

STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

APPEAL FROM CHARLESTON COUNTY
FAMILY COURT
The Honorable Jocelyn B. Cate, Family Court Judge

SEP 17 2018
S.C. SUPREME COURT

Appellate Case No. 2016-000479
Opinion #2018-UP-268 (S.C. Ct. Of App. Filed June 20, 2018)
(Shearouse Ad. Sh. No. 25)

Holly Lawrence, ... Petitioner,

v.

Jennifer Brown, ... Respondent.

APPENDIX

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
In the Family Court
Jocelyn B. Cate, Family Court Judge

Appellate Case No. 2016-000479
Trial Court Case Nos. 2013-DR-10-4057
2013-DR-10-4386

Holly Lawrence, ... Appellant,

v.

Jennifer Brown, ... Respondent.

RECORD ON APPEAL

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**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

Jennifer Brown, Petitioner,

v.

Baby Girl Harper, a minor under the age of seven, and
Holly Lawrence, Respondents.

Appellate Case No. 2014-001746

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From Charleston County
Ronald R. Norton, Family Court Judge

Opinion No. 27448
Heard September 23, 2014 – Filed September 29, 2014

AFFIRMED

John S. Nichols, of Bluestein Nichols Thompson &
Delgado, LLC, of Columbia, and Shannon Phillips Jones,
of Shannon Jones, Attorney at Law, LLC, of Charleston,
for Petitioner.

Allison Boyd Bullard, of Harling & West, LLC, of
Lexington, and James Fletcher Thompson, of James
Fletcher Thompson, LLC, of Spartanburg, for
Respondent.

CHIEF JUSTICE TOAL: Petitioner Jennifer Brown (Adoptive Mother) appeals the court of appeals' decision affirming the family court order finding Respondent Holly Lawrence's (Birth Mother) consent to adoption was invalid and requiring immediate return of Baby Girl Harper (Baby Girl) to Birth Mother. We affirm.

FACTS/PROCEDURAL BACKGROUND

Birth Mother, a resident of Charlotte, North Carolina, gave birth to Baby Girl on [REDACTED], 2013, in Pineville, North Carolina. On October 30, 2013, Birth Mother signed a Consent to Adoption form (the Consent) in Charleston, South Carolina, in which she consented to Adoptive Mother's adoption of Baby Girl.

Birth Mother was twenty-three years old when she learned that she was pregnant very late in the pregnancy. She received no prenatal care. She did not tell her parents she was pregnant, even though she lived with them. She gave birth alone after presenting to the emergency room when she went into labor with Baby Girl. Shortly after the birth, Birth Mother mentioned to hospital staff that she might be interested in placing Baby Girl for adoption. The hospital social worker advised her that, under North Carolina law, she could not make any decision regarding adoption for twenty-four hours following the birth. Other hospital workers were aware that Birth Mother was considering adoption, including the nurse midwife who delivered Baby Girl. The nurse midwife told Birth Mother that the nurse midwife's cousin in South Carolina, Adoptive Mother, was considering adoption, and gave her Adoptive Mother's telephone number.¹

On October 28, Birth Mother and Adoptive Mother spoke via telephone about a potential adoption, and Adoptive Mother indicated that she would contact a lawyer. Birth Mother and Adoptive Mother also verbally agreed that the adoption would be an "open" adoption, which would mean Birth Mother could have visitation, send cards, and otherwise be a part of Baby Girl's life. At some point that same day, Birth Mother was informed that after inquiring with several attorneys, Adoptive Mother could not afford to adopt Baby Girl.

¹ Adoptive Mother is a 41-year-old divorcée with no other children. She testified she had thought about adoption in the past, but was not actively seeking to adopt a child when her cousin, the nurse midwife, contacted her about Baby Girl.

Birth Mother was discharged from the hospital on October 28 prior to Baby Girl's release. On October 29, the nurse midwife called Birth Mother to inform her that Adoptive Mother found a lawyer to assist her with the adoption. From that point, it appears from the Record that attempts were made to conceal the pending adoption. For example, in one text message exchange between Birth Mother and Adoptive Mother, Adoptive Mother stated, "[D]on't tell anyone you are coming here." Furthermore, the nurse midwife hid her vehicle behind bushes at the hospital so that her colleagues could not see her collecting Birth Mother and Baby Girl to transport them to South Carolina.

The nurse midwife bought a car seat and drove Birth Mother and Baby Girl to Columbia. There, they met Adoptive Mother's sister, who drove them the rest of the way to Charleston. The sister paid for Birth Mother and Baby Girl to stay in a local hotel overnight. The next morning, Birth Mother and Baby Girl went to Adoptive Mother's lawyer's office to execute the Consent and related documents. This was the first time that Birth Mother and Adoptive Mother met. Upon meeting, Adoptive Mother testified that they hugged and cried. Birth Mother assured Adoptive Mother she was not going to change her mind. Adoptive Mother felt that Birth Mother was certain about going forward with the adoption.

Adoptive Mother's lawyer rented office space in an executive suite shared by other law firms, including the law firm where the attorney-witness worked.² On the morning of the adoption, Adoptive Mother's lawyer asked the attorney-witness to act as a witness to the execution of the Consent. In addition, Adoptive Mother's lawyer asked a legal assistant from another law firm that also shared the office suite to be the second witness to the adoption.³

Birth Mother's signature appears on the Consent and other relevant forms, and she stipulated at the hearing that she signed the Consent voluntarily.

The legal assistant was present when Birth Mother signed the Consent, but

² The attorney-witness has been admitted to practice law in South Carolina since 2006 and generally does not practice in the area of family law, although she has been appointed to handle child abuse and neglect cases.

³ That witness testified: "I was just walking by and [Adoptive Mother's lawyer] grabbed me and asked me to come in." Like the attorney-witness, the second witness had never been involved in an adoption case or witnessed a relinquishment prior to this instance.

did not see her initial the remainder of the document. She understood her role to be that of a witness to Birth Mother's signature. Adoptive Mother's lawyer notarized Birth Mother's signature.

However, the attorney-witness did not enter the room until after Birth Mother signed the Consent, although she had the impression that Birth Mother had signed the Consent shortly before she entered the room.⁴ Neither witness was present for any discussions between Adoptive Mother's lawyer and Birth Mother regarding the Consent. The attorney-witness testified that she believed that Adoptive Mother's lawyer had explained the Consent to Birth Mother outside of her presence. Once the witnesses were in the room, Adoptive Mother's lawyer restated his prior conversation with Birth Mother in summary fashion. The witnesses signed the Consent, and the attorney-witness's law clerk notarized their signatures.⁵ The entire transaction lasted approximately ten minutes.

Birth Mother left the office with Adoptive Mother's mother, who drove Birth Mother back to the local hotel where she had spent the previous night. Birth Mother spent time alone with Baby Girl there, and then relinquished Baby Girl to Adoptive Mother. However, Birth Mother explained that she "felt immediately that something was not right with the process." Birth Mother remained at the hotel alone until a friend of Adoptive Mother retrieved her and drove her back to Charlotte.

Five days later, on November 5, 2013, Birth Mother sent a registered letter to Adoptive Mother's lawyer formally revoking her consent. Adoptive Mother's action for court approval of this adoption is still pending.

On April 24, 2014, the family court issued an order in a bifurcated hearing

⁴ The attorney-witness believed that if Birth Mother acknowledged her signature in her presence, notarial standards applied, and she could act as a witness and sign. She explained: "[Birth Mother] understood . . . what was there. She acknowledge[d] to me that she understood it before she acknowledged her signature."

⁵ Birth Mother believed that everyone inside the conference room worked for Adoptive Mother's lawyer. However, she signed a form stating that she understood that Adoptive Mother's lawyer represented Adoptive Mother; that Adoptive Mother was willing to pay for her to obtain legal counsel; and that she was entitled to counseling at no expense to her.

finding the Consent was invalid and requiring Baby Girl's immediate return to Birth Mother. In its order, the family court noted the only issue presented to the court was "whether the consent document was properly executed and, based on that ruling, whether Birth Mother's request for emergency transfer of legal and physical custody of the minor be granted." The court held that the relevant statutory provisions were clear and mandatory, such that strict compliance was required. The court further held "the absence of the attorney[-]witness, a witness required by statute, renders the document invalid." The court stated that "since the attorney[-]witness acknowledges she was not present when the document was signed . . . she cannot certify that the provisions of the document were discussed with [Birth] Mother prior to signing." The family court added that each of the alleged defects on their own would render the Consent invalid, "but when combined strengthens further this [c]ourt's ruling that the Consent is invalid."

On August 4, 2014, the court of appeals affirmed the family court, finding (1) that the order was immediately appealable; (2) that the execution of a consent to adopt document must strictly adhere to section 63-9-340 of the South Carolina Code; and (3) that the Consent was invalid because the attorney-witness was not present when Birth Mother signed the document, and neither witness undertook to discuss the provisions of the Consent with Birth Mother prior to her signature. *Brown v. Harper*, ___ S.C. ___, 761 S.E.2d 779, 779 (Ct. App. 2014).

On August 20, 2014, this Court granted Adoptive Mother's petition for a writ of certiorari to review the court of appeals' decision and expedited oral arguments.

ANALYSIS

I. Consent

"Consent lies at the foundation of the adoption process," and therefore, "[i]n order for the court to issue a valid adoption decree, it must appear that the parent has consented or otherwise forfeited his or her parental rights." *Gardner v. Baby Edward*, 288 S.C. 332, 333, 342 S.E.2d 601, 602 (1986) (citing *D'Augustine v. Bush*, 269 S.C. 342, 237 S.E.2d 384 (1977)).

Adoptions are conducted pursuant to the South Carolina Adoption Act (the Adoption Act). *See* S.C. Code Ann. §§ 63-9-10 to -2290 (2010 & Supp. 2013). Under the Adoption Act, "[c]onsent or relinquishment for the purpose of adoption is required of the following persons: . . . the mother of a child born when the mother was not married . . ." S.C. Code Ann. § 63-9-310(A)(3). To effect this

consent, section 63-9-330(A) requires that consent be made by a sworn document signed by the person giving consent and specifies the contents of such document. To formally execute a consent,

[t]he sworn document provided for in Section 63-9-330, which gives consent or relinquishment for the purpose of adoption, *must be signed in the presence of two witnesses one of whom must be one of the following:*

(1) a judge of any family court in this State;

(2) *an attorney licensed to practice law in South Carolina who does not represent the prospective adoption petitioners;*

(3) a person certified by the State Department of Social Services, pursuant to Section 63-9-360, to obtain consents or relinquishments.

S.C. Code Ann. § 63-9-340(A) (emphasis added). In addition, witnesses:

shall attach to the document written certification signed by each witness that before the signing of the document, the provisions of the document were discussed with the person giving consent or relinquishment, and that based on this discussion, it is each witness' opinion that consent or relinquishment is being given voluntarily and that it is not being obtained under duress or through coercion.

Id. § 63-9-340(B) (emphasis added).

Once consent is given, it cannot be withdrawn "except by order of the court after notice and opportunity to be heard is given to all persons concerned, and except when the court finds that the withdrawal is in the best interests of the child and that the consent or relinquishment was not given voluntarily or was obtained under duress or through coercion." *Id.* § 63-9-350. Consequently, South Carolina has a long history of strict construction of adoption statutes:

It is stated in many cases that adoption statutes providing for a procedure or method by which one person may be adopted as the child of another are in derogation of the common law and, therefore, to be strictly construed in favor of the parent and the preservation of the

relationship of parent and child. The rationale of this rule is apparent when we consider that when a final decree of adoption is entered, the natural parents of the adopted child, unless they are the adoptive parents, are relieved of all parental responsibilities for the child and have no rights over such adopted child.

Goff v. Benedict, 252 S.C. 83, 86–87, 165 S.E.2d 269, 271 (1969) (internal citations omitted), *overruled on other grounds by Joiner ex rel. Rivas v. Rivas*, 342 S.C. 102, 536 S.E.2d 372 (2000); *see also Hucks v. Dolan*, 288 S.C. 468, 470, 343 S.E.2d 613, 614 (1986) ("Adoption exists in this state only by virtue of statutory authority which expressly prescribes the conditions under which an adoption may legally be effected. Since the right of adoption in South Carolina is not a natural right but wholly statutory, it must be strictly construed." (citation omitted)).

Here, the parties agree that there were two statutory violations concerning the *execution*: (1) Birth Mother did not sign the Consent in the presence of two witnesses, *see* section 63-9-340(A); and (2) although the witnesses believed a discussion of the Consent occurred, the witnesses were not present for the lawyer's discussion with Birth Mother, and therefore could not certify that the provisions of the Consent were discussed with Birth Mother before she signed the document and that her consent was given voluntarily, *see* S.C. Code Ann. § 63-9-340(B). Thus, Adoptive Mother can prevail only if we use the concept of substantial compliance⁶ to find the execution of the Consent valid under the Adoption Act. Here, we hold that substantial compliance cannot cure the failure to comply with the relevant requirements for formal execution of the consent.⁷

First, the plain, mandatory language of section 63-9-340 weighs against adopting a substantial compliance paradigm with respect to the formalities of execution of a consent to adoption. *See Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) ("What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts

⁶ Substantial compliance has been defined as "compliance in respect to the essential matters necessary to assure every reasonable objective of the statute." *Orr v. Heiman*, 12 P.3d 387, 389 (Kan. 2000).

⁷ We make clear that our decision is narrow and fact-based, and we are not precluding the use of substantial compliance in future cases where technical defects in the consent, such as a scrivener's error, may be at stake. We reach our decision here because the defects in *execution* were material and egregious.

are bound to give effect to the expressed intent of the legislature." (citation omitted)); *see also State v. Morgan*, 352 S.C. 359, 367, 574 S.E.2d 203, 207 (Ct. App. 2002) ("The statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers." (citation omitted)).

Moreover, a finding of substantial compliance here would not further the purposes of the Adoption Act. *See* S.C. Code Ann. § 63-9-20 ("The purpose of this article is to establish fair and reasonable procedures for the adoption of children . . ."); *Liberty Mut. Ins. Co. v. S.C. Second Injury Fund*, 363 S.C. 612, 621, 611 S.E.2d 297, 301 (Ct. App. 2005) (citations omitted) ("All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute." (citations omitted)).

We agree with the court of appeals that "[t]he legislature intended that strict compliance with the procedures set forth in section 63-9-340 be required in order to reduce litigation, promote finality, and ensure consent documents are voluntary." *Brown*, ___ S.C. at ___, 761 S.E.2d at 780. Furthermore,

The main reason [a consent form] is so crucial is because, under South Carolina law, there simply is no waiting period before a relinquishment of parental rights becomes effective. It is the Legislature, not this Court, that has made this pronouncement. The legal rules on the timing of consents are ultimately a compromise between the interest in protecting biological mothers from making hasty or ill-informed decisions at a time of great physical and emotional stress, and the interest in expediting the adoption process for newborns.

The Legislature has chosen to safeguard this difficult decision-making process with certain requirements regarding both the form and content of a consent or relinquishment form and the process employed at the actual signing of the form.

McCann v. Doe, 377 S.C. 373, 393–94, 660 S.E.2d 500, 511–12 (2008) (Waller, J., dissenting) (footnotes omitted) (citations omitted) (quotation marks omitted)). Thus, the statutory formalities have heightened relevance and importance under South Carolina law, as the formalities are the only clear line separating a biological parent's rights with respect to the child prior to the adoption, from the finality and

irrevocability resulting from the execution of the formalities.

Accordingly, we hold that the Consent is invalid.

II. Best Interests of the Child

In *McCann*, this Court noted, "The best interest of the child remains, always, the paramount consideration in every adoption." 377 S.C. at 389, 660 S.E.2d at 509 (citation omitted) (quoting *Dunn v. Dunn*, 298 S.C. 365, 367, 380 S.E.2d 836, 837 (1989); *Doe v. Roe*, 369 S.C. 351, 371, 631 S.E.2d 317, 328 (Ct.App.2006)). The Court stated further:

Because a challenge to the consent for relinquishment may only occur prior to an adoption, the dispute concerns a custody determination and the normal best interest analysis in custody disputes should be employed.

Id.; see also S.C. Code Ann. §§ 63-9-330(A)(7), -350.

Because we have declared the Consent to be invalid, then the law presumes that it is in a child's best interests to be in the custody of her biological parent. *McCann*, 377 S.C. at 389, 660 S.E.2d at 509 ("The state . . . recognizes a rebuttable presumption in custody matters that it is the best interest for the child to be placed with a biological parent over a third party.") (citing *Moore v. Moore*, 300 S.C. 75, 78, 386 S.E.2d 456, 458 (1989)). Nothing in the Record conclusively rebuts this presumption. Accordingly, we find the transfer of custody is in Baby Girl's best interests.⁸

CONCLUSION

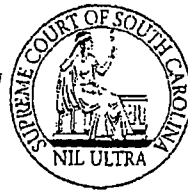
Although we note with sadness that Adoptive Mother is a loving mother to Baby Girl, for the foregoing reasons, we affirm the court of appeals. Because we declare the Consent invalid, we order the transfer of Baby Girl to Birth Mother. See S.C. Code Ann. § 63-17-20(B) ("The custody of an illegitimate child is solely

⁸ As these issues are dispositive, we decline to reach the issue of ratification. See *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999). With respect to Adoptive Mother's request for attorneys' fees, because Adoptive Mother was not the prevailing party on appeal, an award of attorneys' fees would be inappropriate.

in the natural mother unless the mother has relinquished her rights to the child."). The transfer should occur as soon as any petition for rehearing has been acted upon by the Court, unless the Court grants rehearing. We direct that a petition for rehearing, if any, be received by the Court within five days after the filing of this opinion and direct a response to such petition be received within three days of the filing of the petition for rehearing.

AFFIRMED.

PLEICONES, BEATTY, KITTREDGE and HEARN, JJ., concur.



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

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October 7, 2014

The Honorable Julie J. Armstrong
100 Broad St Ste 106
Charleston SC 29401-2210

REMITTITUR

Re: Jennifer Brown v. Baby Girl Harper
Lower Court Case No. 2013DR1004057, 2013DR1004386
Appellate Case No. 2014-001746

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court along with the earlier decision of the South Carolina Court of Appeals is enclosed.

Very truly yours,

CLERK

cc: John S. Nichols, Esquire
Shannon Phillips Jones, Esquire
James Fletcher Thompson, Esquire
Allison Boyd Bullard, Esquire
Jon A. Mersereau, Esquire

APPX14

The Supreme Court of South Carolina

Jennifer Brown, Petitioner,

v.

Baby Girl Harper, a minor under the age of seven, and
Holly Lawrence, Respondents.

Appellate Case No. 2014-001746

ORDER

Pursuant to Rule 242 of the South Carolina Appellate Court Rules, the motion for costs filed by Respondent Holly Lawrence is granted in the amount of \$1,583.39 against the Petitioner Jennifer Brown. The family court is directed to add this award of costs to the remittitur.


C.J.
FOR THE COURT

Columbia, South Carolina
October 29, 2014

cc: John S. Nichols, Esquire
Shannon Phillips Jones, Esquire
James Fletcher Thompson, Esquire
Allison Boyd Bullard, Esquire
Jon A. Mersereau, Esquire
The Honorable Julie J. Armstrong

The South Carolina Court of Appeals

Jennifer Brown, Appellant,

v.

Baby Girl Harper, a minor under the age of seven, and
Holly Lawrence, Respondents.

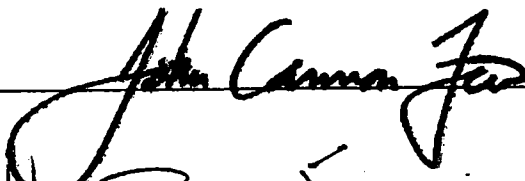
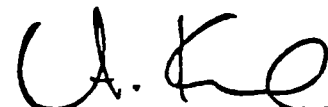
Appellate Case No. 2014-000977

ORDER

Appellant has filed a notice of appeal from the family court's April 24, 2014 order declaring consent for an adoption invalid and ordering the immediate transfer of the child and the May 5, 2014 order denying rehearing. Appellant has filed an emergency petition for supersedeas seeking a stay of the order. Respondents have filed a return and a motion to dismiss, arguing the family court's order is not final and is not immediately appealable.

After careful consideration of the motions, Appellant's petition for supersedeas is granted and Respondents' motion to dismiss is denied. In order to protect the best interests of the child and in recognition of the need for stability in child's life, briefing is expedited as follows.

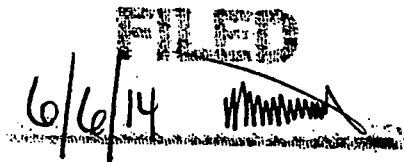
Appellant shall serve and file her initial brief and designation of matter within ten days. Respondent shall serve and file their initial brief and designation of matter within fifteen days of service of Appellant's initial brief. Any initial reply brief shall be served and filed within five days of service of Respondent's initial brief. Appellant shall serve the record and file proof of service within ten days of service of the last brief. The parties shall serve and file their final briefs within ten days of service of the record on appeal. A motion for an extension will be granted only in the most extraordinary of circumstances.

 C.J.
 J.
 J.

Columbia, South Carolina

cc:

John S. Nichols, Esquire
James Fletcher Thompson, Esquire
Allison Boyd Bullard, Esquire
Jon A. Mersereau, Esquire
The Honorable Ronald R. Norton



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Jennifer Brown, Appellant,

v.

Baby Girl Harper, a minor under the age of seven, and
Holly Lawrence, Respondents.

Appellate Case No. 2014-000977

Appeal From Charleston County
Ronald R. Norton, Family Court Judge

Opinion No. 5260
Heard July 23, 2014 – Filed August 4, 2014

AFFIRMED

John S. Nichols, of Bluestein Nichols Thompson &
Delgado, LLC, of Columbia; and Shannon Phillips Jones,
of Shannon Jones, Attorney at Law, LLC, of Charleston,
for Appellant.

James Fletcher Thompson, of James Fletcher Thompson,
LLC, of Spartanburg; and Allison Boyd Bullard, of
Harling & West, LLC, of Lexington, for Respondent.

Jon A. Mersereau, of Charleston, Guardian Ad Litem.

PER CURIAM: In this adoption case, we hold the execution of a consent to
adopt document must strictly comply with section 63-9-340 of the South Carolina

Code (2010). We affirm the family court's determination that the consent document signed by the birth mother was rendered invalid by (1) the failure of the attorney-witness to be present when the birth mother signed the document and (2) the failure of both witnesses to observe the statutorily-required discussion of the provisions of the consent to adopt document.¹

I. Validity of the Consent to Adopt Document

"Adoption exists in this state only by virtue of statutory authority which expressly prescribes the conditions under which an adoption may legally be effected. Since the right of adoption in South Carolina is not a natural right but wholly statutory, it must be strictly construed." *Hucks v. Dolan*, 288 S.C. 468, 470, 343 S.E.2d 613, 614 (1986) (citation omitted).

Adoptions are carried out pursuant to the South Carolina Adoption Act. S.C. Code Ann. §§ 63-9-10 to -2290 (2010 & Supp. 2013). Under the Act, "Consent or relinquishment for the purpose of adoption . . . must be made by a sworn document, signed by the person . . . giving consent or relinquishment" S.C. Code Ann. § 63-9-330(A) (2010). Section 63-9-330(A) sets forth a list of items that must be specified in the consent to adopt document. The requirements for executing the document are set forth in section 63-9-340:

(A) The sworn document . . . must be signed in the presence of two witnesses one of whom must be one of the following:

(1) a judge of any family court in this State;

¹ We disagree with Lawrence's contention that the underlying order is not immediately appealable. The family court's finding that the consent document was invalid constitutes a final decision that Brown cannot proceed with the adoption of the child. Thus, it is a final order that is immediately appealable. *See Terry v. Terry*, 400 S.C. 453, 456-57, 734 S.E.2d 646, 648 (2012) (defining temporary family court orders as "temporary—they neither decide any issue with finality nor affect a substantial right . . .").

(2) an attorney licensed to practice law in South Carolina who does not represent the prospective adoption petitioners;

(3) a person certified by the State Department of Social Services . . . to obtain consents or relinquishments;

....

(B) The persons who witness the signing of the sworn document . . . shall attach to the document written certification signed by each witness that before the signing of the document, the provisions of the document were discussed with the person giving consent or relinquishment, and that based on this discussion, it is each witness' opinion that consent or relinquishment is being given voluntarily and that it is not being obtained under duress or through coercion.

The important facts in this appeal are simple. The attorney-witness was not in the room when the birth mother, Holly Lawrence, signed the consent document, and neither witness observed any discussion with Lawrence before Lawrence signed it.² The adoptive mother, Jennifer Brown, concedes the execution of the consent document did not strictly comply with section 63-9-340.

The plain and mandatory language of section 63-9-340 indicates the legislature intended strict compliance. Subsection (A) states the document "*must* be signed in the presence of two witnesses." (emphasis added). Subsection (B) states the witnesses "shall" certify that the provisions of the document were discussed with the person giving consent "*before* the signing of the document." (emphasis added). The requirement in subsection (B) of "certification . . . based on this discussion" indicates the witnesses must have personal knowledge of the discussion based on their observation of it.

² Lawrence was not married when she delivered the child, and we do not address whether the biological father's consent was required. See S.C. Code Ann. § 63-9-310(A)(4), (5) (2010) (setting forth certain requirements that must be met before an unwed father's consent to adopt is required).

Our interpretation of the Act as requiring strict compliance with section 63-9-340 is supported not only by *Hucks*, but also by the Act itself. Section 63-9-20 of the South Carolina Code (2010) provides, "The purpose of this article is to establish fair and reasonable procedures for the adoption of children" The legislature intended that strict compliance with the procedures set forth in section 63-9-340 be required in order to reduce litigation, promote finality, and ensure consent documents are voluntary. *See McCann v. Doe*, 377 S.C. 373, 390, 660 S.E.2d 500, 509 (2008) ("[P]rotections need to be in place for both biological and adoptive parents to ensure the decision to give a child for adoption is a thoughtful and certain one and not likely to be challenged in a long, arduous, and emotionally-wrenching legal process . . ."). Because the execution of a consent document must strictly comply with section 63-9-340, the consent document is invalid and the adoption may not proceed. Therefore, Lawrence could not ratify the invalid consent by her subsequent acts.

II. Remaining Issues

We decline to determine whether the Rule 62(a), SCRCP, ten-day automatic stay was applicable to the family court's order because our order granting supersedeas rendered that issue moot. *See Sloan v. Dep't of Transp.*, 379 S.C. 160, 167, 666 S.E.2d 236, 240 (2008) ("This Court will not pass on moot and academic questions or make an adjudication where there remains no actual controversy." (internal quotation marks omitted)); *Curtis v. State*, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001) ("A case becomes moot when judgment, if rendered, will have no practical legal effect upon [the] existing controversy."). We do not address the best interest of the child because it is not an issue when the consent document is invalid. Finally, because we are affirming the family court's order in favor of Lawrence, we do not address Brown's request for attorney's fees.

