

SUPREME COURT OF OHIO

In re: (C.C.S.),	:	
	:	Case No. 2016-0395
Appellant,	:	
	:	Appeal from Franklin County
vs.	:	Court of Appeals Tenth Appellate District
ADOPTION BY GENTLE	:	
CARE,	:	Case No: 15-AP-000884
	:	
Appellee.	:	

APPENDIX FOR MERIT BRIEF OF APPELLANT
CAROLINE STEARNS

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IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO
DIVISION OF DOMESTIC RELATIONS
AND JUVENILE BRANCH

TERMINATION
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IN THE MATTER OF:
CAMDEN C. STEARNS

CASE NO. 14JU-07-08823

CAROLINE L. STEARNS,

PETITIONER,

JUDGE THOMAS E. LOUDEN
By Special Assignment of the Ohio Supreme Court

VS.

MAGISTRATE STROUD

ADOPTION BY GENTLE CARE.

JOURNAL ENTRY PURSUANT TO 60(A)

This matter came on for hearing on July 28, 29, 30, 31 and August 19, 2014, on the Amended Petition for a Writ of Habeas Corpus filed on July 23, 2014, for a writ of Habeas Corpus for Petitioner's minor child, Camden Calvin Stearns, date of birth, March 31, 2012, for whom Petitioner-mother seeks judicial declaration that her permanent surrender of custody of Camden Calvin Stearns to Adoption by Gentle Care adoption agency, signed and executed on April 4, 2014, seventy-two hours at least after the birth of the child, was made by Petitioner-mother involuntarily, as result of duress, undue influence, misrepresentations, and failure of Adoption by Gentle Care to provide the Petitioner-mother with information necessary for her to give a knowledgeable, understanding, informed and valid consent

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Petitioner-mother, Caroline L. Stearns, presented testimony of hers, her witnesses and her exhibits, for which Petitioner's Exhibits A through S were all admitted into evidence without objection, with the exception of Respondent's electronic case notes marked as Petitioner's Exhibit K. The Court accepted Petitioner's Exhibit K into evidence.

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FRANKLIN COUNTY CLERK OF COURTS

understanding that Respondent's file records and any and all references to matters of attorney-client communications and advice, is or are to be considered redacted Whereupon Petitioner rested her case.

Respondent then orally moved the Court for an Ohio Civil Rule 41 (B)(2). denial or dismissal of the Petitioner's Amended Petition for a Writ of Habeas Corpus for failure of Petitioner to meet her burden of proof

I. FINDINGS OF FACTS

The Petitioner-mother on or about March 15, 2014, then over eight months pregnant, first initiated telephone contact with Adoption by Gentle Care for information regarding surrender of custody of Camden Calvin Stearns to Gentle Care for adoption. A Gentle Care social worker for biological birth parents, Kelly Schumaker, met with Petitioner-mother on March 27, 2014, at Bob Evan on Sawmill Road, Columbus, Ohio for a discussion about the required procedure for permanent surrender of custody for purposes of adoption. At the March 27, 2014, meeting Ms. Schumaker presented Ms. Stearns with all the documentation required and expected to be presented to the Petitioner-mother, at the execution of the permanent surrender for purposes of the Petitioner-mother to review and become familiar with the documents prior to the actual signing and execution of all the permanent surrender forms, which occurs at least seventy-two hours after the birth of the child.

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The Ohio legislature has established very specific procedures for purposes of adoption of children. Adoption is sometimes determined desirable by a birth parent or birth parents and by a person or person's desiring to adopt a child

The Ohio Revised Code has contemplated the various and many circumstances involved

in adoption. The Code is cognizant, first and foremost, of the needs of an adopted child to have finality and stability in the adoption process that secures an adoption placement. The Code also assures respect for the fundamental right of parents to have custody and rear their children without undue fear of interference in the parents' custodial rights. Further, the Code mandates adequate care for children, and for the child to be eligible for State protection from abuse, neglect or dependency.

This adoption circumstance involves a newborn being placed for adoption. The surrounding circumstances were very emotional as are many or most of the permanent surrender of custody circumstances for most, if not all, mothers.

Caroline L. Stearns, Petitioner-mother, is an unmarried thirty-eight year old woman, who has five other minor children living with her. Ms. Stearns has lived with her significant other Jeff, for the past six years. Jeff is not the father of any of Ms. Stearns children.

The father of this child, Camden Calvin Stearns, has been established by DNA testing to be Steven Lump who is now of the opinion that adoption is in Camden's best interest, although he stands ready, willing and able to "meet his moral and legal obligations" to the child-Camden. Mr. Lump testified he so advised Ms. Stearns before she decided on permanent surrender of custody for purposes of adoption.

Respondent-Adoption by Gentle Care is believed and determined from the testimony and evidence presented, to have met their legal duty and obligation to Carline L. Stearns for purposes of receiving permanent custody surrender of Camden C. Stearns.

On cross-examination, Executive Director for Gentle Care, Trina Saunders, testified that one hundred percent of mothers they see for permanent surrender of custody for purposes of

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adoption all experience emotional stress, pressure and duress. not unlike that now alleged by Ms Stearns

Ms. Stearns now alleges "buyer's remorse", about her permanent custody surrender. She alleges reasons to void or rescind the surrender of permanent custody that would be no different for any other mother with a change of heart about the surrender

The seventy-two hour State requirement for delay in accepting a permanent surrender of custody, after the mother receives, review and contemplates the forms provided and required to be executed voluntarily is the time frame determined by the State of Ohio to be an adequate time period after which an enforceable permanent surrender of custody for adoption can be accepted from the parent or parents by public and private child placing agencies

Ms. Stearns very clearly described the circumstances and pressures under which she found herself, that are not found to be justification or sufficient to establish an involuntary surrender, or duress or undue influence necessary to void or rescind her permanent surrender of custody for purposes of adoption

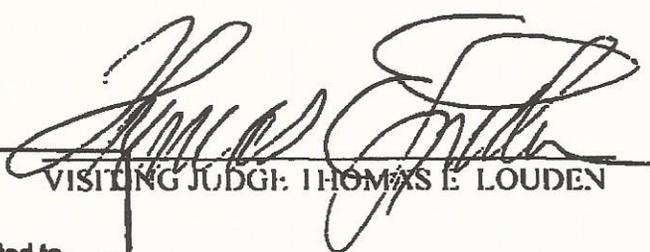
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II. CONCLUSIONS OF LAW

The Petitioner's testimony and evidence failed to prove, by clear and convincing evidence, that the written permanent surrender executed by her was a product of fraud, duress, or undue influence.

Petitioner's Amended Petition for Writ of Habeas Corpus is ordered denied.

IT IS SO ORDERED.



VISITING JUDGE THOMAS E LOUDEN

Date: August 21, 2014

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Pursuant to Civil Rule 58(B), you are hereby instructed to serve upon all parties not in default for failure to appear, notice of the judgment and its date of entry upon the journal

Copies to:

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*First Appeal
Appeals Ct. Decision*

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

In the Matter of: [C.C.S.]	:	
[C.L.S.]	:	No. 14AP-739
	:	(C.P.C. No. 14JU-8823)
Petitioner-Appellant,	:	(REGULAR CALENDAR)
v.	:	
Adoption by Gentle Care,	:	
Respondent-Appellee.	:	

D E C I S I O N

Rendered on June 2, 2015

Erik L. Smith; Steven E. Hillman, for appellant.

A. Patrick Hamilton; Tucker Ellis LLP, and Jon W. Oebker, for appellee.

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

BRUNNER, J.

{¶ 1} This appeal is from the denial of a writ of habeas corpus to invalidate petitioner-appellant C.L.S.'s permanent surrender of custody of her minor child for adoption to respondent-appellee Adoption by Gentle Care ("Gentle Care"). The trial court held that she failed to prove by clear and convincing evidence that the written permanent surrender she executed was a product of fraud, duress or undue influence.

I. FACTS AND PROCEDURAL HISTORY

{¶ 2} Appellant and her five children have lived with J.G. from 2008. J.G. worked to support the household while appellant stayed home and tended to the children in their Dublin residence. In 2013, appellant became pregnant by an "old friend." J.G., who is not the father of any of appellant's five children, would not agree to bring the child

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into the home. Appellant contacted Gentle Care, a licensed, private child placement agency, on March 15, 2014. Four days before the child was born, appellant met with a Gentle Care social worker, Kelly Schumaker. Appellant states that she explained to Schumaker that the decision was a nightmare, but appellant had no choice. Appellant stated that she was 90 percent sure she wanted to surrender the child and wanted the process to be as fast and painless as possible. Appellant claimed that J.G. was making her surrender the child and that the choice was not her own. Schumaker gave appellant Gentle Care's standard forms to review and complete. Appellant signed the documents. Appellant feared that if the adoption did not go through, the child would be placed in foster care. She did not want to look at the documents, and Schumaker gave her a folder enclosing the forms to take home and review. Schumaker read from her own forms and explained the documents to appellant.

