

No. 2016-0395

In the Supreme Court of Ohio

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

In re: [C.C.S.], [C.L.S.],
Petitioner-Appellant,

v.

ADOPTION BY GENTLE CARE,
Respondent-Appellee,

MERIT BRIEF OF APPELLEE ADOPTION BY GENTLE CARE

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I. INTRODUCTION AND SUMMARY OF THE ARGUMENT

Private adoptions in Ohio are based on voluntary decisions by birth parents to sign “Permanent Surrender” contracts which terminate the parental rights of the birth parents who sign them. Ohio law governing private adoptions balances the importance of informed, voluntary decisions by birth parents with the need of adoptive parents for permanency and certainty. As a result, these Permanent Surrenders are irrevocable and a birth parent can invalidate a surrender only by establishing the execution of the contract was involuntary.

After signing a Permanent Surrender of her child in favor of Respondent-Appellee Adoption by Gentle Care (“AGC”), Petitioner-Appellant Caroline Stearns (“Ms. Stearns”) filed a Petition for Writ of Habeas Corpus claiming the circumstances at the time she signed the surrender amounted to duress and thus her signature on the Permanent Surrender contract was involuntary. At trial and on appeal she agreed the decades-old standard for a birth parent seeking to invalidate a Permanent Surrender in Ohio is as follows: “The real and ultimate fact to be determined in every case is whether the [birth parent] really had a choice; whether [she] had [her] freedom of exercising [her] will.” *Morrow v. Family & Community Services of Catholic Charities, Inc.* 28 Ohio St.3d 247, 251, 504 N.E.2d 2 (1986).

After five days of testimony, the trial judge found Ms. Stearns’s claims of duress “feigned” and “the execution of the Permanent Surrender was the product of her ‘freedom of exercising [her] will.’” (Opinion at p. 20, 34, 35) On appeal, Ms. Stearns did not challenge her burden of proof (clear and convincing); the standard for invalidating surrenders (was the execution of the surrender a product of her own free will); or the standard of review (a judgment will not be reversed as against the manifest weight of the evidence if supported by competent, credible evidence.) The Tenth District affirmed. *In re C.C.S v. Adoption by Gentle Care*, Tenth Dist. Case No. 15AP-884, 2016-Ohio-388.

Now in this Court, having failed to carry her burden to prove her signature on the surrender was not the product of her own free will, Ms. Stearns tries to shift the focus away from her own voluntary choices and argues AGC should have not allowed her to surrender even though that is exactly what she told the agency she wanted to do.

As both the trial and appellant courts recognized, trial evidence reveals Ms. Stearns's decision to surrender her child and place him for adoption was informed and voluntary. While pregnant, Ms. Stearns, a college-educated 38-year-old who had faced five previous out-of-wedlock pregnancies, contacted a private agency, AGC, in order to place her child for adoption. After a phone discussion with the AGC social worker, Ms. Stearns texted "I'm 100% choosing adoption." Four days before giving birth, Ms. Stearns and the AGC social worker met for an hour-long, one-on-one meeting after which Ms. Stearns executed the initial adoption paperwork. After Ms. Stearns gave birth, there were numerous communications from Ms. Stearns and others indicating her intention to place her child for adoption. For example: Ms. Stearns called AGC and stated, "she is doing well and feels at peace with her decision;" her trusted Aunt texted AGC Ms. Stearns "was at peace about her decision"; and a hospital social worker reported in the hospital records that "[n]ow the baby has been born she's feeling even more sure of her decision." After waiting a day beyond the statutory 72-hour waiting period, Ms. Stearns executed a Permanent Surrender contract using the form drafted by the Ohio Department of Job and Family Services which stated:

The assessor has provided the following counseling and discussed alternatives to the surrender, pre and post-adoption options, temporary custody and foster care and reviewed and signed to Ohio laws an adoption materials form. * * * 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.

In addition, although not required by Ohio, AGC took the extra precautions to have Ms. Stearns execute a notarized Affidavit of Relinquishment stating:

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 discussed 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.

Finally, any question as to her knowledge of options and voluntariness of her decision was answered by Ms. Stearns's own voice when the trial judge heard the recording of the question-and-answer style colloquy on the day of the surrender. When asked "do you understand that you're not obligated to proceed with the surrender today, and that baby could be placed in foster care or discharged to give you more time[.]" Ms. Stearns replied, "I understand." And when she was asked if she would "like to consider any of these options[.]" she answered "No."

Simply put, Ms. Stearns had her day in court and the trial court dismissed her petition finding her claims of duress "feigned" and her execution of the Permanent Surrender to be voluntary. Now in the Court she does not argue for a change in the law, she simply argues that the facts, as she wishes them to be, as opposed to trial facts, should warrant relief under Ohio law. Her error-correction argument does not change the outcome found by the trial judge: her execution of the surrender was informed and voluntary.

As noted by Amicus Curiae American Academy of Adoption Attorneys, the precedential value of a reversal on this set of facts will have a deleterious effect on adoptions in Ohio moving forward. A reversal would undercut the permanency of permanent surrenders in Ohio by allowing any birth parent to subsequently invalidate a voluntary surrender simply by citing difficult circumstances during the execution of the surrender.

II. STATEMENT OF CASE

More than two weeks prior to giving birth, Ms. Stearns contacted AGC indicating she wanted to place her child for adoption. After initiating an adoption plan on March 15, 2014, Ms. Stearns gave birth to a son on March 31, 2014. On April 4, 2014, Ms. Stearns executed a Permanent Surrender of this child in favor of AGC. The execution of this Permanent Surrender was witnessed by two licensed social workers who engaged in a recorded colloquy with Ms. Stearns that explained the process and ramifications of the surrender as well as the available options. In addition, Ms. Stearns executed an Affidavit of Relinquishment. Thereafter, AGC's executive director accepted placement on behalf of the agency. Pursuant to R.C. 5103.15(B)(2), AGC filed the Permanent Surrender in juvenile court and placed the child with an adoptive family.

On April 14, 2014, the adoptive family filed a Petition for Adoption in Franklin County Probate Court. On May 12, 2014, Ms. Stearns filed a "Petition to Withdraw Consent to Permanent Surrender Agreement" in the probate court case. This petition to withdraw challenged the validity of the Permanent Surrender she signed. In addition to trying to intervene in the probate proceedings, Ms. Stearns began a social media campaign attacking AGC and she began contacting the initial adoptive family. For example, Ms. Stearns sent an email to the first adoptive couple on Mother's Day that stated, "Mother's Day is for mothers, not for people who steal babies." Eventually the first adoptive couple withdrew their petition for adoption because of perceived threats. Because there was no longer an adoption petition pending, the probate court dismissed Ms. Stearns's "Petition to Withdraw Consent to Permanent Surrender Agreement." Ms. Stearns did not appeal this dismissal.

Ms. Stearns then filed a Petition for Writ of Habeas Corpus in the Tenth District Court of Appeals challenging the validity of the Permanent Surrender. After a status conference with the

court, Ms. Stearns filed a voluntary dismissal and stipulated that the Franklin County Juvenile Court had jurisdiction over her Petition for Habeas Corpus. The Joint Stipulation and Notice of Voluntary Dismissal of Action Without Prejudice Stated:

On July 2, 2014 counsel for the parties met at the Tenth District Court of Appeals pursuant to Magistrate's Order dated June 30, 2104 by Magistrate Stephanie B. Brooks. During this meeting, the parties stipulated to the jurisdiction of this Court to hear Petitioner's Writ of Habeas Corpus filed in this Court on June 13, 2014. The parties also stipulated to the jurisdiction of the Franklin County Juvenile Court and it was agreed upon that Petitioner would file her Writ of Habeas Corpus in Juvenile Court. Respondent's counsel stated that they would not pursue another Motion to Dismiss on the basis that Juvenile Court was an improper forum and was without jurisdiction to entertain Petitioner's Writ of Habeas Corpus. Respondent's counsel also agreed to an expedited case schedule and expedited discovery in Juvenile Court regarding Petitioner's Writ of Habeas Corpus and further, that they would respond to Petitioner's Writ of Habeas Corpus and not file a Motion to Dismiss on the basis of jurisdictional issues.

