

IN THE SUPREME COURT OF OHIO

THE STATE OF OHIO, ex. Rel.
THE ALLEN COUNTY CHILDREN
SERVICES BOARD
123 West Spring Street
Lima, Ohio 45801

*
*
*

CASE NO.

16-0723

Relator

*

vs.

*

ORIGINAL ACTION IN
PROHIBITION

THE COMMON PLEAS COURT OF
MERCER COUNTY, OHIO
PROBATE DIVISION
101 North Main Street
Celina, Ohio 45822
and

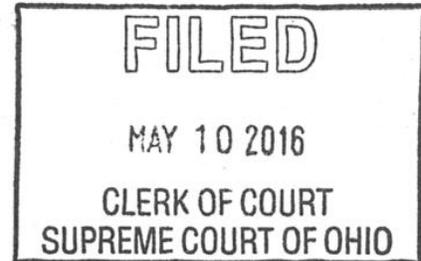
*
*
*
*

THE HON. MARY PAT ZITTER
A Judge of the Court of Common Pleas
101 North Main Street
Celina, Ohio 45822
and

*
*
*

THE HON. JAMES RAPP
A Judge by Assignment of the Court
of Common Pleas
101 North Main Street
Celina, Ohio 45822

*
*
*



Respondents

*

COMPLAINT FOR AN ORIGINAL WRIT OF PROHIBITION
AND SUPPORTING AFFIDAVIT

TERRI L. KOHLRIESER (0073982)
Assistant Prosecuting Attorney on behalf of
the Allen County Children Services Board
204 N. Main St., Ste. 302
Lima, Ohio 45801
(419) 222-2462; Fax: 419-227-1072
tkohlrieser@allencountyohio.com
ATTORNEY FOR RELATOR

NEED FOR IMMEDIATE RELIEF

(1) This is an original action for a writ of prohibition to restrain the Respondent court and judges from continuing the unlawful assertion of jurisdiction by the Mercer County Probate Court and to correct the actions already undertaken regarding the minor child M.S. in the captioned case *In the Matter of The Placement and Adoption of M.A.S.A.*, Court of Common Pleas, Mercer County, Probate Division, No. 2016 5005. The proceeding in question is scheduled for a Contempt Hearing against the Allen County Children Services Board on May 13, 2016. For that reason, immediate relief is required, at a minimum, by means of this Court's issuance of an alternative writ pursuant to S.Ct. Prac. R. 12.05. Further, an adoption hearing in that matter is scheduled for June 2, 2016.

JURISDICTION

(2) This is an action in prohibition brought to prevent and remedy the unlawful assertion of jurisdiction by the Mercer County Probate Court of the minor child, M.S. (AKA M.A.S.A.) This Court has jurisdiction of the present action pursuant to Article IV, Section 2(B)(1)d) of the Constitution of Ohio and pursuant to this Court's precedents holding that a writ of prohibition is an extraordinary writ issued to prevent a court from proceeding in a judicial matter in which it seeks to exercise jurisdiction it does not have under the law. *State ex rel. News Herald v. Ottawa Cty, Court of Common Pleas* (1996), 77 Ohio St. 3d 40, 671 N.E.2d (5).

PARTIES

(3) Relator, the Allen County Children Services Board, is a public children

services agency that is established, organized, and functions under the authority of Ohio Revised Code Section 5153 to exercise and carry out duties on behalf of children in Allen County, Ohio, and is the current temporary custodian of the minor child, M.S.

(4) The Respondents in this action are the Court of Common Pleas for Mercer County, Ohio, Probate Division, the Hon. Mary Pat Zitter, a duly elected judge of the Respondent court and the Hon. James Rapp, a duly appointed judge by assignment of the Respondent court.

RESPONDENTS' UNLAWFUL EXERCISE OF JURISDICTION

(5) There is now pending in the Respondent court a Petition for Adoption of Minor captioned as *In the Matter of the Adoption of M.A.S.A.*, Mercer County Common Pleas, Probate Division, case number 20165005, that was filed March 31, 2016. In that pending case, the Petitioners therein, Brian Anderson and Kelly Anderson (hereinafter "Petitioners") petitioned to adopt the minor child, M.S. Respondent, the Hon. Mary Pat Zitter, presided over the Application of Placement of M.S. and Respondent, the Hon. James Rapp, has been duly assigned to preside over the pending adoption proceedings.

(6) On March 28, 2016, the mother of M.S., Mary Angela Spurlock, made application in the Mercer County Probate Court for the placement of her daughter, M.S., for the purpose of adoption. On March 31, 2016, Respondent, the Hon. Mary Pat Zitter, approved the placement of the minor child, M.S., with the Petitioners and Ordered that Allen County Children Services release the child to the attorney for the adoptive parents, Susan Garner Eisenman. Relator was not a party to the Application of Placement of

M.S., was not served notice prior to the hearing three days later, and had no knowledge that said hearing was being held on that date.

