Supreme Court of Ohio Clerk of Court - Filed April 13, 2016 - Case No. 2016-0395

No. 2016-0395

In the Supreme Court of Ohio

APPEAL FROM THE COURT OF APPEALS
TENTH APPELLATE DISTRICT
FRANKLIN COUNTY, OHIO
CASE NO. 15AP-884

In re: [C.C.S]. [C.L.S.],

Petitioner-Appellant,

v.

Adoption by Gentle Care,

Respondent-Appellee.

APPELLEE'S MEMORANDUM OPPOSING JURISDICTION

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I. THIS CASE DOES NOT PRESENT A SUBSTANTIAL CONSTITUTIONAL QUESTION.

Petitioner-Appellant, Caroline Stearns ("Ms. Stearns") had her day(s) in court and lost. After executing a Permanent Surrender of her child, Ms. Stearns filed a Petition for Habeas Corpus claiming the Permanent Surrender was invalid because her execution of that contract was the product of duress. After five days of testimony, the trial judge dismissed Ms. Stearns's petition because he found her not credible and her proof insufficient. The dismissal was unanimously affirmed by the Tenth District. *In re C.C.S v. Adoption by Gentle Care*, Tenth Dist. Case No. 15AP-884, 2016-Ohio-388.

Ms. Stearns's introductory statement first argues this Court should accept jurisdiction because she claims this case presents a "substantial constitutional question." She is wrong. She never raised any constitutional claims below. Neither her amended petition nor her assignments of error presented constitutional arguments. Now, at this late stage, she has sprinkled terms like due process into her Memorandum in Support. Simply adding constitutional phrases to her arguments will not transform this case into a case involving a substantial constitutional question. Instead, this case was a straightforward application of facts to well-established and uncontested Ohio law.

II. MS. STEARNS TERMINATED HER OWN PARENTAL RIGHTS.

Although not an independent basis for a grant of jurisdiction under S.Ct.Prac.R. 7.02(C)(2), Ms. Stearns's introductory statement next claims this case involves the termination of parental rights. Respondent-Appellee Adoption by Gentle Care ("AGC") disagrees with this characterization. While this case relates to the termination of Ms. Stearns's parental rights, her parental rights were not terminated by the court or by

operation of this case. Rather, it was Ms. Stearns who chose to terminate her own parental rights when she signed the Permanent Surrender contract.

III. THIS CASE DOES NOT INVOLVE ANY ISSUE OF PUBLIC AND GREAT GENERAL INTEREST THAT WARRANTS REVIEW.

Ms. Stearns's introduction concludes by arguing that this Court should accept jurisdiction because this case presents an issue of "great public and general interest." Again, she is wrong. There is no great public or general interest in a court's routine application of well-established law to facts. The parties did not dispute the applicable standard for challenges to Permanent Surrenders and the trial judge found that Ms. Stearns failed to prove by clear and convincing evidence that her execution of the Permanent Surrender was involuntary. The trial court concluded: "[A]pplying the applicable law to the evidence presented by Ms. Stearns in her case in chief, this Court concludes that Ms. Stearns 'really had a choice' and the execution of the permanent surrender was the product of her 'freedom of exercising [her] will.'" In affirming this dismissal, the appellate court recognized: "On appeal, C.L.S. does not challenge the legal standard applied or the validity of the evidence presented at trial. C.L.S. only asks that we look at the totality of circumstances to come to a different conclusion than the trial court. * * * Essentially this case was a question of fact, not law." *In re C.C.S*, *supra* at ¶¶ 22, 42.

Thus, no public or great general interest is at stake. No novel issue is presented as the trial court and the Tenth District merely applied well-established law to the facts of this case. *Noble v. Colwell* (1989), 44 Ohio St. 3d 92, 94. That Ms. Stearns believes that the courts below erred is insufficient to invoke this Court's discretionary review. Because this is not an error correction court, jurisdiction should be declined.

