

ORIGINAL

IN THE SUPREME COURT OF OHIO

THE STATE OF OHIO, EX REL.
COLEENA CAIRO AND
DEBRA AND RUSSELL CARDER
C/O JEANETTE MOLL, ESQ.
301 MAIN STREET
SUITE H
ZANESVILLE, OH 43701

CASE NO. 16-1370

ORIGINAL ACTION IN PROHIBITION

Relators.

EXPEDITED: This action involves the
adoption of minor children – S.Ct.Prac.R.
10.10

v.

JUDGE ERIC MARTIN
MUSKINGUM COUNTY JUVENILE CT
1860 EAST PIKE
ZANESVILLE, OH 43701

Respondent.

COMPLAINT FOR WRIT OF PROHIBITION

Jeanette M. Moll (0066786)
Jeanette M. Moll, LLC
301 Main Street
Suite H
Zanesville, OH 43701
Phone: 740-297-4700
Fax: 740-
Email: jmollesq@gmail.com

Counsel for Relators

FILED
SEP 16 2016
CLERK OF COURT
SUPREME COURT OF OHIO

Now come the Relators, Maternal Grandmother of the four minor children, Coleena Cairo (Legal Custodian and pre-finalization adoptive parent of K.G., D.B. and K.B.), as well as the Paternal Grandmother/Legal Custodian/pre-finalization adoptive parents of M.B., Debra and Russell Carder, by and through their respective counsel, and respectfully petition this Honorable Court for a Writ of Prohibition which prohibits the Respondent, Judge Eric Martin, and the Muskingum County Juvenile Court from proceeding with Case Numbers 21130016, 17, 18, and 118 Muskingum County Juvenile Court, based on the following:

PRELIMINARY STATEMENT

1. This is an original action under the laws and Constitution of the State of Ohio in which the Respondent, Judge Eric Martin, and the Muskingum County Juvenile Court have exercised and are about to exercise judicial power in a case in which he and his Court patently and unambiguously do not have jurisdiction.

JURISDICTION

2. Original jurisdiction in this Court pursuant to Section 2(B)(1)(d), Article VI of the Ohio Constitution.

PARTIES

3. Relators are residents of Muskingum County and are the Legal Custodians, Grandparents, and pre-finalization adoptive parents of the minor children who are the subject matter of Case Nos 21130016, 17, 18 and 118 in Muskingum County Juvenile Court. The minor

children and the Relators are the subjects of adoption proceedings in Muskingum County which were officially initiated by filing petitions to adopt the minor children on June 24, 2016 in Muskingum County Court of Common Pleas, Probate Division Case Nos. 20164022, 23, 24, and 25. Such Petitions were set for hearing on September 1, 2016 by Entries of June 24, 2016 and remain pending.

4. Respondent Judge Eric Martin is now and at all relevant times has been the Judge of the Muskingum County Juvenile Court in Muskingum County, Ohio. Respondent Judge Eric Martin is also the Judge of the Muskingum County Probate Court in Muskingum County, Ohio.

FACTS

5. The minor children, K.G. and D.B. are in the legal custody of Relator, Coleena Cairo, pursuant to Muskingum County Juvenile Court Entry of August 30, 2011 (Case Nos. 21130016 & 17). The minor child, K.B. is in the legal custody of Relator, Coleena Cairo, pursuant to Muskingum County Juvenile Court Entry of August 31, 2011 (Case No. 21130118). Relator, Coleena Cairo, is the maternal grandmother of all four minor children and the pre-finalization adoptive parent of K.G., D.B. and K.B (Probate Case Nos. 20164023, 24, & 25). Relators, Debra and Russell Carder, are the Paternal Grandparents, Legal Custodians pursuant to Muskingum County Juvenile Court Entry of August 30, 2011 (Case No. 21130018), and pre-finalization adoptive parents of M.B (Probate Case No. 20164022).