{¶ 3} Appellant's prenatal care physician, Dr. Joseph Amato, expressed concern that she had not sufficiently thought through her decision, appellant having expressed that J.G. wanted her to give up the baby and that doing so was her best way of making things work for everyone else in the home. Appellant's scheduled cesarean section took place on April 7, 2014. Three days later, on April 10, 2014, appellant signed a permanent surrender agreement at her home. Schumaker and another Gentle Care social worker, Beth Simmons, were present. Appellant points to portions of the recorded conversation that are unintelligible, including her responses to questions about whether she signed the permanent surrender agreement voluntarily. The recorded portions include the following:

Q. In your own words can you explain what we're doing today?

* * *

A. I'm giving up -- I'm signing my parental rights.

Q. Okay. Yeah. Signing your parental rights to Adoption by Gentle Care?

A. Yes.

Q. Making an adoption plan.

A. Yes.

Q. Is that right?

A. Yes.

Q. Okay. That's okay. 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 the surrender today, and that baby could be placed in foster care or discharged to you to give you more time?

A. I understand.

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

A. No.

Q. And do you understand that you have the right to seek to [sic] an attorney before we go on?

A. Yes.

Q. Would you like to talk to one?

A. No.

Q. Who have you talked to about -- who have you talked to about your decision to place the child for adoption?

A. Like?

Q. Like who in your family?

A. Okay. My aunt, my twin sister.

Q. Your Aunt [] right?

A. Yeah.

Q. Is that right?

A. Like just (inaudible) my best friend.

* * *

Q. All right. And have you felt like any of these people have tried to pressure you in any way -

A. Not at all.

Q. - going forward? And no one from Gentle Care or from Riverside?

A. No.

Q. Okay.

A. No one.

* * *

Q. Okay. And before we go on, are you aware that the decision you're making is a final decision that cannot be changed?

A. Yes.

Q. Do you have any questions?

A. No.

(July 29, 2014 Tr. 35-38, 43.)

{¶ 4} Appellant also signed on April 10, 2014, an affidavit of relinquishment, which stated:

I understand and agree that I have the right to seek the counsel of any attorney of my choosing before making the decision as to parenting or permanently placing my child for adoption with Adoption by Gentle Care: that having

discusse[d] this decision with my attorney or having declined to do so, 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's placement and adoption statutes.

This process terminates the legal rights and responsibilities that existed between me and the child.

(July 29, 2014 Tr. 44.)

{¶ 5} The permanent surrender document appellant signed includes Schumaker's written note that appellant was unable to care for the child because she thought it would be emotionally best for the child and her family if the child were placed for adoption with someone to ensure the child is in a stable environment. The document includes language that, with appellant's signature, all of her rights as a parent to the child will end. Further language in the document is as follows:

I have read this permanent surrender or it was read to me before I signed it. I was given the opportunity to ask questions concerning this permanent surrender, and those questions were fully answered to my satisfaction. I understand and agree to the terms of this permanent surrender of my child. I am signing this permanent surrender of my child voluntarily and at least seventy-two hours after the birth of the child.

(July 29, 2014 Tr. 51.)

{¶ 6} Claiming that J.G. had expressed remorse for forcing her to surrender the child, appellant contacted Schumaker on April 13, 2014 and asked her to return the child. The request was denied. Appellant petitioned the Franklin County Probate Court to revoke the permanent surrender. Before a hearing, the adopting parents dismissed their adoption petition voluntarily and returned the child to Gentle Care. They did not wish to raise the child while a biological parent sought to retrieve the child. Appellant's petition with the probate court was dismissed for lack of jurisdiction.

{¶ 7} Appellant then petitioned the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, for a writ of habeas corpus and alleged that she had signed the permanent surrender agreement under duress. At the close of

appellant's evidence, the juvenile court granted Gentle Care's motion to dismiss the petition under Civ.R. 41(B)(2).

II. ASSIGNMENTS OF ERROR

{¶ 8} Appellant appeals assigning four assignments of error for review:

I. THE TRIAL COURT ERRED IN DISMISSING THE PETITION FOR HABEAS CORPUS BECAUSE THE EVIDENCE CLEARLY SHOWED THAT APPELLANT SIGNED THE PERMANENT SURRENDER AGREEMENT UNDER DURESS FROM HER DE FACTO HUSBAND OR AS A RESULT OF BEING UNDULY INFLUENCED.

II. ALTERNATIVELY, THE TRIAL COURT ERRED TO APPELLANT'S PREJUDICE BY IMPROPERLY EXCLUDING EVIDENCE OF COMMUNICATIONS BETWEEN APPELLANT AND HER DE FACTO HUSBAND THAT WOULD SHOW HOW APPELLANT WAS COERCED INTO SURRENDERING HER CHILD.

III. THE TRIAL COURT ERRED IN DISMISSING THE PETITION FOR HABEAS CORPUS BECAUSE THE AGENCY DID NOT TIMELY AND ADEQUATELY DISCUSS THE OPTIONS AVAILABLE TO APPELLANT IN LIEU OF SURRENDERING THE CHILD, AS REQUIRED BY OAC: 5105:2-42-09(B).

IV. THE TRIAL COURT ERRED IN GRANTING A "DIRECTED VERDICT" IN A BENCH TRIAL BY NOT DETERMINING WHETHER EVIDENCE OF SUBSTANTIAL, PROBATIVE VALUE SUPPORTED EACH ELEMENT OF THE PLAINTIFF'S CLAIMS. IF THE PLAINTIFF HAS PRESENTED THAT EVIDENCE AND THE TRIAL COURT STILL 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.

We address appellant's fourth assignment of error and find it dispositive so as to render moot our consideration of the others.

III. DISMISSAL UNDER CIV.R. 41(B)(2)

{¶ 9} Appellant claims that she presented sufficient evidence to avoid a directed verdict, which the trial court treated as an involuntary dismissal under Civ.R. 41(B)(2).

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The standard of review on Civ.R. 41(B)(2) motions differ from that on a motion for a directed verdict. As we stated in *Jarupan v. Hanna*, 173 Ohio App.3d 284, 2007-Ohio-5081, ¶ 9 (10th Dist.):

In contrast to Civ.R. 50(A)(4), Civ.R. 41(B)(2) allows a trial court to determine the facts by weighing the evidence and resolving any conflicts therein. * * * 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. * * * 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.

"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." *Id.*

{¶ 10} However, "when a trial court grants a 'directed verdict' in a bench trial, an appellate court must first determine 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. The appellate court must instead remand the case to the trial court so that that court can fulfil its role as the trier of fact." *Id.* at ¶ 14.

{¶ 11} The trial court judgment does not include any discussion of appellant's principal claim of duress: that J.G. would not tolerate the child in the house and would dismiss appellant and all of the children if she kept the baby. Appellant did present evidence to support her claim of duress, but the trial court did not mention this evidence, let alone weigh it and determine the credibility of the witnesses in this regard. We therefore sustain appellant's fourth assignment of error and remand the case to the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, so the trial court can fulfill its role as the trier of fact.

{¶ 12} "Absent a weighing of the evidence, an appellate court cannot review the 'directed verdict' under the manifest-weight standard applicable to Civ.R. 41(B)(2) in voluntary dismissals." *Id.* at ¶ 13. Beyond the court's mischaracterization of appellant's

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situation as "buyer's remorse" or the trial court's characterization of appellant's reasons for seeking to void or rescind the surrender of permanent custody as being "no different for any other mother with a change of heart about the surrender," the requisite determinations have not been made by the trial court of "whether evidence of substantial, probative value supports each element of the plaintiff's claims" and if so, whether after "weighing the evidence and determining the credibility of the witnesses" appellant is or is not entitled to relief. (Judgment, 4.) *Jarupan* at ¶ 14.