Furthermore, the parties stipulated to having a Guardian Ad Litem appointment by Juvenile Court as a neutral party to oversee the health of C.C.S. and to report his condition to Petitioner. Both parties agreed the nature of this case warrants immediate attention and that a hearing on the merits would be beneficial. Petitioner's counsel agreed to this Voluntary Dismissal Without Prejudice on the condition that Respondent agree to expedite the proceedings in Juvenile Court and to an expedited discovery schedule.

(Order dated July 2, 2014 Tenth District Court of Appeals Case No. 14 AP 000471.)

On July 2, 2014, pursuant to R.C. 2725.02,¹ R.C. 2151.23(A)(3),² and Juv. R. 10³ Ms. Stearns filed a Petition for Writ of Habeas Corpus in Franklin County Juvenile Court. She

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

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

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

amended this petition and the case proceeded to trial. Because Judge Dana Priesse was on AGC's witness list, the remaining judges of the Franklin County Juvenile Court all recused themselves and Judge Thomas Louden was appointed to preside over the trial.

The trial court closed the courtroom to the media and held trial over five days, July 28 - 31 and August 19, 2014. After Ms. Stearns rested her case, (Tr. 8/19 at 122-123) AGC moved for an involuntary dismissal pursuant to Civ.R. 41(B)(2). In moving for dismissal, counsel for AGC did not waive the right to present witnesses and indicated that AGC intended on proceeding with their defense case if the motion for dismissal was denied. Attorney Oebker stated: "Your Honor, **before we present any witnesses**, Respondent would like to respectfully move for a dismissal under Civil Rule 41(B)(2), which is similar to a directed verdict in a jury trial." (Tr. 8/19 at p. 127-128 emphasis added.) After hearing arguments from both sides, the trial court granted AGC's motion and dismissed Ms. Stearns's Amended Petition.

In the first appeal, the Tenth District Court of Appeals, in a 2-1 decision, remanded the case to the trial court and ordered as follows:

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."

In the Matter of C.C.S v. Adoption by Gentle Care, Tenth Dist. Case No. 14AP-739, 2015-Ohio-2126 at. p. 4. (J. Brown dissenting).

On remand, the trial court held a status conference and permitted the parties to submit proposed findings of fact and conclusions of law. The trial court issued a 35-page opinion again dismissing Ms. Stearns's Amended Petition. In its opinion, the trial court "determine[d] that, after weighing the evidence presented at trial, Ms. Stearns failed to establish, by clear and

convincing evidence that pressure from Jeff Griffith, or any of the other facts of Ms. Stearns's circumstance, resulted in her being denied the ability to exercise her free will when she executed the Permanent Surrender." (Opinion at p. 19-20.)

Ms. Stearns again appealed to the Tenth District Court of Appeals. In the second appeal, the Tenth District unanimously affirmed the dismissal. Notably, the appellate court stated: "On appeal, C.L.S. does not challenge the legal standard applied or the validity of the evidence that was presented at trial. C.L.S. only asks that we look at the totality of the circumstances to come to a different conclusion than the trial court." *In re C.C.S v. Adoption by Gentle Care*, Tenth Dist. Case No. 15AP-884, 2016-Ohio-388 at ¶ 22. The appellate court went on to find that "[t]here is ample evidence of a valid Permanent Surrender agreement." *Id.* at ¶ 23.

III. STATEMENT OF FACTS

A. Timeline leading up to the execution of the permanent surrender

- **Summer of 2013:** Ms. Stearns and her five children were living in Dublin, Ohio with Ms. Stearns's "significant other," Jeff Griffith. Mr. Griffith is not the father of any of her children. While living with Mr. Griffith, Ms. Stearns became pregnant with her sixth child. Mr. Griffith was not the father with the potential father being either Steven Lump or another male. (Tr. 7/28 at p. 39-40.)
- **March 15, 2014:** Ms. Stearns "Googled adoption" and contacted AGC. (Tr. 7/28 at p. 146.) AGC Social Worker Kelly Schumaker "explained the adoption process" and "encouraged [Ms. Stearns] to call back if she had any questions." (Ex. K at p. 1.)
- **March, 2014:** Ms. Stearns spoke with friends and family about adoption. Ms. Stearns's friend since high school, Stacy Pope, testified that she spoke to Ms. Stearns, probably every day or every other day concerning her decision to pursue adoption. (Tr. 7/28 at p. 27.) In addition, Ms. Stearns's aunt, Kelly Brubaker, a registered nurse, was also providing "emotional support" during that time. (Id. at p. 109-110.) Ms. Stearns "trusted" her Aunt Kelly. (Id. at p. 151.)
- **March 15, 2014:** Ms. Stearns, in a text conversation, stated that she is "uncomfortable even considering a decision like this * * * but I really don't think I have a choice." Ms. Schumaker replied, "Its completely up to you! It has to be a decision you are comfortable with." (Id.) In the same text conversation, Ms. Stearns stated "I'm 90%" and later that evening, she texted, "I know its late but I want you to know I am 100% choosing adoption." (Id.)

- **March 27, 2014:** - Social Worker Schumaker and Ms. Stearns met at a location chosen by Ms. Stearns, a local Bob Evans restaurant. (Ex. K at p. 3.) During this meeting, Social Worker Schumaker “explained the Birth Parent Agreement, * * * explained the Ohio Laws and Adoption Materials Form, * * * and explained the surrender paperwork and process to the birth mom.” (Ex. K at p. 4.) Ms. Stearns was also given a pamphlet stating “Placing your child with a relative, temporarily or permanently: Placing your child with a friend or nonrelative, temporarily or permanently.” Ms. Schumaker testified that Ms. Stearns seemed engaged and nothing about Ms. Stearns’s level of anxiety or circumstances caused Ms. Schumaker any particular alarm with moving forward with the adoption plan. Ms. Schumaker did not find the reasons Ms. Stearns gave for pursuing an adoption plan to be unusual and did not believe that Ms. Stearns was “wavering” about her decision or that someone was forcing her to proceed with the adoption plan. (Tr. 7/31 at p. 125, 141, 185, 186, 214) From the very beginning, Ms. Schumaker brought up the option of “foster care” to Ms. Stearns. (Tr. 7/28 at p. 148.)
- **March 31:** Ms. Stearns gives birth. In response to Social Worker Schumaker asking how Ms. Stearns was doing after giving birth, Ms. Stearns’s Aunt Kelly Brubaker texted “A bit tearful yet at peace about her decision.” (Ex. K at p. 5.)
- **April 1, 2014:** A hospital entry from 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.)

- **April 1, 2014:** Ms. Stearns called Social Worker Schumaker and explained “she is doing well and feels at peace with her decision.” (Ex. K at p. 6.) Ms. Stearns asking if she could sign the surrender paperwork on Friday morning. (Id.)
- **April 2, 2014:** In a text conversation between Ms. Stearns’s Aunt Kelly Brubaker and Social Worker Kelly Schumaker, Aunt Kelly texted that Ms. Stearns did not want to know any more about the adoptive family and added: “she said to tell you not to worry, she is not changing her mind – just hard to deal with.” Social Worker Schumaker responded by texting: “Thanks for the update, I really need to talk to her at least daily to make sure everything is going okay and to go over her rights, plan etc. Do you think she is willing to talk at all?” Aunt Kelly Brubaker responded “Hmmm – not about the baby and as little as possible about anything else. Sorry, how can I help.” Social Worker Schumaker responded, “I just want to make sure she understands everything before signing paperwork on Friday.”

B. Ms. Stearns gives birth

During her pregnancy, Ms. Stearns was treated by Dr. Joseph Amato. (Tr. 7/29 at p. 95, 98.) The baby was delivered by C-Section on March 31, 2014. Dr. Amato did not deliver the baby, nor did he observe Ms. Stearns at the hospital or in a post-operation discharge visit. (Tr. 7/29 at p. 105.) Dr. Amato did not observe Ms. Stearns on the date she met with Kelly Schumaker to execute the adoption plan, or on the date Ms. Stearns executed the Permanent Surrender. (Tr. 7/29 at p. 116.)

C. Permanent Surrender

Ms. Stearns executed the Permanent Surrender contract in her home on April 4, 2014. AGC social workers Kelly Schumaker and Beth Simmons were present for the execution of the surrender. The Permanent Surrender executed by Ms. Stearns was the official document drafted by the Ohio Department of Job and Family Services. The Permanent Surrender itself was read into the into the trial record on July 29, beginning at p. 47:

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. I 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 ln 9 to p. 50 ln 11.)