6. The Mother, after service of the Petitions for adoption, filed pro se Motions to Show Cause in the Muskingum County Juvenile Court on July 20, 2016.
7. The Mother has filed no pleadings or objection in the Muskingum County Probate Court as to the pending Petitions to Adopt.
8. The Relators filed Motions to Stay in the Muskingum County Juvenile Court on the basis of lack of jurisdiction on July 26, 2016.
9. The Relators filed Second Motions to Stay in the Muskingum County Juvenile Court on the basis of lack of jurisdiction on September 6, 2016.
10. The Respondent filed Entry denying the stay on the afternoon of September 12, 2016 in Muskingum County Juvenile Court.
11. The Respondent, by prior Entry, set the Juvenile Court case for hearing on September 13, 2016. The September 13, 2016 hearing was continued due to the unavailability of the Undersigned due to a family emergency on September 13, 2016.
12. The Petitions for adoption continue to pend in Muskingum County Probate Court due to the Respondent continuing the cases despite the failure of the Mother or any of the Fathers to appear for the adoption hearings after notice and service. Testimony and evidence were present in Probate Court Case No. 20164022 as to parental abandonment and best interests. The Respondent stated on the record that he was appointing a Guardian ad Litem to determine if there was justifiable cause for parental abandonment as to all four adoption cases. The Undersigned objected on the record of the Probate Court as the legal burden to prove justifiable cause rests solely on the parents who failed to file written objections or to appear. Neither the Court nor a GAL has the legal ability

to prove justifiable cause. Respondent also questioned on the record of the Probate Court the status of the Juvenile Court proceedings. The basis of the Respondent's knowledge of the Juvenile Court action is unknown as a Judge has no ability to take judicial notice of other cases pending in other courts. Moreover, the Juvenile Court cases were not open and had no pending motions at the time of the filing of the Petitions. Respondent then questioned whether justifiable cause would exist if the Juvenile Court found the Relators in Contempt. The Undersigned noted that the Probate Court has exclusive jurisdiction due to the filing of the Petitions. Nevertheless, the Respondent continued all four cases relating to adoption.

13. The Respondent has set the Juvenile Court cases to proceed on September 20, 2016 while having failed to schedule the Probate Cases.
14. The Relators filed Motions to Dismiss for lack of jurisdiction in the Muskingum County Juvenile Court on September 15, 2016 but it is unlikely that such motions will be ruled on in a timely manner prior to the Juvenile Court proceeding on September 20, 2016. Moreover, should the Motions to be denied, there will be insufficient time available to appeal before the Juvenile Court proceeds without jurisdiction such that speed is of the essence.

JUSTIFICATION FOR WRIT

15. The Muskingum County Juvenile Court "patently" and unambiguously lacks jurisdiction to proceed.
16. The probate court has exclusive jurisdiction in adoption matters pursuant to O.R.C. Chapter 3107. The juvenile court may not impede that jurisdiction.

The probate court has complete jurisdiction over the parties and subject matter of the adoption proceedings before it. In re McTaggart, (1965), 4 Ohio App. 2d 359, 33 O.O.2d 447, 212 N.E. 2d 663. The probate court has the power to fully hear and determine adoption proceedings. See State ex rel. Portage Cty. Welfare Dept. v. Summers, (1974), 38 Ohio St. 3d 144, 67 O.O.2d 151, 311 N.E. 2d 6...

The...juvenile court overstepped its bounds...[the adoption] is for the probate court to decide. The power to grant or deny an adoption rests in the probate court. In re Adoption of Ridenour, (1991), 61 Ohio St.3d 319, 325, 574 N.E. 2d 1055, 1060. The trial court's ruling represented a de facto denial of appellants' adoption petition. In re The Adoption of Hitchcock, 120 Ohio App. 3d 88.