IV. COUNTERSTATEMENT OF THE CASE AND FACTS.

While pregnant, Ms. Stearns contacted AGC about adoption. Prior to giving birth, she met with an AGC social worker to discuss her options and to execute an adoption plan. Ms. Stearns gave birth on March 31, 2014. Four days later (one day beyond the statutory waiting period), Ms. Stearns executed a Permanent Surrender of her child. The Permanent Surrender included the following language:

> The assessor has provided the following counseling and discussed alternatives to the surrender, pre and post-adoption options, temporary custody and foster care and reviewed and signed the Ohio Laws and Adoption Materials form.

In addition, Ms. Stearns executed an Affidavit of Relinquishment which stated:

> I have the absolute right to refuse to place my child for adoption; that I consider the signing of Permanent Surrender of child to be a final and irrevocable decision; that if I do permanently place my child, the relationship between me and the child is permanently severed, as provided for in the child placement and adoption statutes.

The execution of this Permanent Surrender was witnessed by two licensed social workers. Although not required by law, AGC recorded an extensive question and answer colloquy with Ms. Stearns regarding her knowledge of her rights and her intent to sign the surrender. This colloquy was played at trial. When asked "do you understand that you're not obligated to proceed with the surrender today, and that baby could be placed in foster care or discharged to give you more time[,]" Ms. Stearns replied, "I understand." And when she was asked if she would "like to consider any of these options[,]" she answered "No." After Ms. Stearns signed the Permanent Surrender, AGC's Executive Director accepted

custody on behalf of the agency, and pursuant to R.C. 5103.15(B)(2), notified the Franklin County Juvenile Court of the Permanent Surrender.

Thereafter, the adoptive family (who had been chosen by Ms. Stearns as part of her adoption plan) filed a petition for adoption in Franklin County Probate Court. While the petition was pending, Ms. Stearns filed a "Petition to Withdraw Consent to Permanent Surrender Agreement" in the probate court case challenging the validity of the Permanent Surrender she signed. In addition to trying to intervene in the probate proceedings, Ms. Stearns began a social media campaign attacking AGC and she began contacting the initial adoptive family. For example, Ms. Stearns sent an email to the first adoptive couple on Mother's Day that stated, "Mother's Day is for mothers, not for people who steal babies." Eventually the first adoptive couple withdrew their petition for adoption because of perceived threats. Because there was no longer an adoption petition pending, the probate court dismissed Ms. Stearns's "Petition to Withdraw Consent to Permanent Surrender Agreement." Ms. Stearns did not appeal this dismissal.

Ms. Stearns then filed a Petition for Writ of Habeas Corpus in the Tenth District Court of Appeals challenging the validity of the Permanent Surrender. After a status conference with the court, Ms. Stearns filed a voluntary dismissal and stipulated that the Franklin County Juvenile Court had jurisdiction over her Petition for Habeas Corpus.

On July 2, 2014, pursuant to R.C. 2725.02,[1] R.C. 2151.23(A)(3),[2] and Juv. R. 10[3] Ms. Stearns filed a Petition for Writ of Habeas Corpus in Franklin County Juvenile Court. She

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[1] R.C. 2725.02 states: "a writ of habeas corpus may be granted by the supreme court, court of appeals, court of common pleas, probate court, or by a judge of any such court."

amended this petition and the case proceeded to trial. Because Judge Dana Priesse was on AGC's witness list, the remaining judges of the Franklin County Juvenile Court all recused themselves and Judge Thomas Louden was appointed to preside over the trial. In Ms. Stearns's case-in-chief, the trial judge was presented with the following evidence:

- Ms. Stearns was a 38-year old, college-educated, mother of five who lived with her boyfriend, Jeff Griffith. She was described by friends, family and herself as having a strong-willed and bold personality.

- Mr. Griffith was not the father of this child and this was not the first time Ms. Stearns faced an out-of-wedlock pregnancy. This child, along with her previous five children, were each fathered by six different men, none of whom were married to Ms. Stearns.

- Ms. Stearns Googled "adoption" and contacted AGC. After the first conversation with an AGC social worker, Ms. Stearns texted the social worker that she was "100% choosing adoption."

- Prior to giving birth, Ms. Stearns met with an AGC social worker for an hour wherein Ms. Stearns was asked a lot of questions, the two discussed the available options including foster care, and Ms. Stearns executed an adoption plan.

