

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. :

REPLY TO MERIT BRIEF OF APPELLEE AND AMICUS CURIAE
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REPLY ARGUMENT AS TO ADOPTION BY GENTLE CARE

The Appellee in its Introduction and Summary of the Argument, Statement of the Case and Statement of the Case seemingly wants to retry this case by introducing various statements and representations that are not accurate. The existence of duress is not dependant upon the Appellee's misrepresentations or the introduction of statements not in evidence but whether or not the totality of the circumstances placed the Appellant under duress.

The actions of the Appellant by introducing a fiduciary who undertook to advise and protect the rights of Carrie and Camden Stearns in this adoption and relinquishment proceedings is only one of the factors causing Carrie to relinquish her will. The particular person in this case is Kelly Schumaker the mother's social worker and a Gentle Care employee.

The failure to have a discussion as required by the law eliminated the choices Carrie should have had available to her. This failure to follow the law kept narrowing the road that Carrie could choose for her and her child giving her no choice. The Appellee seems to think that the Appellee's obtaining a signature with Kelly Schumaker greasing the skids is following the law and the plan language of the law should be ignored.

In re Adoption of G. V. 126 Ohio St.3d 249:

Our role with regard to statutory interpretation is to apply clear and unambiguous statutes as written and to engage in no further interpretation. *State ex rel. Burrows v. Indus. Comm.* (1997), 78 Ohio St.3d 78, 81, 676 N.E.2d 519. It is our duty to enforce a statute as written and to not add or subtract language from the statute. *In re Adoption of Holcomb* (1985), 18 Ohio St.3d 361, 366, 18 OBR 419, 481 N.E.2d 613

This is Justice Brown's decent and it is certainly appropriate in this case as is the majority's which states:

" [T]he right of a natural parent to the care and custody of his children is one of the most precious and fundamental in law." In re Adoption of Masa (1986), 23 Ohio St.3d 163, 164, 23 OBR 330, 492 N.E.2d 140, citing Santosky v. Kramer (1982), 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599

" Few consequences of judicial action are so grave as the severance of natural family ties." Santosky, 455 U.S. at 787, 102 S.Ct. 1388, 71 L.Ed.2d 599 (Rehnquist, J., dissenting). Because adoption terminates fundamental rights of the natural parents, " we have held that ' * * * [a]ny exception to the requirement of parental consent [to adoption] must be strictly construed so as to protect the right of natural parents to raise and nurture their children.' " In re Adoption of Masa, 23 Ohio St.3d at 165, 23 OBR 330, 492 N.E.2d 140, quoting In re Schoeppner (1976), 46 Ohio St.2d 21, 24, 75 O.O.2d 12, 345 N.E.2d 608. With " a family association so undeniably important * * * at stake," we approach the case before us " mindful of the gravity" of the circumstances and the long-term impact on all the concerned parties. M.L.B. v. S.L.J. (1996), 519 U.S. 102, 117, 117 S.Ct. 555, 136 L.Ed.2d 473.

The intentional failure of the Appellee to recognize Exhibit K is to ignore the knowledge Gentle Care had:

1. The Appellant told Adoption by Gentle Care that "I don't think I have a choice".
(page 1)
2. The Appellant's Aunt reported to Adoption by Gentle Care that the Appellant was struggling with this decision and wanted to make sure she had all of the **right information.** (page 1)
3. The Appellant expressed her duress and undue influence to Adoption by Gentle Care when she told Adoption by Gentle Care that her other children's great life