III. Conclusion

For the foregoing reasons, the order on appeal is

AFFIRMED.

FEW, C.J., and WILLIAMS and KONDUROS, JJ., concur.

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
HOLLY LAWRENCE,	)	CASE NO.: 2013-DR-10-4386
	)	
Plaintiff,	)	
	)	
-vs-	)	<u>TEMPORARY ORDER</u>
JENNIFER BROWN,	)	
	)	
Defendant.	)	

DATE OF HEARING:	December 17, 2013
PRESIDING JUDGE:	The Honorable Daniel E. Martin
ATTORNEY FOR PLAINTIFF:	James F. Thompson, Esquire
ATTORNEY FOR DEFENDANT:	Shannon Phillips Jones, Esquire
COURT REPORTER:	Patricia A. Danner

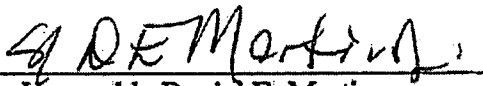
THIS MATTER was before the Court on the above date on Plaintiffs' *Motion for Emergency Relief*. Plaintiff's request to set the matter on an emergency basis was previously denied and the matter was set before the court for a temporary hearing. Present and appearing before the Court were the Plaintiff, Holly Lawrence, along with her attorney James F. Thompson, Esquire and the Defendant, Jennifer Brown, along with her attorney, Shannon Jones, Esquire. Based upon the pleadings filed as well as evidence submitted, the Court issues the following Temporary Order:

1. I find that this case (2013-DR-10-4386) shall be consolidated with case number 2013-DR-10-4057.
2. The Defendant, Holly Lawrence, shall be allowed to intervene in case number 2013-DR-10-4057.
3. I find that this matter shall be deemed complex and that a second temporary hearing shall be set on an expedited basis and set for two full days beginning February 4, 2013 at 9:00

a.m. This hearing shall be a full evidentiary hearing on the issues presented in Plaintiff's *Motion for Emergency Relief*. The parties are free to submit affidavits in lieu of live testimony by agreement.

4. I find that the parties have consented to the appointment of a Guardian *ad Litem* and Jon A. Mersereau, Esquire shall serve as GAL in this matter. A separate Order shall be submitted detailing costs and fees related to the GAL.
5. I find that the parties are granted full discovery pursuant to the *South Carolina Rules of Civil Procedure* and the *South Carolina Rules of Family Court*, and that such discovery shall be expedited (i.e.: parties' response time shall be reduced by half).
6. All other issues are held in abeyance pending further Order of the Court.

AND IT IS SO ORDERED!


The Honorable Daniel E. Martin
Presiding Family Court Judge

December 30, 2013

Charleston, South Carolina

FAILURE TO COMPLY WITH THE TERMS OF THIS ORDER MAY CONSTITUTE CONTEMPT OF COURT AND MAY BE PUNISHABLE BY A FINE, A PUBLIC WORK SENTENCE, OR BY IMPRISONMENT IN A LOCAL CORRECTIONAL FACILITY OR ANY COMBINATION THEREOF, IN THE DISCRETION OF THE COURT, BUT NOT TO EXCEED IMPRISONMENT IN A LOCAL CORRECTIONAL FACILITY FOR ONE YEAR, A FINE OF ONE THOUSAND FIVE HUNDRED (\$1,500.00) DOLLARS, A PUBLIC WORK SENTENCE NOT TO EXCEED THREE (300) HUNDRED HOURS, OR ANY COMBINATION THEREOF AS PROVIDED BY S.C. CODE ANN. 20-7-1350 (1976) (AS AMENDED).

SECRET

2014 MAR 10 PM 12:05

IN THE FAMILY COURT OF THE

NINTH JUDICIAL CIRCUIT

CASE NO.: 13-DR-10-4057

13-DR-10-4386

BY

vs

**BABY GIRL HARPER, A MINOR
UNDER THE AGE OF SEVEN (7)
And HOLLY LAWRENCE,
Defendants.**

ORDER ON LAWRENCE'S MOTION
TO LIMIT DISCOVERY; ORDER ON
BROWN'S MOTION TO COMPEL
AND RECONVENE DEPOSITION;
ORDER ON LAWRENCE'S
VOLUNTARY DISMISSAL OF A
PARTICULAR CAUSE OF ACTION

March 5 & 7, 2014

Jocelyn B. Cate

Shannon Jones & Cassandra Hutchens

James Fletcher Thompson & Allison Bullard

Jon Mersereau

Pat Danner

THIS MATTER CAME BEFORE the court for hearing on the above Motions.

Present for the March 5th motion hearing were both parties along with their

ugh there was no objection to the court considering the written opinion of the

At the call of the case on March 5th, the court inquired of Ms. Jones whether her

tion was made to the insufficient notice; however, giving due consideration to the

WPPX24

fact that there is a two-day evidentiary hearing scheduled in this matter on April 7 & 8, the court finds that this motion should be heard and decided with the rest of the motions; however, Ms. Jones was given additional time to supplement her arguments.

Submitted and considered by the court on the above Motions were as follows:

1. Biological Mother's Motion to Limit Discovery filed on January 30, 2014;
2. Adoptive Mother's Motion to Compel Discovery, to Reconvene Deposition & Continue Evidentiary Hearing filed on February 3, 2014;
3. Biological Mother's Return to Motion to Compel;
4. Adoptive Mother's Return to Motion to Limit Discovery; Memorandum in Support of Motion to Compel Discovery and Opposing Holly Lawrence's Motion to Limit Discovery (As to Identity of Birth Father);
5. Biological Mother's Motion for Voluntary Dismissal of a Particular Cause of Action;
6. Letter from Adoptive Mother's counsel dated March 7, 2014;
7. In camera inspection of text messages excluded from Biological Mother's response to Request to Produce.

Having heard the extensive arguments of counsel and the guardian ad litem and reviewing all of the submissions above, the court makes the following rulings:

- The Third Cause of Action contained in the Complaint filed on November 26, 2013 by Biological Mother is dismissed; however, this dismissal does not preclude Adoptive Mother's request for an award of attorney's fees and costs incurred in defending this cause of action;
- The court will grant Biological Mother's request to limit the response to Request to Produce # 4 to those persons identified by Biological Mother as her closest family members and friends to whom she has confided;
- The court has reviewed *in camera* the withheld copies of text messages by Biological Mother's counsel who objected to its disclosure on the basis of relevancy. The objection is overruled and Biological Mother shall produce those documents within 24 hours of the date of receipt of this Order;

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- Under the facts and circumstances of this case, the court must determine whether an unwed biological mother has a fundamental right to withhold the identity of the putative father in an action where she seeks to invalidate her Consent for Adoption of Child as improperly executed and thereby reverting both legal and physical custody of the minor child to her. The determination as to whether or not the legal document was properly executed is heavily dependent upon the credibility of the testimony of the witnesses to its execution. The ability of the court to make credibility assessments is critical. It has been satisfactorily shown to the court that the putative biological father may have important relevant evidence concerning the credibility of Biological Mother that Adoptive Mother has a right to explore. Biological Mother should not be entitled to assert the need to maintain the confidentiality of adoption proceedings and her right to avoid disclosure of personal matters where she is attempting to end it. Therefore, Biological Mother shall be required to disclose the name of the putative biological father of Baby Girl Harper and any and all contact information she has for him; however, the above requirement and other provisions pertaining thereto shall not take into effect until ten days after the receipt of this Order by counsel for purposes of affording the opportunity to file an interlocutory appeal, if one is available. Notwithstanding the above, notices of deposition and/or deposition subpoenas may be served during this waiting period in order to give the deponent(s) and parties the requisite notice time.
- Although what transpired at Biological Mother's deposition did not necessarily conform to the requirements of Rule 30(j)(4), given the emotionally charged atmosphere and what is at stake in this litigation, the court cannot conclude that there was any bad faith or intentional misconduct by Biological Mother's counsel to thwart the discovery process or to violate the rule. The question -- "Do you have any problem with my client contacting you?" -- was ultimately answered by Biological Mother.
- Questions as to possibility of settlement and the terms of such settlement should be poised to counsel and not to the client.

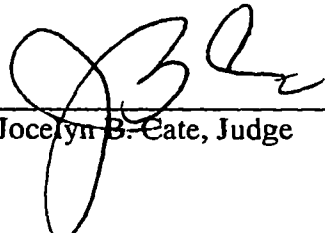
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- The deposition of Biological Mother may be reconvened at the request of Adoptive Mother's counsel for the purpose of counsel's inquiry pursuant to Rule 30(j)(6), answering any questions pertaining to the putative biological father, and other questions that were not objected to.
- Biological Mother agreed in court to provide HIPAA compliant releases to the facilities and organizations identified by Adoptive Mother at the hearing that she did not have.
- Biological Mother agreed to also provide written authorization and all necessary information so that Adoptive Mother may request and obtain NCIC criminal background check of Biological Mother on her own. Biological Mother shall within 24 hours of her receipt provide copies of her NCIC background check to Adoptive Mother and the guardian ad litem.
- The above Releases shall be provided within 24 hours of the date of receipt of this Order if they have not already been provided.
- It is also noted that although Adoptive Mother's Motion included in its caption the request to continue evidentiary hearing scheduled for April 7 & 8, counsel advised the court that that was not being requested in her Motion.
- Attorney's fees and costs shall be held in abeyance.

**ALL OF THE ABOVE SHALL CONSTITUTE THE ORDER OF THE COURT.
ANY VIOLATIONS SHALL BE SUBJECT TO THE CONTEMPT POWERS OF
THE COURT.**

AND IT IS SO ORDERED.

March 10, 2014
Charleston, South Carolina



Jocelyn B. Cate, Judge

APX27

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
JENNIFER BROWN,)
Plaintiff,)
vs.)
BABY GIRL HARPER, A MINOR)
UNDER THE AGE OF SEVEN (7))
YEARS and HOLLY LAWRENCE,)
Defendant.)
_____)

IN THE FAMILY COURT
NINTH JUDICIAL CIRCUIT

FILED

2014 APR 24 PM 4:18

CLERK OF COURT

ORDER

BY _____

2013-DR-10-4057
2013-DR-10-4386

Date of Hearing:	April 7-9, 2014
Trial Judge:	The Honorable Ronald R. Norton
Attorneys for Jennifer Brown:	Shannon Jones Cassandra L. Hutchens
Attorneys for Holly Lawrence:	James Fletcher Thompson Allison Boyd Bullard
Guardian ad Litem:	Jon A. Mersereau
Court Reporter:	Missy Brown

This case involves a contested adoption between Jennifer Brown (Adoptive Mother) and Holly Lawrence (Biological Mother.) On November 26, 2013, Biological Mother filed a motion for emergency relief seeking the return of her minor child, who was born in North Carolina on _____, 2013. Biological Mother alleged that the consent document signed on October 30, 2013 was not validly executed pursuant to S.C. Code § 63-9-340. Biological Mother also alleged that approval of the Interstate Compact on the Placement of Children (ICPC) was not obtained, thereby rendering this purported adoption illegal.¹ The Honorable Daniel E. Martin, Jr. issued an order on December 30, 2013, scheduling an expedited evidentiary hearing on Biological Mother's motion, and that discovery be expedited. On March 31, 2014, Adoptive Mother moved that the

¹ See S.C. Code § 63-9-2200 (subsection 4).

PRN

ICPC issue be bifurcated from the issue of whether or not the consent document was properly executed. Biological Mother agreed to this bifurcation on April 4, 2014. Therefore, the issue presented to this Court is whether the consent document was properly executed and, based on that ruling, whether Biological Mother's request for emergency transfer of legal and physical custody of the minor be granted. Adoptive Mother is also seeking attorney fees and costs. Based upon an examination of the pleadings, consideration of all of the testimony and evidence presented, I make the following findings:

FINDINGS OF FACT

The facts in this case are largely undisputed and in fact, the attorneys have stipulated to the manner by which the consent document was executed.

Biological Mother gave birth to a healthy female child at approximately 4:00 a.m. on , 2013, at Carolinas Medical Center in Pineville, North Carolina. On Tuesday, October 29, 2013, Adoptive Mother's family drove Biological Mother and the baby to Charleston, South Carolina. The following day, October 30, 2013, at 10:00 a.m., Biological Mother and Adoptive Mother went to the office of Adoptive Mother's attorney. Present at this meeting were Biological Mother, Adoptive Mother, attorney for the Adoptive Mother (Douglas Barker) and Christina Pinto, a legal assistant with another law firm in Mr. Barker's office suite. It is undisputed that Mr. Barker explained the Consent to the Birth Mother. It is undisputed that the Birth Mother signed the Consent and it is undisputed that the attorney witness (Christina Humphries) to the Birth Mother's execution of the consent document was not present when the Birth Mother executed the document. Ms. Humphries acknowledges at Paragraph 15 of her Affidavit the following:

Although I did not personally witness Ms. Lawrence sign the Consent, based on the notarial standard for acknowledging a signature, the standard for witnessing a will, and Attorney Barker's experience and involvement, I understood her

acknowledgment of her signature in my presence to be a valid acknowledgment and execution.

Based on the above Findings of Fact, the Court makes the following

CONCLUSIONS OF LAW

a. Rule 15(b) motion to conform pleadings to the evidence presented

Biological Mother filed a Summons and Complaint on November 26, 2013 which states "the consent document purportedly signed by Biological Mother was not witnessed pursuant to S.C. Code Ann. Section 63-9-340 and therefore is void *ab initio*." The motion before this Court, filed on November 26, 2013, makes no mention of the consent being void *ab initio*, but only states, "This consent document was improperly executed." During the course of the trial, Adoptive Mother and Biological Mother both presented evidence relating to the execution of the consent document and whether it complied with S.C. Code Ann. § 63-9-340. The parties stipulated to the circumstances under which the consent was executed based on the testimony of Christina Humphries and Christina Pinto. The evidence presented at trial and stipulated to by both parties raised the question of whether the consent document is void, voidable and/or invalid due to improper execution. As a result, Biological Mother moved the Court to conform the pleadings to the evidence pursuant to South Carolina Rules of Civil Procedure (SCRCP) 15 (b). Biological Mother requested to amend her First Cause of Action by changing "void *ab initio*" to "void, voidable or invalid due to improper execution."

South Carolina Rules of Civil Procedure, Rule 15(b) states "when issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they have been raised in the pleadings."² An amendment to conform the pleadings to the

² Rule 15(b), SCRCP.

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evidence may be made upon the motion of any party at any time, even after judgment.³ The Court may allow the pleadings to be amended and shall do so freely when the merits of the action will be subserved thereby and the objecting party fails to satisfy the Court that the admission of such evidence would prejudice him.⁴ "It is proper during the trial of a case for the Court to allow an amendment to conform the pleadings to facts proved provided such amendment does not materially or substantially change the claim."⁵ It is desirable to conform the pleadings to the issues actually developed at trial and these amendments should be liberally allowed when no prejudice to the opposing party will result.⁶ The prejudice to the opposing party envisioned by Rule 15 is lack of notice and lack of opportunity to refute.⁷ "Simply because an amendment to conform to proof was made late in trial affords no basis for holding that the amendment comes too late."⁸

This Court holds that Biological Mother's motion to amend the pleadings to conform to evidence was properly made during the course of the trial when Biological Mother rested her case in chief and the amendment requested did not materially or substantially change the claim for relief.

During the course of the trial, evidence was presented by stipulation that supports an amendment to Biological Mother's pleadings. The stipulation by both parties as to the facts surrounding the execution of the consent document raised the issue of whether the consent document is void, voidable or invalid due to improper execution pursuant to S.C. Code Ann. § 63-9-340. This Court holds that the Biological Mother should be permitted to amend her pleadings to conform to the evidence presented. This Court holds that the change from "void ab

³ *Id.*

⁴ *Id.*

⁵ *Johnson v. Finney*, 246 S.C. 366, 143 S.E.2d 722 (1965).

⁶ *Kelly v. South Carolina Farm Bureau*, 316 S.C. 319, 450 S.E.2d 59 (Ct.App. 1994).

⁷ *Staubes v. City of Folly Beach*, 339 S.C. 406, 529 S.E.2d 543 (2000).

⁸ *Soil and Material Engineers, Inc. v. Folly Associates*, 293 S.C. 498, 361 S.E.2d 779 (Ct.App. 1987).

initio" to "void, voidable and/or invalid due to improper execution" does not substantially or materially change the claim. The initial cause of action references the failure to properly execute the consent document in accordance with S.C. Code § 63-9-340 and whether that makes the consent void ab initio, void, voidable or invalid does not change the facts surrounding whether a violation under the statute occurred.

In the present case, because Adoptive Mother was on notice that the alleged violations to the execution of the consent stemmed from S.C. Code Ann. § 63-9-340, she was on notice of the concerns with the execution of the consent. Additionally, Adoptive Mother was served with Biological Mother's Notice of Motion and Motion for Temporary Relief on November 26, 2013, and Biological Mother's Answers to Adoptive Mother's Interrogatories on March 26, 2014, both of which put Adoptive Mother on notice of the issue of invalid execution of the consent document due to violations of S.C. Code Ann. § 63-9-340.

This Court further holds that Adoptive Mother will not suffer prejudice as a result of Biological Mother amending her pleadings to conform with the evidence because Adoptive Mother was on notice of the defects in the consent and was given the opportunity to refute these defects during trial. Also, no prejudice will be suffered because the motion before the Court set forth that the "consent document was improperly executed" and, on that basis, Biological Mother sought "transfer of legal and physical custody."

b. The statutory procedure for signing the consent document.

South Carolina Code Ann. § 63-9-340 sets forth that a consent document "must be signed **in the presence** of two witnesses." (Emphasis added.) In witnessing the Biological Mother's signature both Ms. Pinto and the attorney witness, Ms. Humphries, in signing their names did declare, affirm and certify that the deponent signed and executed the document in the presence of each of them. This in fact was not the case. This Court holds that the absence of the attorney

witness, a witness required by statute, renders the document invalid.

Additionally, § 63-9-340(b) requires that the persons who witness the signing of the document “shall attach to the document written certification signed by each witness that *before* the signing of the document the provisions of the document were discussed with the person giving consent or relinquishment, and that based on this discussion it is each witness’ opinion that the consent/relinquishment is being given voluntarily and that it is not being obtained under duress or through coercion.” (Emphasis added) Since the attorney witness acknowledges she was not present when the document was signed, this Court holds that she cannot certify that the provisions of the document were discussed with Biological Mother prior to signing. This Court believes that either one of these defects on its own would render the document invalid, but when combined strengthens further this Court’s ruling that the Consent is invalid.

c. Statutory construction

South Carolina adoption law exists only by virtue of statutory authority which expressly prescribes the conditions under which an adoption may be legally affected. *Hucks v. Dolan*, 343 S.E.2d 613 (1986) citing *Driggers v. Jolley*, 64 S.E.2d 19 (1951). Since this right is not a natural right but wholly statutory, it must be strictly construed. *Id.* at 614 citing *Wright v. Alexander*, 95 S.E. 2d 500 (1956). The law and procedure set forth in the South Carolina Adoption Act is mandatory not precatory; the consent “**must be signed** in the presence of two witnesses” and the witnesses “**shall** attach a document” stating that the consent document was discussed with the person giving consent “**before**” the signing. “Under the rules of statutory interpretation, use of the words ‘shall’ or ‘must’ indicates the legislature’s intent to enact a mandatory requirement”.⁹ The Supreme Court has been clear, “where language is unambiguous the Court’s inquiry is over and

⁹ *Collins v. Doe*, 352 S.C. 462, 470, 574 S.E.2d 739, 743 (2002).

the statute must be applied according to its plain meaning."¹⁰ These statutory directives must not be ignored or trivialized.

The Adoptive Mother argues the execution of the consent was in substantial compliance with the statutory requirements and the Court should not require strict compliance. As the Adoptive Mother points out, there is no South Carolina case addressing the issue of strict compliance versus substantial compliance. If substantial compliance is the standard, based on the stipulated facts of this case, this Court holds that the execution was not in substantial compliance with the statute. Here, the attorney for the Adoptive Mother met with and explained the Consent to the Biological Mother. The Adoptive Mother was present while this was taking place. The non-attorney witness, Christina Pinto, was also present but did not advise the Biological Mother. The Birth Mother had no independent counsel or representation. Further, the attorney witness, a witness specifically required by statute, was not present at the signing and did not and could not declare, affirm or certify the provisions of the document were discussed with the Adoptive Mother prior to signing. She simply signed as a witness after being told by the attorney for the Adoptive Mother that he had explained the document and the Biological Mother acknowledged her signature. This Court does not find this method of obtaining the Consent to be in substantial compliance with the statute.

Adoptive Mother appears to be relying on her own attorney's pre-signing discussion with Biological Mother and his subsequent summary of that conversation to Ms. Humphries, to satisfy this statutory requirement. (Ms. Humphries admitted that she "was not advising anyone as to the signing of the consent. ...")¹¹ As previously stated, this Court holds that a witness cannot certify

¹⁰ *Jennings v. Jennings*, 401 S.C. 15, 736 S.E.2d 651 (2012).

¹¹ Humphries' Affidavit, Paragraph 18.

that something occurred that she did not witness.¹²

Alternatively, if the law of this State regarding adoption consents is that, under certain circumstances, one could certify, in a sworn document, that something occurred that they did not witness, this Court holds that it would require more than Adoptive Mother's attorney's assurance to Ms. Humphries. Mr. Barker's discussion was brief and cursory at best. Further, reliance on the Adoptive Mother's attorney is misguided. This Court holds that the presence of the attorney for the Adoptive Mother and his involvement in this process is improper and inappropriate.

Adoptive Mother also urges this Court to hold that, by later acknowledging her signature before the two witnesses, Biological Mother has ratified her previous signature, thereby curing the statutory defect. This Court holds that, if ratification is legally possible, no such ratification occurred here. When asked if Biological Mother could have stopped the adoption after signing, but before Ms. Humphries witnessed the document, Ms. Humphries testified that at that point, the bell had rung. This is not a ratification, but rather a hurried and thoroughly tainted procedure. Allowing this consent to stand would eviscerate the integrity of the adoption process, a process that should be held inviolate, given that our state does not have a revocation period in which the biological parent can reflect on her decision.¹³

d. Immediate Transfer of Child

As to the issue of best interest of the child, which was argued vigorously, the Court does not believe this issue to be before the Court. This is not a withdrawal of a Consent which by statute and case law would require the Court to investigate best interest.¹⁴ If the document is invalid, then best interest is not reached. Adoptive Mother, in her *Motion to Bifurcate* filed

¹² Merriam-Webster defines certify as: "to say officially that something is true, correct or genuine; to say officially that something or someone has met certain standards as requirements." Ms. Humphries could not certify something to be true and correct or that someone has met certain standards that she did not witness herself.

¹³ *Doe v. McCann*, 377 S.C. 373, 383, 660 S.E.2d 500, 506 (2008).

¹⁴ See S.C. Code Ann. § 63-9-350.

March 31, 2014 summarizes this point well: "the pivotal inquiry in this case is the validity of the Consent for Adoption. If the Plaintiff is successful in her attempt to invalidate the Consent for Adoption, the Defendant's adoption action will end as Plaintiff will be restored to her legal position as natural mother." This Court agrees. Under South Carolina law, "the custody of an illegitimate child is solely in the natural mother unless the mother has relinquished her rights to the child."¹⁵ In this case, there has been no relinquishment, as the purported consent is invalid. Thus, Biological Mother is restored to her previous custodial position.¹⁶ Importantly, there is no legal justification for continuing to allow this child to remain in a home where not only there is no valid consent, but where there is no approved homestudy.¹⁷

Though the narrow legal issue before this Court does not have a best interest component, out of an abundance of caution, however, this Court has painstakingly considered the effect of this transfer on this five-month-old child. Based upon the ample testimony presented, there has been no showing that the Biological Mother is unfit. She is committed to the return, care, and nurturing of her child. Further, this Court finds Dr. Cheryl Fortner- Wood to be a credible expert witness in the field of child development and attachment. She testified that there would be no short-term or long-term damage to the minor child should the child be transferred back to her Biological Mother. Dr. Cheryl Fortner-Wood stated that "time was of the essence" in allowing this child to be placed with her permanent parent. Adoptive Mother's expert, Dr. Elizabeth Kirlis, concurred that she would have fewer concerns regarding a transfer at five months than at eight or nine months. Therefore, it is ordered that it is in the best interest of the Child that the Child be immediately returned to the Biological Mother. This transfer shall be immediate, without delay.

¹⁵ See S.C. Code Ann. § 63-17-20 (B).

¹⁶ *McLaughlin v. Strickland*, 279 S.C. 519, 309 S.E. 2d 787 at 790 (S.C. Ct. App. 1983) (Birth father being restored to his previous legal position after his consent document was found to be improper).

¹⁷ S.C. Code § 63-9-710 (C).

c. Attorney's Fees

Finally, the Adoptive Mother seeks attorney's fees and costs. The Court has considered the following factors in reaching this decision: (1) Each party's ability to pay for their own fee; (2) the beneficial result obtained by the attorney; (3) the parties' respective financial condition; and (4) the affect of the fee on each party's standard of living. Biological Mother is an hourly employee with no substantial assets from which to draw to pay an attorney fee should one be ordered. Conversely, Adoptive Mother has substantial equity in a North Carolina home that she has listed for sale. To award an attorney fee against Biological Mother would significantly alter her standard of living, for years to come. Requiring Adoptive Mother to pay her own fees would not have a similar adverse impact on Adoptive Mother. Finally, this Court considered the fact that the Adoptive Mother did not prevail in this matter. Based on these factors, the Court denies the award of attorney's fees and costs to Adoptive Mother. While the Court has not been presented with a detailed accounting of these expenses, the Adoptive Mother's testimony at trial was that these expenses totaled approximately \$60,000.

This Court also notes that before the first dollar of attorney's fees was incurred by Adoptive Mother, Adoptive Mother knew that North Carolina ICPC offices had determined that there had been a violation of the Compact and that North Carolina would not approve the adoptive placement;¹⁸ Adoptive Mother also knew first-hand the procedure followed in the execution of the consent, and had received Ms. Humphries' affidavit detailing the process (with its statutory omissions) by December 17, 2013.¹⁹ Adoptive Mother incurred these costs and fees with full knowledge of her legal position. She continued forward, with much of Adoptive Mother's discovery and the testimony presented at trial seeking to challenge Biological Mother's credibility.

¹⁸ Please see home investigation dated December 2, 2013, signed by Teresa Smith.

¹⁹ Humphries' Affidavit, Paragraph 14.

This Court does not find credibility relevant under the limited issue before the Court. Had the Biological Mother sought to withdraw her consent, credibility issues might have been explored. However, since the issue was not withdrawal, the Court need only to address the process by which the Biological Mother's signature was obtained. Since the facts of this process are not in dispute, credibility is not relevant.