{¶ 13} We are constrained by the longstanding principle of law that a court speaks through its journalized judgment entry:

It is well-settled law that a court speaks through its journal entries. See *State ex rel. Fogle v. Steiner*, 74 Ohio St.3d 158, 656 N.E.2d 1288, 1995-Ohio-278; *Gaskins v. Shiplevy*, 76 Ohio St.3d 380, 667 N.E.2d 1194, 1996-Ohio-387; *State ex rel. Leadingham v. Schisler*, 4th Dist. No. 02CA2827, 2003-Ohio-7293; *State v. Ellington* (1987), 36 Ohio App.3d 76, 521 N.E.2d 504. Without the transcript, we don't know whether the trial court actually did conduct the appropriate analysis or make the appropriate findings under the correct statute. However, even assuming, arguendo, that the trial court did conduct an analysis on the record using the correct statute, this is still problematic. If a journal entry and the trial judge's opinion are in conflict, the journal entry controls. *Andrews v. Bd. of Liquor Control* (1955), 164 Ohio St. 275, 131 N.E.2d 390. Furthermore, where a journalized order and the trial judge's comments from the bench are contradictory, the journalized order controls. *State v. Burnett* (Sept. 18, 1997), 8th Dist. No. 72373, citing *Economy Fire & Cas. Co. v. Craft Gen. Contractors, Inc.* (1982), 7 Ohio App.3d 335, 455 N.E.2d 1037. See also *Scarborough v. Scarborough* (July 18, 2001), 9th Dist. No. 00CA007743 (a trial court speaks through its journal entry and an oral pronouncement of judgment is not binding).

State v. Hillman, 10th Dist. No. 09AP-478, 2010-Ohio-256, ¶ 15.

{¶ 14} The 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.

{¶ 15} Accordingly, we remand the matter so the trial court may explicate and weigh the circumstances and pressures it previously found appellant to have "very clearly

described," but not to have been "justification or sufficient to establish an involuntary surrender, or duress or undue influence necessary to void or rescind her permanent surrender of custody for purposes of adoption." (Judgment, 4.)

{¶ 16} In post-briefing motions, Gentle Care sought to strike certain statements of fact in the reply brief as unsupported, and appellant asked us to strike Gentle Care's motion to strike. Whether appellant's unsupported points may or may not be treated as fair comment on the evidence, or argument, they are not material to our determination and therefore both motions are denied.

IV. CONCLUSION

{¶ 17} Appellant's fourth assignment of error is sustained, rendering the remaining three assignments of error moot. This matter is remanded to the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, consistent with this decision.

*Motions denied.
Judgment reversed and
cause remanded with instructions.*

HORTON, J., concurs.
BROWN, P.J., dissents.

BROWN, P.J., dissenting.

{¶ 18} I respectfully disagree with the disposition of appellant's fourth assignment of error in the majority decision. The trial court acknowledges that "[C.L.S.] very clearly described the circumstances and pressures under which she found herself" and found she did not establish duress necessary to void the permanent surrender of her child.

I would overrule appellant's fourth assignment of error.

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

In the Matter of: [C.C.S.]	:	
[C.L.S.]	:	No. 14AP-739
	:	(C.P.C. No. 14JU-8823)
Petitioner-Appellant,	:	(REGULAR CALENDAR)
v.	:	
Adoption by Gentle Care,	:	
Respondent-Appellee.	:	

JUDGMENT ENTRY

For the reasons stated in the decision of this court rendered herein on June 2, 2015, appellant's fourth assignment of error is sustained, rendering the remaining three assignments of error moot. It is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, is reversed, and this cause is remanded to that court for further proceedings in accordance with law and consistent with said decision. Appellee's February 5, 2015 and appellant's February 9, 2015 motions to strike are denied. Costs assessed to appellee.

BRUNNER & HORTON, JJ.

By /S/ JUDGE
Judge Jennifer Brunner

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IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
DIVISION OF DOMESTIC RELATIONS
JUVENILE BRANCH

In the Matter of:

Camden C. Stearns

:

Case No. 14JU-8823
Judge Thomas E. Loudon
(Sitting by Assignment)

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JUDGMENT ENTRY
AND
FINDINGS OF FACT AND CONCLUSIONS OF LAW

Findings of Fact

In the Summer of 2013, Petitioner, Caroline Stearns ("Ms. Stearns") and her five children were living with Ms. Stearns' "significant other," Jeff Griffith, in Dublin, Ohio. (Tr. 7/28 at 132; 7/29 at 152; 7/30 148-149.) Jeff Griffith was not the father of any of Ms. Stearns' children. (Tr. 7/29 at 152.)

While living with Jeff Griffith, Ms. Stearns became pregnant. When subsequently asked to "explain the birth father's situation," Ms. Stearns replied, "it's questionable between two men," neither of which was Jeff Griffith. (Tr. 7/29 at 39-40.) Ultimately, it was determined that the father was Steven Lump. (Tr. 7/31 at 109-110; Tr. 7/30 at 171; Tr. 8/19 at 110; Tr. 7/28 at 144.)

On March 15, 2014, Ms. Stearns contacted a private adoption agency, Respondent Adoption by Gentle Care ("AGC"). (Tr. 7/29 at 14; Tr. 7/30 at 14-15.)

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At the time she contacted AGC, Ms. Stearns was a 38-year old high school graduate. She attended college at Ohio State and Columbus State, and considered going to law school. (Tr. 7/29 at 80-85; 7/30 at 209, 212.)

On March 27, 2014, Ms. Stearns met with an AGC social worker Kelly Schumaker at a location chosen by Ms. Stearns, a local Bob Evans restaurant. (Tr. 7/28 at 137, 7/30 at 63-64.)

Kelly Schumaker is licensed as a certified adoption assessor by the Ohio Department of Job and Family Services. She has a Bachelor of Science in Social Work from Bowling Green State University and a Master's Degree in Social Work from the University of Cincinnati. In addition to her "hands on" training with AGC, Ms. Schumaker has completed the training for Tier One, Tier Two and Post Adoption Services. (Tr. 7/31 at 119, 122, 123.) The Executive Director of AGC, Trina Saunders, testified that there have been no complaints registered against Ms. Schumaker in her four years of service as birth parent social worker for AGC. (Tr. 7/30 at 287-288.) Ms. Saunders further testified that Ms. Schumaker is a "good person" and she does not have the reputation of being manipulative (Tr. 7/31 at 105.)

At the March 27, 2014 meeting between Ms. Schumaker and Ms. Stearns, Ms. Schumaker provided Ms. Stearns with a packet containing a pamphlet that stated, "Choices regarding your child's future ultimately rest with you." (Tr. 7/31

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at 87; Exhibit M.) The packet also included a pamphlet that the Ohio Department of Job and Family Services requires to be provided to birth parents considering adoption. This pamphlet explains the birth parents' rights and options. (Tr. 7/31 at 19-22; 87-89; 127-128.) Ms. Stearns later acknowledged that at this March 27 meeting, Kelly Schumaker "discussed alternatives to the surrender, pre and post-adoption options, temporary custody and foster care." (Tr. 7/29 at 36, 50.)

After the meeting, Kelly Schumaker texted Ms. Stearns: "it's completely up to you, it has to be your decision." (Tr. 7/30 at 54.) That same day, Ms. Stearns responded via text: "I know its late but I want you to know I'm a hundred percent choosing adoption." (Tr. 7/30 at 54.)

On March 27, 2014 Ms. Stearns executed an adoption plan and signed a series of adoption-related documents. (Tr. 7/29 at 78.) As part of this adoption plan, Ms. Stearns selected the couple to adopt her child. (Tr. 7/28 at 129-130, 161.) Ms. Stearns gave birth to the child in question on March 31, 2014 at Riverside Methodist Hospital.¹ (Tr. 7/28 at 161.)

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¹ The Opinion from the Tenth District incorrectly lists the date of birth as April 7 and the date of the surrender as April 10. *In the Matter of C.C.S v Adoption by Gentle Care*, Tenth Dist. Case No. 14AP-739, 2015-Ohio-2126 at ¶3. The correct dates for the birth and surrender are March 31 and April 4. (Tr. 7/28 at 161; Tr. 7/29 at 17-18, 28.)

A hospital entry by a hospital social worker the day after the birth stated:
“Now the baby has been born she’s feeling even more sure of her decision; denies any reservations and impatient with any discussion on the subject.” (Tr. 7/30 at 74-76.)