- was in jeopardy because her significant other was too hurt to allow Camden to come home. (page 2)
4. The Appellant told Adoption by Gentle Care that “she does not want to place this baby for adoption but feels she has no other choice.” (page 4)
 5. On April 3rd the Appellant explained to the Social Worker that she was in pain and sleepy. This was a red flag to the Social Worker that the Appellant was on pain medications not able to make any decision regarding her baby. (page 7)
 6. On April 3rd Adoption by Gentle Care recorded only a selected portion of the surrender interview and held at least one if not more conversations off the record. (page 8) The off the record conversation included the Appellant being told not to mention her Native American heritage or anything that would in any way delay the adoption procedure being used by Adoption by Gentle Care.
 7. On April 12, 2014 the Appellant left a voice mail explaining that she was off her pain medication and did not want to give up her baby. (page 9) She made it clear that Jeff had pressured her into giving up her baby for adoption and she wanted her baby back.
 8. The Steve Lump clearly represented to Adoption by Gentle Care he never wanted the baby and wanted the Appellant to get an abortion and was very upset that she did not get an abortion. This was additional pressure on the Appellant that contributed to the undue influence and duress she was under. (page 10)
 9. The original adoptive family expressed a desire to have a dependency hearing but Adoption by Gentle Care never followed up on this request. (page 10)

10. Adoption by Gentle Care received the medical records of the Appellant and verified the pain medications that the Appellant was taking before and on April 3rd when the permanent surrender was presented for signature. (page 12)
11. Adoption by Gentle Care posted the profile of the adoptive family on their website making public the names and address of the adoptive family. (page 15)
12. The adoptive family was concerned about the life long ramifications of parenting a child whose biological parent wants him. (page 15)
13. Adoption by Gentle Care went to Cleveland to retrieve the baby from the adoptive family. They were placing him in foster care and acknowledged that the end result would be to return the baby to the Appellant. (page 16)
14. Adoption by Gentle Care went so far as to discuss the preparation of the documentation they would have the Appellant sign when they gave her back her baby. (page 16)
15. Adoption by Gentle Care became concerned over social media and not the baby or the undue influence and duress suffered by the Appellant. (page 17)
16. Adoption by Gentle Care became increasingly concerned with social media to the point of asking the Steve Lump to contact the Appellant and explain how this was delaying the process which at this point was returning the baby to the Appellant. Adoption by Gentle Care saw this as a “complicating factor” (page 19)
17. Adoption by Gentle Care on approximately May 22, 2014 moved the baby from one foster home but due to these foster parents going on vacation (page 23) the baby was moved to another foster home, making the third move in one and a half months. (page 22)

18. Adoption by Gentle Care's reason for not returning the baby to the Appellant became a battle of ego and concern not over this situation, but a concern over the financial impact it might have on Adoption by Gentle Care for future adoptions. (page 27)

19. Adoption by Gentle Care knew that the only gain they would have in continuing to oppose the Appellant would be a fee. (page 29). Adoption by Gentle Care believed that they could run the Appellant out of money to pursue the case that they believed would ultimately result in the Appellant receiving the baby and might result in the surrender being declared invalid as in fact due to duress and undue influence between Jeff, the pain, the pain killers and the natural biological dump of hormones there was no ability for the Appellant to make an informed and voluntary decision. (page 29)

20. Although some of the board members of Adoption by Gentle Care believed that the Court should consider the best interest of the child, the only evidence of the Appellant's ability to parent was positive towards her. (pages 29-30)

Gentle Care's policy of declining permanent surrender agreements when it is evident that the mother is surrendering involuntarily or being pressured by a third party should have caused any fiduciary to protect Carri. (TR 7/30/14 at 295, 297, 299 – 300; TR 7/31/14 at 186.) Gentle Care's social workers assume a fiduciary relationship with mothers and are promoted as being their available advocates, (Exh. M, pg. 2; TR 7/31/14 at 24: 10 – 11, 134 – 135). The contravention of that duty turned Ms. Schumaker into an advocate for the monetary enhancement of Gentle Care and not as a protector for Carri. She violated her fiduciary duty to Carri. Gentle Care's choice to proceed to the

permanent surrender agreement while knowing of the coercion from Jeff therefore was a knowing furtherance of the duress. Furthering the duress contributes to the duress. *See, In re Hua*, 62 Ohio St.2d 227