BASED UPON THE ABOVE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THIS COURT HOLDS AS FOLLOWS:

1. The Biological Mother's Rule 15(b) motion to conform pleadings to the evidence presented is granted. The Biological Mother's First Cause of Action in her Complaint filed on November 26, 2013, is conformed to read as follows: "The consent document purportedly signed by Biological Mother was not witnessed pursuant to S.C. Code Ann. Section 63-9-340 and therefore is void, voidable or invalid due to improper execution."
2. The Consent for Adoption of Child signed by the Biological Mother on October 30, 2013, is hereby declared invalid, and without any force or effect.
3. It is in the best interest of the Child that the Child be immediately returned to the Biological Mother, without delay.
4. The Adoptive Mother's request for attorney's fees is denied.

IT IS SO ORDERED.

R. R. Norton
RONALD R. NORTON
JUDGE, FAMILY COURT
NINTH JUDICIAL CIRCUIT

DATE: *April 24, 2014*

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By *[Signature]*
DEPUTY CLERK

APPX38

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
JENNIFER BROWN,)
)
Plaintiff,)
)
-vs-)
)
BABY GIRL HARPER, A MINOR)
UNDER THE AGE OF SEVEN (7))
YEARS AND HOLLY LAWRENCE))
)
Defendant.)
_____)

IN THE FAMILY COURT OF THE
NINTH JUDICIAL CIRCUIT
CASE NO.: 2013-DR-10-4057
2013-DR-10-4386

ORDER DENYING PLAINTIFF'S
RULE 59(e) MOTION

2014 MAY -5 PM 2:09
JULIA E. IRONS
CLERK OF COURT
RY

THIS MATTER HAS COME BEFORE THE COURT on a Motion pursuant to Rule 59(e) filed by the Plaintiff in the above matter. This Court issued its Order which was filed with the Court on April 24, 2014. It is important to note the mandate to the Court by way of order of the Honorable Daniel E. Martin, Jr. was to conduct an evidentiary hearing. The parties seem to have lost sight of the fact this was not a final hearing but rather a hearing to determine the validity of certain evidence which might be offered at trial. After a thorough review of the 59(e) Motion with the respect to the narrow and limited issue which was before the court, the Motion is hereby denied.

As with much of the testimony at the temporary hearing the Adoptive Mother by this motion seeks to insert testimony and evidence outside the scope of the narrow and limited issue before the court.

In denying this motion the court reiterates that the Adoptive Mother requested the court bifurcate certain issues, a request consented to by the Birth Mother. As a result, the only issue before this Court at this temporary evidentiary hearing was a determination of

the validity of the Consent to Adopt. The Adoptive Mother in her Motion to Bifurcate states, "In an effort to streamline the matters before the Court and in the interest of judicial economy, Defendant requests that the Court bifurcate the issues so as to limit the evidence at the temporary hearing to that concerning the Consent for Adoption." (In the motion to bifurcate, the Defendant is the Adoptive Mother and the Plaintiff is the Birth Mother. Also please note the Adoptive Mother refers to this as a temporary hearing.) The Birth Mother in her return to this motion consents to the bifurcation. Therefore the sole and only issue before this Court at this temporary evidentiary hearing was to determine the validity of the Consent to Adopt based upon the process by which it was obtained and executed. The order of this court was not dispositive of the case, only the validity of the Consent. To proceed as if this limited issue is dispositive of the case would exceed the mandate of Judge Martin, ignore the agreement to bifurcate and also render the additional causes of action of the Adoptive Mother and the additional defenses of the Birth Mother moot. The information contained in the 59(e) Motion like much of the testimony at the hearing goes far beyond this narrow and limited issue.

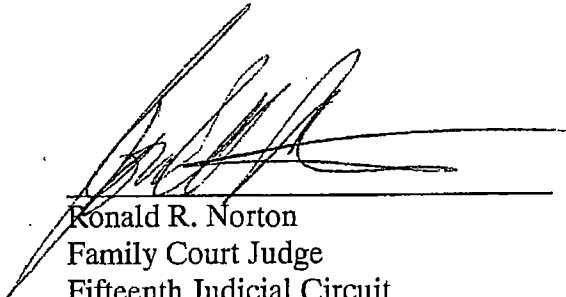
This Court based its decision primarily on stipulated and uncontested facts. The parties stipulated the attorney for the Adoptive Mother explained the Consent to the Birth Mother and then notarized her signature. This was done in the presence of the Adoptive Mother and one witness, Christina Pinto. The attorney witness, Christine Humphries, the witness required by statute, was not present at the time of the execution of the Consent to Adopt. The Court therefore determined these procedures did not comply with the provisions of the adoption statutes and therefore the Consent to Adopt was invalid. This was the issue before this Court pursuant to the agreement to bifurcate. With respect

to the return of the child to the Birth Mother, since the Court determined the Consent to Adopt was invalid then the placement of the child with the Adoptive Mother pursuant to this Consent was improper and therefore the child should be returned to the Birth Mother and the case proceed to trial.

The ruling at this temporary evidentiary hearing does not prevent either party from going forward with the trial of this case. The Adoptive Mother has several other causes of action in her pleadings and the Birth Mother has several defenses none of which were dealt with at this temporary evidentiary hearing. These additional causes of action and defenses are preserved for trial and are not affected by the Order filed April 24, 2014.

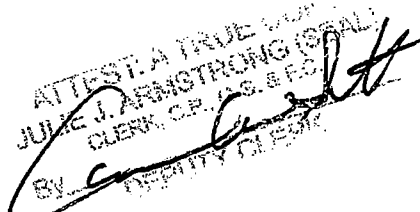
The 59(e) Motion is DENIED.

IT IS SO ORDERED.



Ronald R. Norton
Family Court Judge
Fifteenth Judicial Circuit

May 5, 2014
Conway, South Carolina

ATTEST A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., C.S. & F.C.
BY  DEPUTY CLERK

FILED

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

HOLLY LAWRENCE,

Plaintiff,

vs.

JENNIFER BROWN,

Defendant.

IN THE FAMILY COURT
NINTH JUDICIAL CIRCUIT

CASE NOS.: 2013-DR-10-4057, 4386 ✓

2015 JAN 29 PM 12:21
JULIE J. ARMSTRONG
CLERK OF COURT

ORDER

(Denying Biological Mother's Request for
Further Hearing as to Her Request for
Attorney's Fees and Costs)

Date of Hearing:
Presiding Judge:
Adoptive Mother's Counsel:
Biological Mother's Counsel:
Court Reporter:

November 18, 2014
The Honorable Jocelyn B. Cate
Shannon Jones, Esquire
Jim Thompson, Esquire
Pat Danner

THIS MATTER was before the Court on Biological Mother's (Plaintiff's) Pre-Trial Hearing Request filed October 24, 2014, which set this matter for a pre-trial hearing on the above date and time. Present and appearing before the Court were the Adoptive Mother's (Defendant's) attorney, Shannon Jones, Esquire as well as the Plaintiff's attorney, Jim Thompson, Esquire.

The Court heard oral argument from counsel, which included Plaintiff's position that she was entitled to continue discovery and conduct further hearing as to her request for attorney's fees and costs. Defendant's position was that the case had ended following a two and a half day trial wherein Plaintiff declined to produce any evidence on the issue of attorney's fees and costs. The parties were ordered to submit memorandums in support of their respective positions, as well as summaries of the procedural history of this matter.

Based upon my review of the memorandums and submissions of the parties, I find that the time for the Plaintiff to request and submit evidence of attorney's fees and costs was at the trial on this matter held from April 7, 2014 to April 9, 2014. I find that the Plaintiff failed to submit any

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(AW)

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evidence of attorney's fees and costs at trial, effectively abandoning her right to make such a request, and Plaintiff shall not be allowed to reopen this matter, conduct further discovery and proceed to another trial on the issue of attorney's fees and costs.

THEREFORE, IT IS ORDERED that Plaintiff's Request for Hearing on the issue of attorney's fees and costs is **DENIED**.

IT IS SO ORDERED!

Charleston, South Carolina
1-29, 2015



The Honorable Jocelyn B. Cate
Presiding Judge, Family Court
Ninth Judicial Circuit

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.R., G.S. & F.C.
By _____
DEPUTY CLERK

FILED

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

2016 FEB 11

PM 4:

IN THE FAMILY COURT OF THE
NINTH JUDICIAL CIRCUIT
CASE NO.: 13-DR-10-4386/4057

JULIE J. FINE JUDGE
CLERK OF COURT

HOLLY LAWRENCE,
Plaintiff,

BY _____

vs

JENNIFER BROWN,
Defendant

ORDER ON PLAINTIFF'S RULE 59(e)
MOTION TO ALTER/AMEND
JUDGMENT

Hearing Date:	February 4, 2016
Judge:	Jocelyn B. Cate
Plaintiff's Attorney:	James Fletcher Thompson
Defendant's Attorney:	Shannon Jones
Court Reporter:	Pat Danner

THIS MATTER COMES BEFORE the court on Plaintiff's filing of a Rule 59(e) Motion to Alter/Amend Judgment of this court's **Order (Denying Biological Mother's Request for Further Hearing as to her Request for Attorney's Fees and Costs).**¹

Plaintiff was not present for this hearing but was represented by her counsel, Mr. Thompson. Defendant appeared with her counsel, Ms. Jones. The court heard extensively from both attorneys.

As the underlying Order explained, this matter initially came before the court on Plaintiff's pre-trial hearing request seeking a hearing on her "cause of action" for attorney's fees and costs and to pursue additional discovery on that issue. Although, the court is not persuaded to grant the relief requested by the Plaintiff, the court finds that for purposes of review, additional findings should be included as follows:

¹ The Order at issue was filed on January 29, 2015. The within Motion was filed on February 19, 2015. There is no issue of the "timeliness" of this Motion. Plaintiff's counsel acknowledged that he did not provide a copy of this Motion to the court as required by Rule 59(g), SCRCP. Consequently, the court was unaware of this outstanding Motion until counsel's correspondence to the court dated December 10, 2015 inquiring of the status of the Motion. Counsel also added that he had sent a follow-up email on August 28, 2015 to the court's administrative assistant which was not received. The court instructed the attorneys to schedule the Motion hearing after the court's return from vacation. There was no objection to the court's ruling on this Motion.

- Plaintiff's counsel points to nowhere in the record of the two and a half day trial where he reserves the right to pursue attorney's fees and costs against the Defendant until such time as his other causes of action were tried despite the fact that the Defendant presented both oral and documentary evidence on that issue to include the Plaintiff's Financial Declaration. This was the time to advise the court of her intention so that the court could determine whether that was appropriate in light of the special circumstances of this case.
- The decision on the agreed upon bifurcation of the issues rendered the Plaintiff's other causes of action moot. All of Plaintiff's causes of action were made for the desired effect of returning legal and physical custody of the minor child to her.² All of Defendant's causes of action were made for the desired opposite effect.³
- Plaintiff failed to present any legal authority to support the assertion that a request for an award of attorney's fees and costs constitutes a separate "cause of action"⁴ and not collateral to or supplemental to an underlying cause of action.
- Consequently, Plaintiff request for a hearing on the issue of attorney's fees and costs on the appellate level is likewise denied.⁵
- Defendant's request for attorney's fees and costs is denied.

² "The family court's finding that the consent document was invalid constitutes a final decision that Brown cannot proceed with the adoption of the child." *Brown v. Harper*, ___ S.C. ___, 761 S.E. 2d 779, 780 n.1 (2014)

³ On May 5, 2014, a Voluntary Dismissal of the Amended Complaint was filed by the Defendant in Case No.: 2013-DR-10-4057.

⁴ The court found the discussion of "splitting" a cause of action in *Lawton v. New York Life Ins. Co.*, 181 S.C. 230, 186b S.E. 909 (1936) compelling. "Cause of action" was defined as a right on plaintiff's part and a violation of such right by defendant. In dismissing this action for recovery of attorney's fees, the Supreme Court found that "[T]he complaint in the case at bar is an effort to split a cause of action into two parts. In the first place, if plaintiff was not suing on the entire cause of action in the first suit it does seem that both the court in which the action was tried and the defendant both ought to have been advised, in the former case, that part of the claim, the sum of \$700, was being reserved for another and separate action; good faith and the orderly administration of justice would seem to require this."

⁵ "While appellate rule vests authority in appellate courts to grant attorney fees on appeal, nothing in rule divests family court of authority to award fees incurred pursuant to appeal **where issue of attorney fees was issue on appeal and case was remanded for consideration of attorney fees in light of ultimate decision on remand.** (emphasis added) Rule 222, *Green v. Green*, 320 S.C. 347, 465 S.E.2d 130 (S.C. App. 1995).

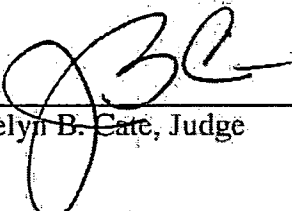
It is, therefore,

ORDERED that the Plaintiff's Motion to Alter/Amend is denied and the above additional findings are hereby incorporated and merged into the Order filed on January 29, 2015 as if stated *in verbatim*. It is further

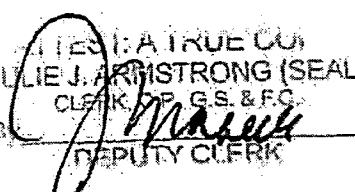
ORDERED that the Plaintiff shall be granted an award of costs against the Defendant in the amount of \$1,583.39 pursuant to the Order of the Supreme Court dated October 29, 2014. If this award has not yet been paid, the Defendant shall have thirty (30) days from the date of this Order to make this payment to the Plaintiff via her attorney, James Fletcher Thompson.

AND IT IS SO ORDERED.

February 11, 2016
Charleston, South Carolina



Jocelyn B. Cate, Judge


WILLIE J. ARMSTRONG (SEAL)
CLERK OF S.S. & F.C.
DEPUTY CLERK

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
2013 OCT 30 PM 3:45
IN THE FAMILY COURT OF THE
NINTH JUDICIAL CIRCUIT
CASE NO: 2013-DR-10-4057

JENNIFER BROWN,

JULIE ARMSTRONG
CLERK OF COURT

Plaintiff,

SUMMONS

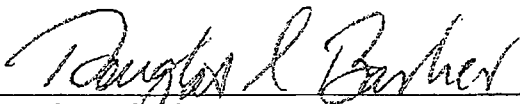
vs.

BABY GIRL HARPER, A MINOR
UNDER THE AGE OF SEVEN
(7) YEARS,

Defendant.

YOU ARE HEREBY SUMMONED and required to answer the Complaint herewith served upon you and, to serve a copy of your Answer to the said Complaint on the subscriber, Douglas A. Barker, at his office, at the address below, within thirty (30) days after the service hereof, exclusive of the day of service.

YOU ARE HEREBY GIVEN NOTICE that, if you fail to appear and defend and fail to answer the Complaint as required by this summons within thirty (30) days after the service hereof (exclusive of the day of service), judgment by default will be entered against you for the relief demanded in the Complaint.


Douglas A. Barker
Attorney for Plaintiff
171 Church Street, Suite 160
Charleston, South Carolina 29401
Office: 843-727-0077
Fax: 843-577-0460

Charleston, South Carolina
October 30, 2013.

STATE OF SOUTH CAROLINA **FILED** IN THE FAMILY COURT OF THE
COUNTY OF CHARLESTON 2013 OCT 30 PM 3:15 NINTH JUDICIAL CIRCUIT
CASE NO: 2013-DR-10- 4057

JENNIFER BROWN,

JULIE ARMSTRONG
CLERK OF COURT

Plaintiff.

vs.

BABY GIRL HARPER, A MINOR
UNDER THE AGE OF SEVEN
(7) YEARS,

Defendant.

COMPLAINT
Adoption

Plaintiff would respectfully show unto this Honorable Court:

1. Plaintiff is a citizen and resident of Charleston County, South Carolina, residing at 378 Stefan Drive, Charleston, South Carolina 29412.
2. The minor Defendant in this action was born on _____, 2013 at CMC Pineville Hospital, County of Mecklenburg, North Carolina.
3. On October 29, 2013 the birth mother brought the minor Defendant to Charleston, South Carolina. Once in Charleston, she met with Plaintiff and inquired about the possibility of adoption by Plaintiff.
4. Plaintiff is forty (40) years of age having been born on January 31, 1973 in Hendersonville, North Carolina.
5. That on information and belief, the minor Defendant is a mixed race (Caucasian and African American) girl born on _____, 2013, in Mecklenburg County, North Carolina, and for the purpose of this action is known as Baby Girl Harper. If the adoption is approved, it is the Plaintiff's desire that the name of the infant be changed

Jennifer Brown v. Baby Girl Harper
Petition for Adoption

Page 1 of 6

APPX48

to _____ and that the Plaintiff be permitted to use this name pending final approval of adoption.

6. It is the sincere desire of the Plaintiff to establish a relationship of parent and child with the minor Defendant. Plaintiff is a fit and proper person, fully capable of caring for the child and providing for the child's welfare.
7. That to the best of Plaintiff's knowledge, the minor Defendant owns no property, either real or personal, in the State of South Carolina or elsewhere.
8. Plaintiff alleges that the biological mother has voluntarily signed a release, Consent for Adoption of Child dated October 30, 2013 ("Consent"), in which she has relinquished all her parental rights to the infant. The Consent is filed herewith. In the Consent the biological mother specifically consents for the minor Defendant to be adopted and therefore her parental rights should be terminated. She further has specifically waived her right to be named as a Defendant to an action to terminate her parental rights and/or an action for adoption of the minor Defendant and she has specifically consented to there being one action which will include the termination of her parental rights and the adoption of the minor Defendant by the Plaintiff.
9. All written consents or relinquishments for the purpose of adoption as required by S.C. Code Ann. Section 63-9-310 have been obtained.
10. Since the biological father has not been identified, Plaintiff's counsel will search the North Carolina Responsible Father Registry. If the birth father failed to register, this failure constitutes an implied irrevocable waiver of the father's right to notice of the

adoption proceedings. If a birth father has registered, the Plaintiff will serve him with notice of these adoption proceedings.

11. The Plaintiff alleges upon information and belief that the biological mother and this man ("John Doe") have not lived together continuously during the six (6) months immediately preceding the birth of the minor Defendant, that they are not married to each other, nor has he paid any amount of support for the child or for the expenses incurred with the pregnancy or with the birth of the child. Plaintiff alleges the consent of John Doe is not required pursuant to S.C. Code Ann. Section 63-9-310. Further, the parental rights of John Doe should be terminated pursuant to S.C. Code Ann. Section 63-7-2570 (7).
12. No pre-placement and background investigation reports have been conducted by a certified investigator approved by the Department of Social Services. All such required investigations and reports will be completed and filed with the Court. Plaintiff has never been investigated by the Department of Social Services, has never committed nor been charged with any crime, has never appeared on any registry of abuse and neglect, and has never appeared on any registry of sexual offenders. On information and belief all investigations and reports resulting from this adoption will be favorable insofar as Plaintiff's qualifications are concerned.
13. A post placement investigation report will be submitted to the Court prior to the final hearing.
14. The Plaintiff has not paid or promised a fee, compensation or any other thing of value as consideration for the Consent/Relinquishment for the purpose of adoption but has

paid for the costs of the adoption, an accounting of which will be furnished to the Court.

15. The Plaintiff had no prior relationship with the minor Defendant.
16. The Plaintiff has made no payment of money or anything of value within the past five (5) years and agreed not to make any such payment in the future by or on behalf of the Plaintiff to any person, agency or organization connected with the adoption with the exception of legal, court costs, and related fees of the adoption, an accounting of which will be furnished to the Court.
17. The Plaintiff is informed and believes that there are no other orders of any nature which affect the custody, support or visitation of the minor Defendant.
18. The Plaintiff is informed and believes that a Guardian ad Litem should be immediately appointed for the minor Defendant, Baby Girl Harper, to protect the child's best interest during the proceedings.

WHEREFORE, the Plaintiff prays for the following:

- a. For the parental rights of the biological parents of the minor Defendant to be terminated;
- b. That the Plaintiff be allowed to use the name of _____
_____ for the minor Defendant during the pendency of this action and permanently thereafter;
- c. That the Plaintiff be permitted to adopt the minor Defendant; for the relationship of parent and child between the Plaintiff and minor Defendant to be established; and for the records of these proceedings to be sealed;

Jennifer Brown v. Baby Girl Harper
Petition for Adoption

Page 4 of 6

- d. After the passage of at least three (3) months following the filing of this Complaint, and the filing of a post placement report and an accounting, for an Order of this Court directing that a birth certificate be issued in the name of _____ showing the Plaintiff as the parent of the minor Defendant; and
- e. For such other and further relief as the Court may deem just and proper.



Douglas A. Barker
Attorney for Plaintiff
171 Church Street, Suite 160
Charleston, South Carolina 29401
Office: 843-727-0077
Fax: 843-577-0460

Charleston, South Carolina
October 30 2013.

STATE OF SOUTH CAROLINA

FILED

FILE

COUNTY OF CHARLESTON

2013 OCT 30 PM 3:15

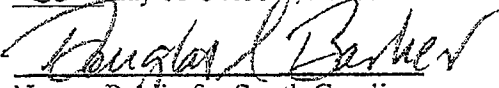
VERIFICATION

2013 OCT 30 PM

PERSONALLY appeared before me, Jennifer Brown, who, being duly sworn, deposes and says that she is the Plaintiff in the within cause of action; that she has read the forgoing Summons and Complaint, and the allegations contained therein are true and correct to her own knowledge and belief, except as to those allegations alleged upon information and belief, and as to those she believes same to be true.


Jennifer Brown

SWORN TO before me this
30th day of October, 2013.


Notary Public for South Carolina
My commission expires: 9-27-2017

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN FAMILY COURT
NINTH JUDICIAL CIRCUIT

2013 NOV 26 PM 1:18

CLERK OF COURT

HOLLY LAWRENCE,

Plaintiff,

vs.

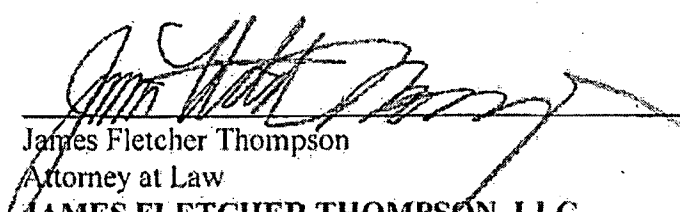
JENNIFER BROWN,

Defendant.

SUMMONS

2013-DR-10- 4386

You are hereby summoned and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Complaint on the subscribers at their offices, 302 East St. John Street, Spartanburg, South Carolina, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.


James Fletcher Thompson

Attorney at Law

JAMES FLETCHER THOMPSON, LLC

302 East St. John Street

Post Office Box 1853

Spartanburg, South Carolina 29304

(864) 573-5533 ext. 5

ATTORNEY FOR PLAINTIFF

Nov 26, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

2013 NOV 26 PM 1:18
IN FAMILY COURT
NINTH JUDICIAL CIRCUIT

HOLLY LAWRENCE,

Plaintiff,

vs.

JENNIFER BROWN,

Defendant.

SUMMONS

2013-DR-10-4384

The Plaintiff would respectfully show to this Court:

1. The Plaintiff Holly Nicole Lawrence is a citizen and resident of Mecklenburg County, North Carolina, residing at 4648 Twynham Lane, Charlotte, North Carolina 28226.

2. On information and belief, the Defendant Jennifer Brown is a citizen and resident of Charleston County, South Carolina, and is the prospective adoptive mother for a female child born to Holly Lawrence on , 2013, at Carolinas Medical Center in Pineville, North Carolina.

3. After giving birth to a female child or , 2013, at Carolinas Medical Center in Pineville, North Carolina, Holly Lawrence was contacted by medical personnel at the hospital who suggested that she place the child for adoption with Jennifer Brown, a relative of the mid-wife who delivered the child.

4. On October 29, 2013, Holly Lawrence and her newborn infant were transported from North Carolina to South Carolina by relatives of Jennifer Brown for purposes of placing the infant child for adoption with Jennifer Brown.

5. On October 30, 2013, Holly Lawrence purportedly executed a South Carolina consent document in the presence of Jennifer Brown and attorney, Douglas A. Barker, who on information

and belief, represents Jennifer Brown in her adoption action. Following the execution of the consent document, three additional witnesses were brought into the room and signed as purported witnesses to the consent document although they were not present at the time of signing.

FOR A FIRST CAUSE OF ACTION
The purported consent document is void ab initio.

6. The consent document purportedly signed by Holly Lawrence was not witnessed pursuant to S.C. Code Ann. Section 63-9-340 and therefore is void *ab initio*.

7. There is, therefore, no legal basis upon which the Defendant can rely for the continued unlawful possession of the minor child and the Plaintiff Holly Lawrence therefore requests immediate transfer of legal and physical custody of the minor child.

FOR A SECOND CAUSE OF ACTION
Jennifer Brown has breached the requirements of Interstate Compact on the Placement of Children, pursuant to South Code Ann. § 63-9-2200.

8. Any time a child is brought from a sending state to a receiving state as a preliminary to a possible adoption, the Interstate Compact on the Placement of Children (ICPC) is implicated. Approval from the sending state and the receiving state must be obtained prior to the child moving from the sending state to the receiving state. For the Plaintiff to be transported from North Carolina to South Carolina as a preliminary to the adoption is a violation of ICPC rendering this an illegal placement in both North Carolina and South Carolina. (See Section 4 for penalty for illegal placement.¹) The North Carolina ICPC Deputy Compact Administrator/Manager has denied ICPC approval in this case by correspondence dated November 22, 2013.

¹ Such violations may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place or care for children.

9. There is, therefore, no legal basis upon which the Defendant can rely for the continued unlawful possession of the minor child and the Plaintiff Holly Lawrence therefore requests immediate transfer of legal and physical custody of the minor child.

FOR A THIRD CAUSE OF ACTION

**The consent document was involuntarily executed and should be withdrawn pursuant to
S.C. Code Ann. Section 63-9-350.**

10. Holly Lawrence is a North Carolina resident and is subject to all legal protections afforded to the citizens of North Carolina.

11. Upon information and belief, a North Carolina birth mother entering into a private adoption action, has seven days after signing a North Carolina consent in which she may revoke her consent; the seven days begins to run from the time that the birth mother is provided a copy of the adoptive parents' pre-placement home investigation report. No such pre-placement report has been provided.

12. Holly Lawrence issued a revocation of her consent document by sending a registered letter to Douglas Barker on November 5, 2013.

13. North Carolina law governs Holly Lawrence's execution of any alleged consent document as she is a citizen and resident of North Carolina; she has never received any legal counseling regarding North Carolina law, and therefore could not knowingly and voluntarily waive her rights under North Carolina law.

14. There is, therefore, no legal basis upon which the Defendant can rely for the continued unlawful possession of the minor child and the Plaintiff Holly Lawrence therefore requests immediate transfer of legal and physical custody of the minor child.

FOR A FOURTH CAUSE OF ACTION

A medical and social history for the has not been obtained pursuant to S.C. Code Ann. Section 63-9-520.