- After the birth, a hospital social worker noted "she's feeling even more sure of her decision."

- After giving birth and waiting one day beyond the statutory three-day waiting period, Ms. Stearns signed a Permanent Surrender and Affidavit of Relinquishment.

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[2] R.C. 2151.23(A)(3) states: "The Juvenile Court has exclusive original jurisdiction under the Revised Code was follows: … (3) [t]o hear and determine any application for a writ of habeas corpus involving the custody of a child."

[3] Ohio Rule of Juvenile Procedure 10 (A) states: "Any person may file a complaint to have determined the custody of a child not a ward of another court of this state, and any person entitled to the custody of a child and unlawfully deprived of such custody may file a complaint requesting a writ of habeas corpus. Complaints concerning custody shall be filed in the county where the child is found or was last known to be."

- When the Permanent Surrender was signed, an AGC social worker engaged in an extensive question and answer colloquy with Ms. Stearns regarding her knowledge of options and her intent.

- Evidence revealed numerous examples challenging Ms. Stearns's credibility: her criminal record included two recent convictions for dishonesty (theft, unauthorized use of property with the theft being committed while she was pregnant with this child); she lied to a social worker about her employment; she admitted "I lied" during the signing of the Permanent Surrender; she admitted she intentionally put down the wrong name of the father on a medical document; she was advised by her attorney to invoke her right to remain silent after giving conflicting answers to the judge's questions about whether she disseminated the transcript in violation of the court's order; and the father of the child testified he has known her for 10 years and she has a reputation for not being truthful.

After Ms. Stearns rested her case, the trial court granted AGC's motion for an involuntary dismissal pursuant to Civ.R. 41(B)(2).

In the first appeal, the court of appeals remanded the case to the trial court and ordered the court to explain its decision to dismiss the petition. *In the Matter of C.C.S v. Adoption by Gentle Care*, Tenth Dist. Case No. 14AP-739, 2015-Ohio-2126 (J. Brown dissenting). On remand, the trial court issued a 35-page opinion again dismissing Ms. Stearns's Amended Petition. In its opinion, the trial court "determine[d] that, after weighing the evidence presented at trial, Ms. Stearns failed to establish, by clear and convincing evidence that pressure from Jeff Griffith, or any of the other facts of Ms. Stearns's circumstance, resulted in her being denied the ability to exercise her free will when she executed the Permanent Surrender." (Opinion at p. 19-20.) The trial court's findings included, but were not limited to the following:

- The court specifically found Ms. Stearns to be not credible and that she "feigned" her claims of duress and no choice. (Opinion at p. 20, 34, 35)

- "[T]his Court finds that Ms. Stearns did, in fact, have a choice and the execution of the Permanent Surrender was voluntary." (Opinion at p. 20.)

- "Ms. Stearns's perceived difficult circumstances were not duress and not the fault of anyone else." (Opinion. at p. 20)

- "The profile of Ms. Stearns as presented at trial is not the profile of a person who is easily pressured into doing something she does not want to do." (Opinion at p. 20.)

- "Ms. Stearns had ample discussion and time to consider her decision." (Opinion. at p. 21.)

- "Ms. Stearns was provided with the options available to her, including discussions about 'alternatives to the surrender, pre and post-adoption options, temporary custody and foster care.'"(Opinion at p. 21.)

- "The documents signed by Ms. Stearns at the time of the surrender are clear and unequivocal." (Opinion at p. 21.)

- "And there is little doubt as to Ms. Stearns' state of mind regarding the Permanent Surrender because this Court heard her own voice on the recorded colloquy as she answered questions about the voluntariness of her signing of the Permanent Surrender." (Opinion at p. 22.)

- "[T]his Court concludes that Ms. Stearns 'really had a choice' and the execution of the permanent surrender was the product of her 'freedom of exercising [her] will.'" (Opinion at p. 35.)

In the second appeal, the Tenth District unanimously affirmed the dismissal. Notably, the appellate court stated: "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." *In re C.C.S*, 2016-Ohio-388 at ¶ 22. The appellate court went on to find that "[t]here is ample evidence of a valid permanent surrender agreement." *Id*. at ¶ 23.