17. The exclusive jurisdiction of the probate court is well-established principal which has been recognized in numerous Ohio courts including In re Ridenour, 61 Ohio St 3d 319 (1991) (The probate court is empowered by the legislature to reach adoption decisions...If the probate court is bound by a prior order from another court, then the probate court may be forced to sacrifice the best interests of the child in order to protect the rights of third parties....); In re Hitchcock, 120 Ohio App. 3d 88 (3rd Dist., 1996) (Jurisdiction over parties and subject matter of adoption proceedings is vested exclusively in (the) probate court. Continuing jurisdiction of juvenile court is not (a) jurisdictional bar to adoption proceedings in probate court going forward...even if juvenile court may not agree with (a) specific adoption...The juvenile court's order (attempting to block the placement) is, in effect, a denial of the foster parents' adoption petition and as such exceeded the juvenile court's jurisdiction); In re Stojkou, 2003 WL 352763 (11th Dist., 2003) (Probate court has jurisdiction over the adoption petition...domestic relations court has jurisdiction over visitation and custody issues; the legal issues and parties differed [in the two cases]...even though the same children were at the center of both legal disputes.

The probate court had exclusive jurisdiction over adoption matters). See also State ex rel. Montgomery v. MLG, 2012-Ohio-3591, (Dist. 10, 2016); Caskey v. Gano, 2011-Ohio-6144 (Dist. 2, 2011); In re Joshua Tai T, 2009-Ohio-2733; In re TNW, (Dist. 8, 2008) 2008 Ohio 1088; In re Adoption of RNLO, (Dist. 12, 2007) 2007 Ohio 4215.

18. Moreover, “the continuing jurisdiction of the juvenile court [does] not present a jurisdictional bar to adoption proceedings in probate court.” In re Adoption of McDermitt, 408 N.E.2d 680, 63 Ohio St.2d 301, 17 O.O.3d 195 (Ohio, 1980).
19. The Muskingum County Juvenile Court proceeding as to a Motion to Show Cause relating to the alleged denial of parenting time may well be a de facto denial of the adoption petitions which rest, in part, on the mother’s failure to have more than de minimus contact with the minor children without justifiable cause.
20. The Muskingum Juvenile Court ruling denying the stay is an attempt to divest the Muskingum County Probate Court of its right to adjudicate the adoption. This is impermissible. In re Hitchcock, 120 Ohio App 3d 88, 103-104 (1994).
21. The juvenile court’s grant of jurisdiction at O.R.C. 2151.22(A)(2) limits its jurisdiction to those children who are not wards of any other court.
22. The Muskingum County Probate Court has exercised its exclusive adoption jurisdiction over the minor children. They are wards of the Muskingum County Probate Court.
23. There is no adequate remedy at law. For a remedy to be adequate, the remedy must be complete, beneficial, and speedy...(A conventional) appeal in this matter would not be adequate because it would not be complete or speedy...It is important that the minor children be placed in a permanent home environment at the earliest possible moment.

Marich v. Knox County Department of Human Services, 45 Ohio State. 3d 163 (Ohio 1989).

24. The Mother failed to file written opposition to or appear at the adoption hearing in probate court thereby waiving her ability to provide testimony and evidence in opposition to the Petitions including as to justifiable cause for parental abandonment. As per Ohio law, the Notice of Hearing on Petition for Adoption, Form 18.2, served on the Mother in the Muskingum County Probate Court and filed June 24, 2016 contains the following language:

IF YOU WISH TO CONTEST THE ADOPTION, YOU MUST FILE AN OBJECTION TO THE PETITION WITHIN FOURTEEN DAYS AFTER PROOF OF SERVICE OF NOTICE OF THE FILING OF THE PETITION AND OF THE TIME AND PLACE OF HEARING IS GIVEN TO YOU. IF YOU WISH TO CONTEST THE ADOPTION, YOU MUST ALSO APPEAR AT THE HEARING. A FINAL DECREE OF ADOPTION MAY BE ENTERED IF YOU FAIL TO FILE AN OBJECTION TO THE ADOPTION PETITION OR APPEAR AT THE HEARING.

25. The Muskingum County Juvenile Court is attempting to permit the Mother to have an unlawful and impermissible second bite at the apple to prove justifiable cause by permitting the later filed Motions to Show Cause to proceed in Juvenile Court prior to the Petitions for Adoption in Probate Court.