15. The birth mother, Holly Lawrence, has never been interviewed to give a medical and social history as required by South Carolina Code Ann. § 63-9-520 and therefore the requirements of the Adoption Statute have not been met.

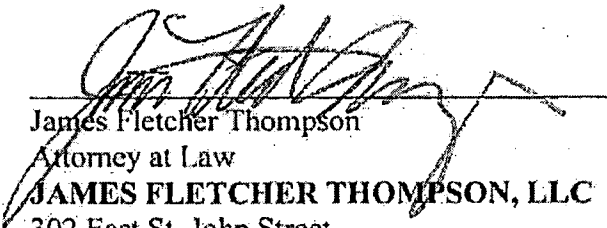
FOR A FIFTH CAUSE OF ACTION

Request for attorney's fees.

16. The Plaintiff Holly Lawrence is informed and believes that she should be awarded attorney fees and costs for this matter.

WHEREFORE, the Plaintiffs pray for:

- A. The immediate return of the minor child to her custody and care;
- B. For this Court to dismiss any purported adoption proceedings filed by the Defendant or any other individual seeking the custody and for adoption of the minor child;
- C. For this Court to order Defendant Jennifer Brown to reimburse Plaintiff's attorneys fees and costs; and,
- D. Such other and further relief as the Court may deem just and proper.


James Fletcher Thompson

Attorney at Law

JAMES FLETCHER THOMPSON, LLC

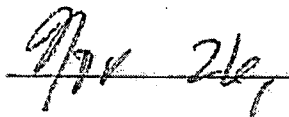
302 East St. John Street

Post Office Box 1853

Spartanburg, South Carolina 29304

(864) 573-5533 ext. 5

ATTORNEY FOR PLAINTIFF

 2013

APPX58

FILED
IN THE FAMILY COURT
NINTH JUDICIAL CIRCUIT
2013 NOV 26 PM 4:35

JULIE ARMSTRONG
CLERK OF COURT

BY) NOTICE OF MOTION AND MOTION
) FOR EMERGENCY RELIEF
) AND MOTION TO INTERVENE
) AND TO CONSOLIDATE

Docket No. 2013-DR-10-4057

Docket No. 2013-DR-10-4057

Docket No. 2013-DR-10-4057

Docket No. 2013-DR-10-4057

Docket No. 2013-DR-10-4057

IN THE FAMILY COURT
NINTH JUDICIAL CIRCUIT

2013-DR-10- 4306

2013-DR-10- 4306

2013-DR-10- 4306

2013-DR-10- 4306

2013-DR-10- 4306

2013-DR-10- 4306

APPX59

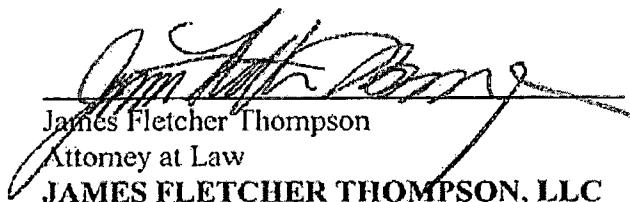
On , 2013, Holly Lawrence delivered a child at Carolinas Medical Center Hospital in Pineville, North Carolina. On October 29, 2013, Ms. Lawrence was transported from North Carolina to South Carolina by relatives of Jennifer Brown. On October 30, 2013, Ms. Lawrence was driven to the offices of Douglas Barker in Charleston, South Carolina where she purportedly executed a South Carolina consent document. This consent document was improperly executed. (See Exhibit 1, Affidavit of Holly Lawrence.)

Further, a South Carolina consent document should have never been executed (even if it had been appropriately witnessed.) Ms. Lawrence is a North Carolina resident and subject to the laws of North Carolina which allow for a seven-day revocation period. Ms. Lawrence has revoked her consent and hence, there is no legal basis for Jennifer Brown to continue to pursue an adoption action.

As a separate and independent basis for which this adoption should be dismissed, the child was transported from North Carolina to South Carolina for purposes of an adoption, thereby implicating the Interstate Compact on the Placement of Children (ICPC). There has been no ICPC approval granted in this case. Therefore, this purported placement is an illegal placement. (See Exhibit 2, correspondence of November 22, 2013, from North Carolina ICPC Deputy Compact Administrator/Manager, Carla McNeill.)

Based on these allegations, Holly Lawrence respectfully requests an emergency hearing wherein she may appear before the court seeking emergency transfer of legal and physical custody of the minor, and for her intervention into the termination of parental rights and adoption action filed by Jennifer Brown, and consolidation of that case, #2013-DR-10-4057, with action filed by Holly Lawrence, #2013-DR-10-4380.

Respectfully submitted:


James Fletcher Thompson
Attorney at Law
JAMES FLETCHER THOMPSON, LLC
302 East St. John Street
Post Office Box 1853
Spartanburg, South Carolina 29304
(864) 573-5533 ext. 5

~~APPROX~~ATTORNEY FOR PLAINTIFFS

November 21, 2013

ORDER

This matter ____ shall / ✓ shall not be scheduled for an emergency hearing.

A hearing on Plaintiff's Motion is scheduled for Dec 17th, 2013, at 9:00 (a.m.) / p.m.
in Charleston County Family Court, 100 Broad Street, Charleston, South Carolina.

IT IS SO ORDERED.

A. J. McMeekin
Judge of Family Court
Ninth Judicial Circuit

11-26, 2013

2013 NOV 26 PM 2:33
CLERK OF COURT
BY _____

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By [Signature]
DEPUTY CLERK

FILED

2013 NOV 26 PM 1:25

JULIE ARMSTRONG
CLERK OF COURT

BY _____

EXHIBIT 1

STATE OF SOUTH CAROLINA)
) AFFIDAVIT OF HOLLY NICOLE LAWRENCE
COUNTY OF SPARTANBURG)

The affiant, being duly sworn, states and deposes,

1. I am Holly Nicole Lawrence, date of birth December 24, 1989. I reside at 4648 Twynham Lane, Charlotte, North Carolina 28226.

2. On Sunday, [REDACTED], 2013, at approximately 4:00 a.m. I went alone to the emergency room at Carolinas Medical Center in Pineville, North Carolina, where I was admitted. I gave birth to a healthy female child at 9:59 a.m. on [REDACTED], 2013.

3. I had only learned of my pregnancy approximately one month prior to the time of the delivery, and had no prenatal care. I had not shared the news of my pregnancy with my parents, although I live with them.

4. On Sunday, _____, 2013, following the baby's birth, I mentioned to hospital staff that I was considering adoption and a hospital social worker came to my room. This social worker, I believe his name was Tommy, advised that I could not make any decision for 24 hours after the baby's birth, and he left after that brief interaction.

5. Other hospital staff were also aware that I was considering adoption for my baby, including the midwife who delivered the child, April Witzel.

6. On Monday, October 28, 2013, at approximately 1:00 a.m., April Witzel came to my room and told me that she had a cousin who lived in South Carolina who was hoping to adopt and she proceeded to describe her cousin's situation to me. She gave me the number for her cousin, Jennifer Brown, and invited me to call Jennifer. I again informed April that I was considering adoption, but did not know what I was going to do.

7. On Monday, October 28, 2013, sometime during the hours of 10:00 a.m. and 1:00

APPX63

p.m., the hospital social worker Sharon Carter visited my room and gave me a printout with a number for Bethany Christian Services. She called this agency for me, and I spoke briefly by phone with someone named "Sarah." Sarah explained how I could choose a family, the difference in an open and closed adoption, and what services they could provide. She referred me to their website where I could look at prospective adoptive families.

8. Later on Monday, October 28, 2013, I talked with Jennifer Brown about her desire to adopt. At some point later that day, I was informed that Jennifer had been looking into lawyers to handle the adoption and that it was going to be too expensive to adopt, and she wished me good luck.

9. I was discharged from the hospital on Monday, October 28, 2013. At no time during my hospitalization did any hospital staff offer to contact my family for me. I was without any support from family or friends during my hospitalization; I only had interaction with hospital staff who were very encouraging of adoption.

10. On Tuesday, October 29, 2013, April Witzel called and advised that her cousin Jennifer Brown had now found someone to assist with the adoption. April bought a car seat, and met me at Carolinas Medical Center in Pineville, North Carolina to discharge the baby. After discharge, April transported me and my baby to South Carolina for purposes of completing the adoption with Jennifer Brown.

11. April Witzel drove me and the baby to Columbia, South Carolina where we met Pamela Brown, the sister of Jennifer Brown. Pamela Brown then drove the baby and me to Spring Hill Suites in Charleston, South Carolina. Arrangements were made to pick me up the next morning for an appointment with the adoption lawyer at 10:00 am.

12. After sleeping very little that night, I was picked up at the hotel on Wednesday, October 30, 2013 at 9:30 a.m. by Gail Brown, mother of Jennifer Brown. Gail Brown drove me

to the offices of Jennifer's lawyer, Douglas A. Barker. Upon arriving at his offices, I met Jennifer Brown, the adoptive mother, for the first time.

13. Promptly at 10:00 a.m., Jennifer Brown and I went into the office and met with her attorney, Douglas A. Barker. Mr. Barker advised me of his role as the adoption attorney, and had a document for my signature. He instructed me to read and initial each paragraph, and to sign on page 2. I signed the document at 10:15 a.m. in the presence of Jennifer Brown and attorney Douglas Barker. I immediately requested a break to go outside and smoke a cigarette. I looked at my watch and noted the time, and how quick the meeting had been.

14. I returned to Douglas Barker's office where he and Jennifer Brown were still meeting. He then brought in three witnesses who he explained were required to witness the document that I had signed. He stated that one was an attorney. Those witnesses signed their names to the document, but none of the witnesses spoke to me. They left the room, and Douglas Barker advised that my part was done. I left his office with Gail Brown, who returned me to the Spring Hill Suites.

15. Upon returning to Spring Hill Suites, I got so spend some time with my baby, and then Jennifer Brown arrived and I handed the baby over to her. I felt immediately that something was not right with the process.

16. I remained at Spring Hill Suites alone until sometime later that afternoon when a family friend of adoptive mother picked me up and returned me home to Charlotte, North Carolina.

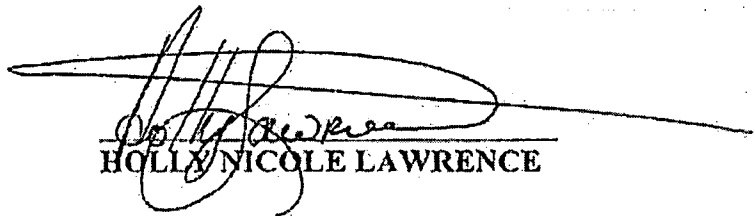
17. I was very emotional during the return to North Carolina, and was exhausted upon arrival at home.

18. I worked all day on Thursday, October 31, 2013 and Friday, November 1, 2013 (7:00 a.m. - 3:30 p.m.).

19. On Saturday, November 2, 2013, I finally broke down emotionally and told my mother what had happened. Repeating the events of the last week to my mother caused me to see

the "red flags" about how this situation was handled. I began to reach out to the hospital, law enforcement, attorneys offices and other agencies to try to get my daughter back.

20. I sent a registered letter to attorney Douglas Barker on November 5, 2013, revoking my consent.



HOLLY NICOLE LAWRENCE

SWORN to before me this 18
day of November, 2013.

Mary H. Waldrop (SEAL)

Notary Public for South Carolina

My Commission expires: 5-16-2023

EXHIBIT 2

Mary Waldrop

From: McNeill, Carla [carla.mcneill@dhhs.nc.gov]
Sent: Friday, November 22, 2013 4:09 PM
To: Henne, Sherre
Cc: Timmons, Charlene; Thompson, Jane; jamesfletcherthompson@gmail.com; Mary Waldrop; Cokley, Patricia
Subject: RE: FROM: James Fletcher Thompson re: Baby Girl Lawson

Sherre:

I am following up with you on the letter I received from the birth mother's attorney. I apologize for the minimal delay. If you need anything more, please let me know.

The North Carolina ICPC office has reviewed the 11/20/13 letter from SC attorney James Thompson, representing birth mother Holly Lawrence, and Ms. Lawrence's enclosed sworn affidavit. Mr. Thompson makes it clear that Ms. Lawrence is invoking her rights under North Carolina's adoption law, Chapter 48 of the NC General Statutes. Ms. Lawrence's affidavit states that on 11/5/13 she sent her written revocation to Ms. Brown's attorney via registered mail. 48-3-608 governs NC revocations and allows the parent 7 days in which to revoke. In addition, 48-3-608(b) and 48-3-307 provide that the placing parent may revoke up to and including 5 business days after she receives a copy of an approved pre-placement assessment for the prospective adoption parent in independent, non-related adoptions in which an approved pre-placement assessment is required. It is our understanding that Ms. Brown does not have an approved pre-placement assessment.

Lack of ICPC compliance is a violation of North Carolina law, G.S. 7B-3800, Art. IV. NC ICPC continues to maintain that this adoptive placement was made in violation of the Compact and will not receive the approval of NC ICPC.

Thanks

Carla McNeill, MSW
N.C. Department of Health and Human Services
Deputy Compact Administrator/Manager
Division of Social Services
820 S. Boylan Avenue
McBryde Building East
3rd Floor
Raleigh, NC 27603

MSC 2409
Raleigh, NC 27699-2409
Phone Number (919) 527-6391
Fax Number (919) 733-3052
Carla.McNeill@dhhs.nc.gov
www.ncdhhs.gov/dss

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From: Henne, Sherre [<mailto:Sherre.Henne@dss.sc.gov>]
Sent: Wednesday, November 20, 2013 5:02 PM
To: McNeill, Carla
Cc: Timmons, Charlene
Subject: FW: FROM: James Fletcher Thompson re: Baby Girl Lawson

Hi Carla and Charlene! Pat is out so I wasn't sure if you thought I should respond to this. Do you know if the well visit was made via SC DSS? Any updates?

Sherre

From: Mary Waldrop [<mailto:mary@thompsonlawfirm.net>]
Sent: Wednesday, November 20, 2013 4:54 PM
To: Henne, Sherre; charlene.timmons@dhhs.nc.gov
Subject: FROM: James Fletcher Thompson re: Baby Girl Lawson

Ms. Henne and Ms. Timmons:

Please see the attached letter. A hard copy has been mailed today.

I appreciate your attention to this matter.

Sincerely,

Jim Thompson

James Fletcher Thompson
Law Offices of James Fletcher Thompson, LLC
P.O. Box 1853
Spartanburg, SC 29304
Telephone: 864-573-5533 ext. 5
Fax: 864-327-5139

Hague Approved



CERTIFICATION • INTEGRITY • ACCOUNTABILITY



Fellow of the
AMERICAN ACADEMY OF
ADOPTION ATTORNEYS



Fellow of the
AMERICAN ACADEMY OF
ASSISTED REPRODUCTIVE TECHNOLOGY ATTORNEYS



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

HOLLY LAWRENCE,

Plaintiff,

-VS-

JENNIFER BROWN,

Defendant.

FILED
IN THE FAMILY COURT
NINTH JUDICIAL CIRCUIT
2013 DEC 17 CASE NO. 2013-DR-10-4386
JULIE ANN STRONG
CLERK OF COURT

BY _____

ANSWER AND COUNTERCLAIM

TO: JAMES FLETCHER THOMPSON, ESQUIRE, ATTORNEY FOR PLAINTIFF, HOLLY LAWRENCE.

The Defendant, JENNIFER BROWN, by and through her undersigned counsel, Answers and Counterclaims to the Plaintiff's Complaint as follows:

FOR A FIRST DEFENSE:

1. The Defendant denies each and every allegation contained in the Plaintiff's Complaint not hereinafter specifically admitted, qualified or explained, and strict proof is demanded thereof.

2. Defendant is without sufficient information to either admit or deny the allegations contained in paragraph 1 of Plaintiff's Complaint and, therefore denies the same and demands strict proof thereof.

3. Defendant admits paragraph 2 of Plaintiff's Complaint.

4. The Defendant denies the allegations contained in Paragraph 3 of the Plaintiff's Complaint and demands strict proof thereof. By way of clarification, Defendant avers that Holly Lawrence planned to place her minor child for adoption prior to the child's birth and that such plan for adoption was solely that of Ms. Lawrence.

5. Defendant admits so much of Paragraph 4 as alleges that on October 29, 2013, Holly Lawrence traveled to Charleston, South Carolina and was transported by a relative of the Defendant. All other allegations contained in Paragraph 4 are denied and strict proof demanded thereof.

6. Defendant admits so much of Paragraph 5 as alleges that on October 30, 2013, the Plaintiff executed a South Carolina Consent for Adoption of Child in the State of South Carolina which was witnessed by three individuals, including one attorney licensed to practice in the State of South Carolina. Defendant is without sufficient information as to the remaining allegations contained in Paragraph 5 so as to admit or deny and, therefore, denies the same and demands strict proof thereof.

7. The Defendant denies the allegations contained in Paragraphs 6 and 7 of the Plaintiff's Complaint and demands strict proof thereof.

8. The Defendant denies the allegations contained in Paragraphs 8 and 9 of the Plaintiff's Complaint and demands strict proof thereof. Defendant refers to South Carolina's law governing the Interstate Compact on the Placement of Children (ICPC), specifically S.C. Code §63-9-2200(8), which delineates certain "limitations" on the applicability of the ICPC and states, "This compact shall not apply to the sending or bringing of a child into a receiving state by his parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or nonagency guardian in the receiving state." Because ICPC by statute does not apply, there is no need for ICPC approval and, therefore, no ICPC violation in this case. In the alternative, if ICPC is deemed to apply, Defendant avers that it would be in the best interest of the minor child that she be granted retroactive approval under the circumstances.

9. As to Paragraph 10 of Plaintiff's Complaint, Defendant is without sufficient information to either admit or deny that the Plaintiff is a legal resident of North Carolina and

therefore denies the same. All other allegations contained in Paragraph 10 of the Plaintiff's Complaint are denied and strict proof demanded thereof.

10. Regarding Paragraph 11, the Defendant lacks information or knowledge sufficient to either admit or deny the allegations and therefore denies the same and demands strict proof thereof. The Defendant would clarify that such may well be the law in North Carolina; however, the Plaintiff has submitted herself to the jurisdiction of the State of South Carolina Family Court by, among other actions, the filing of her pleadings in this Court wherein she requests affirmative relief. In filing her action, Plaintiff avers this Court has jurisdiction over her and over this matter such that it is empowered to issue relief and, therefore, the Plaintiff has voluntarily submitted herself to be governed by South Carolina law.

11. Defendant admits the allegations of Paragraph 12 in so much that there is a letter purportedly signed by Holly Lawrence that was received by attorney Douglas Barker sometime after November 5, 2013 wherein she states she is revoking her consent to the adoption pursuant to North Carolina law. Defendant denies that such revocation is proper or legal and denies that Plaintiff can attempt to utilize North Carolina law where she has voluntarily submitted herself to the jurisdiction of the Family Court of South Carolina and demands strict proof thereof.

12. Defendant denies the allegations contained in Paragraphs 13 and 14 of Plaintiff's Complaint and demands strict proof thereof. Defendant refers Plaintiff to her Answer to the allegations contained in Paragraph 12 as stated above. Plaintiff has voluntarily submitted herself to the jurisdiction of the South Carolina Family Court and in so doing necessarily acquiesced to being governed by the laws of this state.

13. Defendant admits so much of the allegations contained in Paragraph 15 that the Plaintiff has not yet been interviewed with regard to a medical and social history; however, upon

information and belief, Plaintiff has executed a HIPPA compliant release allowing the Defendant access to her medical information. All other allegations are denied and strict proof demanded thereof.

14. Defendant denies the allegations contained in Paragraph 16 of Plaintiff's Complaint and demands strict proof thereof.

FOR A SECOND DEFENSE AND BY WAY OF COUNTERCLAIM:

15. The above Paragraphs 1-14 are incorporated herein by reference as if fully set forth verbatim.

16. In support of her requests for affirmative relief in this action, the Defendant would refer to all allegations contained in her Complaint filed on October 30, 2013 in Case Number 2013-DR-10-4057 and joins the Plaintiff in her request that such case be joined and or consolidated with the instant action.

17. The Defendant is informed and believes that she has been forced to defend this action through no fault of her own, and that she is without sufficient funds to maintain her defense as well as prosecution of this action, and would request that the court order the Plaintiff to be responsible for all of her attorney fees and costs, temporarily and permanently.

18. That the Defendant is informed and believes that she should be allowed to engage in discovery pursuant to the *South Carolina Rules of Civil Procedure* and the *South Carolina Rules of Family Court*.

19. That as this is now a contested adoption action, Defendant is informed and believes that it is necessary for the Court to appoint a Guardian *ad Litem* for the minor child and that the parties be required to be equally responsible for all costs related to the Guardian *ad Litem*, subject to a different allocation by agreement or Final Order of the Court.

20. The Defendant is informed and believes that this matter is subject to mandatory mediation and that it would be beneficial to the parties and particularly to the minor child for the parties to attempt to resolve their differences via mediation. Defendant requests an Order of this Court directing that the parties participate in mediation and equally divide the cost of mediation subject to reallocation of such costs by agreement or Final Order of the Court.

WHEREFORE, Defendant prays as follows:

1. For an Order dismissing Plaintiff's action with costs and fees to the Defendant.
2. For an Order requiring the Plaintiff to be responsible for the Defendant's attorney fees and costs, temporarily and permanently.
3. For an Order allowing the parties to engage in discovery pursuant to the *South Carolina Rules of Civil Procedure* and the *South Carolina Rules of Family Court*; and
4. For an Order appointing a Guardian *ad Litem* to represent the interests of the minor child and requiring the parties to equally divide such costs subject to a different allocation via agreement or Final Order of the Court; and
5. For an Order requiring the parties to participate in mediation and to equally divide such costs subject to a different allocation via agreement or Final Order of the Court; and
6. For such other and further relief on behalf of the Defendant as this Court deems just and proper.

SIGNATURE PAGE TO FOLLOW

SHANNON JONES, ATTORNEY AT LAW, LLC

SHANNON JONES, ESQUIRE

3 State Street

Charleston, South Carolina 29401

Telephone: (843) 720-3100

Facsimile: (843) 720-5999

ATTORNEY FOR DEFENDANT

Charleston, South Carolina

Dated: Dec 17, 2013

Court which encourages the, "prompt voluntary exchange of information and documents by parties prior to trial..."

3. On January 13, 2014 Defendant served Plaintiff with Requests to Produce and Interrogatories as evidenced by the attached Certificate of Mailing. (See Exhibit A). These discovery requests were also sent via fax to the Plaintiff that same day as evidenced by the attached fax confirmation report. (See Exhibit B).

4. Giving Plaintiff five (5) additional days due to service by mail, responses to Defendant's discovery were technically due no later than February 3, 2014.

5. On January 28, 2014 Plaintiff delivered responses to Defendant's written discovery requests, however such responses were incomplete. Defendant's counsel inquired whether additional responses would be forthcoming by the deadline to which the answer was none. (See Exhibit C).

5. Although Plaintiff has filed a motion to limit discovery and has asked for a protective order with regard to certain information requested in both written and deposition discovery, Plaintiff has failed and/or refused, *without asserting any legal objection*, to produce the following:

a) "[A] complete copy of any and all medical records, including but not limited to, physician, hospital, emergency room, substance abuse, psychiatric treatment, and psychological treatment and/or counseling received by Defendant for the last five (5) years." (Request to Produce # 5).

b) "[A]n executed HIPAA compliant release for any and all medical providers, including but not limited to physicians, hospitals, emergency rooms, substance abuse treatment and/or rehabilitation facilities, psychiatrists, and psychologists

from whom the Defendant has received care for the last five (5) years. (Request to Produce #6).

- c) "[A] copy of the results of any and all drug and/or alcohol testing in the last five (5) years." (Request to Produce #8).
- d) "[A] copy of a complete NCIC criminal background check, including all arrests and convictions, for Defendant for the last ten (10) years" (Request to Produce #9).

6. Upon information and belief and pursuant to the Plaintiff's own deposition testimony as well as her answers to interrogatories, Plaintiff has received counseling and other support services at Catholic Charities Diocese of Charlotte since October 30, 2013; however no records were produced with regard to such counseling. In addition, Plaintiff admittedly received treatment at Carolinas Medical Center where she gave birth and yet she failed to produce any records from that treatment provider. While Plaintiff did recently execute and deliver a HIPAA form to Defendant authorizing release of her records from Carolinas Medical Center, Plaintiff also filed a complaint with the hospital alleging, among other things, that the hospital violated her HIPAA rights as it relates to this matter. (See Exhibit D). Furthermore, after originally executing a HIPAA form in October of 2013 for the Defendant to secure her medical records from Carolinas Medical Center, Plaintiff revoked her HIPAA authorization on January 8, 2014 via letter from her attorney and also apparently relayed notice of her revocation to the hospital. (See Exhibit E). Not surprisingly, the hospital has refused to produce Plaintiff's medical records to the Defendant. (See Exhibit F).

7. Plaintiff testified in her deposition that she lives approximately two miles from Carolinas Medical Center. Without question, Plaintiff has the ability to secure the records from

Carolinas Medical Center easier and faster than Defendant and, given the close proximity of her home to the hospital, coupled with her formal complaint filed against this treatment provider for violating her HIPAA rights as well as her recent HIPAA revocations, Plaintiff is in the best if not only position to retrieve copies of her medical records from Carolinas Medical Center¹. It is important to note that the Plaintiff does not claim the records from Carolinas Medical Center lack relevance in this matter, just that the Defendant should have to secure them, not her.

8. As to Defendant's counseling records from Catholic Charities Diocese of Charlotte, the Plaintiff has simply failed to produce anything.

9. Upon information and belief, the records from both Carolinas Medical Center and Catholic Charities Diocese of Charlotte contain important information directly relevant to this action, including but not limited to, as to the issue of Plaintiff's truthfulness and veracity, Plaintiff's claim of lack of knowledge of her pregnancy which goes directly to the issue of fitness and best interest due to lack of prenatal care and Plaintiff's claims of duress and coercion to support her claim that she should be able to undo her Consent for Adoption.

10. Although Plaintiff's response to Request to Produce #8 regarding copies of all drug test results over the last five (5) years was, "None," Plaintiff testified in her verified Answers to Interrogatories that she had, *"a drug test done by Link Staffing in August 2013 when Defendant applied for current manufacturing job. The Plaintiff does not know who Link Staffing used for drug testing, but was advised the test was negative."* Not only is Plaintiff's verified response to request to produce #8 in direct conflict with her verified answer to interrogatory #8 (which signals a lack of truthfulness, candor or worse...perjury), Plaintiff's response is wholly inadequate. Plaintiff does not claim securing

¹ Because it is necessary to ensure complete and accurate disclosure, Defendant would request that the Court direct that the Plaintiff to authorize the hospital's record custodian to verify to Defendant that the records provided are complete.

these drug test results from the facility that tested her just last year would be unduly burdensome, she claims no such results exist, which appears to be untrue.