V. ARGUMENT

A. Counterproposition of Law No. 1

A reviewing court should not substitute its judgment for that of the trial court when there exists competent and credible evidence supporting the findings of fact and conclusions of law rendered by the trial judge.

In her first proposition of law, Ms. Stearns asks this Court to accept this case because she argues AGC violated Ohio Administrative Code, specifically OAC 5101:02-42-09(B)'s requirement that the birth mother be informed of her options prior to signing a permanent surrender. There are a number of flaws with this argument, but most notably, Ms. Stearns is simply arguing that the court of appeals was wrong when it found that competent credible evidence supported the trial court's finding that the options were discussed with Ms. Stearns: "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." *Id*. at ¶ 38. Because this Court is not an error correction court, Ms. Stearns's first proposition does not warrant a grant of jurisdiction.

In addition to simply arguing error correction, Ms. Stearns's first proposition is full of holes. First, she failed to raise this argument at trial. Her current argument is based on a particular administrative code section, OAC 5101:02-42-09(B), yet that code section was never cited in her 44-page amended petition, nor was it ever mentioned at trial. Second, while Ms. Stearns continually refers to "30 day agreements," the OAC code section she cites never refers to a "30 day agreement." What OAC 5101:2-42-09 (B) (1) does require is:

> [a]t least seventy-two hours prior to [the private child adoption agency] execution of 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.

Thus, this administrative code section simply requires a discussion of *options*. Third, Ms. Stearns cites to no case law actually granting a writ of habeas corpus and undoing a permanent surrender based on an alleged violation of OAC 5101:2-42-09.

Aside from the holes in her argument, Ms. Stearns is wrong when she states, "Gentle Care failed to discuss the surrender options as required by OAC: 5101:02-42-09(B)(1)." Stearns Mem. in Support at p. 10. The evidence produced at trial revealed that in addition to pre-birth phone and text conversations between Ms. Stearns and the AGC social worker Kelly Schumaker, Ms. Stearns met with Kelly Schumaker for a face-to-face meeting at a local Bob Evans restaurant on March 27 that lasted almost an hour. Ms. Stearns chose the location because it was "more comfortable." Regarding this one-on-one meeting, Ms. Stearns admitted there were "a lot of questions" and she was "sure" and "confident" that the adoption process was "discuss[ed]." Kelly Schumaker testified that the two "talked back and forth" during the meeting and further explained that during this meeting, she went through "all of our initial contact paperwork," including all the informational documents, and she explained "each paper until the end." Ms. Stearns conceded that Ms. Schumaker did put all of the documents in the folder that was given to Ms. Stearns which included a pamphlet that the Ohio Department of Job and Family Services requires to be provided to birth parents considering adoption. This pamphlet contains information about a birth parent's rights and options and lays out all the non-surrender options available under Ohio law including "Placing your child with a friend or non-relative temporarily or permanently."

Further, the trial court heard Ms. Stearns's own words confirm that she was informed of her options including temporary custody. During the execution of the surrender, Ms. Stearns was asked to confirm her understanding of her options: "And do you understand that you're not obligated to proceed with the surrender today, and the baby could be placed in foster care or discharged to you to give you more time?" Ms. Stearns responded, "I understand." Ms. Stearns also signed the Permanent Surrender which stated: "The assessor has provided the following counseling and discussed alternatives to the surrender, pre and post-adoption options, temporary custody and foster care and reviewed and signed the Ohio Laws and Adoption Materials form."

After hearing this evidence, the trial judge specifically found that AGC fulfilled its obligation under this administrative code section. "The Court determines there was sufficient discourse between AGC staff and Ms. Stearns to meet the "discussion" issue Ms. Stearns now denies." (Opinion at p. 26.) On appeal, the Tenth District found that "[a]mple 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." *In re C.C.S.*, *supra* at ¶ 38.

In sum, Ms. Stearns's first proposition of law does not claim there is any aspect of Ohio law that needs interpreting or clarification by this Court. Simply put, her flawed, baseless, error-correction argument does not warrant a grant of jurisdiction.