The Appellant claims to have discussed all options, but we know that is not true since the Trial Court on pages 27 and 28 of the trial court decision of September 23, 2015 the trial court defines “ ‘Discuss’ means ‘to speak with another or others about; talk over.’ The options an agency must discuss include keeping the child, placing the child with nonrelatives temporarily, and placing the child in temporary custody/foster care.” This discussion never happened. Therefore, the Appellee never complied with the regulations that required a discussion. There simply was no discussion as demanded by OAC:5101:2-42-09. On page 29 the trial court says that the chance to discuss or ask questions is insufficient and the regulations demand an actual verbal explanation of the options by the assessor which includes the 30 day agreements. Had the Appellant been told of a 30 day agreement as required under the law it would have solved the sudden insurmountable dictate that she had no place for herself and then six children within hours of a major surgery and delivery of Camden.

In re Adoption Of Baby Girl E., 2005-Ohio-3565

"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." *Id.*, citing Tallmadge, *supra*. **Duress is present when a state of mind was created such that the person giving consent "was induced to do an act which [s]he would not otherwise have done and which [s]he was not bound to do."** Tallmadge, at 340. {¶32} In determining whether duress is present, a court assesses the effect of claimed "threats" upon the particular individual providing the consent, not the effect of such "threats" upon an "ordinary" individual.

The Appellee wants us to believe that to rule that there was duress and that the Appellee assisted by claiming to be a fiduciary for the benefit of the Appellant while ignoring the law will hurt their business demands a reversal. The cure is simple, do it right. Adoption is a wonderful cure when it is needed, but it is a horrible punishment when it is not.

On April 13, 2014 the Appellant personally contacted the Appellee and explained again that it was not her choice to give up her baby. (Exhibit K, pg. 9) On April 14, 2014 Pat Hamilton after being paid by the Lloyds filed for adoption. On April 15, 2014 the Lloyds (the adoptive family) requested a dependency hearing and this request was sent to Pat Hamilton (Exhibit K, pg. 10) who evidently represented both the Lloyds and the Appellee. It also appears from the record that no dependency hearing was requested or conducted, even though Pat Hamilton was instructed to do so.

The Lloyds returned Camden to the Appellee because "...they are concerned about the life long ramifications of parenting a child whose biological parent wants him..." (Exhibit K, pg. 15) On April 30, 2014 the Lloyds having expressed their choice to not adopt "He (Camden) will be placed in foster care with the likely end result being that the baby will be returned to birthmother." (Exhibit K, pg 16) On May 22, 2014 Camden was moved from the foster home of April 30, 2014 to another foster home. (Exhibit K, pg. 22) On or about May 23, 2014 someone from the Appellee called Kelly Green magistrate in the Franklin County, Ohio Probate Court and told her that Camden had been returned to the Appellant and that the adoption proceeding filed by the Lloyds was no longer at issue. (Exhibit K, pg. 23)

The Appellant did meet with her social worker assigned to her by the Appellee, Kelly Schumaker on March 27, 2014 but the notes contained in Exhibit K on page 4 give us a far different picture of what transpired than that reported on page 9 of the Appellee's Brief. The Appellant repeats over and over again that "she feels that she has no choice". Again on March 31, 2014 the Appellant again reports to her social worker Kelly Schumaker and Kelly Schumaker reports that the Appellant "seems to be very conflicted about what she wants to do and would really like to parent ...". Kelly Schumaker was Carri's social worker and fiduciary. As an experienced social worker who was given the task of looking out for the well being of her client she was aware of Carri having "no choice" and should have discussed the thirty day option provided in R.C. 5103.15 and she did not. This thirty days clearly would have solved the Appellant's dilemma since it was less than ten days until she resolved her confliction and was ready and able to parent. The testimony of Dr. Amato fully explains that Carri's ability to make decisions was restored once she was off of the pain medications, the hormonal dump, had recovered from major surgery and all of the associated threats and pressures. Kelly Schumaker must have known all of this since the Appellee saw the benefit of restoring Camden to his mother but allowed her employer to trample Carri's rights when she should have protected them.