* * *

The assessor has provided the following counseling and discussed alternatives to the surrender, pre and post-adoption options, temporary custody and foster care and reviewed and signed the Ohio Laws and Adoption Materials form. The date on which this was provided was March 27, 2014. The name of the assessor was Kelly Schumaker, MSW, LSW.

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 in any adoptive home or other substitute care settings it find 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 voluntarily and at least seventy-two hours after the birth of the child.

(Tr. 7/29 at p. 47-51.) Both Ms. Stearns and a witness, AGC social worker Beth Simmons, signed the document. They both swore and affirmed that their signatures were theirs; that the information given was true and accurate to the best of their knowledge; and that they signed the surrender under their own free will. (Tr. 7/29 at p. 51, ln. 22 to p. 52, ln. 2; Tr. 7/29 at p. 57.)

D. Signed Affidavit of Relinquishment

On the date she signed the Permanent Surrender, Ms. Stearns also signed an Affidavit of Relinquishment which was also read into the trial transcript on July 29, beginning at Page 43:

The name of the child is Baby Boy Stearns. The date of this permanent placement is April 4, 2014. The date of birth is March 31, 2014. The name of the birth mother is Caroline Love Stearns. The name of the birth father is unknown.

I, Caroline Love Stearns, being first duly sworn, depose and say that the following statements have been read to me and apply to me. I understand what has been read to me by the adoption assessor and the statements set forth below are true and accurate.

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 discussed 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.

I, the birth mother, have decided to not discuss the identity of the birth father, and I, the birth mother, further assert that I am not currently married, and I was not married to the birth father or any other person during the period of conception. And having had the foregoing read to me and having had any questions answered to my satisfaction, I will be signing the Permanent Surrender of my child to Adoption by Gentle Care.

(Tr. 7/29 at p. 43-46.)

E. Recorded colloquy of the Permanent Surrender

The Permanent Surrender was signed at Ms. Stearns's house on April 4, 2014. (Tr. 7/29 at p. 28.) When Ms. Stearns executed the Permanent Surrender, AGC social worker Kelly Schumaker engaged in a detailed colloquy with Ms. Stearns to ensure that Ms. Stearns fully understood the consequences of the Permanent Surrender and the legal rights she was giving up. This colloquy was recorded. At trial, the audio recording of the colloquy was played for the trial court and transcribed into the trial transcript on July 29, beginning at p. 35:

Q. Karen -- Carri, can you state your full name legal name?

A. Caroline Love Stearns.

Q. And your age?

A. Thirty-eight.

Q. And are you currently under the influence of any drug, alcohol or pain medication that might impair your decision-making ability?

A. No.

Q. Could you please state the date and time right now?

A. Friday, April 4th, 2014.

Q. And what was the date and time of the birth of the baby?

A. March 31st, 2014. The time was (inaudible).

Q. And has more than seventy- two hours passed since the time?

A. Yes.

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 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 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 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 Kelly, 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.

(Tr. 7/29 at p. 35-43.) Trial testimony explained that the tape recorder was turned off once, at Ms. Stearns's request, because she had questions for Ms. Schumaker regarding the birth father.

(Tr. 7/31 at p. 233.)

F. The birth father testified he told Ms. Stearns he was willing to fulfill his moral and legal obligations and he believes adoption is in the best interest of the child.

For her final witness at trial, Ms. Stearns called the birth father, Steven Lump. (Tr. 8/19 at p. 79.) Ms. Stearns initiated contact with Mr. Lump which led to the conception of the child at issue in this case. At the time, Ms. Stearns did not inform Mr. Lump that she was in a relationship and living with another man. (Tr. 8/19 at p. 92.) Mr. Lump stated that after learning of the pregnancy he asked her to consider abortion and consider adoption, but he denied any attempt to threaten or harass Ms. Stearns about her decision. (Tr. 8/19 at p. 79, 85.) After learning she did not want to consider abortion, Mr. Lump respected her decision and had no face to face contact with Ms. Stearns from the conception of the child in July of 2013 until after she signed a Permanent Surrender in April of 2014. (Tr. 8/19 at p. 102.)

Mr. Lump made no threats or ultimatums but he repeatedly asked for cooperation in completing DNA testing. (Tr. 8/19 at p. 83, 95.) When Mr. Lump suggested to her that he may seek the assistance of counsel, Ms. Stearns replied in a text message "you know what I do for a living." (Tr. 8/19 at p. 94.) Later in their communications, Ms. Stearns lied and told Mr. Lump she was employed by the Franklin County Prosecutors Office. (Tr. 8/19 at p. 105, 117).

Mr. Lump testified that he has known Ms. Stearns for ten years and she has a reputation in the community for not being truthful. (Tr. 8/19 at p. 91, 111.) In fact, Mr. Lump testified that, in his opinion, Ms. Stearns "does not tell the truth a lot." (Id.)

Indeed, as the pregnancy proceeded, Mr. Lump indicated to Ms. Stearns he was willing to fulfill his moral and legal obligations as a father. (Tr. 8/19 at p. 96.) Finally, on the witness stand, Mr. Lump stated his intentions for his son as follows:

What I want – what I'd like to see for this child is to be adopted out to a loving, caring family that could provide this child with everything a child should be given and that includes a mother and a father and potential siblings that will love this child and care for this child. That's all I want. Is what I feel is best for the child.

(Tr. 8/19 at p. 110.) When asked whether his desire is more likely to happen through adoption as opposed to the child being co-parented by himself and Ms. Stearns, Mr. Lump replied, "I think absolutely." (Id.)

G. At trial, Ms. Stearns agreed she has a "strong personality" and "is able to defend herself and her opinions."

Ms. Stearns claims that she had "no choice" and was forced to sign the Permanent Surrender under pressure from her boyfriend, Jeff Griffith. This characterization of Ms. Stearns as a timid person in an unfamiliar situation is at odds with the description of Ms. Stearns provided by herself and others.

Ms. Stearns is an educated adult. She graduated from high school and "off and on" attended college at Ohio State and Columbus State. (Tr. 7/29 at p. 80, 85; 7/30 at p. 212.) She even considered going to law school. (Tr. 7/29 at p. 84; 7/30 at p. 209.)

When asked about her personality, Ms. Stearns agreed that she has a "strong personality" and "is able to defend herself and her opinions." (Tr. 7/29 at p. 11.) Her Aunt Kelly Brubaker agreed that "Carri can speak up for herself pretty well" and "she's pretty verbal." (Tr. 7/28 at p. 127.) Her 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 p. 32, 46.)

In addition to her strong personality, during these events Ms. Stearns was receiving emotional support from her Aunt Kelly Brubaker, her twin sister, and friends. (Tr. 7/28 at p. 109;

7/28 at p. 37.) She involved her Aunt Kelly Brubaker in the decision-making process because Ms. Stearns “trusted her” and considered her to be a best friend. (Tr. 7/28 at p. 151; 7/28 at p. 37.) Ms. Stearns indicated that Aunt 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 p. 108.) In fact, Aunt Kelly was on the phone with Ms. Stearns “quite consistently” during this time. (Tr. 7/28 at p. 124.)

Ms. Stearns’s claim that she felt helpless regarding her latest pregnancy is at odds with her history of being tenacious regarding her children. Particularly, Ms. Stearns is no stranger to litigation involving her children. Prior to giving birth to the child in question in this case and dating back to 2003 and 2005, she has been involved in custody-related litigation with three different fathers of her other five children (Mr. Wolfinbarger, Mr. Merrick, and Mr. Paille) as well as mediation with the grandparents of another. (Tr. 7/30 at p. 85-87.) The Merrick litigation in particular went on for four and a half years. (*Id.* at p. 88.) She also had past experience litigating the voluntariness of her signature to a custody agreement. (Tr. 7/30 at p. 96-97.) When asked about her litigation experience, Ms. Stearns indicated she has filed motions and *ex parte* emergency custody cases. Ms. Stearns explained, “Yes, after ten years of going through litigation with three different fathers taking me to court every other day, I started to learn about custody and support, yes.” (Tr. 7/30 at p. 89.)

Thus, at the time she contacted AGC in the spring of 2014, Ms. Stearns was anything but a timid, helpless mother who was dealing with an out-of-wedlock pregnancy for the first time.