B. <u>Counterproposition of Law No. 2</u>

A birth parent's signature on a permanent surrender contract terminates their parental rights and does not violate the Constitution.

Ms. Stearns's second proposition fails to present a coherent argument. Wading through the language of her second proposition, Ms. Stearns now seems to argue that an

unspecified failure to follow statutes and regulations renders any "termination" void. Her two-paragraph argument in support of this proposition, goes on to generically refer to due process rights and then concludes by offensively referring to an agency "broker[ing] the sale of child." Stearns Mem. In Support at p. 11.

Ms. Stearns's second proposition of law does not warrant review by this Court. She does not argue for a change or interpretation of Ohio law. Moreover, she fails to acknowledge that her rights to her child were not terminated by the State of Ohio. Rather, *Ms. Stearns* terminated her rights to her child *herself* when she voluntarily signed the Permanent Surrender. Moreover, Ms. Stearns never raised a constitutional challenge in her habeas petition, at trial, or on appeal as an assignment of error. To the extent that Ms. Stearns is now attempting to raise a constitutional argument, she fails to explain in any coherent fashion how her constitutional rights were violated in any way.

C. <u>Counterproposition of Law No. 3</u>

A birth parent seeking to avoid the effect of a permanent surrender contract must establish, by clear and convincing evidence, the permanent surrender was a product of duress, fraud, or undue influence.

For her third proposition of law, Ms. Stearns presents a disjointed argument claiming that AGC social worker Kelly Schumaker breached a nonexistent fiduciary relationship with Ms. Stearns and that somehow this resulted in a violation of Ms. Stearns's due process rights. In addition to the lack of citations to trial testimony, legal authority, or any coherent argument, the substance of Ms. Stearns's third proposition amounts to her unsupported, false narrative of events interspersed with legal phrases such as fiduciary duty and due process. Ms. Stearns never raised a claim at trial or assignment of error on

appeal based on concepts such as fiduciary duty or constitutional rights. More importantly, her memorandum fails to present a reason why this Court should exercise jurisdiction. She does not suggest Ohio law should be changed, explained or modified in any way.

Indeed, the bulk of her "argument" is her 18 numbered paragraphs on pages 12 to 14 of her Memorandum. *These numbered paragraphs are not based on trial testimony.* Rather, they are Ms. Stearns's misleading spin of internal agency notes that were turned over in discovery over the objection of AGC. At trial, the trial judge ruled that any notes that were not discussed at trial or notes that contained privileged communication between AGC and its legal counsel "would be considered to be redacted." Even though there was no trial testimony about these notes, Ms. Stearns has cherry-picked information from these notes and created numbered paragraphs filled with misleading and false statements.

In contrast to Ms. Stearns's narrative, the actual evidence that was presented at trial revealed the following: After considering adoption for over a month, contacting AGC herself, picking out the adoptive family, being informed of her options, and waiting one day beyond the statutory post-birth waiting period, Ms. Stearns, a thirty-eight year old, educated, self-professed strong-willed mother of five, executed documents evidencing her unequivocal intent to surrender including a Permanent Surrender (*prima facie* evidence of intent to surrender) and a sworn Affidavit. And, even though it was not required by law, AGC recorded a question and answer colloquy with Ms. Stearns during the execution of the surrender so that her intent to surrender would be memorialized. This recording was played for the trial court who heard Ms. Stearns's own voice on the day of the surrender expressing her intent. After listening to the recording along with five days of testimony, the

trial court found Ms. Stearns to be not credible, her claims of duress were "feigned," and she failed to prove, by clear and convincing evidence that her own free will was overcome by any duress when she executed the Permanent Surrender.