On April 4, 2014, after waiting one day beyond the statutorily-required seventy-two hours, Ms. Stearns signed a Permanent Surrender of this child in favor of AGC. (Tr. 7/29 at 17-18, 28.) The Permanent Surrender states:

So I, Caroline Love Stearns, am thirty-eight years old, the parent guardian of Baby Boy Stearns, born on March 31, 2014 at 5:43 p.m. in Columbus, which is Franklin County, Ohio, who currently lives at 7296 Coventry Woods Drive, Dublin, Ohio, sign this permanent surrender as the child’s mother, and hereby request Adoption by Gentle Care to take permanent custody and control of the child, and am unable to care for said child for the following reasons.

* * *

[At this point, Social Worker Schumaker wrote:] Caroline states she thinks it would be emotionally best for the baby and her family for the baby to be placed for adoption or someone to ensure the baby is in a stable environment. (Tr. 7/29 at 48-50.)

* * *

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 to Ohio laws an adoption materials form. The date on which this was provided was March 27, 2014. The name of the assessor was Kelly Schumaker, MSW, LSW.

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I agree and understand that under Ohio law, signing this document means all of my rights as a parent to the above-named child will end. This includes, but is not limited to, all rights to visitation, communication, support, religious affiliation and the right to consent to the child's adoption. The Agency shall have permanent custody of the child and have the right to place the child at any adoptive home or other substitute care settings it finds in the child's best interests. This is Ohio Revised Code section 3107.06. This permanent surrender was taken at 9:41 a.m. on the fourth day of April, 2014 in the following location: Dublin, Ohio.

I have read this permanent surrender or it was read to me before I signed it. I was given the opportunity to ask questions concerning this permanent surrender, and those questions were fully answered to my satisfaction. I understand and agree to the terms of this permanent surrender of my child. I am signing this permanent surrender of my child and voluntarily and at least seventy-two hours after the birth of the child.

Ms. Stearns then signed the document and swore that the information given was true and accurate to the best of her knowledge and that she signed the surrender under her own free will. (Tr. 7/29 at 51-52, 57.) The Permanent Surrender was signed in Ms. Stearns' home and it was witnessed by two social workers.

The question and answer session or colloquy evidencing Ms. Stearns' intent to execute the Permanent Surrender was recorded on an audiotape. In the colloquy Ms. Stearns stated that she had considered adoption for over a month, she knew she could take more time but she chose not to, she knew that she could talk to an

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attorney but she chose not to, and she chose the family but she decided not to meet them. (Tr. 7/29 at 35-52.) The colloquy also contained the following statements by Ms. Stearns:

Q. And 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.

A. I understand.

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

A. No.

(7/29 at 36-37.) Then, after being asked "who have you talked to about your decision to place the child for adoption" Ms. Stearns was asked:

Q. All right. And have you felt like any of these people have tried to pressure you in any way

A. Not at all.

Q. - going forward? And no one from Gentle Care or from Riverside

A. No.

Q. Okay.

A. No one.

* * *

Q. And again, do you feel like anyone's forcing you to make this adoption plan?

A. No.

(Tr. 7/29 at 38-39)

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In addition to the Permanent Surrender, Ms. Stearns also signed a notarized Affidavit of Relinquishment which included the statement: "I have the absolute right to refuse to place my child for adoption." (Tr. 7/29 at 43-44.)

The testimony and evidence presented established the following:

In 2008, Caroline Stearns (Carri) and Jeff Griffith began a romantic relationship. (Tr. 7/28 at 42: 13 - 17, 132.) Carrie was 32 years old at the time and had five children, ranging from one to eight years old. (Tr. 7/28 at 42 - 42; Tr. 7/29 at 8, 70.) Jeff, who could not sire children, welcomed Carri and her children into his home and they set about living as a family unit. (Tr.7/30 at 151:5 - 8.) for the next six years, Jeff worked and supported the household while Carri stayed home and tended to the children in their comfortable Dublin residence. Tr. 7/29 at 146:11 - 15 Tr.7/30 at 148:25 - 151:8.) Jeff played a fatherly, child-rearing role with the kids. Tr. 7/29 at 7 - 8.) He was close to the children (Exh. K, pg. 4.) Jeff's role was symbolized by Carri regularly referring to him as her "husband." (Exh. K, pg. 1.)

In 2013, Carri's father died suddenly. (Tr. 7/28 at 75; Tr. 7/30 at 266:5 - 12.) Carrie called Steven Lump, an old friend and stated to him she wished to meet with him for sexual relations at his home, which they did, and resulted in this pregnancy. (Tr. 7/28 at 74 - 75); Tr. 8/19 at 91 - 92.) Carri and Jeff could care for a sixth child and though Jeff was hurt by the situation, he and Carri decided to keep living as a family unit. (Tr. 7/30 at 224:2 - 6; Tr. 7/31 at 130:7 - 12; 140:1 -11; Tr.

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8/19 at 146:9 –11.) In March of 2014, three weeks before the baby was due, Jeff told Carri for the first time that she could not bring the child, who would be named Camden, home. (Tr. 7/30 at 224:2 – 6; Tr.7/31 at 130:7 – 12: 140:1 – 11; Tr. 8/19 at 146:9 – 11.) Carri wanted to keep the family together. (Tr.7/28 at 76:7, 146, and Exh. K., pg. 2; Tr. 7/30 at 148:17 – 24, 149 – 150, 231:13 – 15; Tr. 7/31 at 130:1 – 12, 140:1 –11.) Wanting to preserve living with Jeff Griffith, Carri called AGC on March 15, 2014 to make the adoption plan (Tr. 7/30 at 267 – 269; Exh. K, pg. 1.)

Adoption by Gentle Care (AGC) is a licensed PCPA located in Ohio with an executive director and seven full-time staff members. (Tr. 7/30 at 267 – 269.) The executive director manages the staff and ensures that AGC’s policies and procedures are followed. (Tr. 7/30 at 268 – 269.) Agency staff includes several social workers whose job is to make the adoption process go as smoothly as possible should the mother decide to surrender. (Tr. 7/30 at 295.) AGC 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.” (Exh. M, pg. 1.) AGC’s policy requires the social worker to tell the mother that no one can force her to surrender. AGC’s policy is to advise the mother about her options. (Tr. 7/31 at 256:17 – 24; Tr. 8/19 at 24 – 25.) Options to adoption include parenting the child, discharging the baby temporarily to a family member, temporary custody, and foster care. (Tr. 8/19 at 28:22 – 29:10.)

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At trial, Ms. Kennedy, the birth parent social worker supervisor, explained that temporary custody differed from temporary placement with a relative and from foster care. (Tr. 8/19 at 29.) Specifically, with temporary custody, the child goes into foster care for a limited time of 30 days to give the mother more time to decide what she wants to do. (Tr. 8/19 at 29.) Meanwhile, the mother is counseled about the decision between surrendering and parenting. (Tr. 8/19 at 31:15 – 25.) Thus, temporary custody is often called a “30-day agreement” in foster care circles. (Tr. 7/31 at 11:1 – 5.)

When the social worker met with the mother to discuss adoption, she gave the mother a packet that included a pamphlet informing the mother about her rights and options, which the mother was encouraged to read. (Tr. 7/31 at 88 – 90.)

The social worker who communicated with the mother notated the communications and entered meaningful information into the agency’s database (Exh. K; Tr. 7/30 at 306.) AGC relied on the case notes and considered them credible. (Tr. 7/30 at 311:6 – 8.)

Kelly Schumaker was the birthparent social worker and AGC employee whom Carri first contacted on March 15, 2014. (Tr. 7/30 at 283 – 284.) As such, Ms. Schumaker had primary responsibility for Carri’s case from the initial contact through the permanent surrender execution. (Tr. 7/31 at 6 – 7, 121:20 – 25.)

During the initial contact, Carri told Ms. Schumaker about Jeff Griffith’s

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position and that she therefore wanted an option to keeping custody of Camden. (Tr. 7/31 at 4:17 – 22; Exh, K, pgs. 1 – 4.) For the next three weeks, Carri stayed in contact with Ms .Schumaker via text messages and phone calls. (Tr. 7/28 at 15:156.) Carri repeatedly told Ms. Schumaker of her dilemma between keeping custody or permanent surrender for adoption. Carri texted Ms. Schumaker that she was 100% for surrender of custody for adoption. The hospital social worker, after Camden was born, reported Carri was at peace with surrender for adoption. Carri did not want to see Camden at the hospital.

Carri met with Ms. Schumaker in person four days before the actual birth and eight days before the scheduled birth C-section when she and Ms. Schumaker had lunch at a Bob Evans restaurant on March 27, 2014. (Tr. 7/28 at 136:147; Tr. 7/29 at 20.) No one else was present. (Tr. 7/28 at 151:1 – 8.)

