity of the evidence that was presented at trial. C.L.S. only asks that we look at the totality of the circumstances to come to a different conclusion than the trial court. C.L.S. argues on appeal that duress from her significant other, J.G., along with a combination of undue influence from Gentle Care, effects from surgery, the hormonal dump experienced after pregnancy, and the effects of narcotic pain prescriptions, rendered her unable to consent to a valid permanent surrender agreement. It is clear that the trial court fulfilled its role as trier of fact and found that C.L.S.'s evidence was not persuasive or credible enough to satisfy her burden of proof.

{¶ 23} There is ample evidence of a valid permanent surrender agreement. This evidence included the agreement itself, an audio recording of the colloquy that accompanied the agreement (which was played for the trial court), and the affidavit of relinquishment which stated many times the permanent, but non-mandatory nature of the surrender agreement. (July 29, 2014 Tr. 34-52.) This affidavit of relinquishment was read out loud, and C.L.S. answered questions about it, all of which was recorded as part of the colloquy which the court heard at trial.

{¶ 24} The trial court found that C.L.S. did in fact have a choice in the permanent surrender even though she claimed she was under duress from J.G., her significant other. (Sept. 14, 2015 Judgment Entry, 19). The profile of C.L.S. was not one of someone who was easily pressured. She was 38 and college educated. She was described as rather bold and not a pushover. *Id.* There was evidence of C.L.S.'s desire to pursue adoption through her contact with Gentle Care and meeting and discussing adoption ahead of giving birth.

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C.L.S. was not rushed into making a decision, having weeks to decide after initially contacting Gentle Care. *Id.* at 20. There were also statements made by C.L.S., both before and after giving birth, that indicate it was her choice to go through with adoption. After meeting with a Gentle Care social worker, C.L.S. texted "I'm a hundred percent choosing adoption." (July 30, 2014 Tr. 54.) A hospital record indicated that C.L.S. was even more sure about her decision the next day after giving birth. (July 30, 2014 Tr. 74-76.)

{¶ 25} The trial court found that there was little doubt as to C.L.S.'s state of mind regarding the permanent surrender as the court heard C.L.S.'s own voice on the recorded colloquy. The trial court also found that evidence of a history of untruthfulness undercut C.L.S.'s claims that J.G. left her with no choice but to surrender the child. (Sept. 14, 2015 Judgment Entry, 22.) The trial court also noted that C.L.S. and her five children continued to live with J.G. even as she sought to void the permanent surrender. The trial court found that fact undercut the argument that J.G. was so adamant that this new child not live with him to cause C.L.S. such duress that she surrendered the child. C.L.S.'s arguments about being on pain medication and suffering a hormonal dump are also not persuasive as the doctor testifying was not the delivery doctor, was not at the hospital, did not see C.L.S. before she signed the permanent surrender agreement, and only spoke in generalities. (July 29, 2014 Tr. 98-115.) Ultimately, the trial court found that the evidence presented by C.L.S. was not sufficiently credible. (Sept. 14, 2015 Judgment Entry, 34.)

{¶ 26} The trial court found that C.L.S. had failed to prove by clear and convincing evidence that her consent to the permanent surrender agreement was not valid. We find this decision is supported by some competent and credible evidence going to all essential elements of the case.

{¶ 27} The first assignment of error is overruled.

Testimony From J.G. Was Not Improperly Excluded

{¶ 28} In her second assignment of error, C.L.S. argues that the trial court improperly excluded evidence of a communication between C.L.S. and J.G., the man with whom she was living with. The trial court sustained an objection about this testimony. While not specific as to the grounds for the objection, it was likely made based on hearsay.

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During trial, C.L.S was under direct examination and being asked when she first considered adoption. The entirety of the objection is as follows:

A. I – I never considered adoption until March, the middle of March.

Q. Why did you begin to consider it then?

A. Because I was getting ready to give birth and my significant other told me that I had to choose –

ATTORNEY OEBKER: Objection.

ATTORNEY HAMILTON: Objection. Sorry.

JUDGE LOUDEN: Sustain.

A. – because I felt like I didn't have a choice.

Q. You didn't have a choice to do what?

A. Other than adoption at that day – that point.

(July 28, 2014 Tr. 145-46.)

{¶ 29} "The admission of evidence is generally within the sound discretion of the trial court, and a reviewing court may reverse only upon the showing of an abuse of that discretion." *Peters v. Ohio State Lottery Comm.*, 63 Ohio St.3d 296, 299 (1992). "The term 'abuse of discretion' connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶ 30} The trial court did not abuse its discretion in sustaining the objection. Counsel for C.L.S. did not argue at trial against it, or why the statement would not be considered hearsay. Further, there was no indication that C.L.S.'s significant other, J.G., was unavailable to testify.

{¶ 31} The second assignment of error is overruled.

The Trial Court Did Not Grant a Directed Verdict

{¶ 32} In her third assignment of error, C.L.S. argues that the trial court erred in granting a directed verdict in a bench trial by not first determining whether evidence supports each element of the claim. This assertion is without merit. The trial court, in its second decision, on September 14, 2015 granted an involuntary dismissal. This is distinct

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from the first decision when we found that the trial court could not enter an involuntary dismissal because the findings to support such action did not exist in the August 2014 judgment entry. *In re C.C.S.*, 10th Dist. No. 14AP-739, 2015-Ohio-2126.