26. The granting of the Petitions for Adoption will render the Juvenile Court Motions to Show Cause moot as the adoptions will divest the Mother of her rights as a parent. If the adoptions are not granted, the Mother's Motions may be set for hearing once the jurisdiction of the Probate Court has ended. Unlike adoptions, there is no legal basis providing for timely or expedited hearing of motions to show cause. The placement of

children into permanent homes, conversely, is to occur “at the earliest possible moment.”

Marich v. Knox County Department of Human Services, 45 Ohio State. 3d 163 (Ohio 1989).

27. If contempt is found, an appeal will further delay the Petitions for Adoptions and further delay permanency for these children.
28. The conventional remedies at law are not speedy.
29. The scheduling orders of the Juvenile Court cannot be appealed because they are not final, appealable orders. Without a writ, the Juvenile Court may enter findings that may be dispositive in the Probate case. The conventional legal route is not complete.
30. The adoption rules of this court are expedited in recognition of the urgent needs of children to have permanency and stability.
31. This court has held in In re Adoption of Zschach (1996), 75 Ohio St. 3d 648, 651, 665 N.E.2d 1070:

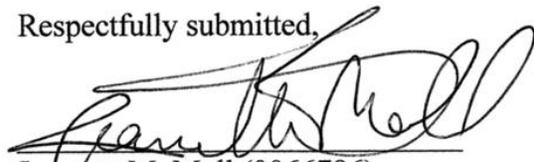
[U]ltimately, the goal of adoption statutes is to protect the best interests of children. In cases where adoption is necessary, this is best accomplished by providing the child with a permanent and stable home...and ensuring that the adoption process is completed in an expeditious manner... If these goals are met, the new parent-child relationship will have the best opportunity to develop fully.

WHEREFORE, the Relators respectfully move this Honorable Court to expedite this action while issuing an immediate stay to the Respondent and his Juvenile Court, to issue a Writ of Prohibition that prohibits the Respondent, Judge Eric Martin and his Juvenile Court, from proceeding with Case Nos. 21130016, 17,18 and 118 of the Muskingum County Juvenile Court and that directs the Respondent, Eric Martin and his Juvenile Court, to dismiss the Motions to

Show Cause without prejudice, and directs the Respondent, Judge Eric Martin and his Juvenile Court to exercise no further jurisdiction over this matter, until at least after the completion of the adoption proceedings in Muskingum County Probate Court have concluded, and that Relators be awarded court costs, attorney fees, and such other and further relief as the Relators may be entitled under law or in equity.

The Muskingum County Juvenile Court lacks jurisdiction to make any determination as to the pending motions. “[T]his is not a mere error in the exercise of jurisdiction; it is a defect in the....Court’s subject matter jurisdiction.” Rosen v. Celebrez1ze, 117 Ohio St.3d 241, 248; 2008 Ohio 853; 883 N.E. 2d 420, “Because subject-matter jurisdiction goes to the power of the court to adjudicate the merits of a case, it can never be waived and may be challenged at any time.” *Id.* at 249. Further, the Petitions for Adoptions in the Probate Court pre-date the filing of the Motions to Show Cause such that exclusive jurisdiction already resided in the Probate Court.

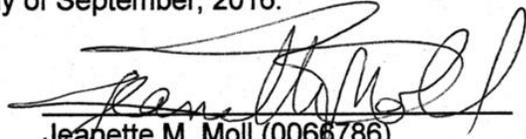
Respectfully submitted,



Jeanette M. Moll (0066786)
Attorney for Relators
Jeanette M. Moll, LLC
301 Main Street
Suite H
Zanesville, OH 43701
(740) 297-4700

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing was duly served upon the Respondent by hand delivery on this 16th day of September, 2016.