Ms Schumaker handed Carri AGC’s standard packet of papers and forms to review and fill out. (Tr. 7/28 at 141:20 – 142:1; Tr. 7/31 at 13:11 – 14: 7 – 16, 20 and Exhs. 2 – 3.) The packet contained a Human Arc form, Authorization for Release of Private Personal Information and Billing, Authorization for Release of Medical Information, Birth Parent Agreement, Living Expense Affidavit, Employment and Income Questionnaire, Designation of Authorization of a Representative, Agreement of Confidentiality, and Ohio Law and Adoption Materials. (Tr. 7/29 at 74 – 78; Exhs. 2 and 3.) Ms. Schumaker gave Carri a

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separate folder with the forms in it to take home and review. (Tr. 7/28 at 141:1; Exhs. 2 and 3.)

Although Carri's due date was April 7, 2014, her scheduled C-section was moved up to March 31, and she checked into the hospital and gave birth to Camden by C-section that evening. (Tr. 7/28 at 155:12 - 17; 156:2 - 6; Tr. 7/29 at 47:25 - 48:2; Amend.Pet. I (Birth Cert.), pgs. 5 - 6.) Carri left the hospital the next day, April 1. (Tr. 7/29 at 8.)

The meeting for the signing of the permanent surrender agreement occurred four days later, on April 4, at Carri and Jeff's home, with Carri, Ms. Schumaker, an another AGC social worker, Beth Simmons, present. (Tr. 7/28 at 28:11 - 21; Tr. 7/31 at 216 - 218.) Part of the meeting was tape recorded. (Tr. 7/28 at Exh. B pgs. 1 - 17; Tr. 7/29 at 28; Tr. 7/30 at 103 - 104.)

Carri made no request for counseling from Ms. Schumaker. When Carri was asked whether anyone was forcing her to make the adoption plan, Carri said "no" at the permanent surrender meeting. Carri signed the surrender agreement. (Tr. 7/30 at 202 - 203; Perm Surr. Of Child, Exh. B at 1, T.d. 69.)

Ms. Schumaker's supervisor, Megan Kennedy, reviewed Carri's entire file and the completed permanent surrender paperwork to determine why Carri was surrendering. (Tr. 8/19 at 8 - 9; 11 - 12; 16 - 18.) After her review, AGC placed Camden with prospective adoptive parents, who petitioned the Franklin County

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Probate Court to adopt him. (Exh. K, pg. 10; Amend. Pet. Hab. Corp. Exh. A, T.d. 69.)

On April 13, Camden, two weeks old, Carri told Ms. Schumaker that the decision to surrender Camden was never hers to make, but that Jeff now felt bad for asking her to do it. (Exh. K, pg. 9; Tr. 7/29 at 65:13 – 15.) Carri then asked Ms. Schumaker to return Camden to her, but Ms. Schumaker denied the request. (Tr. 7/29 at 65 – 66; 69; Exh. K, pg. 9.)

Carri responded by petitioning the Franklin County Probate Court to revoke the permanent surrender agreement, asserting that the agreement was invalid. (Exh. I.) Before a hearing was held on that petition, however, the prospective adoptive parents dismissed their adoption petition voluntarily and returned Camden to AGC (Amend. Pet. Hab. Corp. at Exh. A, T.d. 69; Exh. K, pg. 16; Tr. 7/31 at 202.3.) One reason for the dismissal was the prospective adoptive parents' concerns about the lifelong ramifications of parenting a child whose biological mother wanted him, and her likely continued attempt to cause disruption of the adoptive home. The Probate Court then dismissed Carri's petition for lack of jurisdiction. (See Amend. Pet. Hab. Corp. at Exh. M, T.d. 69.) AGC still refused to return Camden to Carri, however, compelling Carri to petition in this Court for a writ of habeas corpus. (T.d. 2; T.d. 69.)

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On July 7, 2014, Ms. Stearns filed a Petition for Writ of Habeas Corpus challenging the validity of the Permanent Surrender. The case proceeded to trial on July 28, 2014.

Ms. Stearns presented five days of testimony including her own.

The Permanent Surrender and Affidavit of Relinquishment were read at trial. (Tr. 7/29 at 47; Tr. 7/29 at 43-46.) In addition, the audio recording of the Recorded Colloquy was played and transcribed into the trial transcript. (Tr. 7/29 at 34-43.)

This Court heard testimony from Ms. Stearns and her witnesses regarding her personality. Ms. Stearns agreed that she has a "strong personality" and "able to defend herself and her opinions." (Tr. 7/29 at 11) Ms. Stearns' Aunt, Kelly Brubaker, agreed that "Carri can speak up for herself pretty well" and "she's pretty verbal." (Tr. 7/28 at 122.) Ms. Stearns' friend, Stacy Pope, agreed that Ms. Stearns is "rather bold," "pretty good at standing up for herself," "energetic, outgoing," and "not a pushover." (Tr. 7/28 at 32, 46.)

This Court heard testimony from Ms. Stearns' witnesses regarding the emotional support Ms. Stearns was receiving from her friend, her twin sister and her Aunt, Kelly Brubaker, during this time. (Tr. 7/28 at 78, 109; 7/28 at 37.) Ms. Stearns testified that she involved Kelly Brubaker in the decision making process because Ms. Stearns "trusted her" and considered her to be a best friend. (Tr. 7/28

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at 37, 151.) Ms. Stearns indicated that Kelly Brubaker was supportive of Ms. Stearns in the time between when Ms. Stearns first contacted AGC and when she gave birth. (Tr. 7/28 at 108) In fact, Kelly Brubaker was on the phone with Ms. Stearns “quite consistently” during this time. (Tr. 7/28 at 124.)

This Court heard evidence of Ms. Stearns’ untruthfulness including but not limited to her recent convictions for crimes of dishonesty (Tr. 7/29 at 11, 7/30 at 204) and her acknowledgements that she has “lied,” “told things that weren’t exactly accurate,” and embellished things “throughout [her] life.” (Tr. 7/30 at 10, 137, 171.)

Ms. Stearns testified that because her significant other, Jeff Griffith, would not accept another child of Ms. Stearns into their home, Ms. Stearns felt pressure into giving the child up for adoption. Although Ms. Stearns subpoenaed Jeff Griffith, she did not call him to testify.

Ms. Stearns called Steven Lump, the father of the child, as her final witness (Tr. 8/19 at 79.) Mr. Lump testified that he has known Ms. Stearns for over ten years and that she has a reputation in the community for being untruthful and, in his opinion, Ms. Stearns “does not tell the truth a lot.” (Tr. 8/19 at 91, 111) He also testified that it is his desire that his child be adopted. (Tr. 8/19 at 110.) He also testified he had stated to Ms. Stearns that if she kept custody of the child he would met his legal obligations as father of the child.

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The Amended Petition for Writ of Habeas Corpus alleged that Carri signed the permanent surrender under alleged duress because Carri alleged Jeff gave her an ultimatum that she either place Camden for adoption or break up the family.

(Amend. Pet., T.d. 69 at 37 – 38.)

The Amended Petition also averred that:

“Ms. Schumaker also told Petitioner that C.C.S. would go into foster care if Petitioner did not sign the Permanent Surrender.” (Amend. Pet. T.d. 6 at pg. 38, Section C2.)

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

(Journal Entry of Sep. 12, 2014, T.d. 116.) Trina Saunders, a certified adoption assessor with 14 years’ experience at AGC, testified that all mothers who come to AGC are in some sort of crisis, or a crisis similar to Carri’s. (Tr. 7/30 at 267-273:25 – 274; 21.) Megan Kennedy, the birth parent social worker supervisor at AGC, clarified that every “client” is a different person and personality in a different situation. (Tr. 7/29 at 8:6 – 8, 24: 2 – 6.)

AGC called its witness, Social Worker Beth Simmons, who testified about her observances at the permanent surrender agreement signing. (Tr. 7/31 at 17.) AGC also submitted exhibits into evidence. The Juvenile Court admitted all of Appellant’s exhibits, except that Exhibit K was admitted “subject to the fact – or ruling that any attorney-client communications are to be redacted.” (Tr. 8/19 at 126:16 – 21.)

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After Ms. Stearns rested and prior to presenting its defense case, AGC moved for an involuntary dismissal under Civ. R. 41(B)(2). (Tr. 8/19 at 127.) This Court afforded both sides the opportunity to argue the motion and then granted AGC's motion and dismissed Ms. Stearns' Petition. (Tr. 8/19 at 127-134.)²

The following facts can be found as evidenced by Exhibit K:

Carri said to AGC: "I don't think I have a choice." (Exh. K. at 1.)