11. Plaintiff has also failed and refused to produce a complete NCIC criminal background check, including all arrests and convictions for the last (10) years. According to Plaintiff, she is, "not in possession of this information," and she believes that Defendant can and should be required to secure such information. Once again, this information is easily retrievable by Plaintiff and her unwillingness to at least attempt to produce such information when she is in the best position to retrieve it smacks of a desire to evade and/or avoid disclosure of relevant information. Importantly, Defendants attempts to secure an NCIC report utilizing information provided by Plaintiff have been unsuccessful. Furthermore, according to the Federal Bureau of Investigations, only individuals themselves are allowed to request a complete NCIC report unless the matter involved is criminal in nature. (See Exhibit G).

12. In addition to all of the above information for which no formal objection has been lodged by Plaintiff to prevent disclosure, the Plaintiff has filed a motion to limit discovery as well as a motion for a protective order requesting the Court's permission not to disclose relevant and important information in this case. As to that evidence, Defendant also moves this Court to compel the Plaintiff to disclose all such information which will be more fully addressed in Defendant's Return to Plaintiff's Motion to Limit Discovery.

13. Finally, in this action, Plaintiff is attempting to undo her Consent for Adoption and, thereby, destroy the adoption action itself. Her burden is high as our Courts have made it clear how important it is to ensure permanence and stability for children. Attacks on executed Consent for Adoptions are not, and should not be, entertained lightly. In this case, although ordered to conduct discovery as a part of prosecuting her action, Plaintiff has failed and refused to produce relevant

information, not just on grounds of privilege, but on grounds that it is simply not convenient to her or on no grounds at all. Plaintiff should be reminded of the serious nature of her action and that her unwillingness to provide complete disclosure of the evidence will not be tolerated by the Court and if perpetuated, should be held as a negative inference against her in this action.

WHEREFORE,

Based on all of the above, Defendant respectfully requests that this Court issue an Order compelling Plaintiff to properly and fully respond to all discovery requests, compelling the parties to reconvene and finalize Defendant's deposition of Plaintiff and granting a continuance of the evidentiary hearing scheduled in this matter until such discovery is completed.

Respectfully submitted,

SHANNON JONES, ATTORNEY AT LAW, LLC

Shannon Jones, Esquire
Cassandra L. Hutchens, Esquire
3 State Street
Charleston, South Carolina 29401
Telephone: (843) 720-3100
Facsimile: (843) 720-5999

ATTORNEYS FOR DEFENDANT

Charleston, South Carolina

Dated: Feb. 3, 2014

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
HOLLY LAWRENCE,

Plaintiff,

-vs-

JENNIFER BROWN,

Defendant.

FILED
IN THE FAMILY COURT
NINTH JUDICIAL CIRCUIT
CASE NO. 2013-DR-10-4057
2013-DR-10-4386

OLIE J. ARMSTRONG
CLERK OF COURT

8) RULE 11 CERTIFICATION

Pursuant to Rule 11 of the *South Carolina Rules of Civil Procedure*, I, Shannon Phillips Jones, Esquire, as the counsel for the above named Defendant, do hereby certify that I have either consulted in good faith with opposing counsel in an attempt to resolve the issues joined by Defendant's *Motion to Compel Discovery, to Reconvene Deposition & Continue Evidentiary Hearing* or that such consultation would serve no useful purpose or could not be timely held.

Respectfully Submitted,

Shannon Phillips Jones, Esquire
3 State Street
Charleston, SC 29401
Telephone: (843) 720-3100
Facsimile: (843) 720-5999

ATTORNEY FOR DEFENDANT

Charleston, South Carolina

Dated: 2-3-14

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2013-DR-10-4057
	)	
JENNIFER BROWN,	)	
	)	
Plaintiff	)	PLAINTIFF'S FIRST SET OF
	)	INTERROGATORIES TO DEFENDANT
vs.	)	
	)	
BABY GIRL HARPER, A	)	
MINOR UNDER THE AGE OF	)	
SEVEN (7) and HOLLY	)	
LAWRENCE,	)	
	)	
Defendants.	)	

TO THE DEFENDANT HOLLY LAWRENCE AND HER ATTORNEY, JAMES F. THOMPSON, ESQUIRE:

Pursuant to Rule 25 of the Rules of Practice for the Family Courts, Rule 26 of the South Carolina Rules of Civil Procedure, and the Order of the Charleston County Family Court, the following Interrogatories are propounded by the Plaintiff to the Defendant to be answered under oath by the Defendant within thirty (30) days of the service hereof. These Interrogatories shall be deemed to continue from the time of service until the time of trial of the case, and should additional or amended answers to these Interrogatories be necessary during the time, they shall be properly transmitted to the Plaintiff through Plaintiff's undersigned attorney.

NOTE A: When used in these Interrogatories, the term "Defendant" or any synonym thereof is intended to, and shall, embrace and include, in addition to the named Defendant, counsel for Defendant and all agents, servants, employees, representatives, investigators, and other persons or agencies who are in possession of or have obtained or have access to information for or on behalf of Defendant.

NOTE B: As used herein, the term "you", "your", or "yourself" refer to Defendant and, if it is a corporation, each of its parents, predecessors, subsidiaries and affiliates and each of its present and former officers, employees, agents, representatives and attorneys and each person acting or purporting to act on behalf of said company or corporation.

NOTE C: As used herein, the term "representative" means any and all agents, employees, servants, officers, directors, attorneys or other persons acting or purporting to act on behalf of the person in question.

NOTE D: As used herein, the term "person" means any natural individual in any capacity whatsoever or any entity or organization (including divisions, departments, and other units therein) and shall include, but not be limited to, a public or private corporation, LLC, partnership, joint venture, voluntary or unincorporated association, organization, proprietorship, trust, estate, governmental agency, commission, bureau, department, or private company.

NOTE E: As used herein, the term "document" means any medium upon which intelligence or information can be recorded or retrieved -- and includes, without limitation, the original and each copy, regardless of origin and location, of any book, pamphlet, periodical, letter, memorandum (including memorandum or report of a meeting or conversation), invoice, bill, order form, receipt, financial statement, accounting entry, diary calendar, telex, telegram, cable, report, record, contract, agreement, study, hand-written note, draft, working paper, chart paper, print, laboratory record, drawing sketch, graph, index, list, tape, photograph, microfilm, data sheet or data processing card or any other written, recorded, transcribed, punched, taped, filed or graphic matter, however produced or reproduced -- which is in your possession, custody, or control or which was, but is no longer, in your possession, custody or control.

NOTE F: As used herein, the term "communication" means any oral or written utterance, notation or statement of any nature whatsoever, by and to whomsoever made, including but not limited to correspondence, conversations, dialogues, discussions, interviews, consultations, agreements, and other understandings between or among two or more persons.

NOTE G: As used herein, the terms "identify", "identification", or "identity" when used in reference to (a) a natural individual, require you to state his or her full name and residential and business address, or (b) a corporation, require you to state its full corporate name, and any names under which it does business, its state of incorporation, the address of its principal place of business and the addresses of all of its offices, or (c) a business, require you to state the full name or style under which the business is conducted, its business address or addresses, the type of business in which it is engaged, the geographic areas in which it conducts those businesses and the identity of the person or persons who own, operate, and control the business, or (d) a document, require you to state the number of pages and the nature of the document, its title, its date, the name or names of its authors and recipients and its present location and custodian, or (e) a communication, require you to identify the document or documents which refer to or evidence the communication and, to the extent that the communication was non-written, to identify the person participating in the communication and to state the date, manner, place and substance of the communication.

NOTE H: In addition to supplying the information requested, you are to identify all documents that support, refer to or evidence the subject matter of each interrogatory and your answer thereto.

NOTE I: If any or all documents identified herein are no longer in your possession, custody or control, because of destruction, loss or any other reason, then do the following with respect to each and every such document: (a) describe the nature of the document (e.g.: letter, memorandum, etc.); (b) state the date of the document; (c) identify the persons who sent and received the original and a copy of the document; (d) state in as much detail as possible the contents of the document; and (e) state the manner and date of disposition of the document.

NOTE J: If you contend that you are entitled to withhold from production any document identified herein on the basis of attorney/client privilege, work product doctrine or other ground, then do the following with respect to each and every document: (a) describe the nature of the document (e.g.: letter, memorandum, etc.); (b) state the date of the document; (c) identify the person who sent and received the original and a copy of the document; (d) state the subject matter of the document; and (e) state the basis upon which you contend you are entitled to withhold the document from production.

INTERROGATORIES

1. State the names, addresses and telephone numbers of persons known to the parties or counsel to be witnesses concerning the facts of this case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statement. This includes any and all Affidavits obtained for the Temporary or other hearing in this matter, whether filed or not, and whether notarized or not.

2. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

3. State the name, address, telephone number and qualification of each expert who may be called as an expert witness at the trial of this case, the subject matter concerning which the expert will testify, the mental impressions and opinions held by the expert and the facts known to the expert which relate to or form the basis of the mental impressions and opinions held by the expert.

4. Set forth a list of photographs, sketches or other prepared documents in possession of the Defendant that relate to the claim or defense in the case.

5. Please state your current address, including all present post office or mail box addressed, if different.
6. State with specificity all persons or entities for who you have been employed within the past three (3) years, provide the name of the person or entity, dates of employment, number of hours employed weekly and your work schedule.
7. State the names, addresses and telephone numbers of any and all medical providers, including but not limited to, physicians, hospitals, emergency rooms, substance abuse treatment and/or rehabilitation facilities, psychiatrists, and psychologists from whom the Defendant has received care for the last five (5) years.
8. State the names, addresses and telephone numbers of any and all drug and/or alcohol testing facilities that have tested Defendant for drug and/or alcohol in the last five (5) years.
9. List the names, addresses and telephone numbers of any and all medical, or otherwise, clinics or facilities where appointments were scheduled for you, whether by you or another party, to have an evaluation, treatment, and/or procedure related to an abortion at any time during the twelve (12) months prior to giving birth on _____, 2013.
10. List the name(s), address(es), and telephone number(s) of the birth father.
11. List any and all agencies and/or individuals you have contacted about adoption.
12. Did you call any telephone numbers or otherwise contact or research any entities who advertise to help with your pregnancy? If so, list the phone numbers, internet addresses or email addresses used to contact these entities, with who you spoke, and location where you saw such advertisement.
13. List any and all criminal arrests and/or convictions you have had for the last ten (10) years.
14. Explain why you went alone to the emergency room at Carolinas Medical Center in Pineville, North Carolina on _____, 2013.
15. Explain why you did not share the news of your pregnancy with your parents prior to giving birth and placing the child for adoption.
16. Explain why you did not seek prenatal care after you learned of your pregnancy.
17. Explain why you decided to attempt to revoke your consent to adoption after so adamantly stating to the Plaintiff and her family on multiple occasions between October 28, 2013 and October 30, 2013 that you knew you were making the best decision for the child and knew you could not take care of the child financially or emotionally?

18. List the names, addresses, and telephone numbers of any and all hospital staff at Carolinas Medical Center who you spoke to about placing the child for adoption.

19. Explain in detail in what manner you claim the hospital staff at Carolinas Medical Center were "very encouraging of adoption," including specific statements that were made and by whom, how many hospital staff came to you to discuss adoption before you expressed your desire to place the child for adoption, how many hospital staff came to you to discuss adoption after you expressed your desire to place the child for adoption, times that hospital staff came to you to discuss adoption options, and which staff members, if any, allegedly put pressure on you to place the child for adoption.

These Interrogatories shall be deemed continuing in nature from the time of service until the time of trial of the case, so that the information sought by these Interrogatories, which comes to the knowledge of the party, his representative or attorney, after answers to these Interrogatories have been submitted, shall be promptly transmitted to the subscriber.

SHANNON JONES, ATTORNEY AT LAW, LLC


Shannon Jones, Esquire
Cassandra L. Hutchens, Esquire
3 State Street
Charleston, South Carolina 29401
Telephone: (843) 720-5100
Facsimile: (843) 720-5999
ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina
This 13 day of January, 2014

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
JENNIFER BROWN,)
Plaintiff,)
vs.)
BABY GIRL HARPER, A)
MINOR UNDER THE AGE OF)
SEVEN (7) and HOLLY)
LAWRENCE,)
Defendants.)

IN THE FAMILY COURT
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2013-DR-10-4057

PLAINTIFF'S FIRST REQUEST TO PRODUCE
TO DEFENDANT

TO THE DEFENDANT HOLLY LAWRENCE AND HER ATTORNEY, JAMES F. THOMPSON, ESQUIRE:

Pursuant to Rule 25 of the Rules of Practice for the Family Courts and Rule 26 and 34 of the South Carolina Rules of Civil Procedure, and the Order of the Charleston County Family Court, Plaintiff requests that the Defendant produce and permit the representatives of Plaintiff to inspect and copy the documents and other items described below in the possession, custody, and control of the Defendant. Plaintiff requests that the documents and other items described be made available for inspection and copying within the time allowed by the South Carolina Rules of Civil Procedure at the offices of Shannon Jones, Attorney at Law, 3 State Street, Charleston, South Carolina, 29401, as soon as practicable, but no later than thirty (30) days from the date of service of these requests. Please note that the Charleston County Family Court Order requires expedited discovery.

1. Copies of all documents referenced in the *Plaintiff's First Set of Interrogatories to the Defendant*.
2. Copies of all pay stubs, receipts and any and all other evidence of any compensation, reimbursement, bonuses or payment of any kind received by the Defendant for the past three (3) years.
3. A sworn, current financial declaration.
4. Please provide phone records that include details of all incoming and outgoing phone calls, text messages or media messages for any cell phone(s) you have had use of from October 27, 2012 to the present.

5. Please provide a complete copy of any and all medical records, including but not limited to, physician, hospital, emergency room, substance abuse, psychiatric treatment, and psychological treatment and/or counseling received by Defendant for the last five (5) years.

6. Please provide an executed HIPAA compliant release for any and all medical providers, including but not limited to physicians, hospitals, emergency rooms, substance abuse treatment and/or rehabilitation facilities, psychiatrists, and psychologists from whom the Defendant has received care for the last five (5) years.

7. Please provide a copy of any scheduling documentation, whether electronic or otherwise, regarding any and all medical or otherwise, clinics or facilities, including but not limited to abortion clinics, adoption agencies or any other clinic or facility, where appointments were scheduled for you, whether by you or by another party, at any time during the twelve (12) months prior to giving birth on 2013 to the present.

8. Please provide a copy of the results of any and all drug and/or alcohol testing in the last five (5) years.

9. Please provide a copy of a complete NCIC criminal background check, including all arrests and convictions, for Defendant for the last ten (10) years.

10. Please provide a copy of any and all correspondence to and from Defendant and/or Defendant's attorney on the Defendant's behalf to and from the North Carolina Department of Health and Human Services in this matter.

11. Please provide a copy of any and all exhibits Defendant plans to introduce at the evidentiary hearing scheduled for February 4 and 5, 2014.

YOU WILL PLEASE ALSO TAKE NOTICE that the foregoing Interrogatories are of a continuing nature and shall continue through the date of the trial of this case on the merits.

SHANNON JONES, ATTORNEY AT LAW, LLC



Shannon Jones, Esquire
Cassandra L. Hutchens, Esquire
1 State Street
Charleston, South Carolina 29401
Telephone: (843) 720-3100
Facsimile: (843) 720-5999
ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina
This 21 day of January, 2014.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JENNIFER BROWN,

Plaintiff,

vs.

BABY GIRL HARPER, A
MINOR UNDER THE AGE OF
SEVEN (7) and HOLLY
LAWRENCE,

Defendants.

IN THE FAMILY COURT
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2013-DR-10-4057

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on today's date I served true and correct copies of the Plaintiff's First Set of Interrogatories to Defendant and the Plaintiff's First Request to Produce to Defendant in the above captioned action via US Mail with proper postage attached thereto at the following addresses:

James F. Thompson, Esquire
James Fletcher Thompson, L.L.C.
302 East Saint John Street
Spartanburg, SC 29302


Cassandra L. Hutchens, Esquire
Shannon Jones, Attorney at Law, LLC
3 State Street
Charleston, South Carolina 29401
Office: (843) 720-3100
Facsimile: (843) 720-5999

Charleston, South Carolina
January 13, 2014

*** FAX TX REPORT ***

EXHIBIT
"B"

TRANSMISSION OK

JOB NO.	3150
DESTINATION ADDRESS	8643275139
PSWD/SUBADDRESS	
DESTINATION ID	
ST. TIME	01/13 17:56
USAGE T	04' 26
PGS.	9
RESULT	OK

Shannon Jones, Attorney at Law, LLC

3 State Street & Charleston, SC 29401

Telephone (843) 720-3100 & Facsimile: (843) 720-5999

shannon@shannonjoneslaw.com

January 13, 2014

Via U.S. Mail and Facsimile 864.327.5139

James F. Thompson, Esquire
James Fletcher Thompson, L.L.C.
302 East Saint John Street
Spartanburg, SC 29302

RE: Jennifer Brown v. Baby Girl Harper, et al.
Docket No.: 2013-DR-10-4057

Dear Jim:

Please find enclosed a copy of the *Plaintiff's First Set of Interrogatories to Defendant*, and the *Plaintiff's First Request to Produce to Defendant* in the above referenced matter, along with a Certificate of Service.

With kind regards, I am

Sincerely,



Cassandra L. Hutchens, Esquire
Associate Attorney

Enclosures as stated

cc: client (via email only)



Cassie Hutchens <cassie@shannonjoneslaw.com>

Lawrence v. Brown

Mary Waldrop <mary@thompsonlawfirm.net>
To: Cassie Hutchens <cassie@shannonjoneslaw.com>

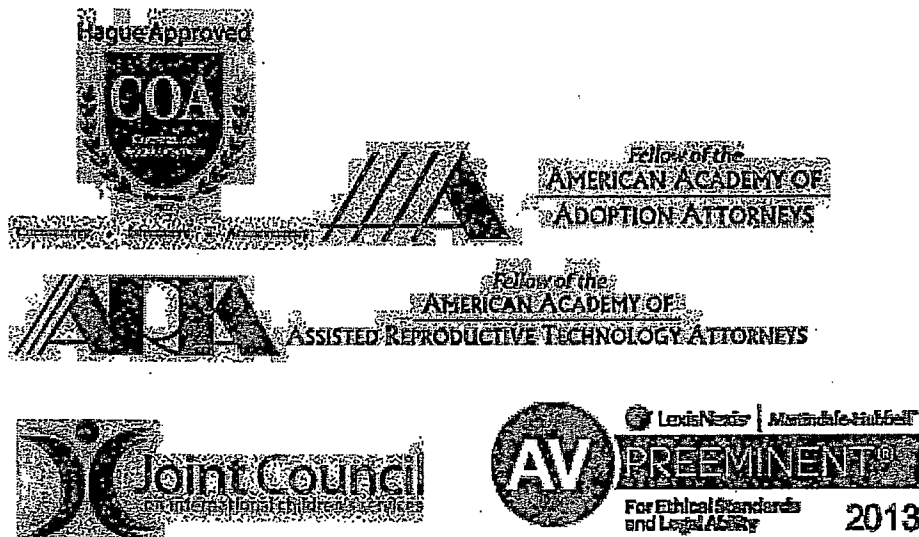
Fri, Jan 31, 2014 at 3:18 PM

There is nothing in addition to the information / responses previously provided.

Sincerely,

Jim Thompson

James Fletcher Thompson
Law Offices of James Fletcher Thompson, LLC
P.O. Box 1853
Spartanburg, SC 29304
Telephone: 864-573-5533 ext. 5
Fax: 864-327-5139



From: Cassie Hutchens [mailto:cassie@shannonjoneslaw.com]
Sent: Friday, January 31, 2014 1:30 PM
To: Jim Thompson
Cc: Shannon Jones; Mary Waldrop
Subject: Lawrence v. Brown

APPX92

Jim,

Will you and your client be producing any additional documents pursuant to our discovery requests before the scheduled hearing next week? In particular we are inquiring about:

a) "a complete copy of any and all medical records, including but not limited to, physician, hospital, emergency room, substance abuse, psychiatric treatment, and psychological treatment and/or counseling received by Defendant for the last five (5) years" (Plaintiff's Request to Produce # 5);

b) "any scheduling documentation, whether electronic or otherwise, regarding any and all medical, or otherwise, clinics or facilities, including but not limited to abortion clinics, adoption agencies or any other clinic or facility, where appointments were scheduled for you, whether by you or by another party, at any time during the twelve (12) months prior to giving birth on October 27, 2013 to the present" (Plaintiff's Request to Produce # 7);

c) "a copy of the results of any and all drug and/or alcohol testing in the last five (5) years" (Plaintiff's Request to Produce # 8); and

d) "a copy of a complete NCIC criminal background check, including all arrests and convictions, for Defendant for the last ten (10) years" (Plaintiff's Request to Produce # 9).

We also request any supplemental documents and answers to our interrogatories that are due pursuant to our discovery requests.

I look forward to hearing from you.

With kind regards I am,

Sincerely,

—

Cassie

Cassandra L. Hutchens

Associate Attorney

Shannon Jones, Attorney at Law, LLC

3 State Street

Charleston, SC 29401

APPX93

(843) 720-3100 office

(843) 720-5999 facsimile

www.shannonjoneslaw.com

The information contained in this e-mail message may be attorney-client privileged and confidential. It is only for the use of the individual or entity named. If the reader of this message is not the intended recipient you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us and return the original message to us. Thank you.

APPX94

93

January 8, 2014

ATTENTION: Mr. Chris Hummer, President Carolinas Medical Center-Pineville

Mr. Hummer, my name is Holly Lawrence and I was a patient at CMC-Pineville this past October, 2013. The most important action of my life to date is to advise you, the hospital administrator, what took place at your hospital during my stay. It has resulted in traumatic and what could possibly be catastrophic results.

- This grievance and complaint is issued against April Witzel, Midwife who delivered my child; Piedmont OB/GYN Ballantyne as employer of Ms. Witzel; Erin Geter – CMC Employee; Keisha Ross – Risk Manager of CMC-Pineville; Jane Firth-Quality Director of CMC-Pineville
- On 2013, I gave birth to a daughter after only learning of the pregnancy just a few weeks prior. I was distraught at the given situation. I gave my status as single and alone; CMC employee Erin Geter learned I was considering adoption and discussed this with April Witzel, Midwife.
- April Witzel approached me that she knew someone who wanted to adopt and could help arrange a private adoption. A social worker from CMC did a very brief visit, handed me a name of one adoption service and left. NO OPTIONS were discussed.
- April Witzel called a FAMILY MEMBER OF MINE who wished to adopt and had me speak with her.
- As I expressed doubts, Ms. Witzel and Ms. Geter encouraged and facilitated adoption arrangements with Ms. Witzel's cousin, Jennifer Brown of Charleston, SC.
- April Witzel arranged to pick me (purchased a car seat herself) and my child up at CMC-Pineville; parking behind bushes not to be seen by co-workers.
- April Witzel assisted her family with finding an attorney, drove me to South Carolina where her family met with me and I signed adoption papers alone and distraught as I did not know what to do.

The gross abuse of position, knowledge and behavior has led to traumatic results for me as I knew for certain within 24 hours that I had not made the right decision. The right decision is to raise her with my family's support. I sent a notice to reverse my decision within 5 days to their legal counsel. The correct counseling, with accredited counselors, would have resulted in very different results. I have filed all motions to have adoption dropped but to date do not have my daughter as I must wait for court hearings and go through the justice system.

- I have discussed this situation with Keisha Ross-CMC Pineville Risk Manager but have had LIMITED feedback.
- My family has contacted Jane Firth-CMC Quality Director but was referred back to Keisha.
- I did not agree to a midwife delivery; I expected a physician to be in charge of the birth.

I have reported Ms. Witzel to the NC Board of Nursing for unethical behavior and asked for disciplinary action to be taken. I also have attempted to have the same disciplinary action taken on Ms. Geter. The ONLY information that I can retrieve from Ms. Ross is that it is being "investigated".

It is my understanding of the law that an accredited hospital has 7 days to respond to a grievance or complaint and 30 days to resolve. We are now over 60 DAYS WITH LIMITED COMMUNICATION and no resolution.

I also have every reason to believe HIPAA laws have been broke by Ms. Witzel and Ms. Geter as they discussed my situation with each other as well as shared my medical history.

This grievance and complaint is requesting:

- Disciplinary action for Ms. Witzel and Ms. Geter, up to including dismissal and loss of midwife/nursing license.
- Hospital, Lab, Anesthesiology Charges Dropped
- Legal fees to retain custody of child reimbursed
- Undetermined sum for damages brought forth as determined by legal counsel

Task for a response to this grievance with 7 days from January 8, 2013.

Holly Lawrence 4648 Twynham Lane Charlotte, NC 28226 704-996-2801

Cc: Rita Horton, Complaint Intake Unit, DHSR of NC; Donna Mooney-NC Nursing Board; Jane Firth-CMC Quality Director; Keisha Ross-Risk Manager CMC Pineville

James Fletcher Thompson, LLC

Attorney at Law

Spartanburg Office:*
302 E. Saint John Street
Spartanburg, SC 29302

* Principal Office
Address for Overnight Mailings

Mailing Address:
Post Office Box 1853
Spartanburg, SC 29304
Telephone: 864-573-5533 ext. 5
Facsimile: 864-327-5139
email: jamesfletcherthompson@gmail.com

Charleston Office:
29X State Street
Charleston, SC 29401

January 8, 2014

via email and U.S. Mail

Shannon Jones, Esquire
3 State Street
Charleston, South Carolina 29401

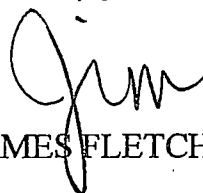
RE: Holly Lawrence v. Jennifer Brown
C.A. No. 2013-DR-10-4386

Dear Shannon:

In your Answer and Counterclaim, you state in #13 that, "...however, upon information and belief, Plaintiff has executed a HIPPA compliant release allowing the Defendant access to her medical information." My client has no recollection of signing a HIPPA release allowing the release of her medical information to your client. If any such release exists, *Holly Lawrence hereby revokes any such medical release.*

With kind regards, I am,

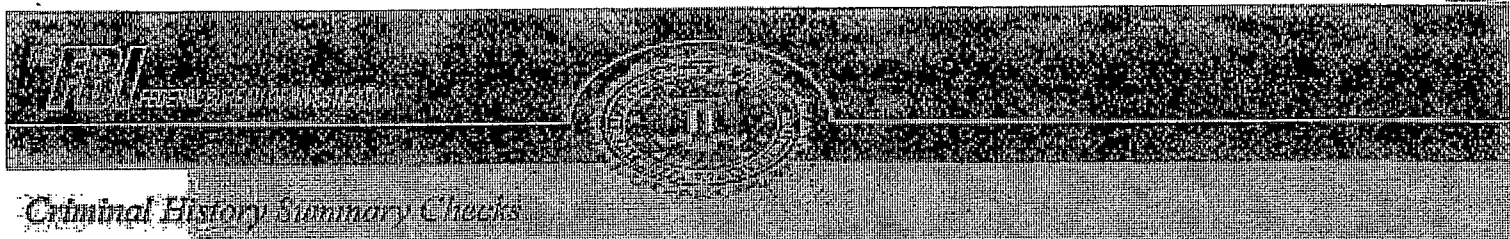
Sincerely yours,



JAMES FLETCHER THOMPSON

/mhw

cc: Jon Mersereau (Via email)



[Home](#) • [About Us](#) • [CJIS](#) • [Criminal History Summary Checks](#)

A Criminal History Summary—often referred to as a criminal history record or a “rap sheet”—is a listing of certain information taken from fingerprint submissions retained by the FBI in connection with arrests and, in some instances, federal employment, naturalization, or military service.