Jeanette M. Moll (0066786)
Attorney for Relators

AFFIDAVIT

STATE OF OHIO
COUNTY OF MUSKINGUM, ss:

Coleena Cairo and Debra Carder duly cautioned and sworn, states the following is true and accurate to their knowledge and belief:

1. Relators are residents of Muskingum County and are the Legal Custodians, Grandparents, and pre-finalization adoptive parents of the minor children who are the subject matter of Case Nos 21130016, 17, 18 and 118 in Muskingum County Juvenile Court. The minor children and the Relators are the subjects of adoption proceedings in Muskingum County which were officially initiated by filing petitions to adopt the minor children on June 24, 2016 in Muskingum County Court of Common Pleas, Probate Division Case Nos. 20164022, 23, 24, and 25. Such Petitions were set for hearing on September 1, 2016 by Entries of June 24, 2016 and remain pending.
2. Respondent Judge Eric Martin is now and at all relevant times has been the Judge of the Muskingum County Juvenile Court in Muskingum County, Ohio. Respondent Judge Eric Martin is also the Judge of the Muskingum County Probate Court in Muskingum County, Ohio.
3. The minor children, K.G. and D.B. are in the legal custody of Relator, Coleena Cairo, pursuant to Muskingum County Juvenile Court Entry of August 30, 2011 (Case Nos. 21130016 & 17). The minor child, K.B. is in the legal custody of Relator, Coleena Cairo, pursuant to Muskingum County Juvenile Court Entry of August 31, 2011 (Case No. 21130118). Relator, Coleena Cairo, is the maternal grandmother of all four minor children and the pre-finalization adoptive parent of K.G., D.B. and K.B (Probate Case

Nos. 20164023, 24, & 25). Relators, Debra and Russell Carder, are the Paternal Grandparents, Legal Custodians pursuant to Muskingum County Juvenile Court Entry of August 30, 2011 (Case No. 21130018), and pre-finalization adoptive parents of M.B (Probate Case No. 20164022).

4. The Mother, after service of the Petitions for adoption, filed pro se Motions to Show Cause in the Muskingum County Juvenile Court on July 20, 2016.
5. The Mother has filed no pleadings or objection in the Muskingum County Probate Court as to the pending Petitions to Adopt.
6. The Relators filed Motions to Stay in the Muskingum County Juvenile Court on the basis of lack of jurisdiction on July 26, 2016.
7. The Relators filed Second Motions to Stay in the Muskingum County Juvenile Court on the basis of lack of jurisdiction on September 6, 2016.
8. The Respondent filed Entry denying the stay on the afternoon of September 12, 2016 in Muskingum County Juvenile Court.
9. The Respondent, by prior Entry, set the Juvenile Court case for hearing on September 13, 2016. The September 13, 2016 hearing was continued due to the unavailability of the Undersigned due to a family emergency on September 13, 2016.
10. The Petitions for adoption continue to pend in Muskingum County Probate Court due to the Respondent continuing the cases despite the failure of the Mother or any of the Fathers to appear for the adoption hearings after notice and service. Testimony and evidence were present in Probate Court Case No. 20164022 as to parental abandonment and best interests. The Respondent stated on the record that he was appointing a

Guardian ad Litem to determine if there was justifiable cause for parental abandonment as to all four adoption cases. The Undersigned objected on the record of the Probate Court as the legal burden to prove justifiable cause rests solely on the parents who failed to file written objections or to appear. Neither the Court nor a GAL has the legal ability to prove justifiable cause. Respondent also questioned on the record of the Probate Court the status of the Juvenile Court proceedings. The basis of the Respondent's knowledge of the Juvenile Court action is unknown as a Judge has no ability to take judicial notice of other cases pending in other courts. Moreover, the Juvenile Court cases were not open and had no pending motions at the time of the filing of the Petitions. Respondent then questioned whether justifiable cause would exist if the Juvenile Court found the Relators in Contempt. The Undersigned noted that the Probate Court has exclusive jurisdiction due to the filing of the Petitions. Nevertheless, the Respondent continued all four cases relating to adoption.

11. The Respondent has set the Juvenile Court cases to proceed on September 20, 2016 while having failed to schedule the Probate Cases.
12. The Relators filed Motions to Dismiss for lack of jurisdiction in the Muskingum County Juvenile Court on September 15, 2016 but it is unlikely that such motions will be ruled on in a timely manner prior to the Juvenile Court proceeding on September 20, 2016. Moreover, should the Motions to be denied, there will be insufficient time available to appeal before the Juvenile Court proceeds without jurisdiction such that speed is of the essence.