Carri's Aunt told AGC that Carri was struggling with this decision and wanted to make sure she had all the *right information*. (Exh. K. at 1.) (Emphasis added.)

Carri expressed her duress and undue influence to AGC when she told AGC that her other children's great life was in jeopardy because her significant other was too hurt to allow Camden to come home. (Exh. K. at 2.)

Carri told Gentle are that she "does not want to place this baby for adoption but feels she has no other choice." (Exh. K. at 2.)

On April 3, Carri explained to the Social Worker that she was in pain and sleepy.

AGC recorded the permanent surrender interview and held at least one, if not more, conversations off the record. (Exh. K. at 8.)

² On appeal, Ms. Stearns challenged only this Court's ruling regarding her claim that her execution of the Permanent Surrender was invalid because of alleged duress. Thus, in its opinion remanding the case, the Tenth District ordered this Court to provide more explanation of only that claim. *In the Matter of C.C.S v. Adoption by Gentle Care*, Tenth Dist. Case No. 14AP-739, 2015-Ohio-2126 at ¶11.

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On April 12, 2014, Carri sent a text message telling AGC that she was off of her pain medication and did not want to give up her baby. (Exh. K. at 9.)

Steven Lump testified he would meet his legal obligations to Camden and Carri if she kept custody.

AGC received the medical records for Carri and verified what pain medications she was taking both before and on April 4 when the permanent surrender was presented for signature. (Exh. K at 12.)

AGC posted the adoptive family's profile on their website, making public the names and address of the adoptive family. (Exh. K. at 15.)

The adoptive family was concerned about the life-long ramifications of parenting a child whose mother would not leave them in peace of mind or the child

Conclusions of Law

Ms. Stearns' Petition challenged the validity of her consent to sign the permanent surrender. The Ohio Supreme Court explained the standard to be applied when evaluating a challenge to the validity of a permanent surrender: 'The real and ultimate fact to be determined in every case is whether the party affected really had a choice; whether he had his freedom of exercising his will.' *Morrow v Family & Community Services of Catholic Charities, Inc.* 28 Ohio St.3d 247, 251, 504 N.E.2d 2, 5 (1986) (quoting *Tallmadge v. Robinson*, 158 Ohio St. 333, 340, 109 N.E.2d 496 (1952)). The Tenth District elaborated on this standard for

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consent in the context of an adoption as follows: "A valid consent is 'one which has been freely, knowingly, and voluntarily given with a full understanding of the adoption process and the consequences of one's actions.'" *In re Adoption of Baby Girl E.* 2005-Ohio-3565, Tenth Dist. App. No. 04AP932 at ¶ 23 (citations omitted).

As the Petitioner, Ms. Stearns carried the burden of proof at trial. *Halleck v. Koloski*, 4 Ohio St.2d 76, 77, 212 N.E.2d 601 (1965).

Permanent Surrenders are legally binding contracts. *See, e.g., McHenry v. Children's Home of Cincinnati*, 65 Ohio App.3d 515, 519. Because Ms. Stearns signed a written contract evidencing her intent, in this case a Permanent Surrender, her burden of proof was elevated to clear and convincing evidence. In other words, in order to succeed, Ms. Stearns had the burden to establish, by clear and convincing evidence, that the Permanent Surrender contract she signed was not the product of her own free will. *In re Adoption of Baby Girl E.*, Tenth Dist. App. No. 04AP932, 2005-Ohio-3565, at ¶ 26; *Morrow, supra* at p. 251; Amended Petition at p. 35.

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After reviewing and weighing the evidence presented along with the applicable case law, this Court finds and concludes that granting AGC's motion for involuntary dismissal is warranted for two separate and independent reasons.

Ohio law does not recognize pressure from a non-party as a basis to avoid a contract.

The first independent basis to dismiss the Petition is because the source of Ms. Stearns' claimed duress, Jeff Griffith, is not a valid source of alleged duress in order to avoid the effect of the Permanent Surrender contract.

Under Ohio law, in order to avoid a contract because of duress, the duress has to come from a party to the contract. *Blodgett v. Blodgett*, 49 Ohio St.3d 243 (1990). The *Blodgett* court stated: "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." *Id.* at syllabus.

Jeff Griffith is not the father of the child and is not a party to the Permanent Surrender contract. Thus, Ms. Stearns' claim that she was being pressured by Jeff Griffith is not a valid basis under Ohio law to avoid the effect of the Permanent Surrender contract that she signed. *Blodgett, supra.*

Ms. Stearns did not carry her burden of proof.

The second independent basis to dismiss Ms. Stearns' Petition is because, even if pressure from Jeff Griffith was a potentially valid basis to invalidate the Permanent Surrender, this Court determines 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'

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circumstance, resulted in her being denied the ability to exercise her free will when she executed the Permanent Surrender.

Ms. Stearns claims that, because her "significant other" Jeff Griffith wanted her to surrender the baby for adoption, Ms. Stearns had "no choice." However, this Court finds that Ms. Stearns did, in fact, have a choice and the execution of the Permanent Surrender was voluntary. Ms. Stearns perceived difficult circumstances were not duress and not the fault of anyone else. She feigned "duress" and "no choice" because she takes no responsibility for her actions.

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. Ms. Stearns was a thirty-eight year old, college-educated woman whose friends and relatives described as "rather bold," "pretty good at standing up for herself," "energetic outgoing," and "not a pushover." (Tr. 7/28 at 32, 46.) Further, Ms. Stearns herself agreed that she "is able to defend herself and her opinions." (Tr. 7/29 at 11.)

Ms. Stearns' desire to pursue adoption for her child is evidenced by the fact that she initiated the process. She contacted AGC out of the possible adoption agencies available, she selected the location for the initial meeting with the social worker, and she selected the adoptive family. (Tr. 7/29 at 14; Tr. 7/30 at 14-15; Tr. 7/28 at 129-130, 161.)

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Ms. Stearns had ample discussion and time to consider her decision. The time period from the initial call to the surrender was 20 days. She stated during the Permanent Surrender that she had been considering adoption for over a month. (Tr. 7/29 at 36.) She first contacted AGC over two weeks before the child was born. (Tr. 7/30 at 14.) She executed the Permanent Surrender after waiting one day beyond the seventy-two hour waiting period. (Tr. 7/29 at 51; Tr. 7/30 at 202.) Thus, Ms. Stearns was not rushed into making her decision.

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.” (Tr. 7/29 at 36, 50; Tr. 7/31 at 19-22, 87-88, 127-128.)

Statements made by Ms. Stearns before and after the birth evidence her decision to choose adoption. Before giving birth, Ms. Stearns texted “I’m a hundred percent choosing adoption” (Tr. 7/30 at 54) and a hospital record after the birth stated “she’s feeling even more sure of her decision.” (Tr. 7/30 at 76.)

The documents signed by Ms. Stearns at the time of the surrender are clear and unequivocal. The Permanent Surrender she signed states: “I am signing this permanent surrender of my child and voluntarily and at least seventy-two hours after the birth of the child.” The Affidavit of Relinquishment she signed under

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oath 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's placement and adoption statutes."

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. The colloquy contained statements from Ms. Stearns indicating that she understood she was not obligated to proceed and nobody pressured her or forced her to choose adoption in any way.

In weighing the evidence presented by Ms. Stearns, evidence of her untruthfulness - including but not limited to her recent convictions for crimes of dishonesty, admissions that she has lied and embellished throughout her life, and opinion testimony that she does not tell the truth a lot - all undercut her claim that pressure from Jeff Griffith was so significant that it left her with no choice. Ms. Stearns, age 38, with custody of her five children did, in fact, have a choice to keep custody of Camden Stearns. A choice similar to not choosing to not get pregnant.

Also, Ms. Stearns testified that she and her five children were still living with Jeff Griffith at the time of the trial. (Tr. 7/30 at 148-149.) The fact that she

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was living with Jeff Griffith at the same time she was seeking the return of the child in court diminishes her claim that Jeff Griffith made her choose between living with him or keeping the child.