If the fingerprints are related to an arrest, the Criminal History Summary includes name of the agency that submitted the fingerprints to the FBI, the date of the arrest, the arrest charge, and the disposition of the arrest, if known to the FBI. All arrest data included in a Criminal History Summary is obtained from fingerprint submissions, disposition reports, and other information submitted by agencies having criminal justice responsibilities.

The U.S. Department of Justice Order 556-73 establishes rules and regulations for the subject of a Criminal History Summary to obtain a copy of his or her own record for review. The FBI's Criminal Justice Information Services (CJIS) Division processes these requests.

Who May Request a Copy of a Criminal History Summary (or Proof That a Criminal History Summary Does Not Exist)

Only you can request a copy of your own Criminal History Summary.

Individuals typically make this request for personal review, to challenge the information on record, to satisfy a requirement for adopting a child in the United States or internationally, or to satisfy a requirement to live, work, or travel in a foreign country (i.e., police certificate, letter of good conduct, Criminal History Summary check, etc.).

Background Checks for Employment or Licensing

If you are requesting a background check for employment or licensing within the U.S., you may be required by state statute or federal law to submit your request through your state identification bureau, the requesting federal agency, or another authorized channeling agency. You should contact the agency requiring the background check or the appropriate state identification bureau (or state police) for the correct procedures to follow for obtaining an FBI fingerprint background check for employment or licensing purposes.

How to Request a Copy of Your Record

The FBI offers two methods for requesting your Criminal History Summary or proof that one does not exist.

Option 1: Submit your request directly to the FBI.

Option 2: Submit to an FBI-approved Channeler, which is a private business that has contracted with the FBI to receive the fingerprint submission and relevant data, collect the associated fee(s), electronically forward the fingerprint submission with the necessary information to the FBI CJIS Division for a national Criminal History Summary check, and receive the electronic summary check result for dissemination to the individual. Contact each Channeler for processing times.

Note: If an authentication (apostille) is needed, please contact the Channeler to determine if this service is provided.

What Happens Next

If we find no Criminal History Summary on file, you will receive a response indicating that you have no prior arrest data on file at the FBI. If you do have a Criminal History Summary on file, you will receive your summary or “rap sheet.”

For More Information

See the responses to some frequently asked questions.

[Accessibility](#) | [eRulemaking](#) | [Freedom of Information Act](#) | [Legal Notices](#) | [Legal Policies and Disclaimers](#) | [Links](#) | [Privacy Policy](#) | [USA.gov](#) | [White House](#)
FBI.gov is an official site of the U.S. government, U.S. Department of Justice

Close

Forms and Links

Criminal History Summary Checks Home

New FD-258 Fingerprint Card

FBI Option

- Address Change Request Form
- Applicant Information Form
- Background Check for Employment/Licensing
- Challenge of a Criminal History Summary
- Criminal History Summary Request Checklist
- Credit Card Payment Form
- Frequently Asked Questions
- State Identification Bureau Listing
- State-Maintained Records Listing
- U.S. Department of Justice Order 556-73

Channeler Option

- Background Check for Employment/Licensing
- Challenge of a Criminal History Summary
- FBI-Approved Channelers | List
- Frequently Asked Questions
- State Identification Bureau Listing
- State-Maintained Records Listing
- U.S. Department of Justice Order 556-73

For Law Enforcement Only

- Certified Copies of Fingerprint & Criminal History Summaries

2/2/2014

FBI - Criminal History Summary Checks

APPX98

97

DOUGLAS A. BARKER, P.A.

*Attorney at Law
Licensed Professional Counselor (I)
Certified Family Court Mediator*

October 30, 2013

Medical Records
CMC Pineville Hospital
10628 Park Road
Charlotte, North Carolina 28210

RE: *Holly Nicole Lawrence*
SSN: .

Dear Sir or Madam:

Enclosed is an original HIPPA Compliant Authorization to Disclose Health Information regarding the above referenced patient. Ms. Lawrence gave birth to a baby girl in your hospital on

Please provide me with a copy of the complete medical file, including all medical records and test results for the baby girl.

Please let me know if you need anything further. I am

Sincerely,



Douglas A. Barker

Encl

cc: Jennifer Brown (via mail and email)

171 Church Street, Suite 160, Charleston, South Carolina 29401
Telephone (843) 727-0077 Fax (843) 577-0460
Website: DouglasBarker.com email: Douglas@DouglasBarker.com

APPX99

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

HIPPA COMPLIANT
AUTHORIZATION TO DISCLOSE
HEALTH INFORMATION

PATIENTS NAME: Holly Nicole Lawrence

SOC. SEC. NO.: _____

DATE OF BIRTH: December 24, 1989

HEALTH RECORDS #: _____ (if known)

1. I authorize the use and/or disclosure of my health information from:

Prenatal Care Provider NONE

Hospital CMC Pineville Hospital

Other _____

Other _____

2. The type and amount of information to be used or disclosed is as follows:

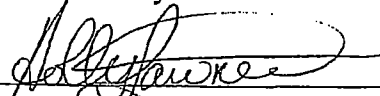
Entire record from March 1, 2013 to October 30, 2013.

3. I understand that the information in my record may include information related to sexually transmitted disease, acquired immunodeficiency syndrome (AIDS), or human immunodeficiency (HIV). It may include information about behavior or mental health services and treatment for alcohol and drug abuse.

4. This information may be disclosed to and used by Douglas A. Barker, Esquire, 171 Church Street, Suite 160, Charleston, South Carolina, for the purpose of an adoption plan and adoption, and that the records may be given to persons involved with the adoption process.

5. I understand I have the right to revoke this authorization at any time. I understand if I revoke this authorization I must do so in writing and present my written revocation to Douglas A. Barker, Esquire. I understand the revocation will not apply to information that has already been released in response to this authorization. Unless otherwise revoked, this authorization will expire in nine months.

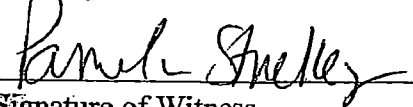
6. I understand that authorizing disclosure of the health information is voluntary. I can refuse to sign this authorization. I understand I may inspect or copy the information to be used or disclosed, as provided in CFR 164.524. I understand any disclosure of information carries with it the potential for an unauthorized re-disclosure and the information may be protected by federal confidentiality rules.



Signature of Patient/ Guardian

10/30/2013

Date



Signature of Witness

10/30/13

Date

APPX100



Carolinan HealthCare System

Douglas A. Barker, P.A.
171 Church Street
Suite 160
Charleston, SC 29401

Carolinan Medical Center Pineville
Health Information/Medical Record Department
10628 Park Road
Charlotte, NC 28210
(704) 667-0800

11/09/13

Regarding: Request for Information on HOLLY LAWRENCE
Request Date: 11/09/13
Request Number: 232380122

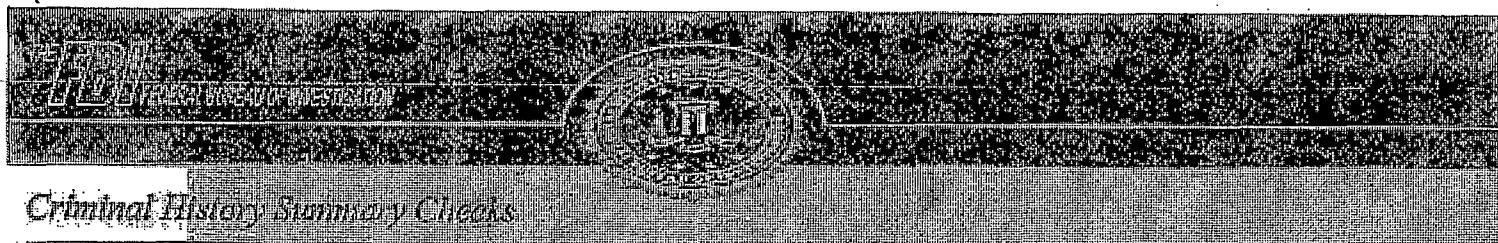
This letter is to inform you we are returning the attached request for information on the above named patient. Unfortunately, we are unable to process your request for the following reason(s):

- ☒ ~~Invalid Authorization~~ Please be sure to include the following patient information on your updated request:
- ☐ Date of Birth
 - ☐ Social Security Number
 - ☐ Dates of Service
 - ☐ Previous Names Used
 - ☐ Patients signed authorization
 - ☐ Rejected by Clinician
 - ☐ Need a copy of Executor of Estate documents
 - ☐ Need a copy of the Health Care Power of Attorney
 - ☐ Unable to locate the records based on the information provided
 - ☐ Duplicate Request
 - ☐ Non custodial parent
 - ☐ The patient was not treated on the date(s) requested
 - ☒ Other Title 45 CFR 164.508 (C)(2)(ii)

In order to process your request, the above issues will need to be addressed. Once we receive your updated request, it will be processed as soon as possible. If you have any questions, please feel free to contact the Health Information/Medical Record Department at the phone number listed above.

Sincerely,

The Health Information/Medical Record Department at
Carolinan Medical Center Pineville



Home • About Us • CJIS • Criminal History Summary Checks • U.S. Department of Justice Order 556-73

U.S. Department of Justice Order 556-73

Title 28 CFR Part 16 – Production or Disclosure of material or information

Subpart-C Production of FBI Identification Records In Response to Written Requests by Subjects Thereof

By order dated September 24, 1973, the Attorney General of the United States directed that the Federal Bureau of Investigation, hereinafter referred to as the FBI, publish rules for the dissemination of arrest and conviction records to the subjects of such records upon request. This order resulted from a determination that 28 U.S.C. 534 does not prohibit the subjects of arrest and convictions records from having access to those records. In accordance with the Attorney General's order, the FBI will release to the subjects of Identification records copies of such records upon submission of a written request, satisfactory proof of identity of the person whose Identification record is requested and a processing fee.

Since the FBI Criminal Justice Information Services (CJIS) Division is not the source of the data appearing on the Identification Records, and obtains all data thereon from fingerprint cards or related identification forms submitted to the FBI by local, state and federal agencies, the responsibility for authentication and correction of such data rests upon the contributing agencies. Therefore, the rules set forth for changing, correcting or updating such data require that the subject of an Identification Record make application to the original contributing agency in order to correct a deficiency.

The Relevant provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rule making, opportunity for public participation and delay in effective date are inapplicable because the material contained herein relates to the interpretation of 28 U.S.C. 534 as allowing the granting of an exemption to subjects of Identification Records and relief of prior administrative restrictions on dissemination of such records to them. Furthermore, it is deemed in the public interest that there be no delay in effective date of availability of Identification Records to the subjects thereof.

By Virtue of the order of the Attorney General, dated September 24, 1973, and pursuant to the authority delegated to the Director, FBI, by 28 CFR 0.85(b), 28 CFR Part 16 is amended as follows:

16.30 Purpose and Scope

This subpart contains the regulations of the Federal Bureau of Investigation (FBI) concerning procedures to be followed when the subject of an Identification Record requests production of that record to review it or to obtain a change, correction, or updating of that record.

16.31 Definition of Identification Record

An FBI Identification Record, often referred to as a "rap sheet," is listing of certain information taken from fingerprint submissions retained by the FBI in connection with arrests and, in some instances, includes information taken from fingerprints submitted in connection with federal employment, naturalization, or military service. The Identification Record includes the name of agency or institution that submitted the fingerprints to the FBI. If the fingerprints concern a criminal offense, the Identification Record includes the date of arrest or the date the individual was received by the agency submitting the fingerprints, the arrest charge, and the disposition of the arrest if known to the FBI. All arrest data included in an Identification Record are obtained from fingerprint submissions,

disposition reports, and other reports submitted by agencies having criminal justice responsibilities. Therefore, the FBI Criminal Justice Information Services Division is not the source of the arrest data reflected on an Identification Record.

16.32 Procedure to obtain an Identification Record.

The subject of an Identification Record may obtain a copy thereof by submitting a written request via the U.S. mail directly to the FBI, Criminal Justice Information Services Division, Attn: SCU, Mod. D-2, 1000 Custer Hollow Road, Clarksburg, WV 26306. Such request must be accompanied by satisfactory proof of identity, which shall consist of name, date and place of birth, and a set rolled-in inked fingerprint impressions placed upon fingerprint cards or forms commonly utilized for applicant or law enforcement purposes by law enforcement agencies.

16.33 Fee for production of Identification Record

Each written request for production of an Identification Record must be accompanied by a fee of \$18 in the form of a certified check or money order, payable to the Treasury of the United States. This fee is established pursuant to the provisions of 31 U.S.C. 9701 and is based upon the clerical time beyond the first quarter hour to be spent in searching for, identifying, and reproducing each Identification Record requested as specified in § 16.10. Any request for waiver of the fee shall accompany the original request for the Identification Record and shall include a sworn statement of indigence. Subject to applicable laws, regulations, and directions of the Attorney General of the United

Forms and Links

Criminal History Summary Checks Home

New FD-258 Fingerprint Card

FBI Option

- Address Change Request Form
- Applicant Information Form
- Background Check for Employment/Licensing
- Challenge of a Criminal History Summary
- Criminal History Summary Request Checklist
- Credit Card Payment Form
- Frequently Asked Questions
- State Identification Bureau Listing
- State-Maintained Records Listing
- U.S. Department of Justice Order 556-73

Channeler Option

- Background Check for Employment/Licensing
- Challenge of a Criminal History Summary
- FBI-Approved Channelers | List
- Frequently Asked Questions
- State Identification Bureau Listing
- State-Maintained Records Listing
- U.S. Department of Justice Order 556-73

For Law Enforcement Only

- Certified Copies of Fingerprint & Criminal History Summaries

States, the Director of the FBI may from time to time determine and establish a revised fee amount to be assessed under this authority. Notice relating to revised fee amounts shall be published in the Federal Register.

16.34 Procedure to obtain change, correction or updating of Identification Records.

If, after reviewing his/her Identification Record, the subject thereof believes that it is incorrect or incomplete in any respect and wishes changes, corrections, or updating of the alleged deficiency, he/she should make application directly to the agency which contributed the questioned information. The subject of a record may also direct his/her challenge as to the accuracy or completeness of an entry on his/her record to the FBI, Criminal Justice Information Services Division, Attn: SCU, Mod.D-2, 1000 Custer Hollow Road, Clarksburg, WV 26306. The FBI will then forward the challenge to the agency which submitted the data requesting that agency to verify or correct the challenged entry. Upon the receipt of an official communication directly from the agency which contributed the original information, the FBI CJIS Division will make any changes necessary in accordance with the information supplied by that agency.

Published in the Federal Register on 11/28/73; amended on 10/27/78, 10/27/81, 8/8/83, 5/6/86, 5/17/91, 1/3/95, and 9/28/99.

[Accessibility](#) | [eRulemaking](#) | [Freedom of Information Act](#) | [Legal Notices](#) | [Legal Policies and Disclaimers](#) | [Links](#) | [Privacy Policy](#) | [USA.gov](#) | [White House](#)
FBI.gov is an official site of the U.S. government, U.S. Department of Justice

Close

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Jennifer Brown,
Plaintiff,

-vs-

Baby Girl Harper.
Defendant.

Holly Lawrence,
Plaintiff,

-vs-

Jennifer Brown.
Defendant.

FILED
IN THE FAMILY COURT OF THE
NINTH JUDICIAL CIRCUIT
2014 FEB 26 AM 8:55 NO: 2013-DR-10-4057
JULIE J. ARMSTRONG
CLERK OF COURT 2013-DR-10-4386

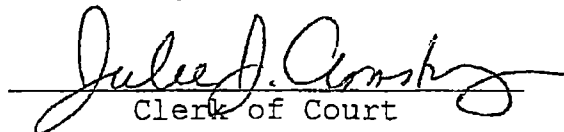
BY _____

NOTICE OF "A CASE"
TRIAL DATE

The above-reference case has been scheduled as the A CASE (or day certain trial) for April 7 - 8, 2014.

Two (2) days of time is allotted for this hearing. You are hereby notified to be present at the **Charleston County Family Court** by 9:00 am on April 7, 2014.

Charleston, SC
February 25, 2014


Clerk of Court

Address of Family Court:
Charleston County Judicial Center
100 Broad Street, Charleston, SC
2nd Floor courtroom

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

JENNIFER BROWN,)

Plaintiff)

vs.)

BABY GIRL HARPER, A)
MINOR UNDER THE AGE OF)
SEVEN (7) and HOLLY)
LAWRENCE,)

Defendants.)

IN THE FAMILY COURT
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2013-DR-10-4057 2014 MAR 17 PM 3:46

JULIE L. ARMSTRONG
CLERK OF COURT

AMENDED SUMMONS

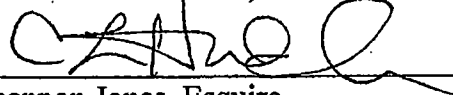
BY _____

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the subscriber, Shannon Jones, Esquire, LLC, at her office at 3 State Street, Charleston, South Carolina 29401, within thirty (30) days of the service hereof, exclusive of the day of such service.

YOU ARE HEREBY GIVEN NOTICE FURTHER that, if you do not appear or answer the Complaint as required by this Summons within thirty (30) days after the service hereof, judgment by default may be rendered per the relief requested in the Complaint.

SHANNON JONES, ATTORNEY AT LAW, LLC



Shannon Jones, Esquire
Cassandra L. Hutchens, Esquire
3 State Street
Charleston, SC 29401
Phone (843) 720-3100
Fax (843) 720-5999

Dated: March 17, 2014
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
JENNIFER BROWN,)
Plaintiff)
vs.)
BABY GIRL HARPER, A)
MINOR UNDER THE AGE OF)
SEVEN (7) and HOLLY)
LAWRENCE,)
Defendants.)

IN THE FAMILY COURT
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2013-DR-10-4057

2014 MAR 17 PM 3:46
JULIE J. JENNISTON
CLERK OF COURT

BY _____

AMENDED COMPLAINT

Plaintiff would respectfully show unto this Honorable Court:

1. Plaintiff is a citizen and resident of Charleston County, South Carolina, residing at 378 Stefan Drive, Charleston, South Carolina 29412.
2. The minor Defendant in this action was born on _____ 2013 at CMC Pineville Hospital, County of Mecklenburg, North Carolina.
3. On October 29, 2013 the birth mother brought the minor Defendant to Charleston, South Carolina. Once in Charleston, she met with Plaintiff and inquired about the possibility of adoption by Plaintiff.
4. This Court has personal jurisdiction over all parties as well as the subject matter jurisdiction over this action and venue in the Charleston County Family Court is appropriate.

**FOR A FIRST CAUSE OF ACTION
(Voluntary Termination of Parental Rights/Adoption)**

5. Plaintiff realleges and reincorporates paragraphs One (1) through Four (4) as if fully set forth

herein verbatim

6. Plaintiff is forty one (41) years of age having been born on January 31, 1973 in Hendersonville, North Carolina.
7. That on information and belief, the minor Defendant is a mixed race (Caucasian and African American) girl born on _____, 2013, in Mecklenburg County, North Carolina, and for the purpose of this action is known as Baby Girl Harper. If the adoption is approved, it is the Plaintiff's desire that the name of the infant be changed to _____ and that the Plaintiff be permitted to use this name pending final approval of adoption.
8. It is the sincere desire of the Plaintiff to establish a relationship of parent and child with the minor Defendant. Plaintiff is a fit and proper person, fully capable of caring for the child and providing for the child's welfare.
9. That to best of the Plaintiff's knowledge, the minor Defendant owns no property, either real or personal, in the State of South Carolina or elsewhere.
10. Plaintiff alleges that the biological mother has voluntarily signed a release, Consent for Adoption of Child, dated October 30, 2013 ("Consent"), in which she has relinquished all her parental rights to the infant. The Original Consent has been filed with the Court. In the Consent the biological mother specifically consents for the minor Defendant to be adopted and therefore her parental rights should be terminated. She further has specifically waived her right to be named as a Defendant to an action to terminate her parental rights and/or an action for adoption of the minor Defendant and she has specifically consented to there being one action which will include the termination of her parental rights and the adoption of the minor Defendant by the Plaintiff.
11. All written consents or relinquishments for the purpose of adoption as required by S.C. Code

Ann, Section 63-9-310 have been obtained.

12. Since the biological father was not originally named or revealed, Plaintiff's counsel searched the South Carolina Responsible Father Registry. Proof of the results of said search has also been filed with the Court. Plaintiff is informed and believes that father failed to register with the South Carolina Responsible Father Registry and that this failure constitutes an implied irrevocable waiver of the father's right to notice of the adoption proceedings.
13. The Plaintiff alleges upon information and belief that the biological mother and this man ("John Doe") have not lived together continuously during the six (6) months immediately preceding the birth of the minor Defendant, that they are not married to each other, nor has he paid any amount of support for the child or for the expenses incurred with the pregnancy or with the birth of the child. Plaintiff alleges the consent of John Doe is not required pursuant to S.C. Code Ann. Section 63-9-310. Further, the parental rights of John Doe should be terminated pursuant to S.C. Code Ann. Section 63-7-2570(7).
14. All required investigations and reports will be completed and filed with the Court prior to the final hearing on the adoption. Plaintiff has never been investigated by the Department of Social services, has never committed nor been charged with any crime, has never appeared on any registry of abuse and neglect, and has never appeared on any registry of sexual offenders. On information and belief all investigations and reports resulting from this adoption will be favorable insofar as Plaintiff's qualifications are concerned.
15. A post placement investigation report will be submitted to the Court prior to the final hearing.
16. The Plaintiff has not paid or promised a fee, compensation or any other thing of value as consideration for the Consent/Relinquishment for the purpose of adoption but has paid for the

cost of the adoption, an accounting of which will be furnished to the Court.

17. The Plaintiff had no prior relationship with the minor Defendant.

18. The Plaintiff has made no payment of money or anything of value within the past five (5) years and agreed not to make any such payment in the future by or on behalf of the Plaintiff to any person, agency or organization connected with the adoption with the exception of legal, courts costs, and related fees of the adoption, an accounting of which will be furnished to the Court.

19. The Plaintiff is informed and believes that there are no other orders of any nature which affect the custody, support or visitation of the minor Defendant.

20. The Plaintiff is informed and believes that a Guardian ad Litem should be immediately appointed for the minor Defendant, Baby Girl Harper, to protect the child's best interest during the proceedings.

21. The Plaintiff is informed and believes that the biological mother has voluntarily consented to the termination of her parental rights via her Consent and that Plaintiff's adoption of Baby Girl Harper should be approved as such is clearly in the best interests of the minor child.

**FOR A SECOND CAUSE OF ACTION
(Involuntary Termination of Parental Rights)**

22. Plaintiff realleges and reincorporates paragraphs One (1) through Twenty-one (21) as if fully set forth herein verbatim.

23. In the alternative, should the Court find that biological mother's consent to this adoption continues to be required despite the execution of the Consent to Adoption, Plaintiff is informed and believes that it is in the best interest of the minor child to terminate the parental rights of the Defendant, Holly Lawrence, in and to the said minor child pursuant to South Carolina Code § 63-7-2570(1) and South Carolina Code § 63-7-2570(7).

24. The Plaintiff is informed and believes that this Court should issue its Order terminating the parental rights of the Defendant, Holly Lawrence, in order to protect the health and welfare of the minor child and to make the minor child eligible for adoption by the Plaintiff who will provide a suitable home environment and the love and care necessary for a happy, healthy and productive life.

**FOR A THIRD CAUSE OF ACTION
(Custody)**

25. Plaintiff realleges and reincorporates paragraphs One (1) through Twenty-four (24) as if fully set forth herein verbatim.

26. Upon information and belief, Plaintiff is the psychological parent of the minor child pursuant to *Middleton v. Johnson*, 269 S.C. 585, 633 S.E.2d 162 (Ct. App. 2006). Defendant Lawrence is not a fit and proper person to have custody of the minor child. Therefore, in the event adoption of the minor child by Jennifer Brown is not approved for any reason, the Plaintiff is informed and believes that it is in the best interests of the minor child that she maintain and be granted legal custody of the minor child, temporarily and permanently.

27. The biological mother consented to, and fostered, the Plaintiff's formation and establishment of a parent-like relationship with the child; the Plaintiff and the minor child have lived together in the same household; the Plaintiff assumed obligations of parenthood by taking significant responsibility for the child's care, education and development, including contributing towards the child's support without expectation of financial compensation; and the Plaintiff has been in a parental role for a length of time sufficient to have established with the child a bonded, dependent relationship, parental in nature.

FOR A FOURTH CAUSE OF ACTION

(Attorney Fees)

28. Plaintiff realleges and reincorporates paragraphs One (1) through Twenty-seven (27) as if fully set forth herein verbatim.

29. That the Plaintiff is informed and believes that she has been forced to initiate this action through no fault of her own and, therefore, requests an Order requiring the biological mother should be required to pay all of Plaintiff's attorney fees, costs and expenses incurred in this action, temporarily and permanently.

WHEREFORE, the Plaintiff prays for the following:

- a. For the parental rights of the biological parents of the minor Defendant to be terminated;
- b. That the Plaintiff be allowed to use the name of _____
for the minor Defendant during the pendency of this action and permanently thereafter;
- c. That the Plaintiff be permitted to adopt the minor Defendant; for the relationship of parent and child between the Plaintiff and minor Defendant to be established; and for the records of these proceedings to be sealed;
- d. After the passage of at least three (3) months following the filing of this Complaint, and the filing of a post placement report and an accounting, for an Order of this Court directing that a birth certificate be issued in the name of _____ showing the Plaintiff as the parent of the minor Defendant; and
- e. Alternatively, that the Plaintiff be granted custody of the minor child,

temporarily and permanently.

- f. That the Plaintiff be granted attorney fees and costs related to this action, temporarily and permanently.
- g. For such other and further relief on behalf of the Plaintiff as the Court may deem just and proper.

SHANNON JONES, ATTORNEY AT LAW, LLC



**SHANNON PHILLIPS JONES, ESQUIRE
CASSANDRA L. HUTCHENS, ESQUIRE**

3 State Street
Charleston, South Carolina 29401
Telephone: 843.720.3100
Facsimile: 843.720.5999

Charleston, South Carolina

March 17, 2014

ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

FILED
IN THE FAMILY COURT
NINTH JUDICIAL CIRCUIT
2014 MAR 28 PM 6:47

JENNIFER BROWN,

JULIE ARMSTRONG
CLERK OF COURT

MOTION TO LIMIT DISCOVERY

Plaintiff,
vs.