{¶ 33} In our June 2, 2015 decision, we only discussed a directed verdict standard to determine if the trial court's decision could meet the more stringent standard of construing the evidence most strongly in favor of C.L.S, rather than the less rigorous standard for involuntary dismissal. See *Goodyear Tire & Rubber Co. v. Aetna Cas. & Sur. Co.*, 95 Ohio St.3d 512, 2002-Ohio-2842. "There is no prejudice if a trial court erroneously applies the Civ.R. 50(A) standard for directed verdict instead of the standard for involuntary dismissal under Civ.R. 41(B)(2) because the directed verdict standard is much more rigorous than the involuntary dismissal standard. * * * Satisfaction of the Civ.R. 50(A) standard implies satisfaction of the Civ.R. 41(B)(2) standard." *Whitestone Co. v. Stittsworth*, 10th Dist. No. 06AP-371, 2007-Ohio-233, ¶ 15; quoting *Fenley v. Athens County Genealogical Chapter*, 4th Dist. No. 97CA36 (May 28, 1998).

{¶ 34} We found that the trial court's September 14, 2015 judgment entry lacked the factual findings to grant an involuntary dismissal under Civ.R. 41(B)(2) and therefore examined if it could pass a directed verdict standard. *In re C.C.S.* Appellant's counsel does not recognize this distinction in his brief and instead alleges factual errors committed by the trial court.

{¶ 35} The third assignment of error is overruled.

Options Other Than Adoption Where Adequately Discussed

{¶ 36} In her fourth assignment of error, C.L.S. argues that the petition for habeas corpus should have been granted because Gentle Care failed to discuss all the options available to C.L.S. in lieu of surrendering the child as required by the Ohio Administrative Code. Ohio Adm.Code 5101:2-42-09 states:

(B) At least seventy-two hours prior to the PCSA or PCPA execution of the JFS 01666, the assessor shall meet with the parents, guardian or other persons having custody of the child to do the following:

- (1) Discuss with the parents, guardian, or persons having custody of the child other options available in lieu of surrendering the child.

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The trial court stated that "[t]here was, in fact, sufficient discussion between [C.L.S.] and [Gentle Care] staff to meet the 'discussion' element of the permanent surrender." (Sept. 14, 2015 Judgment Entry, 26.) The trial court found Gentle Care did discuss the surrender options as required by Ohio Adm.Code 5101:2-42-09(B)(1). (Sept. 14, 2015 Judgment Entry, 27.) This finding of fact is supported by competent and credible evidence in the record.

{¶ 37} On March 27, 2014, C.L.S. met with a Gentle Care social worker, Kelly Schumaker, at a Bob Evans restaurant for about an hour. (July 28, 2014 Tr. 137.) At the meeting, C.L.S. was provided with pamphlets and packets of information about adoption including information about birth parent's rights and options. (July 31, 2014 Tr. 127-28.) Alternatives to surrender were also discussed as well as pre- and post-adoption options, temporary custody with an agency, and foster care. This information was also contained in a pamphlet that was given to C.L.S. at this meeting, including the option to place the child with a friend or non-relative temporarily or permanently. (July 31, 2014 Tr. 87-88.)

{¶ 38} Further, during the colloquy when the permanent surrender was signed, C.L.S. was asked if she understood her options:

Q. And how long have you been considering adoption?

A. For approximately a month.

Q. Okay.

A. Three, four weeks.

Q. Three to four weeks? Do you feel like that's a long enough time to consider all of your options?

A. Yes.

Q. And you understand that you will be signing a permanent surrender of child document and that this is not a temporary custody form?

A. Yes.

Q. And do you understand that you're not obligated to proceed with surrender today, and that baby could be placed in foster care or discharged to you to give you more time?

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A. I understand.

Q. Okay. Would you like to consider any of these options?

A. No.

(July 29, 2014 Tr. 36-37). Ample evidence exists to support the trial court's conclusion that all the options of what could be done with the child were discussed with C.L.S.

{¶ 39} The fourth assignment of error is overruled.

It is Irrelevant That J.G. Was Not a Party to Permanent Surrender

{¶ 40} The trial court also found an independent reason why duress from J.G. could not void C.L.S.'s consent; stating that under Ohio law the duress to void a contract must come from a party to that contract. The trial court quoted:

To avoid a contract on the basis of duress, a party must prove coercion by the other party to the contract. It is not enough to show that one assented merely because of difficult circumstances that are not the fault of the other party.

Blodgett v. Blodgett, 49 Ohio St.3d 243 (1990), at paragraph one of syllabus.

{¶ 41} Whether this is a correct statement of Ohio law in the context of a permanent surrender agreement is not a question that needs to be addressed here. We have already found that trial court's judgment that C.L.S. really had a choice in consenting is supported by the manifest weight of the evidence. Further, such a question pits the public policy that duress to invalidate a contract must originate with a contract party against the policy that birth parents must not be in such duress that it overcomes their freedom to exercise their will. One can only speculate as to which policy takes precedence in other circumstances that may be driven by other facts.

Conclusion

{¶ 42} Having found that C.L.S. really had a choice, we will not invalidate the permanent surrender agreement. The evidence presented by C.L.S at trial is insufficient to overcome the prima facie evidence of the signed permanent surrender agreement. Essentially this case was a question of fact, not law. The trial court, as the fact finder, made its determination after a lengthy trial that C.L.S. failed to present clear and convincing evidence that the surrender agreement is invalid as a result of duress or other factors. It is a great misfortune therefore that this case has resulted in a newborn child living in foster care since birth for the last 21 months.

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{¶ 43} Having overruled the four assignments of error, the judgment of the trial court is affirmed.

Judgment affirmed.

KLATT and BRUNNER, JJ., concur.