Thus, not only does the trial testimony contradict Ms. Stearns' claim that she did not have a choice, the evidence further reveals this entire situation was a result of a series of choices by Ms. Stearns. While living with her "significant other" Jeff Griffith, Ms. Stearns chose to have a sexual encounter with Steven Lump and another man. While pregnant, Ms. Stearns chose to contact AGC and chose the initial location to meet with an AGC social worker. After meeting with AGC, Ms. Stearns chose to execute an adoption plan and chose the adoptive family. And finally, after giving birth and waiting seventy-two hours, Ms. Stearns chose voluntarily sign an Affidavit of Relinquishment and the Permanent Surrender of her child, and to have the process recorded on an audiotape.

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When compared to the body of similar Ohio cases, the facts of this case are insufficient to avoid the effect of the permanent surrender. As noted by the appellate court in *In re Adoption of Hockman*, Eleventh Dist. App. No. 2004-P-0079, 2005-Ohio-140, at ¶27 after surveying Ohio law, "it has only been in extreme circumstances where the courts have permitted the invalidation of consent on the basis of undue influence or duress." *Compare Marich v. Knox Cty. Dept. of Human Serv.*, 45 Ohio St.3d 163 (1989) (fifteen year old birth mother's consent

was invalidated because she was approached by the social service workers about the possibility of adoption for the first time when she gave birth) with *Morrow*, *supra* at 251-252 (consent was freely given by the natural parents, in part, because they had attained the age of majority, had completed all but one semester of college, and had considered adoption of the child had been considered prior to its birth). The fact that Ms. Stearns was thirty-eight years old, had taken college classes, initiated contact with the adoption agency, and considered adoption for weeks prior to the child's birth, makes the facts of this case more like the facts of *Morrow*, where the Ohio Supreme Court did not allow the birth parent to avoid the permanent surrender.

Camden Stearns (d.o.b. 03/31/14) is the child at issue in this case. *Caroline L. Stearns (Carri)* is Camden's mother and *Steven Lump* is the father. Adoption by *Gentle Care (AGC)* is the Private Child Placing Agency (PCPA) that took possession of Camden when *Carri* signed a permanent surrender form on April 4, 2014.

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The Court finds that it has jurisdiction over this case, which jurisdiction is unchallenged.

The matter proceeded to trial on the following dates: 07/28/2014, 07/29/2014, 07/30/2014, 07/31/2014 and 08/19/2014.

The parties stipulated to the admissibility and authenticity of Petitioner's Exhibits A through S, with an exception for Exhibit K. Exhibit K was admitted over the objection of AGC, and to the extent that any content falling under the attorney-client privilege as inadmissible and is to be redacted from it. Petitioner's Exhibits were admitted into evidence on August 19, 2014.

After Carri presented her case and evidence, AGC moved for dismissal of the Petitioner for Writ of Habeas Corpus under Civ. R.P. 41(B)(2). Counsel for both parties argued for and against the motion. Closing arguments were not reached.

A trial court can dismiss a habeas corpus petition under Civ. R. 41(B)(2) if "the plaintiff's evidence is not persuasive or credible enough to satisfy her burden of proof." *Jarupan v. Hanna*, 173 Ohio App.3d 284, 2007-Ohio-5081, ¶ 10 (10th Dist.) A Civ. R. 41(B)(2) motion must be denied, however, if dismissing the case would be incorrect as a matter of law. *In re Adoption of Baby Girl E.*, 10th Dist. No. 04AAP932, 2005-Oio-3565, ¶ 17, *appeal not accepted in* 107 OhioSt.3d 1423, 2005-Ohio-6124. In that case, failure of appellee to request further presentation of evidence after the court weighs evidence the appellee offered waives any claim that appellee has additional evidence to present before final disposition of the case. *Id* at , ¶ 17-18.

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In this case, granting the motion to dismiss would be correct as a matter of law because AGC had the authority to accept the permanent surrender agreement under OAC: 5101:2-42-09. Petitioner did not satisfy her burden of proof. The alleged duress when she signed the permanent surrender is not sufficient to nullify Carri's permanent surrender of custody for purposes of adoption. There was, in fact, sufficient discussion between Petitioner and AGC staff to meet the "discussion" element of the permanent surrender.

Private adoption agencies can assume and retain custody of children through an "agreement for temporary custody of a child" or through a "permanent surrender of child." R.C. 5103.15; OAC:5101:2—1-01(B)(12); OAC:5101:2-42-04(B)(3) and (5).

An "agreement for temporary custody" may or may not be made for the purpose of adoption. R.C. 5103.15(A)(1):OAC5101:2-42-08(F). In the latter case, the law limits the agency's custody to 30 days. OAC:5101:2-42-08(F). At that point, the agency must return the child or file a complaint for custody. OAC:5101:2-42-08(H)(1)-(2). Either party may terminate the custody before the agreed time. OAC:5101:2-42-06(B). Temporary custody agreements are sometimes called "temporary surrenders. *See e.g., Kozak v. Lutheran Children's Aid Soc.*, 164 Ohio St.335, 342 (1955) ("If an agreement for such permanent surrender can be withdrawn, it would seem silly to provide in [R.C.5103.15] for

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both a temporary surrender and a permanent surrender”); *In re Adoption of G.G.*, 8th Dist. No, 96060, 2011-Ohio-3474, 1* (“Before leaving the hospital, Angelis signed a temporary surrender form allowing Catholic Charities to place her baby in foster care while she decided how she would proceed.”) The official appellation, however, is “agreement for temporary custody.” R.C. 5103.15(A); JFS 01645.

A “permanent surrender of child,” in contrast, presumes adoption being pursued. Accordingly, 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 “[d]iscuss 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).

AGC had authority to accept the permanent surrender because the Court finds AGC did discuss the surrender options as required by OAC:5101:2-42-09(B)(1), making AGC’s detention of Camden lawful. Valid administrative rules have the force of law. *Columbus & S. Ohio Elec. Co. v. Indus. Comm.*, 64 Ohio St.3d 119 (1992). OAC5101:2-42-09(B)(1) required AGC to discuss; the non-surrender

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options Carri had available to her. "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. (Exh. M.; Tr. 8/19 at 28: 22 – 29:10.) Before birth of the child and on no medications, Carri stated she just wanted to get the birth and permanent surrender over with and quickly.

The evidence shows that although AGC provided Carri with an ODJFS pamphlet about options and other required materials, the assessor did discuss what options Carri had in-lieu of surrendering Camden.

Ms. Schumaker testified that she went through her own entire packet explaining each paper. (Tr. 7/31 at 127 – 128.) The materials Ms. Schumaker reviewed were a Human Arc form, Authorization for Release of Private Personal Information Billing, Authorization for Release of Medical Information, Birth Parent Agreement, Living Expense Affidavit, Employment and Income Questionnaire, Designation of Authorization of a Representative, Agreement of Confidentiality, and Ohio Law and Adoption Materials. (Tr. 7/29 at 74 – 78; Exhs. 1-3.)

AGC gave Carri written information about all of her options, the information (ie., the ODJFS pamphlet) was in the packet Carri took home. Carri later acknowledged that she had been provided with written materials, was able to

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discuss and inquire about them and the adoption process, and she knew the ramifications of making a permanent surrender agreement. (Exh. 3 at pg. 1.)

Carri signed the Ohio Law and Adoption Materials forms in Ms. Schumaker's packet knowing about the actual options. Her signature on the acknowledgment form means that she had an opportunity to discuss and inquire about *the materials* Ms. Schumaker *discussed* with her, which did include the written information about options. Thus, Carri was fully informed and had discussion of her options seventy-two hours before signing the permanent surrender.

That conclusion is enhanced by the fact that it parallel's AGC'ss policy of giving others the options information to review. Ms. Schumaker's procedure was not insufficient under OAC:5101-2-42-09(B)(1).

Carri acknowledged at the permanent surrender signing that Ms. Schumaker discussed "temporary custody/foster care. The discussion and 72-hour waiting requirement under Subsection (B)(1) of the rule ensures that the agency will *explain* the options to the parent and that the parent will have a chance to contemplate what was explained before surrendering. Those requirements demand giving the parent more than just a "chance" to discuss or ask questions. They demand an actual verbal explanation of the options by the assessor – such as the explanation given at trial bout 30-day agreements. (Tr. 8/19 at 29 – 31.) Carri

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attested that she had the chance to discuss options and her other responses at the permanent surrender signing proved a timely discussion had occurred.

The State promulgated Subsection (B)(1) to ensure that parents who consider adoption, whether under duress or not, are fully informed of their option before executing a permanent surrender.