Carri kept reporting to Kelly Schumaker that she was in pain and sleepy. Carri never wanted to give up Camden as would have been seem by an experienced social worker like Kelly Schumaker. Even the discussion on April 4, 2014 where Carri asked that the footprint of Camden be placed in an envelope so Carri could keep it (Exhibit K, pg. 8) for whenever she wanted to look at it should have given a fiduciary pause and at

least delay any signing. Carri was both physically and emotionally unable to make an informed decision.

Another factor contributing to duress was that the biological father insisted that the Appellant get an abortion. The biological father, Steven Lump, stated in his text message to the Appellant she should abort this child and have another. (Trans. August 19, 2014, pg. 113, lines 18-21) She was being harassed to terminate the pregnancy, which was additional pressure and an assurance that she would be on her own. (Trans. July 29, 2014, pg. 40, lines 7-20)

Appellant additionally was under the influence of narcotics prescribed by her obstetrician for pain resulting from her cesarean section. She was in a heightened state of anxiety and depression due to the natural hormonal increase influencing her behavior. She was released from the hospital with instructions not to make any important decisions due to the influence of the narcotics in her system.

With all of these outside influences added to the ones previously discussed there can be no question of the undue influence and duress the Appellant was experiencing at the time she was asked to permanently give up her child. Dr. Amato's expert testimony of July 29, 2014 is most telling:

1. Pg. 98 Dr. Amato is concerned about the biological father's induced stress; that Appellant was not giving real thought to her choice; and she was on the narcotic vicodin.
2. Pg. 106 The Appellant was not to make any important decisions while on vicodin.

3. Pg. 109 In the Appellant's situation the effects of vicodin would be compounded.
4. Pg. 111 There is a hormonal dump that really hits approximately 48 hours after birth which causes postpartum blues and depression specifically in the Appellant's situation of not going home with her child.
5. Pg. 113 This is not just depression but **major depression**.
6. Pg. 118 Dr. Amato did not believe that she had the ability to make a decision regarding giving up her child.
7. Pg. 126 Since Vicodin, Norco and Percocet all have Tylenol in them it makes these narcotics even more powerful.

Thus, the permanent surrender agreement executed by Carri and Gentle Care was a product of duress or undue influence and therefore invalid. The ability to exercise one's own free will is dependant upon all of the circumstances at the time decisions are to be made. There was no discussion of the alternatives available to the Appellant, her fiduciary was not acting for the best interests of her charge, Carri had just undergone major surgery, she was under the influence of serious drugs and as soon as these chemical and biological inhibitors were removed and the sudden rejection by her significant other of six and one half years were removed and her free will was restored she demanded the return of her child and that child was returned by the adoptive family to the Appellee, but for strictly political and financial concerns the Appellee denied Carri's right to have her child.

The Appellee hangs its hat on "The trial court's finding that Ms. Stearns had ample discussion and time to consider her decision is supported by the trial testimony and

evidence.” However, the trial court on page 29 of its decision concedes that the chance to discuss or ask questions is insufficient the regulations demand an actual verbal explanation of the options by the assessor which includes the 30 day agreements. It is clear that this discussion never occurred. Providing materials is not a discussion as required.

The Appellant did not place her trust in the Appellee but into her individual social worker. Kelly Schumaker was repeated told by the Appellant that she had no choice and was being forced. When arguing about whether or not Kelly Schumaker assumed the role of Carri’s fiduciary the Appellee ignores that we operate under Common Law which includes the findings of this court as in the case of **Groob v. KeyBank**, 843 N.E.2d 1170, 108 Ohio St.3d 348, 2006-Ohio-1189 (Ohio 2006) this Court defined a fiduciary as follows:

a fiduciary is defined as " 'a person having a duty, created by his undertaking, to act primarily for the benefit of another in matters connected with his undertaking." ' " (Emphasis deleted.) **Strock v. Pressnell** (1988), 38 Ohio St.3d 207, 216, 527 N.E.2d 1235, quoting **Haluka v. Baker** (1941), 66 Ohio App. 308, 312, 20 O.O. 136, 34 N.E.2d 68, quoting 1 Restatement of the Law, Agency (1933), Section 13, Comment a. The full breadth of a fiduciary duty is not appropriate when parties are engaged in a business transaction in which each is operating according to his own best interests.