BY _____

BABY GIRL HARPER, A MINOR
UNDER THE AGE OF SEVEN (7)
YEARS, AND HOLLY LAWRENCE,

Defendants.

2013-DR-10-4057

2013-DR-10-4386

YOU WILL PLEASE TAKE NOTICE that Holly Lawrence, by and through her undersigned attorney, shall move before the Family Court of the County of Charleston, State of South Carolina, an order granting relief as follows:

PROCEDURAL HISTORY

Holly Lawrence filed a Summons and Complaint and Motion for Relief on November 26, 2013, and a hearing was scheduled on December 17, 2013. By Court order filed on December 30, 2013, the matter was deemed to be complex in nature and an evidentiary hearing on Holly Lawrence's motion was set for two days beginning on February 4, 2014. Also as part of the December 30, 2013 Order, the Court granted expedited discovery.

On January 13, 2014, counsel for Jennifer Brown served on counsel for Holly Lawrence extensive interrogatories and requests for production. Counsel for Holly Lawrence filed a Motion to Limit Discovery on January 30, 2014, and asked that this motion be heard at the hearing on February 4, 2013. Counsel for Jennifer Brown filed a Motion to Compel Discovery, Reconvene Deposition and Continue Evidentiary Hearing on February 3, 2014. The evidentiary hearing on February 4, 2014, was continued and the matters of Holly Lawrence's Motion to Limit Discovery and Jennifer Brown's Motion to Compel Discovery, Reconvene Deposition and Continue Evidentiary Hearing was scheduled on March 5, 2014. Subsequently, the evidentiary hearing in the matters addressed in Holly Lawrence's Motion of November 26, 2013, was set for April 7 - 8, 2014, as the "A" case.

Following the March 5, 2014, hearing on Holly Lawrence's Motion to Limit Discovery and Jennifer Brown's Motion to Compel Discovery, Reconvene Deposition and Continue Evidentiary Hearing, the Court issued an order on March 10, 2014, ordering that Holly Lawrence provide text messages from a download of her phone messages between Holly Lawrence and persons identified by Holly Lawrence as her closest family members and friends to whom she has confided. This information was provided as requested.

The Court further ordered as follows concerning reconvening the deposition of Holly Lawrence:

- The deposition of the Biological Mother may be reconvened at the request of Adoptive Mother's counsel for the purpose of counsel's inquiry pursuant to Rule 30(j)(6), answering any questions pertaining to the putative biological father, and other questions that were not objected to.

Subsequent to the March 10, 2014, Order, Holly Lawrence was served with Jennifer Brown's Third Requests for Production requesting as follows:

1. A complete unaltered copy of Defendant's Facebook page as it looks as of the present date, along with any Facebook postings or messages sent or received by Defendant. To do so, please take the following steps:
 - a. Click *at the top right of any Facebook page and select "Settings"
 - b. Click General in the left-hand column
 - c. Click on "Download a copy of your Facebook data"
 - d. Click "Start my Archive"
2. All records of Facebook communications between Defendant and the following individuals: Mark Anthony, Vicki Lawrence, Drew Lawrence, Nikki Lawrence, John Lawrence, Doug Childers, Ashley Hennen and Madalena Nisi.

Further, counsel for Holly Lawrence received a subpoena for Holly Lawrence's deposition to be reconvened in Charleston, South Carolina on April 3, 2014, at 9:00 a.m. and, in that deposition subpoena, Holly Lawrence is commanded as follows:

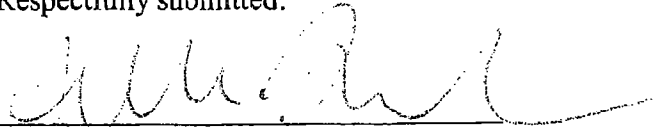
to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below list documents of objects (sic): Any and all electronic devices, including cell phones, used by the Plaintiff/witness since February 1, 2013 to store, access, create or facilitate personal communications.

FILED

HOLLY LAWRENCE'S OBJECTIONS

Holly Lawrence objects to the requests for her Facebook information and request to produce her cell phone and other electronic devices at her deposition as she believes these requests are outside the scope and parameters set forth by this Court's Order of March 10, 2014, and that these requests constitute an undue burden, annoyance and potential embarrassment and is not relevant or reasonably calculated to lead to relevant information, and she believes these request to be overly broad.

Respectfully submitted:



Allison Boyd Bullard, Esq.

Harling & West, LLC

Post Office Box 2485

Lexington, SC 29071

(803) 957-0889

James Fletcher Thompson

Attorney at Law

JAMES FLETCHER THOMPSON, LLC

302 East St. John Street

Post Office Box 1853

Spartanburg, South Carolina 29304

(864) 573-5533 ext. 5

ATTORNEYS FOR HOLLY LAWRENCE

March 28, 2014

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JENNIFER BROWN,

Plaintiff,

vs.

BABY GIRL HARPER, A MINOR
UNDER THE AGE OF SEVEN (7)
YEARS, AND HOLLY LAWRENCE,

Defendants.

FILED

IN THE FAMILY COURT
SOUTH JUDICIAL CIRCUIT
2014 MAR 28 PM 6:47

JULIE ARMSTRONG
CLERK OF COURT

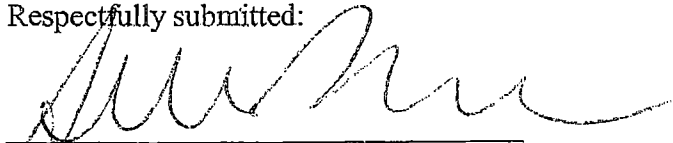
COUNSEL'S STATEMENT PURSUANT
BY TO RULE 11 OF S.C.R.C.P.

2013-DR-10-4057

2013-DR-10-4386

Counsel for Holly Lawrence hereby affirms that prior to filing the foregoing *Motion to Limit Discovery*, counsel has communicated, orally and in writing, with opposing counsel and has attempted in good faith to resolve matters contained in this motion, and asserts that further consultation could not be timely held and would serve no useful purpose.

Respectfully submitted:



Allison Boyd Bullard, Esq.

Harling & West, LLC

Post Office Box 2485

Lexington, SC 29071

(803) 957-0889

James Fletcher Thompson

Attorney at Law

JAMES FLETCHER THOMPSON, LLC

302 East St. John Street

Post Office Box 1853

Spartanburg, South Carolina 29304

(864) 573-5533 ext. 5

ATTORNEYS FOR HOLLY LAWRENCE

March 28, 2014

APPX116

115

STATE OF SOUTH CAROLINA
ISSUED BY THE FAMILY COURT IN THE COUNTY OF CHARLESTON

HOLLY LAWRENCE, Plaintiff

v.

JENNIFER BROWN, Defendant

2014 MAR 28 PM 6:47

JULIE ARMSTRONG
CLERK OF COURT

SUBPOENA IN A CIVIL CASE

Case Number 2013-DR-10-4057, 2013-DR-10-4386

BY _____ Pending in Charleston County

TO: Holly Nicole Lawrence
4648 Twynham Lane
Charlotte, NC 28226

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM :

DATE AND TIME

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

Law Offices of Shannon Jones, Esquire
3 State Street
Charleston, SC 29401

DATE AND TIME: April 3, 2014 at 9:00 a.m.

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below list documents of objects: Any and all electronic devices, including cell phones, used by the Plaintiff/witness since February 1, 2013 to store, access, create or facilitate personal communications.

PLACE

DATE AND TIME:

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

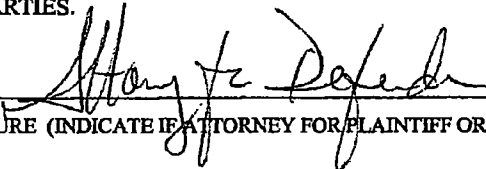
PREMISES

DATE AND TIME , AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.





DATE March 19, 2014

ATTORNEY/ISSUING OFFICER'S SIGNATURE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

PROOF OF SERVICE

SERVED	DATE March 19, 2014	FEES AND MILEAGE TENDERED TO WITNESS ☐ YES ☒ NO AMOUNT \$
SERVED ON James Fletcher Thompson, Esquire, 302 East Saint John Street Spartanburg, SC 29302		MANNER OF SERVICE U.S. Mail
SERVED BY Amy Lever-Neilson		Paralegal

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on March 19, 2014 Amy Lever-Neilson

SIGNATURE OF SERVER

3 State Street Charleston, SC 24901

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- i. fails to allow reasonable time for compliance; or
- ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
- iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- iv. subjects a person to undue burden.

(B) If a subpoena:

- i. requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- iii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

HOLLY LAWRENCE,)

Plaintiff)

vs.)

JENNIFER BROWN,)

Defendant.)

IN THE FAMILY COURT
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2013-DR-10-4057
and 2013-DR-10-4386

JENNIFER BROWN'S THIRD REQUEST TO
PRODUCE TO HOLLY LAWRENCE

TO THE DEFENDANT HOLLY LAWRENCE AND HER ATTORNEY, JAMES F.
THOMPSON, ESQUIRE:

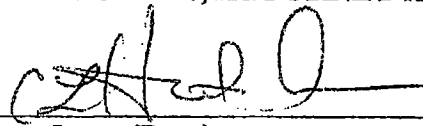
Pursuant to Rule 25 of the Rules of Practice for the Family Courts and Rule 26 and 34 of the South Carolina Rules of Civil Procedure, and the Order of the Charleston County Family Court, Plaintiff requests that the Defendant produce and permit the representatives of Plaintiff to inspect and copy the documents and other items described below in the possession, custody, and control of the Defendant. Plaintiff requests that the documents and other items described be made available for inspection and copying within the time allowed by the South Carolina Rules of Civil Procedure at the offices of Shannon Jones, Attorney at Law, 3 State Street, Charleston, South Carolina, 29401, as soon as practicable, but no later than thirty (30) days from the date of service of these requests. Please note that the Charleston County Family Court Order requires expedited discovery.

1. A complete unaltered copy of Defendant's Facebook page as it looks as of the present date, along with any Facebook postings or messages sent or received by Defendant. To do so, please take the following steps:
 - a. Click  at the top right of any Facebook page and select "Settings"
 - b. Click General in the left-hand column
 - c. Click on "Download a copy of your Facebook data"
 - d. Click "Start My Archive"
2. All records of Facebook communications between Defendant and the following individuals: Mark Anthony, Vicki Lawrence, Drew Lawrence, Nikki Lawrence, John Lawrence, Doug Childers, Ashley Hennen and Madalena Nisi.

SIGNATURE PAGE TO FOLLOW

APPX119

SHANNON JONES, ATTORNEY AT LAW, LLC



Shannon Jones, Esquire

Cassandra L. Hutchens, Esquire

3 State Street

Charleston, South Carolina 29401

Telephone: (843) 720-3100

Facsimile: (843) 720-5999

ATTORNEYS FOR JENNIFER BROWN

Charleston, South Carolina

This 15 day of March, 2014.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

HOLLY LAWRENCE,

Plaintiff,

-vs-

JENNIFER BROWN,

Defendant.

2014 MAR 3

BY _____

ED

IN THE FAMILY COURT
NINTH JUDICIAL CIRCUIT

CASE NOS: 2013-DR-10-4057
2013-DR-10-4386

COURT

NOTICE OF MOTION AND MOTION TO
BIFURCATE ISSUES & TO LIMIT THE
EVIDENCE

TO THE PLAINTIFF, ABOVE-NAMED, AND HER ATTORNEY, JAMES FLETCHER
THOMPSON, ESQUIRE:

PLEASE TAKE NOTICE that the Defendant, Jennifer Brown, by and through her undersigned counsel, will on the 7th day of April, 2014 at 9 a.m. or as soon as she may be heard, move before the Presiding Judge of the Family Court for the County of Charleston, State of South Carolina for an Order bifurcating the issues raised in Plaintiff's Motion for Temporary Relief. Such motion is supported by the following, including all attachments, as well as any additional evidence as may be presented at the time of hearing:

1. Plaintiff's motion for temporary relief is currently scheduled for a two day evidentiary hearing. At this time, Plaintiff has named seven (7) witnesses she plans to present at this hearing and Defendant has named nine (9) witnesses. (Exhibit A). In an effort to streamline the matters before the Court and in the interest of judicial economy, Defendant requests that the Court bifurcate the issues so as to limit the evidence at the temporary hearing to that concerning the Consent for Adoption.¹

¹ "The Court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim....or of any separate issue...." "Judges should bifurcate issues when it helps to clarify and simplify the issues...." S.C. R. Civ. P. 42(b) (2013).

2. The pivotal inquiry in this case is the validity of the Consent for Adoption. If the Plaintiff is successful in her attempt to invalidate the Consent for Adoption, the Defendant's adoption action will end as Plaintiff will be restored to her legal position as the natural mother. On the other hand, if the Plaintiff fails to meet her burden in challenging the Consent for adoption, the Defendant will be entitled to move forward with her request for the Court to approve her adoption.

3. Although the Plaintiff alleges violations of the Interstate Compact on Placement of Children (ICPC) as a means of attacking Defendant's adoption action, such issues are not ripe for review at this stage of the litigation and are typically disposed of at the final hearing on the adoption. This is particularly true where, even when faced with true ICPC violations, the South Carolina Supreme Court and the majority of courts across our nation have refused to allow an ICPC violation to prevent approval of an adoption that is in the best interest of the minor child.²

4. Birth Mother attempts to invalidate the executed Consent for Adoption on grounds of alleged technical violations as to execution of consent. The final inquiry as to all issues involving the Consent for Adoption is, of course, what is in the best interests of the minor child.

5. Plaintiff's attempted attack on the Consent for Adoption is the dispositive issue in this case and it is in the interest of all involved to focus on receiving a determination on that issue alone.

WHEREFORE:

Defendant respectfully requests that this Court bifurcate the issues raised by Plaintiff in her

² See, e.g., *Doe v. Baby Girl*, 376 S.C. 267, 284 (n.8) (S.C. 2008) (held that adoption could proceed despite revocation of ICPC clearance when placement with adoptive parents was safe); *R.F. v. Department of Children and Families*, 50 So. 3d 1243 (Fla. Ct. App. 2011); *In re ADOPTION/GUARDIANSHIP No. 3598*, 701 A.2d 110 (Md. 1997) (Holding best interests of the child is the paramount consideration when ICPC violation was present); *In Re Baby Girl* 64, 850 S.W.2d 64, 71 (Mo.1993) ("at the pinnacle of the court's decision must be the child's best interest, not the interests of the other parties or even public policy"); *In Re Adoption of C.L.W.*, 467 So.2d 1106, 1110 (Fla.Dist.Ct.App.1985) ("the compact is not available to nullify the adoption proceedings") *In Re Adoption of Baby Boy M.G.*, 515 N.Y.S.2d 198, 200-01 (1987)(adoption warranted despite failure to obtain ICPC approval); *In Re Adoption of Baby E.*, 427 N.Y.S.2d 705, 706 (1980)(the best interest of the child should prevail when only failure to comply with ICPC stands in the way). See also *In Re Petition to Adopt: C.M.A.*, 557 N.W.2d 353, 357-58 (Minn.App. 1996)(unknowing violation of the ICPC does not provide an adequate basis for vacating the adoption).

temporary motion so as to focus solely on the dispositive issue of the validity of the Consent for Adoption.

Respectfully submitted,

SHANNON JONES LAW FIRM



Shannon Jones, Esquire
Cassandra L. Hutchens, Esquire
3 State Street
Charleston, South Carolina 29401
Telephone: (843) 720-3100
Facsimile: (843) 720-5999

ATTORNEYS FOR JENNIFER BROWN

Charleston, South Carolina
Dated: Nov 31, 2014

FILED

2014 MAR 31 PM 4:34

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
CLERK OF COURT)
IN THE FAMILY COURT
NINTH JUDICIAL CIRCUIT

JENNIFER BROWN,)
Plaintiff,)
vs.)
BABY GIRL HARPER, A MINOR)
UNDER THE AGE OF SEVEN)
(7) YEARS and)
HOLLY LAWRENCE,)
Defendant.)
_____)
BY _____)
HOLLY LAWRENCE'S
SUPPLEMENTAL ANSWERS TO
PLAINTIFF'S FIRST SET OF INTERROGATORIES
2013-DR-10-4057

TO: SHANNON JONES AND CASSANDRA HUTCHENS, ATTORNEYS FOR PLAINTIFF

1. State the names, addresses and telephone numbers of persons known to the parties or counsel to be witnesses concerning the facts of this case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statement. This includes any and all Affidavits obtained for the Temporary or other hearing in this matter, whether filed or not, and whether notarized or not.

In addition to the witnesses listed below, Defendant reserves the right to call any of the witnesses whose names have been provided as witnesses for the Plaintiff.

Holly Lawrence
4648 Twynham Lane
Charlotte, NC 28226
(704) 996-2801

Holly Lawrence's affidavit has been previously provided to Plaintiff and Ms. Lawrence submitted to a deposition on 1/22/14.

Jennifer Brown
378 Stefan Drive
Charleston, SC 29412
(828) 226-4183

Defendant has been provided affidavit by Plaintiff's counsel.

Vickie Lawrence
4648 Twynham Lane
Charlotte, NC 28226
(704) 308-1929

Mrs. Lawrence is Defendant's mother and is expected to testify concerning her knowledge of the facts and circumstances of this adoptive placement and regarding Defendant's support system. There are no written or recorded statements from this witness.

Sharon W. Davis, MSW
Catholic Charities Diocese of Charlotte
1123 South Church Street
Charlotte, NC 28203-4003
(704) 370-3262

Witness is expected to testify concerning the counseling and other support services provided to Holly Lawrence since October 30, 2013. A letter dated December 16, 2013, was prepared by this witness.

Teresa H. Smith, LBSW
17 Charing Cross Road
Charleston, SC 29407
(843) 766-7057

Witness is expected to testify concerning the home study prepared on behalf of Plaintiff. A copy of this home study and its transmittal letter has been previously provided to counsel for Defendant.

2. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

See answer to #1 above.

3. State the name, address, telephone number and qualifications of each expert who may be called as an expert witness at the trial of this case, the subject matter concerning which the expert will testify, the mental impressions and opinions held by the expert and the facts known to the expert which relate to or form the basis of the mental impressions and opinions held by the expert.

Patricia Cokley
ICPC Supervisor
South Carolina Department of Social Services
1535 Confederate Avenue
ICPC Unit – 5th Floor
Columbia, SC 29202

Witness is expected to testify concerning the requirements of the Interstate Compact on the Placemen of Children and when the Compact is implicated, specifically in relation to the facts and circumstances surrounding this adoptive placement. There are no written or recorded statements from this witness.

Dr. Cheryl Fortner-Wood
Department of Psychology
Winthrop University
134 Kinard Hall
Rock Hill, SC 29733

Dr. Fortner-Wood is an expert on issues of attachment and bonding and is expected to testify regarding these issues as related to the present circumstances.

4. Set forth a list of photographs, sketches or other prepared documents in possession of the Defendant that relate to the claim or defense of the case.

See letters from Catholic Charities Diocese of Charlotte dated December 16, 2013, previously provided and *attached email and letter dated March 4, 2014.*

5. Please state your current address, including all present post office or mail box addressed, if different.

See answer to #1 above.

6. State with specificity all persons or entities for who you have been employed within the past three (3) years, provide the name of the person or entity, dates of employment, number of hours employed weekly and your work schedule.

Stamp Source
1830 Statesville Avenue
Charlotte, NC 28206

Defendant's hours are Monday – Thursday, 3:30 p.m. to 2 a.m. with optional overtime hours

STATE OF SOUTH CAROLINA

2014 MAR 31 PM 4:34

COUNTY OF CHARLESTON

IN THE FAMILY COURT
NORTH JUDICIAL CIRCUIT

JENNIFER BROWN,

BY _____

Plaintiff,

vs.

BABY GIRL HARPER, A MINOR

UNDER THE AGE OF SEVEN

(7) YEARS and

HOLLY LAWRENCE,

Defendant.

PLAINTIFF'S ANSWERS TO
HOLLY LAWRENCE'S
INTERROGATORIES TO PLAINTIFF

2013-DR-10-4057

2013-DR-10-4386

TO JAMES F. THOMPSON, ESQUIRE, ATTORNEY FOR HOLLY LAWRENCE:

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER:

Jennifer Brown
378 Stefan Drive
Charleston, SC 29412

Defendant has been provided the Plaintiff's affidavit. A copy of a subsequent affidavit was provided to Mr. Thompson on March 5, 2014 along with the Plaintiff's Memorandum to the Court.

Holly Lawrence
4648 Twynham Lane
Charlotte, NC 28226

Holly Lawrence's affidavit has been previously provided to Plaintiff and as to the issues discussed in Defendant's deposition on 1/22/14.

Teresa H. Smith
17 Charing Cross Road
Charleston, SC 29407

Witness is expected to testify as to the home study she completed at the Plaintiff's request.

Christina Pinto
Clekis Law Firm
171 Church St., Ste. 160
Charleston, SC 29401

Witness is expected to testify as to her involvement and knowledge in this matter as it relates to her serving as the non-attorney witness for the Consent to Adoption.
Affidavit enclosed.

Jillian S. Barton, Esquire
171 Church St., Ste. 160
Charleston, SC 29401

Witness is expected to testify as to her involvement and knowledge with regard to the serving as the Notary Public (as to the witness signatures) for the Consent to Adoption.
Affidavit enclosed.

Christina B. Humphries, Esquire
171 Church St., Ste. 160
Charleston, SC 29401

Defendant has been provided a copy of witness' affidavit. A copy of an additional affidavit for this witness was provided to Mr. Thompson on March 5, 2014 along with the Plaintiff's Memorandum to the Court.

April Witzel
2005 Potomac Road
Indian Trail, NC 28079

Witness is expected to testify concerning her knowledge of the facts and circumstances in this case.
Affidavit enclosed.

Gail Brown
3157 Hwy 17 N
Mount Pleasant, SC 29466

Witness is Plaintiff's mother and expected to testify concerning her knowledge of the facts and circumstances of this case.
Affidavit enclosed.

Pamela Stuckey
597 White Chapel Circle
Charleston, SC 29412

Witness is Plaintiff's sister and expected to testify concerning her knowledge of the facts and circumstances of this case.
Affidavit enclosed.

Christy Casserly
108 Castlegate Ct.
Charleston, SC 29414

Witness is expected to testify concerning her conversation with Holly Lawrence during their ride together from Charleston to Charlotte as well as to other information she of which she is aware that relate to this case.

Affidavit enclosed.

Jon Mersereau, Esquire

Guardian *ad Litem*

Expected to testify as to his investigation of this case as it relates to the best interest of the child.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

ANSWER: Medical Records from Carolinas Medical Center, Medical Records from Coastal Pediatrics, Consent for Adoption executed by Holly Lawrence October 30, 2013; Deposition of Holly Lawrence; Affidavit of Holly Lawrence

3. In cases involving personal injury set forth the names and addresses of all physicians who have treated the party and all hospitals to which the party has been committed in connection with said injuries and also set forth a statement of all medical costs involved.

ANSWER: N/A

4. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

ANSWER: N/A

5. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party.

ANSWER: N/A

6. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

ANSWER:

Elizabeth Kirlis, MD

1952 Long Grove Drive, Suite 202

Mount Pleasant, SC 29464

Witness is the minor child's pediatrician and is expected to testify as to development markers, her treatment of child, and bonding.

7. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts

COUNTY OF CHARLESTON

2014 APR -4 AM 9:18

CLAY CO COURT

1) HOLLY LAWRENCE'S RETURN TO JENNIFER

BY _____) — BROWN'S NOTICE OF MOTION AND
) MOTION TO LIMIT THE EVIDENCE

2013-DR-10-4057

2013-DR-10-4386

Respectfully submitted:

ATTORNEYS FOR HOLLY LAWRENCE

Date:

4/14/2014

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

JENNIFER BROWN,)

Plaintiff)

IN THE FAMILY COURT

FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2013-DR-10-4057

**VOLUNTARY DISMISSAL OF
AMENDED COMPLAINT**

Pursuant to Rule 41(a)(1) and/or 41(c)

vs.)

BABY GIRL HARPER, A)
MINOR UNDER THE AGE OF)
SEVEN (7) and HOLLY)
LAWRENCE,)

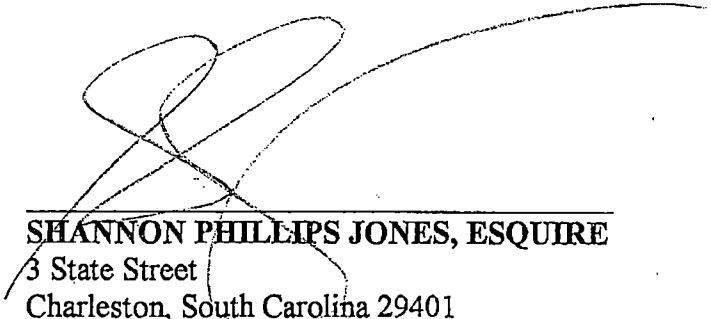
Defendants.)

COMES NOW, the Plaintiff, Jennifer Brown, by and through their undersigned attorney and voluntarily dismisses her Amended Complaint pursuant to Rule 41(a)(1) and/or Rule 41(c) of the South Carolina Rules of Civil Procedure based upon the following:

Plaintiff's action was originally commenced by the filing of a Summons and Complaint on October 30, 2013. Plaintiff filed an Amended Summons and Complaint on March 17, 2014. There has been no filing or service by the adverse party of an answer or other responsive pleading and no introduction of evidence on the issues raised in the Amended Complaint at the trial/hearing in this matter. No request to extend time to answer or otherwise respond has been requested by the adverse party or granted on behalf of the adverse party.

Therefore, Plaintiff hereby dismisses her Amended Complaint filed March 17, 2014 pursuant to Rules 41(a)(1) and/or 41(c).

SIGNATURE PAGE TO FOLLOW



SHANNON PHILLIPS JONES, ESQUIRE

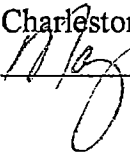
3 State Street

Charleston, South Carolina 29401

Telephone: 843.720.3100

Facsimile: 843.720.5999

Charleston, South Carolina

 May 5, 2014

ATTORNEY FOR PLAINTIFF

IN THE FAMILY COURT
NINTH JUDICIAL CIRCUIT

2014 OCT 31 AM 11:55

PRE-TRIAL HEARING REQUEST

CLERK OF COURT

NY.) **2013-DR-10-4057**

2013-DR-10-4386

A HEARING IS SCHEDULED
ON THE 18 DAY OF NOV 2014
AT 1000 AM/PM

Shannon Jones, Esq.
3 State Street
Charleston, SC 29401
(843) 720-3100
(843) 720-5999

Jon Mersereau, Esq.
234 Seven Farms Drive, Suite 201B
Charleston, SC 29492
(843) 884-5753

Allison Boyd Bullard, Esq.
P.O. Box 2485
Lexington, SC 29071
(803) 957-0889
(800) 762-4915

James Fletcher Thompson
P.O. Box 1853
Spartanburg, SC 29304
864-573-5533 ext. 5
864-327-5139

Type of Case: Contested adoption attorneys fees
Time Needed: Fifteen (15) Minutes

Hearing Requested By: James Fletcher Thompson
APPX133
Attorney for Holly Lawrence

132

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE FAMILY COURT
NINTH JUDICIAL CIRCUIT

JENNIFER BROWN,)
Plaintiff,)

vs.)