AGC could conclude that Carri's responses at the permanent surrender meeting were reliable. At that meeting, Carri answered "no" when Ms. Schumaker asked her if anyone was pressuring her to surrender Camden. Ms. Schumaker accepted that answer. Carri's negative answer at the permanent surrender meeting indicated that Jeff was not pressuring her or that his sentiments did not amount to any perception of pressure on her part.

The ambivalence that "temporary custody" aims to alleviate did not exist within Carri. On one hand she could not bring Camden home, she did want to surrender him that time believing surrender resolved her priorities. In hindsight only, a "30-day agreement" was an option Ms Stearns feigns to wish for. Carri knew or could have known her options under a 30-day agreement but had no anticipation Jeff may change his mind. While Carrie may testify there was no discussion, the Court concludes Carri was in a position that then permitted the decision she made and was pleading to conclude. The court determines there was "discussion" as contemplated by the required procedure.

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The Ohio legislature many years ago established the 72-hour rule – the adoption surrender—to stabilize in the procedure. Biological parent permanent surrender of custody of a child for adoption must include a procedure to *assure* the biological mother and father are provided with both explanation and some time to understand their rights, contemplate and make their decision. Seventy-two (72) hours after the child is born and, after being informed of the gravity and permanence of their decision, whether to complete and execute all the documents for permanent surrender for purposes of adoption and *assure* that the permanent surrender is knowing, voluntary and recognized as irrevocable.

The mother, Carolyn (Carrie Stearns) is age 38, sufficiently intelligent and educated, and a custodial parent of five children. Her residence and living arrangements were secure with a man, Jeff Griffith. She was not employed. Her allegations notwithstanding, she fully understood the gravity of her surrender and that her surrender of custody was irrevocable.

Surrender of custody for adoption is made by mothers as young as sixteen (16) or as old as forty (40) something.

The Ohio Legislature and Ohio Job and Family Services Agency have determined that 72 hours shall be the pre-determined minimal time threshold for an irrevocable surrender of permanent custody. Ms. Stearns contemplated her

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decision for adoption for at least a month prior to her date of executing all the permanent surrender documents.

On cross-examination of Trina Saunders, Adoption by Gentle Care Executive Director, by counsel for Ms. Stearns, Ms. Saunders testified that “one-hundred percent of biological mothers are under stress or duress at the time of making the permanent surrender of custody.” Many mothers are as young as teenagers. The 72-hour contemplation reflection period is intended to apply to all ages, various levels of emotional stability, intelligence, education and circumstances.

Ms. Stearns’ buyer’s remorse cannot be accommodated by her disingenuous assertions. On March 27, 2014, Ms. Stearns verified she was “a hundred percent choosing adoption” in her text to Ms. Schumaker.

Steven Lump, the biological father, testified Ms. Stearns called him to solicit a meeting with him because she enjoyed having sexual relations. She agreed to meet him at his residence in Mansfield, Ohio. Apparently, neither of them used any birth control prophylactics.

Ms. Stearns also named a third man with whom she had sexual intercourse. He was excluded as father.

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Mr. Lump testified he told Ms. Stearns he was willing to meet his legal obligations to her and the child if she decided not to make a permanent surrender of custody for purposes of adoption.

Ms. Schumaker testified she did not tell Ms. Stearns to deny having any Native American heritage, as alleged by Ms. Stearns. The Court adopts the position of Adoption by Gentle Care that Ms. Stearns was not instructed by Ms. Schumaker to misrepresent her Native American heritage. Ms. Stearns' witnesses, and close friends of Ms. Stearns, testified Ms. Stearns was not that vulnerable or insecure as to be manipulated by anyone.

Ohio Legislature and the Ohio Department of Job and Family Services have long recognized the need of children for permanency through laws intended to assure children a stable, safe, secure and permanent home, whether from adoption or adjudicated neglect. Ohio's statutory adoption and Ohio Department of Job and Family Services' administrative rules of procedure were designed to inform and protect parents considering permanent surrender of a child for adoption, then secure the child's placement without the risk of buyer's remorse and revocation efforts by biological parents – of whatever age after informing the biological parent of alternatives to adoption.

Ms. Stearns testimony and evidence do not meet her threshold burden of proof essential to warrant prevailing on this habeas corpus order.

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Ms. Stearns' proposes that there was failure to meet a requirement that "discussion" of the effects and consequences of surrender for adoption along with required forms explaining effects of surrender. It is determined by this Court that the effects and consequences were discussed as "required" by law and administrative procedure.

From the testimony and evidence presented, the Court is of the firm opinion that Ms. Stearns has no excuse or basis for avoiding her voluntary, knowing freewill surrender of custody of Camden for adoption. She fully understood the consequence and effect of her choices and her decision to execute her permanent surrender of custody to AGC for purposes of adoption. She clearly impressed as disingenuously, now feigning duress and coercion which did not exist at the time of her surrender of custody for adoption.

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Had Ms Stearns been approximately age 16, of lesser intelligence than she is perceived, less emotionally stable than perceived, less deceptive than perceived, more vulnerable than perceived, and/or less desperate than perceived, there could be potential and good reason to expect and require a more clear need for "discussion" she now argues was both needed and not done.

The objective of "discussion" must certainly be for the purpose of more verification that the parent or parents are capable of understanding the full consequences of their permanent surrender for purposes of adoption for the parent

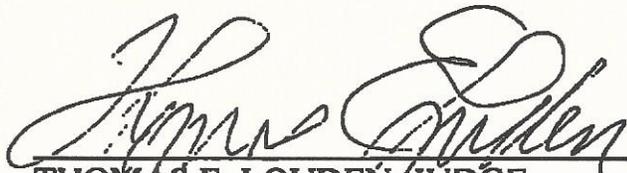
or parents who have limitations that Ms. Stearns does not have. The Court determines there was sufficient discourse between AGC staff and Ms. Stearns to meet the "discussion" issue Ms. Stearns now denies.

The Court also finds that even if there was no "discussion" as contemplated by requirements referred to by Ms. Stearns, it will be an immaterial error under all the circumstances in this matter because a further "discussion" would have made no difference to this mother. She fully understood what she was doing and no more discussion could have affected the decision of Ms. Stearns to execute the surrender she voluntarily made.

The testimony and evidence of Caroline Stearns is not sufficiently credible to meet her burden of proof for granting the requested habeas corpus.

Thus, applying 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." *Morrow, supra*. Accordingly, AGC's motion for involuntary dismissal under Civ. R. Civ. R. 41(B)(2) is granted and Ms. Stearns' Petition for Writ of Habeas Corpus is dismissed.

IT IS SO ORDERED.


THOMAS E. LOUDEN, JUDGE

Prepared by the Court
Copies: Counsel of Record

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Pursuant to Civil Rule 58(B), you are hereby instructed to serve upon all parties not in default for failure to appear, notice of the judgment and its date of entry upon the journal

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IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

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

D E C I S I O N

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.

{¶ 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

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

{¶ 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.

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.

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

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.

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?

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.

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

Judgment affirmed.

KLATT and BRUNNER, JJ., concur.

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

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

In re: [C.C.S.], :
[C.L.S.], :
Petitioner-Appellant, :
v. :
Adoption by Gentle Care, :
Respondent-Appellee. :

No. 15AP-884
(C.P.C. No. 14JU07-8823)
(REGULAR CALENDAR)

JUDGMENT ENTRY

For the reasons stated in the decision of this court rendered herein on February 4, 2016, appellant's assignments of error are overruled, and it is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, is affirmed. Costs assessed against appellant.

TYACK, KLATT, and BRUNNER, JJ.

/S/JUDGE

By: Judge G. Gary Tyack

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



/s/ Judge G. Gary Tyack

SUPREME COURT OF OHIO

In re: (C.C.S.),

Petitioner-Appellant,

vs.

ADOPTION BY GENTLE
CARE,

Respondent-Appellee.:

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:
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:
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:
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Case No.

16-0395

Appeal from Franklin County
Court of Appeals Tenth Appellate District

Case No: 15-AP-000884

NOTICE OF APPEAL OF APPELLANT
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FILED
MAR 17 2016
CLERK OF COURT
SUPREME COURT OF OHIO

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**NOTICE OF APPEAL OF APPELLANT
CAROLINE STEARNS**

The Appellant, Caroline Stearns hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Franklin County Court of Appeals, Tenth Appellate District, entered in the Court of Appeals Case No. Case No: 15-AP-000884, on February 8, 2016.

This case raises a substantial constitutional question; the case involves termination of parental rights and the subsequent adoption of a minor child; and is one of public or great general interest.

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