H. The trial court heard extensive testimony questioning her credibility.

Because Ms. Stearns relied almost exclusively on her own testimony to support the allegations in her habeas petition, her credibility was an issue at trial. A review of the transcript, however, reveals Ms. Stearns’s credibility is suspect. As explained below, in addition to her own

admission that she has embellished matters throughout her life (Tr. 7/30 p. 10, ln. 9-10, 19), the record also contains a number of instances where Ms. Stearns's credibility was brought in question.

First, Ms. Stearns has been convicted of crimes involving dishonesty. The admissible portion of Ms. Stearns's criminal record reveals two recent convictions for crimes of dishonesty; Theft and Unauthorized Use of Property. (Tr. 7/29 at p. 11, 7/30 at p. 204.) In fact, the most recent theft offense occurred in November of 2013 while she was pregnant with the child at issue in this case. (Tr. 7/29 at p. 11; 7/30 at p. 204.)

Second, Ms. Stearns lied to a social worker about her employment history and, during trial, had to correct her testimony as to whether she remembered lying about this fact. Specifically, Ms. Stearns never worked as a juvenile corrections officer. (Tr. 7/29 p. 81, ln 5-10 and 18-20.). However, in the social and medical history that was filled out prior to the birth, Ms. Stearns told the social worker that she had worked in juvenile corrections. (Tr. 7/29 p. 81, ln 11-17) During her testimony on July 29, 2014, when Ms. Stearns was asked whether she told the social worker that she was previously employed as a corrections officer, Ms. Stearns gave conflicting answers alternating between: (1) she did not say that, (2) she might have said that, and (3) she has no idea why the social medical history says that. Then when she returned to the witness stand the next morning (July 30, 2014), before questioning resumed, Ms. Stearns volunteered that she wanted to say something to the court. (Tr. 7/30 p. 7, ln 20.) Ms. Stearns went on to change her testimony from the day before and clarify that she did remember previously telling the social worker that she had worked as a "Juvenile Corrections Director." (Tr. 7/30 p. 8 ln 14-25) She went on to admit that she "embellished" or lied about her

employment history and admitted that she has “told things that weren’t exactly accurate” and agreed that she has embellished things “throughout [her] life.” (Tr. 7/30 p. 10, ln. 9-10, 19)

Third, Ms. Stearns provided conflicting answers when asked on the witness stand about whether she disseminated information about the trial. At the beginning of the trial, Judge Loudon closed this trial to the media. During trial, one of Ms. Stearns’s supporters, who was not in the courtroom, blogged about what AGC personnel were wearing at trial. When asked whether she was the source of this information, Ms. Stearns first unequivocally said, “It didn’t come from me.” (Tr. 7/30 at p. 42.) Moments later, she acknowledged that “I only told her that I thought it was disrespectful to this Court that someone would wear jeans * * * and yes I did say that.” (Tr. 7/30 at p. 43.) While the issue of what someone wore in court is certainly insignificant, the fact that Ms. Stearns can say two different things while under oath is directly probative of her credibility.

Fourth, when Ms. Stearns was asked at trial about the fact that she answered “no” during the execution of the Permanent Surrender when asked under oath if she was under the influence of any drug, alcohol, or pain medication, Ms. Stearns explained, “I lied.” (Tr. 7/30 at p. 137.)

Fifth, she implied that she believes it is not a lie to put down wrong information on a contract. During cross-examination Ms. Stearns admitted that when filling out a medical document, she put down the name “James” as the father instead of “Steve Lump.” (Tr. 7/30 at p. 171.) When asked whether this was a lie, she explained that the incorrect information was not a lie because it was “just a contract” and explained, “No, I didn’t lie because it wasn’t a – permanent question on the form. * * * It was just a contract – it was just a – a contract. So no, I didn’t lie. I gave him a nickname.” Id.

Sixth, Ms. Stearns even lied in a post-trial hearing on the issue of whether the parties could disseminate the transcript to persons who were not parties to the lawsuit. During the hearing, when Ms. Stearns was asked by her attorney whether she had distributed the transcript, she unambiguously answered “no.” (Tr. 11/4 at p. 29.) Moments later, Ms. Stearns notified her attorney that she had, in fact, distributed the transcript to a third party. (Tr. 11/4 at p. 31.) Upon further questioning, Ms. Stearns’s own attorney advised her to exercise her Fifth Amendment right to remain silent. (Tr. 11/4 at p. 34.)

Seventh, Mr. Lump described how Ms. Stearns threatened him in a text message with the message, “you know what I do for a living” and she further stated that she worked in the Franklin County Prosecutor’s Office. (Tr. 8/19 at p. 94.) This was a lie because Ms. Stearns never worked for the Franklin County Prosecutor’s Office. Further, Mr. Lump testified that he has known Ms. Stearns for 10 years and that she has a reputation in the community for not being truthful. (Tr. 8/19 at p. 91, 111.) In fact, Mr. Lump testified that, in his opinion Ms. Stearns “does not tell the truth a lot.” Id.

IV. ARGUMENT

Appellant's Proposition of Law No. 1

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

The execution of the Permanent Surrender by Ms. Stearns was informed and voluntary. She was not a teenage mother or someone incapable of understanding the choices available to her. Instead she was a college-educated, strong-willed adult who had faced out-of-wedlock pregnancies five times before. Weeks before giving birth, Ms. Stearns contacted AGC and met with an AGC social worker for an hour-long, one-on-one meeting to discuss adoption. As the birth and scheduled surrender approached, the information AGC received from Ms. Stearns, her trusted aunt, and the hospital social worker consistently indicated that Ms. Stearns was resolute in her intent to surrender. This intent to surrender was confirmed in the Affidavit of Relinquishment and the Permanent Surrender signed after waiting one day beyond the statutory waiting period. Any question of what Ms. Stearns's intent on the day of the surrender was answered by Ms. Stearns own voice from the question-answer colloquy that was recorded and played for the trial judge.

In order to invalidate her surrender, Ms. Stearns had the burden to establish duress. She claims that pressure from her boyfriend was sufficient to satisfy her burden to establish duress. She is wrong. The mere existence of pressure or difficult circumstances does not automatically equate to legal duress. *In re Adoption of Zschach*, 75 Ohio St. 3d 648, 659, 665 N.E.2d 1070, 1079 (1996) (“While these factors may have had some influence on [the birth parent’s] decision to execute a consent to the adoption, they did not deprive [her] of the exercise of her free will.”) Rather, duress is established only when the pressure or circumstances are so great that a person’s

will is so overborne she loses the ability to exercise her own free will. *Tallmadge v. Robinson*, 158 Ohio St. 333, 109 N.E.2d 496 (1952). Ms. Stearns, like most if not all birth mothers considering surrender, faced challenging circumstances and a difficult choice, but that does not mean that her decision was not a product of her own free will. In other words, she may not have liked her choice, but she had a choice – and she chose to sign the Permanent Surrender.

A. Omissions from Ms. Stearns’s brief

Ms. Stearns’s Merit brief contains a startling amount of omissions. Noticeably absent from her brief are any mention of the following:

Appellate court judgment: Ms. Stearns fails to mention the Tenth District’s unanimous affirmance of the trial court. In doing so the appellate court accurately noted Ms. Stearns “does not challenge the legal standard applied or the validity of the evidence that was presented at trial. C.L.S. only asks that we look at the totality of the circumstances to come to a different conclusion than the trial court.” *In re C.C.S v. Adoption by Gentle Care*, Tenth Dist. Case No. 15AP-884, 2016-Ohio-388 at ¶ 22. The appellate court went on to find that “[t]here is ample evidence of a valid Permanent Surrender agreement.” *Id.* at ¶ 23.

Burden of Proof: Ms. Stearns’s brief fails to mention her burden of proof. Her Amended Petition requested an extraordinary writ, specifically a writ of habeas corpus. 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). Further, Permanent Surrenders are legally binding contracts (*McHenry v. Children's Home of Cincinnati*, 65 Ohio App.3d 515, 519) and, as conceded by Ms. Stearns in her Amended Petition, a signed Permanent Surrender is *prima facie* evidence of valid consent that can only be invalidated by clear and convincing evidence that surrender was not a product of her own free will. (Opinion at p. 18); (Amended Petition at p. 35); *In re Adoption of*

Baby Girl E., Tenth Dist. App. No. 04AP932, 2005-Ohio-3565 at ¶26; *Morrow v. Family & Community Services of Catholic Charities, Inc.* 28 Ohio St.3d 247, 251, 504 N.E.2d 2 (1986).