13. The Muskingum County Juvenile Court proceeding as to a Motion to Show Cause relating to the alleged denial of parenting time may well be a de facto denial of the adoption petitions which rest, in part, on the mother's failure to have more than de minimus contact with the minor children without justifiable cause.

14. The Mother failed to file written opposition to or appear at the adoption hearing in probate court thereby waiving her ability to provide testimony and evidence in opposition to the Petitions including as to justifiable cause for parental abandonment. As per Ohio law, the Notice of Hearing on Petition for Adoption, Form 18.2, served on the Mother in the Muskingum County Probate Court and filed June 24, 2016 contains the following language:

IF YOU WISH TO CONTEST THE ADOPTION, YOU MUST FILE AN OBJECTION TO THE PETITION WITHIN FOURTEEN DAYS AFTER PROOF OF SERVICE OF NOTICE OF THE FILING OF THE PETITION AND OF THE TIME AND PLACE OF HEARING IS GIVEN TO YOU. IF YOU WISH TO CONTEST THE ADOPTION, YOU MUST ALSO APPEAR AT THE HEARING. A FINAL DECREE OF ADOPTION MAY BE ENTERED IF YOU FAIL TO FILE AN OBJECTION TO THE ADOPTION PETITION OR APPEAR AT THE HEARING.

15. The Muskingum County Juvenile Court is attempting to permit the Mother to have an unlawful and impermissible second bite at the apple to prove justifiable cause by permitting the later filed Motions to Show Cause to proceed in Juvenile Court prior to the Petitions for Adoption in Probate Court.

16. The conventional remedies at law are not speedy.

17. The scheduling orders of the Juvenile Court cannot be appealed because they are not final, appealable orders. Without a writ, the Juvenile Court may enter findings that may be dispositive in the Probate case. The conventional legal route is not complete.
18. The adoption rules of this court are expedited in recognition of the urgent needs of children to have permanency and stability.


 Colenna Cairo


 Debra Carder

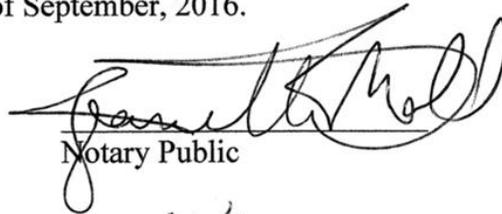
STATE OF OHIO, COUNTY OF MUSKINGUM, SS:

Before me, a Notary Public in and for said state, personally appeared the above named Colenna Cairo, known to me to be the party described in and who executed the foregoing instrument and acknowledge that she executed the same of her own free act and deed, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal at Zanesville, Ohio, this 16th day of September, 2016.



JEANETTE M. MOLL
 ATTORNEY AT LAW
 NOTARY PUBLIC
 STATE OF OHIO
 My Comm. Has No
 Expiration Date
 Section 147.03 R. C.


 Notary Public
N/A
 My Commission Expires

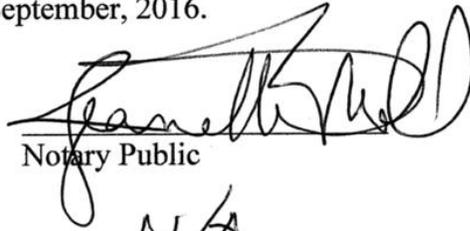
STATE OF OHIO, COUNTY OF MUSKINGUM, SS:

Before me, a Notary Public in and for said state, personally appeared the above named Debra Carder, known to me to be the party described in and who executed the foregoing instrument and acknowledge that she executed the same of her own free act and deed, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal at Zanesville, Ohio, this 15th day of September, 2016.



JEANETTE M. MOLL
ATTORNEY AT LAW
NOTARY PUBLIC
STATE OF OHIO
My Comm. Has No
Expiration Date
Section 147.03 R. C.



Notary Public

N/A
My Commission Expires