This Court has remained consistent in its defining a fiduciary as it did in **Strock v. Pressnell**, 38 Ohio St.3d 207 (Ohio 1988) when it said:

It was correctly stated that a fiduciary is " 'a person having a duty, created by his undertaking, to act primarily for the benefit of another in matters connected with his undertaking' [quoting **Haluka v. Baker** (1941), 66 Ohio App. 308, 312, 20 O.O. 136, 138, 34 N.E.2d 68, 70]." (Emphasis added.) This is precisely the situation in the case

at bar. Pressnell enjoyed a position of trust "created by his undertaking" (i.e., his position as a marriage counselor). But for Pressnell's professional status, appellant and his wife would not have sought his guidance.

On page 36 of the Appellee's Brief it cites paragraph #37 as a finding of the Appeals Court that the discussion of alternatives to adoption occurred. I can only ask this Court to read pages 87 and 88 of the July 31, 2014 transcript and there was no discussion. Handing a distraught mother a pamphlet is not a discussion and the failure to have that discussion further tells her that she has no choice.

The Appellee on page 37 of its Brief states that the testimony of Kelly Schumaker shows that nothing about the Appellant's level of anxiety was of concern when in Exhibit K we find that the Appellant repeats over and over again that "she feels that she has no choice". Again on March 31, 2014 the Appellant again reports to her social worker Kelly Schumaker and Kelly Schumaker reports that the Appellant "seems to be very conflicted about what she wants to do and would really like to parent ...". Kelly Schumaker seems confused as to Carri's level of anxiety. I ask that we read the pamphlet and even in this document that was not discussed there is no explanation of the thirty day option. Handing someone a pamphlet does not equate to a discussion.

Had the Appellee been as thorough as the Counsel for the Appellee was on page 38 of the Brief and explained that "When an agency takes temporary custody arrangements must be made for temporary foster care while the birth mother considers her options" and included the explanation of the thirty days renewable of 30 days and the placement with a relative the Appellant would have her baby and we would not be in this Court.

One should find it interesting that Beth Simmons was given special consideration since she was about to leave on maternity leave. With that special consideration goes its effect that her testimony could only be rebutted when all the witnesses to be presented by the Appellee were done and as such waived its right to move for a dismissal under 41(B)(2).

I am sorry if the language in my brief upsets Appellee's Counsel but the truth is that a fee is charged for the adoption and this fee is nonrefundable and exceeds \$30,000.00 per child. The truth of this statement is contained on the website http://www.adoptionbygentlecare.org/forms/af_information_general.pdf. This information is available to the general public. Non profit does not carry with it some sort of benevolence and does not excuse the Appellee from its obligation to discuss.

The Appellant believes that the statutes should be meticulously followed and when appropriate adoptive families should be considered. " [T]he right of a natural parent to the care and custody of his children is one of the most precious and fundamental in law." **In re Adoption of Masa** (1986), 23 Ohio St.3d 163, 164. There is no adoptive family in this case since the only adoptive family returned the child to be reunited with his mother.

**REPLY ARGUMENT AS TO THE ARGUMENT OF THE AMERICAN
ACADEMY OF ADOPTION ATTORNEYS**

It is a breath of fresh air to know that this organization has as its ultimate goal to promote the best interests of children and families. The brief should then have noted that there is not one word ever mentioned about the child's best interest until this statement by The American Academy of Adoption Attorneys (AAAA). The AAAA argues that the child be given a permanent home and I suppose not be kept in foster homes for over two

years. With this I agree and apparently so did the Appellee until it decided to teach the Appellant a lesson and to keep Camden in limbo. I must assume that AAAA was not told that the adoptive family returned Camden to go back to his mother over two years ago.