Deference to the trial court’s findings: In addition to ignoring her burden of proof, Ms. Stearns also fails to acknowledge the deferential standard of review that must be employed to the trial court. The court specifically found Ms. Stearns claims of duress were “feigned” and “the execution of the Permanent Surrender was the product of her ‘freedom of exercising [her] will.’” (Opinion at p. 35) Because the trial court is in the best position to observe witnesses and weigh their credibility, reviewing court must defer to the findings of the trial court. *Seasons Coal Co., Inc. v. City of Cleveland*, 10 Ohio St.3d 77, 461 N.E.2d 1273 (1984). Thus, a judgment that is supported by some competent, credible evidence will not be reversed by a reviewing court as against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Construction Co.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978).

B. The trial court’s judgment that the execution of the Permanent Surrender was not a product of duress is supported by competent, credible evidence.

Ms. Stearns essentially argues the Tenth District Court of Appeals erred when it affirmed the trial court’s dismissal of the petition for habeas corpus. Her argument is nothing more than an error-correction argument. She does not argue the law applied by the courts below was wrong in any way. She simply argues that the courts below incorrectly applied Ohio law to her version of the facts of this case.⁴

⁴ AGC seeks an affirmance of the judgment of the Tenth District. Moreover, because this Court is not an error-correction court, AGC respectfully submits that this case is a candidate for a dismissal as improvidently granted.

1. Ms. Stearns does not challenge the standard for avoiding Permanent Surrenders.

Ms. Stearns does not challenge or argue that the standard for invalidating a Permanent Surrender should be changed in Ohio. This Court explained the standard as follows: “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, supra* at p. 251 (1986) (citations omitted). Ms. Stearns agrees. (Stearns Merit Brief at p. 14.) Thus, in order to be entitled to habeas relief, Ms. Stearns had the burden to establish by clear and convincing evidence she did not have the freedom to exercise her will when she signed the Permanent Surrender.

2. The trial court’s findings were supported by competent credible evidence.

In its opinion, the trial court “determine[d] that, after weighing the evidence presented at trial, Ms. Stearns failed to establish, by clear and convincing evidence that pressure from Jeff Griffith, or any of the other facts of Ms. Stearns’s circumstance, resulted in her being denied the ability to exercise her free will when she executed the Permanent Surrender.” (Opinion at p. 19-20.) The trial court’s findings included, but were not limited to the following:

- “[T]his Court finds that Ms. Stearns did, in fact, have a choice and the execution of the Permanent Surrender was voluntary.” (Opinion at p. 20.)
- “Ms. Stearns perceived difficult circumstances were not duress and not the fault of anyone else.” (Opinion. at p. 20)
- “The profile of Ms. Stearns as presented at trial is not the profile of a person who is easily pressured into doing something she does not want to do.” (Opinion at p. 20.)
- “Ms. Stearns had ample discussion and time to consider her decision.” (Opinion. at p. 21.)
- “Ms. Stearns was provided with the options available to her, including discussions about ‘alternatives to the surrender, pre and post-adoption options, temporary custody and foster care.’”(Opinion at p. 21.)

- “The documents signed by Ms. Stearns at the time of the surrender are clear and unequivocal.” (Opinion at p. 21.)
- “And there is little doubt as to Ms. Stearns’s state of mind regarding the Permanent Surrender because this Court heard her own voice on the recorded colloquy as she answered questions about the voluntariness of her signing of the Permanent Surrender.” (Opinion at p. 22.)
- “[A]pplying the applicable law to the evidence presented by Ms. Stearns in her case in chief, this Court concludes that Ms. Stearns ‘really had a choice’ and the execution of the Permanent Surrender was the product of her ‘freedom of exercising [her] will.’” (Opinion at p. 35.)

The trial court’s findings of fact and conclusions of law are supported by “some competent, credible evidence.” In his 35-page opinion, Judge Loudon explained in great detail, including extensive citations to the trial transcript, why the evidence produced by Ms. Stearns was insufficient to meet her clear and convincing burden of proof. As explained below, there is abundant competent and credible evidence supporting each one of Judge Loudon’s findings.

The trial court’s finding that Ms. Stearns is someone who is not easily pressured into doing something she does not want to do is supported by evidence in the record. Trial testimony demonstrates that 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.) Ms. Stearns agreed that she has a “strong personality” and “is able to defend herself and her opinions.” (Tr. 7/29 at 11) Ms. Stearns’s Aunt, Kelly Brubaker, agreed that “Carri can speak up for herself pretty well” and “she’s pretty verbal.” (Tr. 7/28 at 122.)

The trial court’s finding that Ms. Stearns was not credible is supported by trial testimony. The Court heard evidence of Ms. Stearns’s untruthfulness including but not limited to: opinion testimony that she had a reputation in the community for not being truthful and that she “does

not tell the truth a lot” (Tr. 8/19 at p. 91, 111); evidence of her recent convictions for crimes of dishonesty (Tr. 7/29 at 11, 7/30 at 204); testimony that Ms. Stearns lied on applications regarding her employment and had to correct her testimony on this point (Tr. 7/30 p. 8 ln 14-25); and her own 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.)

The trial court’s finding that Ms. Stearns had ample discussion and time to consider her decision is supported by trial testimony and evidence. On March 15, 2014, Ms. Stearns contacted AGC. (Tr. 7/29 at 14; Tr. 7/30 at 14-15.) On April 4, 2014, after waiting one day beyond the statutorily-required seventy-two hours, Ms. Stearns signed the Permanent Surrender. (Tr. 7/29 at 17-18, 28.) 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.

The trial court’s finding that Ms. Stearns was informed of her options was supported by competent and credible trial evidence. Ms. Stearns was provided with the options available to her, including “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.) Ms. Stearns signed the Permanent Surrender Form which affirmatively stated: “The assessor has provided the following counseling and discussed alternatives to the surrender, pre and post-adoption options, temporary custody and foster care and reviewed and signed to Ohio laws an adoption materials form.” (Tr. 7/29 at 50.) AGC social worker Kelly Schumaker met with Mrs. Stearns for almost an hour on

March 27. (Tr. 7/28 at 137.) When asked what happened at that meeting, Ms. Stearns testified that there were “a lot of questions” and she was “confident” that adoption process was discussed. (Tr. 7/29 at 15.) Kelly Schumaker testified that they “talked back and forth.” (Tr. 7/31 at 176.) Kelly Schumaker explained that during the March 27 meeting, she went through “all of our initial contact paperwork,” including all the flyers, and she explained “each paper until the end.” (Tr. 7/31 at p. 127-128.) Ms. Stearns conceded that Ms. Schumaker did put all of the documents in the folder that was given to Ms. Stearns. (Tr. 7/28 at p. 141; Tr. 7/29 at 90.) Included in the documents provided to Ms. Stearns was Petitioner’s Exhibit M which is a pamphlet that the Ohio Department of Job and Family Services requires to be provided to birth parents considering adoption. (Tr. 7/31 at p. 87-88.) This pamphlet contains information about a birth parent’s rights and options and lays out all the non-surrender options available under Ohio law including “Placing your child with a friend or non-relative temporarily or permanently.” (Tr. 7/31 at p. 87-88.) The colloquy during the surrender also demonstrated that she “underst[ood] that [she was] not obligated to proceed with the surrender today, and that baby could be placed in foster care or discharged to give [her] more time.” (7/29 at 36-37.)

The trial court’s finding that the “documents signed by Ms. Stearns at the time of the surrender are clear and unequivocal” is supported by competent and credible evidence. The Affidavit of Relinquishment stated in part: “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.” Further, the Permanent Surrender itself states: “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.” (Tr. 7/29 at p. 43-46.)

The trial court's rejection of the claim of duress is supported by competent credible evidence. In addition to finding the execution of the surrender was a product of her free will, the trial court discounted the severity of Ms. Stearns's claim of pressure from Jeff Griffith. Ms. Stearns claimed that Jeff Griffith said she could not bring a child home that was not his. However, trial testimony revealed that (a) Jeff Griffith was already living with Ms. Stearns and her five kids of which he was not the father, and (b) she was still living with Mr. Griffith during the trial while she was actively trying to undo the Surrender. (Tr. 7/30 at 148-149.) Moreover, after listening to days of her testimony, the trial court found that Ms. Stearns “feigned” her claims of duress and having no choice.