(7) On April 5, 2016, Relator filed a Motion to Stay Judgment and Further Proceedings in the Mercer County Probate Court in the *Matter of the Placement and Adoption of M.A.S.A.* requesting the execution of the Judgment filed March 31, 2016 be stayed and to stay any further proceedings in this matter pending the outcome of *In the Matter of M.S.*, 2014 JG 31799, Allen County Court of Common Pleas, Juvenile Division.

(8) On April 27, 2016, Respondent, the Hon. James Rapp concluded that the Allen County Children Services Board must abide by the March 31, 2016 Order of the Mercer County Probate Court, ordered that Relator's Motion to Stay filed April 5, 2016 is overruled, ordered that the April 8, 2016 motion of the Petitioners alleging the Relator to be in contempt of this Court's order of March 31, 2016 shall be set for hearing and granted the Petitioners motion to set the petition for adoption for final hearing.

(9) Relator received notice that Contempt against Relator is scheduled on May 13, 2016 at 10:00 a.m. in the Mercer County Probate Court and that an adoption hearing is set in that same matter on June 2, 2016.

THE RESPONDENTS LACK AUTHORITY TO EXERCISE JURISDICTION
OVER THE MINOR CHILD M.S.

(10) The Allen County Common Pleas Court, Juvenile Division, exercised jurisdiction over M.S. at a Shelter Care hearing on August 8, 2014. A complaint alleging dependency and abuse was filed by Relator on August 11, 2014. The juvenile court found M.S. to be dependent and abused on October 8, 2014. The Allen County Common

Pleas Court, Juvenile Division, has exercised continuing jurisdiction over M.S since that date and was doing so at the time the Respondents exercised jurisdiction over M.S. on March 28, 2016.

(11) M.S. was placed in the temporary custody of Relator by Order of the Allen County Common Pleas Court, Juvenile Division, on November 4, 2014, and has remained in the temporary custody of Relator by two separate Orders extending temporary custody for six months each, respectively.

(12) Currently pending in the Allen County Common Pleas Court, Juvenile Division, are three separate motions relating to the custody of M.S. Said motions are scheduled for a hearing in the Allen County Juvenile Court on May 20, 2016, and May 25, 2016.

(13) On April 1, 2016, the Allen County Juvenile Court Ordered that the Allen County Children Services Board has the right to the physical care and control of the minor child, M.S., pursuant to its previous grant of temporary custody, and is entitled to determine where and with whom the child shall live. Further, it was Ordered by the Hon. Glenn Derryberry of that court, that the child is not to be relocated from the placement made by the Allen County Children Services Board under the statutory authority with which it is vested pending further order of the Allen County Juvenile Court.

(14) Due to the Allen County Juvenile Court having original exclusive jurisdiction over M.S. and the grant of temporary legal custody to the Relator, the subsequent exercise of jurisdiction by the Mercer County Probate Court is unauthorized by law.

RELATOR HAS NO ADEQUATE REMEDY AT LAW

(15) Respondent's unlawful exercise of jurisdiction will cause injury to the Relator for which there is no adequate remedy at law.

(16) By exercising jurisdiction over M.S., ordering Relator to be subject to its Orders that were issued without any legal notice to Relator and opportunity to be heard when said Orders clearly contradict the Orders and legal ramifications thereof, which were issued by the Hon. Glenn Derryberry of the Allen County Juvenile Court, who has exercised jurisdiction over M.S. since August 8, 2014, and by now scheduling an adoption proceeding when no proper placement has occurred, as M.S. is in the custody of Relator, which has not exercised its rights to determine where and with whom M.S. resides (i.e., no actual physical placement with the Petitioners), exposes Relator to the risk of penalties but most importantly exposes M.S. to irreparable harm should the adoption petition be granted absent valid placement by Relator to the Petitioner.

(17) The Complaint is supported by an Affidavit of Brent Bunke and Memorandum of Support.

WHEREFORE, Relator prays:

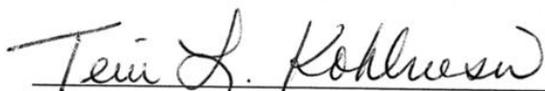
(1) That this Court immediately issue a peremptory writ of prohibition, or at a Minimum, an alternative writ of prohibition, forbidding Respondents from exercising judicial jurisdiction and power over M.S. in the proceeding, *In the Matter of The Placement and Adoption of M.A.S.A.*, The Court of Common Pleas, Mercer County, Probate Division, No. 2016 5005;

(2) That this Court issue a final writ of prohibition forbidding Respondents from

exercising jurisdiction to find Relator in contempt, to vacate their unlawful orders of March 31, 2016, April 11, 2016 and April 27, 2016, and to forbid Respondents from exercising jurisdiction to proceed with the adoption hearing; and

(3) That the Court award such other and further relief as the Court finds appropriate.

Respectfully submitted,



TERRI L. KOHLRIESER (0073982)
Assistant Prosecuting Attorney on behalf of
Relator, the Allen County Children Services
Board
204 N. Main St., Ste. 302
Lima, Ohio 45801
(419) 222-2462; Fax: 419-227-1072
tkohlrieser@allencountyohio.com
ATTORNEY FOR RELATOR