The AAAA seems to want to argue the facts and not the law. AAAA seems to ignore that the Appellant told her social worker that she had no choice. One must look at the totality of the situation. It should be noted that most of the representations by this Appellant came from the business records of the Appellee. I would have hoped that before diving headlong into this case AAAA would have reviewed Exhibit K.

Jeff suddenly giving Carri notice when she was 8 ½ months pregnant that she and her six children would be homeless if Carri brought Camden home, Carri had just undergone major surgery, she was suffering from a hormonal dump, she was extremely depressed, she was on oxycotin and Tylenol, and it was as soon as the narcotics and the hormonal excess and her recovery from the surgery was under way that she recovered her will and retracted her surrender.

CONCLUSION

The decisions of the Courts below should be reversed and the minor child, Camden, ordered returned to his mother.

Respectfully submitted



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APPENDIX



FEE SHEET

**All fees are non-refundable and are subject to change.
A 3% convenience fee is added to all credit card payments.**

DESCRIPTION	AMOUNT	COMMENTS
Application Fee	195	
Activation	10,000	
Paper Profile	Varies	Paid directly to profile company
Video Profile	1,300	Paid directly to Show Pro Media
Match	13,500	
Medical Deposit	Varies	See " Medical Deposit" for summary of charges
Living Expense Deposit	3,000	
Homestudy Services		
Homestudy	1,500	
Homestudy Update	550	
Annual Review	250	
Homestudy Review	200	
Expedited Homestudy	200	If expected within 30 days
Homestudy Conversion	750	International to Domestic
Homestudy Addendum	125	
Multiple Children/Large Family Assessment	125	
Transfer a Homestudy to AGC	250	
Independent Individual Services		
Domestic Pre-Finalization Supervision	1,000	7 visits within 6 months
Domestic Pre-Finalization Supervisory Visits	175	Per visit
International Supervisory Visits	225	Per visit
Independent Assessor Services	75 Per Hour	Certified Adoption Assessor Services
Mileage	Varies	Federal rate per mile if the Social Worker must travel more than 60 miles round trip
Termination of Birth Father/Husband Rights	1,500	Estimated cost
Birth Mother Counseling	750	Maximum fee per birth parent
Finalization Outside Franklin County	200	If finalization needs to occur outside of Franklin County, the adoptive family must contact the Executive Director for authorization
Weekend/After Hours	200	If surrender, placement, and or hospital discharge occurs after 5:00pm or on a weekend.
Birth Parent Legal	Varies	Attorney fees incurred for legal representation of a birth parent.
Foster Care	58	Estimated cost of foster care per day.
Training Attendance Fee	25	Per person



What factors affect a families waiting time?

Over our years of experience, we have determined there are essentially four factors that can affect your waiting time. They are:

1. The number of expectant mothers an adoption professional reaches compared to the number of adoptive families on their waiting list.
2. The expectant mothers selection of a family. This is, obviously, an impossible variable for any professional to predict.
3. The degree of openness a family has on their Adoption Planning Questionnaire. The more adoption situations with which you are comfortable, the more times we can share your profile with expectant mothers.
4. The quality of the profile. In our research, we have found expectant mothers prefer our profiles because they are professional, attractively designed, and easy to read. Our profiles provide us a distinct advantage over other adoption professionals.

What factors typically cause the waiting time to be longer than average?

Since birth mothers select the adoptive family, we feel it is important to share the feedback we have received from birth mothers. The following situations may add to your waiting time:

- Single parent.
- If a parent is older.
- If families have more than one child living in their home.
- Those who do not provide good photographs and information on their profile.

If you fall into one of the categories above, you will want to talk with our adoption specialists to determine how much the above factors could affect your waiting time. It should be noted that if you fall into one of the above categories, it does not prevent you from joining Gentle Care. We feel obligated, as adoption professionals, to disclose any feedback received from birth mothers.

What are the costs to adopt through Adoption by Gentle Care?

Around 90% of our adoptions range from \$28,000 to \$32,000. There are additional costs that may occur for some of the more challenging cases, such as medical expenses and legal expenses. Please see our Fee Sheet for a listing and explanation of most fees.