3. The trial court's dismissal of the petition is consistent with Ohio case law invalidating consent in only “extreme circumstances.”

As noted by the appellate court in *In re Adoption of Hockman*, Eleventh Dist. App. No. 2004-P-0079, 2005-Ohio-140, at ¶27, a survey of Ohio case law reveals: “it has only been in *extreme circumstances* where the courts have permitted the invalidation of consent on the basis of undue influence or duress.” (Emphasis added.) Indeed a review of Ohio case law where surrenders were invalidated provides examples of “extreme circumstances:” *Marich v. Knox Cty. Dept. of Human Serv.*, 45 Ohio St.3d 163, 543 N.E.2d 776 (1989) (fifteen year old birth mother was approached by the social service workers about the possibility of adoption for the first time when she gave birth); *In re Hua*, 62 Ohio St.2d 227, 405 N.E.2d 255 (1980) (Vietnamese mother's consent was invalid where she was pressured into giving her child up for adoption by

the agency reinforcing and encouraging fears that her child would be killed due to his mixed parentage).

In contrast, in *Morrow, supra*, the Ohio Supreme Court found that consent was freely given by the natural parents, in part, because they had attained the age of majority and had completed all but one semester of college. And, the *Morrow* court noted that adoption of the child had been considered prior to its birth. *Id.* at 251-252.

In this case, because Ms. Stearns was an adult who had taken college classes, initiated contact with the adoption agency, and considered adoption for weeks prior to the child's birth, the facts of this case align with the facts of *Morrow*, where the court did not allow the birth parent to avoid the Permanent Surrender. These facts do not present "extreme circumstance" necessary to justify the avoidance of an executed surrender. *In re Adoption of Hockman, supra*. See also, *In re Adoption of Zschach*, 75 Ohio St.3d 648 (1995) (subsequent challenge to consent rejected; difficult circumstances "may have had some influence on [birth parent's] decision to execute consent adoption, they did not deprive [birth parent] of the exercise of her free will."); *In re Adoption of Infant Boy*, 60 Ohio App. 3d 80, 573 N.E.2d 753 (1989) (reversing a finding of no consent; seventeen year-old-mother's claim that she had "no choice" was insufficient to establish duress in the face of consent given in writing.)

In sum, the judgment of the trial court finding that Ms. Stearns's execution of the Permanent Surrender was informed and voluntary is supported by competent, credible evidence and consistent with well-established Ohio law.

C. The AGC social worker fulfilled her duty under Ohio law and did exactly as Ms. Stearns instructed.

Unable to prove that the execution of the surrender was not a product of her free will, Ms. Stearns attempts to shift the focus away from her own actions and onto AGC. Her proposition

argues that AGC should be considered a “fiduciary” and had an affirmative duty to “insure that such relinquishment is given without duress.” Her argument fails for a number of reasons: (1) AGC complied with Ohio law; (2) Ohio law does not define the relationship between the birth parent and social worker as a fiduciary relationship; (3) even if the relationship was a fiduciary relationship, AGC fulfilled any duty to Ms. Stearns by helping her achieve her stated intention of placing her child for adoption.

First, the AGC social worker fulfilled her duty. Under Ohio law, a birth parent social worker has a duty to meet with a birth mother more than 72 hours prior to birth to fill out paperwork, explain the adoption process, and inform her of her options. If the birth mother indicates an intent to surrender, the social worker, after waiting at least 72 hours after the birth, will meet with the birth mother to execute the surrender using the ODJFS form. Herein the AGC social worker fulfilled all of these required obligations under Ohio law.

Second, Ohio law has never characterized the relationship between a birth mother and an adoption agency as a fiduciary relationship. As recognized by the court in *Casey v. Reidy*, 2009-Ohio-415, ¶ 35, 180 Ohio App.3d 615, 623, 906 N.E.2d 1139, 1145, “[d]espite the apparently broad definition of the term “fiduciary” in Ohio, a review of the case law reveals that courts have been reluctant to characterize relationships between individuals as being fiduciary in nature, with the obvious exception of those relationships that involve statutorily-imposed duties.” In fact, in *Marich, supra*, while discussing an undue influence challenge to a surrender, this Court described a birth mother’s trust in agency’s representative as “almost fiduciary” and thus this Court stopped short of classifying the relationship as a fiduciary relationship. *Marich*, 45 Ohio St.3d at 167.

Third, even if Ohio law did mandate that a birth parent social worker owes a fiduciary duty toward a birth parent, it would not change the outcome of this case. In *Strock v. Pressnell* 38 Ohio St.3d 207, 527 N.E.2d 1235 (1988) this Court defined a “fiduciary” as “a person having a duty, created by his understanding, to act primarily for the benefit of another in matters connected with his undertaking.” *Id.* at 216. If the AGC social worker had a duty to act for the benefit of Ms. Stearns, she had a duty to inform Ms. Stearns of her options and to help her execute a surrender if that was her choice. Herein, as the trial court found, Ms. Stearns was fully informed of her options and chose to voluntarily surrender. By explaining the options and helping her achieve her stated desire to surrender, the AGC social worker acted for the benefit of Ms. Stearns by doing exactly what she wanted.

In reality, Ms. Stearns’s argument is: even though Ms. Stearns repeatedly told AGC she wanted to surrender, the AGC social worker should have disregarded Ms. Stearns’s stated wishes and not allowed her to surrender. Ohio law does not and should not mandate that social workers act in such a paternalistic fashion and refuse to allow an informed, educated adult to exercise her own free will.

D. Ms. Stearns’s arguments fail.

1. Ms. Stearns relies on factual claims of duress that the trial court found to be “feigned”.

Ms. Stearns’s argument is nothing more than a fact-based argument regarding her execution of the surrender. In her Merit brief she persists in presenting a narrative that “her and her five children would be turned out into the streets,” and that Jeff Griffith gave her an ultimatum “whereupon Jeff would kick Carri and the children out immediately” (Stearns Merit Brief at p. 23, 32.) There are two fatal flaws with Ms. Stearns’s narrative.

First, as her lack of trial transcript citations in her brief would indicate, a significant number of factual statements contained in Ms. Stearns's brief are not based on trial evidence or testimony. For example, neither Ms. Stearns nor any other witness used the word ultimatum or the phrase "her and her five children would turned out into the streets."

Second, Ms. Stearns's narrative was definitively rejected by the trier of fact. The trial judge specifically found that her claims of duress were "feigned." Thus, Ms. Stearns cannot simply cite to the facts as she wishes them to be. Instead, because this case is on appeal from a judgment in which the trial court made specific findings, Ms. Stearns can only argue the trial court's finding that her claims were feigned was not supported by competent credible evidence. She never makes this argument in her brief. The only attempt to challenge the findings of the trial court is at the back of her brief when she states, "[t]he trial court did not weigh the evidence and determine the credibility of witnesses." (Stearns Merit Brief at p. 33.) Ms. Stearns is wrong and conveniently ignores the Tenth District opinion which stated, "After we remanded this case, the trial court clearly showed how it weighed the evidence and what evidence it found credible. *In re C.C.S.*, 2016-Ohio-388, at ¶ 21.

2. Ms. Stearns's initial statement she felt she had "no choice" is insufficient to prove duress because all the subsequent information leading up to the surrender indicated she desire to place her child for adoption.

In an effort to prove duress, Ms. Stearns relies almost exclusively on her statement when she first contacted AGC (two and a half weeks before the surrender) that she felt like she had no choice. This initial comment is insufficient to establish duress because, after the March 27 hour-long, one-on-one meeting, every communication leading up to the April 4 surrender received from Ms. Stearns, her trusted Aunt Kelly Brubaker, and an independent hospital social worker indicated Ms. Stearns wanted to surrender her child and place him for adoption.