The dismissal of Ms. Stearns's petition is consistent with Ohio case law. After surveying Ohio case law, the court in *In re Adoption of Hockman*, Eleventh Dist. App. No. 2004-P-0079, 2005-Ohio-140, at ¶27 stated: "it has only been in extreme circumstances where the courts have permitted the invalidation of consent on the basis of undue influence or duress." For example in *Marich v. Knox Cty. Dept. of Human Serv.*, 45 Ohio St.3d 163 (1989) a surrender was invalidated when fifteen year old birth mother was approached by the social service workers about the possibility of adoption for the first time on the day she gave birth, and in *In re Hua*, 62 Ohio St.2d 227 (1980) a Vietnamese mother's consent was invalid where she was pressured into giving her child up for adoption by the agency reinforcing and encouraging fears that her child would be killed due to his mixed parentage. In contrast, in *Morrow v. Family & Community Services of Catholic Charities, Inc.* 28 Ohio St.3d 247, 251 (1986), this Court found that consent was freely given by the natural parents, in part, because they had attained the age of majority and were college educated. And, the *Morrow* court also noted that adoption of the child had been considered prior to its birth. *Id.* at 251-252. Thus, the facts of this case – an informed, educated, adult, birth mother who considered adoption prior to birth - are aligned with *Morrow*.

VI. AMICUS BRIEFS

Two amici have separately filed briefs in support of Ms. Stearns. These two briefs were not filed by any recognized groups or organizations. Instead the briefs were filed by

two individuals who did not attend the trial: a counselor from Oklahoma and one of Ms. Stearns's former appellate attorneys.

The amicus brief filed by her former appellate attorney, Erik Smith, should be disregarded as a thinly-veiled attempt to circumvent the rules and file an extra brief that is not allowed by the rules of this Court. As the Appellant seeking jurisdiction, Ms. Stearns is allowed one fifteen-page Memorandum in Support of Jurisdiction. S.Ct.Prac.R. 7.02. Mr. Smith was one of Ms. Stearns's attorneys at the appellate level, but he eventually withdrew from representing her. Now, he has filed an amicus brief wherein he refers to himself in the third person and once again advocates for Ms. Stearns.

Within this brief, Mr. Smith speculates that the trial court lacked jurisdiction to hear this matter. This argument should be disregarded. Ms. Stearns never raised this issue and this Court has repeatedly stated that "[a]mici curiae are not parties to an action and may not, therefore, interject issues and claims not raised by the parties." *State ex rel. Citizen Action for a Livable Montgomery v. Hamilton Cty. Bd. of Elections*, 2007-Ohio-5379, ¶ 26, 115 Ohio St. 3d 437, 441, 875 N.E.2d 902, 907; *Wellington v. Mahoning Cty. Bd. of Elections*, 2008-Ohio-554, ¶ 53, 117 Ohio St. 3d 143, 152, 882 N.E.2d 420, 430 both quoting *Lakewood v. State Emp. Relations Bd.* (1990), 66 Ohio App.3d 387, 394, 584 N.E.2d 70.

The other amicus brief was filed by Linda Kats, a counselor from Oklahoma who appears to be unfamiliar with the trial facts. On page four of her brief she states, "The main person that could have substantiated the duress argument was eliminated from the witness list." Ms. Kats is apparently referring to Ms. Stearns's live-in boyfriend Jeff Griffith. What Ms. Kats fails to acknowledge is that Jeff Griffith was subpoenaed by Ms. Stearns, and even

though he was available, Ms. Stearns did not call him to testify during trial in order to corroborate her claims. Ms. Kats also refers to "expert" testimony; however, no expert testimony was offered at trial. Ms. Stearns's doctor did testify as a fact witness regarding the medications that were prescribed to Ms. Stearns, but he did not observe her on the day she gave birth, in the hospital after the birth, or on the day she signed the surrender. Ms. Kats is also under the mistaken belief that Ms. Stearns was not presented with the options available to her. Trial evidence demonstrated otherwise and the appellate court found: "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." *In re C.C.S.*, 2016-Ohio-388 at ¶ 38.

VII. CONCLUSION

No public or great general interest is at stake here. After hearing five days of testimony, the trial judge dismissed Ms. Stearns's petition and the Tenth District applied well-established law in affirming. Throughout this case Ms. Stearns has not challenged the law in any way; she merely disagrees with the application of the law to the facts. Appellee Adoption by Gentle Care therefore respectfully requests that this Court decline jurisdiction.

Respectfully submitted,

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