- March 31: Ms. Stearns called the AGC social worker and asked if the adoptive family was excited about a boy. (Ex. K at p. 4.)
- March 31, in response to Social Worker Schumaker asking how Ms. Stearns was doing after giving birth, Ms. Stearns's Aunt Kelly Brubaker texted "A bit tearful yet at peace about her decision." (Ex. K at p. 5.)
- April 1, 2014: Ms. Stearns called Social Worker Schumaker and explained "she is doing well and feels at peace with her decision." (Ex. K at p. 6.)
- April 1, 2014: Ms. Stearns asked if she could sign the surrender paperwork on Friday morning. (Id.)
- April 1: The hospital social worker reported that Ms. Stearns has not spent any time with the baby. (Ex. K at p. 5)
- April 1: Ms. Stearns "reported that she is excited for [adoptive family] to meet their son. [Ms. Stearns] confirmed she is not going to name the baby."
- April 1, 2014: A hospital entry from 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.)
- April 1: On behalf of Ms. Stearns, Aunt Kelly texted and asked if the adoptive family "believe[s] in circumcision." Aunt Kelly indicated that Ms. Stearns would sign the surrender paperwork on April 3. (Ex. K at p. 5)
- April 2, 2014: In a text conversation between Ms. Stearns's Aunt Kelly Brubaker and Social Worker Kelly Schumaker, Aunt Kelly texted that Ms. Stearns did not

want to know any more about the adoptive family and added: “she said to tell you not to worry, she is not changing her mind – just hard to deal with.”

- April 3: Ms. Stearns called SW. “BM reported that she just wants tomorrow’s paperwork to go quickly and that she does not have any questions or concerns.”

(Ex. K at p. 7)

After the March 27 meeting, there was no equivocation. As Ms. Stearns told AGC earlier, she was “100% choosing adoption.” Thus, the information AGC received as the surrender approached very clearly indicated Ms. Stearns’s intent to surrender her child and place him for adoption.

In an attempt to point to evidence that her decision was not voluntary, Ms. Stearns lists twenty numbered paragraphs recounting AGC’s internal notes. (Stearns Merit Brief at p. 19-21.) These numbered paragraphs referring to agency notes do not come close to proving the execution of the surrender was not voluntary. In fact, her list of numbered paragraphs highlights the weakness of her argument. Of Ms. Stearns’s twenty numbered paragraphs, only paragraphs 1 and 4 on page 19 of her brief refer to Ms. Stearns’s claim of having “no choice.” Because Ms. Stearns conveniently omits the dates for these two paragraphs, it is important to note paragraphs 1 and 4 refer to the March 15 and March 27 agency notes. Ms. Stearns fails to mention the ten agency notes between March 27 and the surrender on April 4 that indicates her unambiguous decision to surrender and place her child for adoption.

Of her remaining paragraphs numbers 3, 5, and 6 do not indicate that Ms. Stearns’s decision was involuntary; and paragraphs 7 through 20 refer to internal agency notes in the weeks *after* the execution of the surrender. (Stearns Merit Brief at 19-21; Ex. K.) It goes without

saying that evidence that Ms. Stearns subsequently changed her mind weeks later is not evidence that her decision to surrender on April 4 was involuntary.

3. Ms. Stearns’s narrative that there was no discussion is false.

As she did in the trial and appellate courts, Ms. Stearns, as well as the Ohio Birthparent Group, claims there was no discussion regarding options at the March 27 meeting.⁵ (Stearns Merit Brief at p. 25-28.) Both the trial court and the appellate court soundly rejected this argument. The trial court found, “Ms. Stearns had ample discussion and time to consider her decision.” (Opinion. at p. 21.) The Tenth District affirmed stating there was “ample evidence” of discussion of options and explained as follows:

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.

⁵ Within her brief, Ms. Stearns reasserts her claim that AGC violated Ohio Administrative Code § 5101:2-42-09. The Tenth District expressly rejected this argument, In re C.C.S., 2016-Ohio-388, at ¶¶ 36-39 and this Court declined jurisdiction over the proposition based on this issue.

{¶ 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.

In re C.C.S., 2016-Ohio-388, ¶¶ 35-39.

The evidence produced at trial during Ms. Stearns's case-in-chief revealed that in addition to pre-birth phone and text conversations between Ms. Stearns and the AGC social worker Kelly Schumaker, on March 27 Ms. Stearns met with Kelly Schumaker for a face-to-face meeting at a local Bob Evans restaurant that lasted almost an hour. (Tr. 7/28 at p. 137.) Ms. Stearns chose the location because it was "more comfortable." (Tr. 7/28 at p. 137, 7/30 at p. 63-

64.) Kelly Schumaker testified that nothing about Ms. Stearns's level of anxiety or circumstances caused Ms. Schumaker any "particular alarm" with moving forward with the adoption plan. (Tr. 7/31 at p. 125). Ms. Schumaker did not find the reasons Ms. Stearns gave for pursuing an adoption plan to be unusual. (Tr. 7/31 at p. 125.)

During this March 27 meeting, Ms. Schumaker reviewed all of the initial contact paperwork with Ms. Stearns who seemed to be familiar with the paperwork. (Tr. 7/31 at p. 129.) During the meeting, Ms. Stearns talked back and forth with Ms. Schumaker and she found that Ms. Stearns appeared to be engaged in the process. (Tr. 7/31 at p. 176, 177.) Ms. Schumaker did not believe that Ms. Stearns was "wavering" about her decision or that someone was forcing her to proceed with the adoption plan. (Tr. 7/31 at p. 141, 185, 186, 214.)

Regarding this one-on-one meeting, Ms. Stearns admitted there were "a lot of questions" and she was "sure" and "confident" that adoption process was "discuss[ed]." (Tr. 7/29 at 15.) Kelly Schumaker testified that the two "talked back and forth" during the meeting and further explained that during this meeting, she went through "all of our initial contact paperwork," including all the flyers, and she explained "each paper until the end." (Tr. 7/31 at p. 176, 177.) Kelly Schumaker testified that Ms. Stearns appeared to be engaged in the process. (Id.)

Ms. Stearns conceded that Ms. Schumaker did put all of the documents in the folder that was given to Ms. Stearns which included a pamphlet that the Ohio Department of Job and Family Services requires to be provided to birth parents considering adoption. (Tr. 7/31 at p. 87-88.) This pamphlet contains information about a birth parent's rights and options and lays out all the non-surrender options available under Ohio law including "Placing your child with a friend or non-relative temporarily or permanently." (Id.)

Further, the trial court heard Ms. Stearns's own words confirm she was informed of her options including temporary custody. During the execution of the surrender, Ms. Stearns was asked to confirm her understanding of her options: "And do you understand that you're not obligated to proceed with the surrender today, and that baby could be placed in foster care or discharged to you to give you more time?" Ms. Stearns responded, "I understand." (7/29 at 36-37.) Ms. Stearns also signed the Permanent Surrender which stated: "The assessor has provided the following counseling and discussed alternatives to the surrender, pre and post-adoption options, temporary custody and foster care and reviewed and signed to Ohio laws an adoption materials form." (Tr. 7/29 at 50.)

Additionally, a significant portion of the argument made by Ms. Stearns and Ohio Birthparent Group to support the "no discussion" claim is based on what Ms. Stearns refers to as the "30 day rule." The statutory authority for temporary custody is set forth in Ohio Revised Code Section 5103.15(A)(1) and reads as follows;

(A)(1) The parents, guardian, or other persons having the custody of a child may enter into an agreement with any public children services agency or private child placing agency, whereby the child is placed without the approval of the juvenile court in the temporary custody of the agency for a period of time of up to thirty days, except that an agreement for temporary custody can be for a period of time of up to sixty days without court approval if the agreement is executed solely for the purpose of obtaining the adoption of a child who is less than six months of age on the date of the execution of the agreement.

When an agency takes temporary custody arrangements must be made for temporary foster care while the birth mother considers her options. A careful review of the record reveal Ms. Stearns testified she was repeatedly and properly advised of her right to complete a temporary custody agreement. Ms. Stearns testified on multiple occasions that the foster care option was raised in discussions with the AGC Social Worker. In her testimony Ms. Stearns acknowledges she

understood the temporary custody option perfectly and this information was provided to her by the Social Worker, Ms. Kelly Schumaker.

Q. In the surrender – in the surrender process she asked if you wanted more time.
A. And yeah, by taking more time it meant he would have to go to a foster home in the interim. Yes, she did say you could have more time but he'd go to a foster home while I had that time.

(Tr. 7/30 at p. 130)

This testimony demonstrates that Ms. Stearns had a complete and accurate understanding of how temporary custody works as set forth in Ohio Revised Code Section 5103.15(A)(1). Ms. Stearns acknowledged that this information was provided to her by AGC Social Worker Kelly Schumaker. In addition, Ms. Stearns stated under oath that temporary custody was “discussed” when she completed the Relinquishment and Surrender documents (Tr. 7/29 at p. 50-52). Ms. Stearns hides behind her bizarre and completely unfounded perceptions of “foster care.” She also attempts to allege that “foster care” was used as a “scare tactic.” Those distortions notwithstanding it is irrefutable that Ms. Stearns understood the temporary custody option and she received that information directly from discussions with AGC Social Worker Kelly Schumaker.

4. Ms. Stearns’s claim that a 30-day option was a “cure” is disingenuous because she declined the option of more time and she never gave any indication that she needed more time.

Ms. Stearns also claims that a so-called 30-day option “was a cure to her problem.” (Stearns Merit brief at p. 7.) There are two problems with this assertion.

First, she never communicated to AGC that she needed more time or that more time would change the circumstances of her decision. In fact, all indications were that she wanted to complete the surrender on April 4. On April 1, 2014, Ms. Stearns asked if she could sign the surrender paperwork on Friday morning [April 4]. (Id.) That same day Aunt Kelly Brubaker

indicated that Ms. Stearns could even sign the surrender paperwork a day earlier on April 3. (Ex. K at p. 5) On April 3, Ms. Stearns called and “reported that she just wants tomorrow’s paperwork to go quickly and that she does not have any questions or concerns.” (Ex. K at p. 7)

Second, Ms. Stearns was, in fact, given the option of her so-called “cure” of more time, she just chose not to take it. During the execution of the Permanent Surrender she was asked the following:

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.) And the Permanent Surrender signed by Ms. Stearns acknowledged the option of more time was made available to her. “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 and Adoption Materials form. The date on which this was provided was March 27, 2014. The name of the assessor was Kelly Schumaker, MSW, LSW.” (Tr. 7/29 at 50.)

5. Ms. Stearns’s age, education, and personality supports the trial court’s finding that her execution of the surrender was voluntary.

Ms. Stearns emphasizes that when determining whether consent is the product of duress, courts must look “at the particular person” and not the “ordinary person.” (Stearns Merit Brief at 10.) This is precisely what the trial court did. As described throughout this brief, the trial court focused on the testimony about Ms. Stearns and, in his opinion, found her to be a strong-willed, educated adult who previously faced out-of-wedlock pregnancies and had been considering the option of adoption for weeks prior to giving birth. She was not a first-time mother. She was not

a teenager. She was not uneducated. She was not someone who had not been counseled by a licensed social worker prior to giving birth. And, she did not merely consider adoption for the first time in the hospital just after giving birth.

6. The constitutional rights of Ms. Stearns and the child were not violated, as Ms. Stearns severed the parent-child relationship with her own, voluntary action.

Within the body of her brief, Ms. Stearns repeats the same vague statement about the child's constitutional rights: "[a]t no time was there any consideration given to the constitutional rights of [the child]." (Stearns Merit Brief at p 8, 13.) Ms. Stearns, however, never elaborates on what constitutional rights she is referring to or how a reference to the constitutional rights of the child supports her proposition. This was private surrender; Ms. Stearns severed her parental rights when she voluntarily executed the Permanent Surrender.

7. Dr. Amato does not support her claim that her execution of the surrender was involuntary.

Aside from her own self-serving testimony that the trial court found not credible, the only other witness Ms. Stearns cites to support her claim of duress is Dr. Amato. Unfortunately for Ms. Stearns, Dr. Amato provides no support to her claim that her signature on the surrender was involuntary. Dr. Amato did not deliver the baby, nor did he observe Ms. Stearns at the hospital or in a post-operation discharge visit. (Tr. 7/29 at p. 105.) More importantly, Dr. Amato did not observe Ms. Stearns on the date she met with Kelly Schumaker to execute the adoption plan, or on the date Ms. Stearns executed the Permanent Surrender. (Tr. 7/29 at p. 116.)

8. Ms. Stearns's "right to produce witnesses" was not "unduly restricted" by AGC's motion for involuntary dismissal.

In a baffling argument, Ms. Stearns argues that "[e]ven the Appellee's motion for a verdict was a violation that unduly restricted the Appellant's right to produce witnesses to rebut

any testimony by the Appellee and to further show that Appellant had no choice.” (Stearns Merit Brief at p. 33.) Ms. Stearns’s right to present witnesses was not restricted in any way. She presented witnesses over five days with no restriction whatsoever by the trial judge. (During that time, AGC requested and was permitted to call one witnesses, Beth Simmons, during the Petitioner’s case to accommodate Ms. Simmons who was pregnant and due to be on maternity leave when the court would have scheduled the resumption of the case. (Tr. 7/31 at p. 217; 8/19 at 7.) After Ms. Stearns **rested** and stated, “We have no further witnesses, Your Honor.” (Tr. 8/19 at p. 122-123), AGC moved for an Civ.R. 41(B)(2) involuntary dismissal which the trial court granted. (Tr. 8/19 at p. 127-128.) Simply put, if Ms. Stearns was saving witnesses to call on rebuttal instead of during her case in chief, it was a risk her trial counsel took and in no way was her “right to produce witnesses violated.”⁶

And as she has every step of the way, Ms. Stearns argues that by moving for involuntary dismissal, AGC’s counsel somehow waived its right to present additional evidence. In moving for dismissal, counsel for AGC did not waive the right to present witnesses and indicated that AGC intended on proceeding with their defense case if the motion for dismissal was denied. Attorney Oebker stated: “Your Honor, **before we present any witnesses**, Respondent would like to respectfully move for a dismissal under Civil Rule 41(B)(2), which is similar to a directed verdict in a jury trial.” (Tr. 8/19 at p. 127-128 emphasis added.) After hearing arguments from both sides, the trial court granted AGC’s motion and dismissed Ms. Stearns’s Amended Petition.

⁶ Ms. Stearns also argues the trial court erred when it excluded testimony from Ms. Stearns on hearsay grounds. (Stearns Merit Brief at p. 32-33.) This argument was raised to and rejected by the Tenth District. *In re C.C.S.*, 2016-Ohio-388, ¶¶ 28-31.

9. **Ms. Stearns’s willingness to make false claims and use inappropriate, inflammatory language.**

As she has throughout this litigation, Ms. Stearns continues to make false, baseless allegations. For example, even though no claim of spoliation was made at trial, Ms. Stearns alleges evidence was spoliated⁷ because the tape recorder was turned off during the surrender. Ms. Stearns then goes one step further to argue, “What the trial court heard was not the original digital recording but a recording that was edited to provide a false representation to the trial court.” (Stearns Merit Brief at p. 23.) This is yet another example of the depths to which opposing counsel will go in their representation of Ms. Stearns. No spoliation claim was raised at trial and trial testimony explained that the tape recorder was turned off once, at Ms. Stearns’s request, because she had questions for Ms. Schumaker regarding the birth father. (Tr. 7/31 at p. 232-233.) More importantly, there was absolutely zero evidence or even suggestion by Ms. Stearns’s trial counsel that the recording was “edited.” For Ms. Stearns to make this allegation now without any factual or record support is offensive and improper.

In addition to making wholly false allegations, another example of the depths to which Ms. Stearns and her attorney are willing to go as they litigate this case is their use of over-the-top inflammatory language. AGC is a non-profit adoption agency that, over the last 30 years, has counseled thousands of mothers, some of who have chosen to place their children for adoption, some of whom have chosen not to place their children for adoption. Yet, this has not stopped Ms. Stearns and her attorney from using language in her Merit Brief such as: AGC “lure[s] mothers” (p. 12); “This trust was abused for the sake of 40 pieces of silver.” (p. 12); and “they had a commodity to sell, Carrie’s [sic] baby” (p. 16). Such incendiary language along with her

⁷Ms. Stearns repeatedly uses the incorrect term “spoliated.”

willingness to make false allegations and cite to “facts” with no evidentiary support is illustrative of how Ms. Stearns and her attorney know no bounds when litigating this case.

V. CONCLUSION

The trial court and court of appeals, in well-reasoned opinions, correctly applied settled law to the facts as presented at trial. Adoption by Gentle Care submits that a reversal under these facts would negatively affect future private adoptions in Ohio by effectively eliminating the permanent aspect of Permanent Surrenders. Accordingly, Adoption by Gentle Care respectfully asks this case be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **Merit Brief of Appellee Adoption by Gentle Care** was served on July 5, 2016, per S.Ct.Prac.R. 3.11(B), by sending it by regular U.S. Mail to:

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