BABY GIRL HARPER, A MINOR)
UNDER THE AGE OF SEVEN (7))
YEARS and HOLLY LAWRENCE,)
Defendant.)

**MEMORANDUM IN SUPPORT OF
BIOLOGICAL MOTHER'S REQUEST
FOR HEARING ON HER REQUEST
FOR ATTORNEYS' FEES**

2013-DR-10-4057

2013-DR-10-4386

BRIEF PROCEDURAL HISTORY OF CASE

On , 2013, Holly Lawrence (Biological Mother) gave birth to Baby Girl. On October 30, 2013, Biological Mother executed Consent to Adopt documents, agreeing to an adoption by Jennifer Brown. Jennifer Brown then filed an action for court approval. (Exhibit 1) That case bears Civil Action No. 2013-DR-10-4057.

On November 26, 2013, the Biological Mother filed her own Summons and Complaint (Civil Action No. 2013-DR-10-4386) (Exhibit 2) as well as a motion for emergency relief (case number 2013-DR-10-4057) (Exhibit 3) seeking return of the child. In her Summons and Complaint, Biological Mother alleged that the Consent to Adopt which she signed was not validly executed pursuant to South Carolina's Adoption Act, that there had been a violation of the Interstate Compact on the Placement of Children, that the consent document was involuntarily executed, that the Adoptive Parent had not met the statutory requirement of preparing a medical/social history on the child, and, as a Fifth Cause of Action, Biological Mother requested attorney's fees.

On December 30, 2013, the Family Court (Judge Martin) issued a temporary order consolidating the two cases. (Exhibit 4)

On March 31, 2014, Jennifer Brown moved that the Court “bifurcate the issues raised by Plaintiff (Biological Mother) in her temporary motion so as to focus solely on the dispositive issue of the validity of the Consent for Adoption.” (Exhibit 5) On April 4, 2014, Biological Mother agreed to bifurcation. (Exhibit 6) The Family Court held a hearing on April 7-9, 2014, on the issue of the validity of the Biological Mother’s consent. Jennifer Brown sought attorney’s fees and costs of approximately \$60,000. Biological Mother did not present her request for attorneys’ fees, choosing instead to pursue fees when all of her causes of action had been presented to the court.

On April 24, 2014, the Family Court issued an order finding that the Consent was not valid and requiring the immediate return of the child to Biological Mother. The Family Court denied Jennifer Brown’s request for attorney’s fees. (Exhibit 7)

Jennifer Brown served a Notice of Appeal on April 24, 2014.

On April 25, 2014, Jennifer Brown filed the notice of appeal and also sought a supersedeas. The Court issued a temporary supersedeas on April 25, 2014.

On August 4, 2014, the Court of Appeals unanimously affirmed the decision of the Family Court. (Exhibit 8) The Court of Appeals held that, “Because we are affirming the Family Court’s order in favor of Lawrence, we do not address Brown’s request for attorney’s fees.”

Jennifer Brown filed a Petition for Writ of Supersedeas and Expedited Review and a Petition for Writ of Certiorari with the Supreme Court of South Carolina on August 15, 2014. The Supreme Court of South Carolina issued a unanimous opinion affirming the Court of Appeals on September 29, 2014. (Exhibit 9) The Supreme Court held, “With respect to adoptive mother’s request for attorney’s fees, because adoptive mother was not the prevailing party on appeal, an award of attorney’s fees would be inappropriate.”

Custody of the child was returned to the Biological Mother on October 6, 2014.

The case was remitted to the Family Court on October 7, 2014. (Exhibit 10)

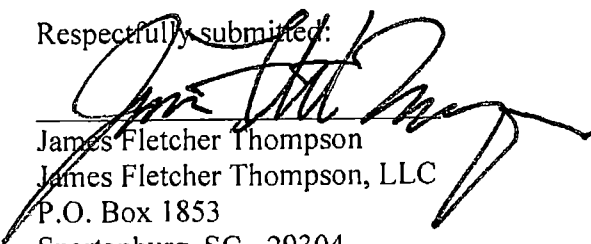
The Biological Mother filed a Pre-Trial hearing request on October 21, 2014 for the purpose of addressing Biological Mother's request for attorneys' fees. (Exhibit 11) The matter was scheduled for a hearing before this Court on Tuesday, November 18, 2014. Jennifer Brown objected to the Biological Mother's request for attorneys fees being set for trial, arguing instead that "the case is over." Judge Cate requested a memorandum of law on Jennifer Brown's claim that Biological Mother is not entitled to be heard on her cause of action for attorneys' fees, filed on November 26, 2013.

**THE FAMILY COURT HAS JURISDICTION TO HEAR THE REMAINING ISSUES
IN BIOLOGICAL MOTHER'S COMPLAINT**

The remittitur from the Supreme Court was issued on October 7, 2014. Once the remittitur is sent from the appellate court, the Family Court acquires jurisdiction to enforce the judgment and to take any action consistent with the appellate court ruling. *Muller v. Myrtle Beach Golf and Yacht Club*, 313 S.C. 412, 438 S.E. 2d 248 (1993). Now that jurisdiction in this case has been restored to the Family Court, Biological Mother wishes to pursue her Fifth Cause of Action, for attorneys' fees. (Biological Mother no longer seeks a hearing on the ICPC issue, as it has become moot by the Supreme Court's determination that the consent document was invalid.) Biological Mother seeks a hearing wherein she may introduce her attorney fee affidavit in support of her request for attorneys' fees and present testimony on the *Glasscock* and *E.D.M.* factors. Biological Mother also seeks limited discovery regarding the issue of attorneys' fees.

The Family Court must apply the *Glasscock* and *E.D.M.* factors to determine whether to award a fee, as well as the amount of the fee to be awarded. *Glasscock*, 304 S.C. 158, 403 S.E. 2d 313 (1991); *E.D.M. v. T.A.M.*, 307 S.C. 471, 415 S.E. 3d 812 (1992). See also *Buist v. Buist*, Appellate Case No. 2012-213002, filed December 3, 2014. This discovery is necessary in order for Biological Mother to present to the Court evidence of the parties' respective financial conditions and the effect of awarding attorneys' fees on each party's standard of living.

Respectfully submitted:



James Fletcher Thompson
James Fletcher Thompson, LLC
P.O. Box 1853
Spartanburg, SC 29304
(864) 573-5533, ext. 5

Allison Boyd Bullard, Esq.
Harling & West, LLC
Post Office Box 2485
Lexington, SC 29071
(803) 957-0889

Date: 12/19/14

ATTORNEYS FOR HOLLY LAWRENCE

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE FAMILY COURT
NINTH JUDICIAL CIRCUIT
CASE NOS.: 2013-DR-10-4386, 4057

HOLLY LAWRENCE,)
Plaintiff,)
vs.)
JENNIFER BROWN)
Defendant.)

DEFENDANT'S MEMORANDUM IN
OPPOSITION TO PLAINTIFF'S
REQUEST TO REOPEN THIS MATTER
SO AS TO CONDUCT ADDITIONAL
DISCOVERY AND TRIAL ON ISSUE
ABANDONED AT TRIAL

The procedural history of this case is voluminous (See Exhibits A & B) and includes a two and a half day trial that, despite vigorous argument otherwise by Plaintiff on Defendant's application for supercedeas appeal, was determined to be a final judgment. No doubt lending to both upper Courts' opinion on the issue of finality was the Plaintiff's own filing before the lower court wherein she agreed that the two and half day hearing would be "dispositive" and would, therefore end the case. (See Exhibit C). For reasons unclear to the Defendant, while knowing and acknowledging that the trial in this matter would finally determine the rights of the parties and result in a dispositive ruling in the case, the Plaintiff voluntarily declined to introduce any evidence at trial on the issue of her attorney fees and costs. The Plaintiff actually says it best in her recent memorandum to this Court wherein she admits that at the final hearing she, "did not present her request for attorney's fees, *choosing* instead to pursue fees when all of her causes of action had been presented to the Court." (Memorandum in Support of Biological Mother's Request for Hearing on Her Request for Attorney's Fees, Page 2) (Emphasis added). The Defendant continues to struggle with the Plaintiff's position - why would it make sense to believe you are entitled to attorney fees and costs and yet intentionally fail to present evidence on such issue at a hearing you agree will end the case?

On appeal, the Defendant sought reversal of the trial court's ruling and also sought an award of attorney fees as there was ample evidence produced at trial on this issue on her behalf without objection including her attorney's affidavit of fees and costs, the Defendant's financial declaration as well as her own testimony on the relevant factors. Plaintiff's financial declaration was also admitted into evidence at trial without objection.

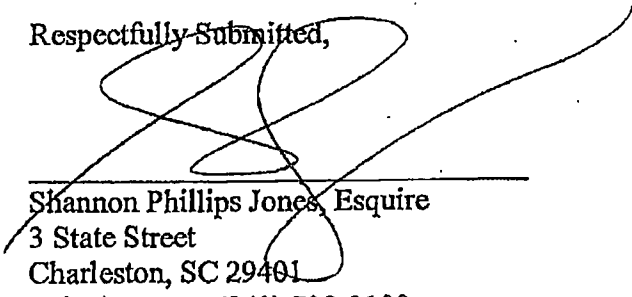
Where the Plaintiff voluntarily failed to submit evidence as to the issue of attorney fees and costs at the very hearing she acknowledged was "dispositive" and would end the case, Plaintiff abandoned her claim for such relief. To raise the issue of reimbursement of costs and fees at this juncture, after final hearing and appeal to both upper Courts is misplaced and improper. Without question the trial judge who received much evidence on the issue of attorney fees and costs was in the best position to rule on the issue. Undeniably the majority of fees incurred in this case were incurred both in preparation for and during the two and half day trial. Plaintiff chose not to pursue something she apparently believed she was entitled to and is now attempting to bifurcate the issue retroactively, having never asked for or received consent from opposing counsel or permission from the Court to do so. Essentially she is asking the Court to allow her to resurrect an issue she abandoned at trial.

The time to request attorney fees and costs was the final hearing. One can imagine the abuse of our system that would result if parties were allowed to intentionally omit evidence as to relief they believe they are entitled to, preferring instead to pocket some requests for a later time and maybe a different judge. Such is not an efficient system of justice and would fail to render justice at all. Just like the case at bar, if the Plaintiff's actions and requests are endorsed and this case is re-opened, regardless of the outcome there will likely be another appeal between the same parties as to the same contest. Plaintiff's intentional failure to request attorney fees at the

hearing she acknowledged would end the case constitutes unequivocal abandonment of the issue and Plaintiff cannot resurrect it now.

Nothing in the Supreme Court's Remittitur requires or authorizes this Court to address any other issue in this case, including the issue of Plaintiff's request for reimbursement of attorney fees and costs. Furthermore, Plaintiff admits in her own memorandum that all other issues in this case were mooted by the final decision. The fact that the trial court's ruling would result in the other issues becoming moot was known by both parties and acknowledged in their filings to the Court. As Defendant states in her Motion to Bifurcate, if the Plaintiff was successful at trial, she would be restored to her status as natural mother and Defendant's adoption action would end. Likewise, had the Defendant prevailed by having the Plaintiff's Consent to Adopt upheld, Plaintiff would have lost standing to contest the adoption. This is why both parties agreed in their filings that a determination on the validity of the adoption was the "dispositive" issue. With the receipt of the Remittitur, this case was closed and Plaintiff should not be allowed to reopen the matter, conduct further discovery and proceed to another trial on an issue abandoned at trial.

Respectfully Submitted,


Shannon Phillips Jones, Esquire

3 State Street

Charleston, SC 29401

Telephone: (843) 720-3100

Facsimile: (843) 720-5999

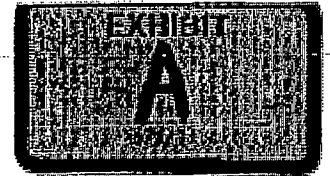
ATTORNEY FOR DEFENDANT

Charleston, South Carolina

Dated: Jan. 15, 2015

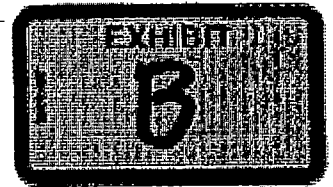
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Holly Lawrence v. Jennifer Brown
Case No. 2013-DR-10-4386, 4057



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SUMMARY OF PROCEDURAL HISTORY

This matter began with the filing of a Summons & Complaint, captioned *Jennifer Brown v. Baby Girl Harper, A Minor Under the Age of Seven (7) Years* (2013-DR-10-4057), on October 13, 2013 by Attorney Douglas Barker, initiating the adoption of Baby Girl Harper by Jennifer Brown (Adoptive Mother). A separate action, *Holly Lawrence v. Jennifer Brown* (2013-DR-10-4386), was filed by Holly Lawrence (Birth Mother) on November 26, 2013 along with a *Notice of Motion and Motion for Emergency Relief and Motion to Intervene and to Consolidate*. This motion argued against the legality of the adoption based on an alleged improperly executed consent, lack of a seven-day revocation period required under North Carolina law, an Interstate Compact on the Placement of Children (ICPC) violation in the transport across state lines of Baby Girl Harper and sought intervention into the termination of parental rights (TPR) and adoption action filed by Adoptive Mother as well as emergency transfer of legal and physical custody of Baby Girl Harper. Adoptive Mother filed a *Return to Motion and Motion to Continue* as well as an *Answer and Counterclaim* wherein she denied Birth Mother's claims for relief, including her request for reimbursement of attorney fees. Birth Mother never filed a Reply.

A hearing on Birth Mother's *Motion for Emergency Relief* was held on December 17, 2013 before The Honorable Daniel E. Martin and a *Temporary Order* was signed and filed by Judge Martin on December 30, 2013 which ordered that the two cases cited above be consolidated, allowed Birth Mother to intervene in the adoption, deemed the matter complex and set the case for a full evidentiary hearing on Birth Mother's *Motion for Emergency Relief* on February 4, 2013 at 9:00 a.m. Jon A. Mesereau, Esquire was also appointed as the Guardian *ad Litem*, and the parties were granted discovery to be conducted on an expedited basis (parties were given 15 days verses 30 to respond). All other issues, including that of attorney's fees and costs, were held in abeyance pending further Order of the Court.

Birth Mother filed a *Motion to Limit Discovery* on January 30, 2014. A *Motion to Compel Discovery, to Reconvene Deposition & Continue Evidentiary Hearing* was filed by Adoptive Mother on February 3, 2014 and both parties filed Returns. Importantly, Adoptive Mother does not have a filed copy of Birth Mother's Return and has been denied access to the file by the Clerk of Court because the file has been closed. Defendant is informed and believes that an Order re-opening the case would have to be issued to allow counsel access to the file.

On February 26, 2014 a "Notice of 'A Case' Trial Date" was filed and served on the parties. Thereafter, Birth Mother filed a *Voluntary Dismissal of a Particular Cause of Action*, requesting to affirmatively withdraw her third cause of action (regarding her alleged involuntariness of the consent) which was consented to by opposing counsel and authorized by the Court. The Order authorizing the withdrawal of Birth Mother's third cause of action preserved Adoptive Mother's attorney fees and cost on that issue.

After hearings on all of these issues held March 5 & 7, 2014 before The Honorable Jocelyn B. Cate, an Order on Birth Mother's Motion to Limit Discovery, Adoptive Mother's Motion to Compel and Reconvene Deposition and Birth Mother's Voluntary Dismissal of a Particular Cause of Action was issued.

On March 17, 2014 an *Amended Summons & Complaint* was filed by Adoptive Mother. Still no Reply was ever filed by Biological Mother. On March 31, 2014, Adoptive Mother filed a *Notice of Motion and Motion to Bifurcate Issues & to Limit the Evidence*, wherein she argued that the issue of the validity of the consent for adoption was the "dispositive issue" that would end the case:

"The pivotal inquiry in this case is the validity of the Consent for Adoption. If the Plaintiff is successful in her attempt to invalidate the Consent for Adoption, the Defendant's adoption action will end as Plaintiff will be restored to her legal position as the natural mother. On the other hand, if the Plaintiff fails to meet her

burden in challenging the Consent for Adoption, the Defendant will be entitled to move forward with her request for the Court to approve her adoption.” (See attached Exhibit D).

Further, had Adoptive Mother prevailed at trial, Biological Mother would have lost legal standing to continue contesting the adoption.

Biological Mother filed her return to Adoptive Mother’s *Motion to Bifurcate* on April 4, 2014 wherein she advised the Court that she, “consents to bifurcate the issues raised by Ms. Lawrence in her temporary motion¹ so as to focus solely on the ‘dispositive issue of the validity of the consent for adoption.” (See attached Exhibit C).

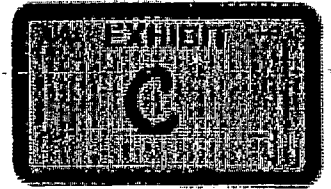
A two and a half day trial was conducted before the Honorable Ronald R. Norton which resulted in an Order issued on April 24, 2014, wherein Judge Norton found the Consent for Adoption of Child signed by Birth Mother invalid and found it in the best interest of the child that she be immediately returned to the Birth Mother. Adoptive Mother’s request for attorney’s fees was denied in that she was not the prevailing party. Adoptive Mother’s *Rule 59(e) Motion to Alter or Amend Judgment* was filed April 24, 2014 and *Holly Lawrence’s Return to Rule 59(e) Motion to Alter or Amend Judgment* was filed April 29, 2014. Adoptive Mother’s Voluntary Dismissal of Amended Complaint Pursuant to Rule 41(a)(1) and/or 41(c) was filed May 5, 2014 and, thereafter, Judge Ronald R. Norton’s *Order Denying Plaintiff’s Rule 59(e) Motion* was filed.

Notice of Appeal was filed on Birth Mother’s behalf on April 25, 2014 along with a *Petition for Emergency Supersedeas*. Counsel for the Birth Mother filed a Motion to Dismiss

¹ The use of “Temporary Motion” to refer to the final hearing has been the subject of much debate as Plaintiff attempted to use the misplaced terminology to argue that the trial court’s ruling was only temporary in nature and, therefore not subject to appeal. The Court of Appeals put that issue to rest when it not only granted the emergency supersedeas, but granted review on appeal. When questioned asked to issue a direct ruling on this issue, the Honorable John C. Few made it clear the Court deemed the issue moot” “That issue isn’t before us now. We issued supersedes and are going to decide the case on the merits.”

Appeal and Adoptive Mother filed a Return to Motion to Dismiss wherein the issue of the finality of Judge Norton's Order was argued by Counsel. (See Adoptive Mother's Return to Motion to Dismiss attached as Exhibits E). In an Order granting emergency supersedeas, the Court denied Birth Mother's Motion to Dismiss Appeal for lack of finality. The Argument on appeal was heard July 23, 2014 and the Court issued an Opinion affirming the Judge Norton's Order on August 4, 2014 (See attached Exhibit F).

On August 15, 2014, a Petition for Writ of Supersedeas and Expedited Review and a Petition for Writ of Certiorari was filed with the Supreme Court of South Carolina. The Supreme Court of South Carolina issued an opinion affirming the Court of Appeals on September 29, 2014. The case was remitted to the Family Court on October 7, 2014. Birth Mother filed a Pre-Trial hearing request on October 21, 2014 and the parties were before the Court on November 19, 2014 on his pre-trial request. Adoptive Mother's position was that the case had ended and Birth Mother's requests were improper. The Court ordered both parties to submit memorandums and summaries of the procedural history of this case at that time.



STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
2014 APR -4 AM 9:18

FILED IN THE FAMILY COURT
NINTH JUDICIAL CIRCUIT

HOLLY LAWRENCE,

Plaintiff,

VS.

JENNIFER BROWN,

Defendant.

CLERK OF COURT

CLERK OF COURT) HOLLY LAWRENCE'S RETURN TO JENNIFER
BY _____) ~~BROWN'S NOTICE OF MOTION AND~~
) MOTION TO LIMIT THE EVIDENCE

2013-DR-10-4057

2013-DR-10-4386

On April 7, 2014 and April 8, 2014 a evidentiary hearing has been scheduled regarding Ms. Lawrence's Motion for Temporary Relief. On March 31, 2014 Jennifer Brown filed a motion seeking to "bifurcate the issues so as to limit the evidence at the temporary hearing to that concerning the consent for adoption."

Holly Lawrence consents to bifurcate the issues raised by Ms. Lawrence in her temporary motion so as to focus solely on the "dispositive issue of the validity of the consent for adoption."

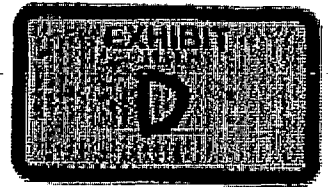
Respectfully submitted:

James Fletcher Thompson
James Fletcher Thompson, LLC
P.O. Box 1853
Spartanburg, SC 29304
(864) 573-5533, ext. 5

ATTORNEYS FOR HOLLY LAWRENCE

Date:

4/14/2014



FILED

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

HOLLY LAWRENCE,

Plaintiff,

-vs-

JENNIFER BROWN,

Defendant.

2014 MAR 31 PM 4:34

JULIE A. ARMSTRONG
CLERK OF COURT

BY _____

IN THE FAMILY COURT
NINTH JUDICIAL CIRCUIT

CASE NOS: 2013-DR-10-4057
2013-DR-10-4386

NOTICE OF MOTION AND MOTION TO
BIFURCATE ISSUES & TO LIMIT THE
EVIDENCE

TO THE PLAINTIFF, ABOVE-NAMED, AND HER ATTORNEY, JAMES FLETCHER
THOMPSON, ESQUIRE:

PLEASE TAKE NOTICE that the Defendant, Jennifer Brown, by and through her undersigned counsel, will on the 7th day of April, 2014 at 9 a.m. or as soon as she may be heard, move before the Presiding Judge of the Family Court for the County of Charleston, State of South Carolina for an Order bifurcating the issues raised in Plaintiff's Motion for Temporary Relief. Such motion is supported by the following, including all attachments, as well as any additional evidence as may be presented at the time of hearing:

1. Plaintiff's motion for temporary relief is currently scheduled for a two day evidentiary hearing. At this time, Plaintiff has named seven (7) witnesses she plans to present at this hearing and Defendant has named nine (9) witnesses. (Exhibit A). In an effort to streamline the matters before the Court and in the interest of judicial economy, Defendant requests that the Court bifurcate the issues so as to limit the evidence at the temporary hearing to that concerning the Consent for Adoption.¹

¹ "The Court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim....or of any separate issue...." "Judges should bifurcate issues when it helps to clarify and simplify the issues...." S.C. R. Civ. P. 42(b) (2013).

2. The pivotal inquiry in this case is the validity of the Consent for Adoption. If the Plaintiff is successful in her attempt to invalidate the Consent for Adoption, the Defendant's adoption action will end/as Plaintiff will be restored to her legal position as the natural mother. On the other hand, if the Plaintiff fails to meet her burden in challenging the Consent for adoption, the Defendant will be entitled to move forward with her request for the Court to approve her adoption.

3. Although the Plaintiff alleges violations of the Interstate Compact on Placement of Children (ICPC) as a means of attacking Defendant's adoption action, such issues are not ripe for review at this stage of the litigation and are typically disposed of at the final hearing on the adoption. This is particularly true where, even when faced with true ICPC violations, the South Carolina Supreme Court and the majority of courts across our nation have refused to allow an ICPC violation to prevent approval of an adoption that is in the best interest of the minor child.²

4. Birth Mother attempts to invalidate the executed Consent for Adoption on grounds of alleged technical violations as to execution of consent. The final inquiry as to all issues involving the Consent for Adoption is, of course, what is in the best interests of the minor child.

5. Plaintiff's attempted attack on the Consent for Adoption is the dispositive issue in this case and it is in the interest of all involved to focus on receiving a determination on that issue alone.

WHEREFORE:

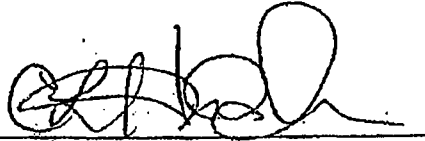
Defendant respectfully requests that this Court bifurcate the issues raised by Plaintiff in her

² See, e.g., *Doe v. Baby Girl*, 376 S.C. 267, 284 (n.8) (S.C. 2008) (held that adoption could proceed despite revocation of ICPC clearance when placement with adoptive parents was safe); *R.F. v. Department of Children and Families*, 50 So. 3d 1243 (Fla. Ct. App. 2011); *In re ADOPTION/GUARDIANSHIP No. 3598*, 701 A.2d 110 (Md. 1997) (Holding best interests of the child is the paramount consideration when ICPC violation was present); *In Re Baby Girl 64*, 850 S.W.2d 64, 71 (Mo. 1993) ("at the pinnacle of the court's decision must be the child's best interest, not the interests of the other parties or even public policy"); *In Re Adoption of C.L.W.*, 467 So.2d 1106, 1110 (Fla. Dist. Ct. App. 1985) ("the compact is not available to nullify the adoption proceedings") *In Re Adoption of Baby Boy M.G.*, 515 N.Y.S.2d 198, 200-01 (1987) (adoption warranted despite failure to obtain ICPC approval); *In Re Adoption of Baby E.*, 427 N.Y.S.2d 705, 706 (1980) (the best interest of the child should prevail when only failure to comply with ICPC stands in the way). See also *In Re Petition to Adopt: C.M.A.*, 557 N.W.2d 353, 357-58 (Minn. App. 1996) (unknowing violation of the ICPC does not provide an adequate basis for vacating the adoption).

temporary motion so as to focus solely on the dispositive issue of the validity of the Consent for Adoption.

Respectfully submitted,

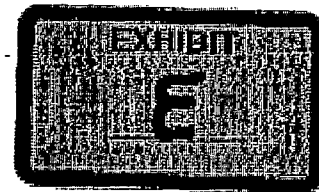
SHANNON JONES LAW FIRM

A handwritten signature in black ink, appearing to read 'Shannon Jones', written over a horizontal line.

Shannon Jones, Esquire
Cassandra L. Hutchens, Esquire
3 State Street
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Telephone: (843) 720-3100
Facsimile: (843) 720-5999

ATTORNEYS FOR JENNIFER BROWN

Charleston, South Carolina
Dated: Nov 31, 2014



THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Ronald R. Norton, Family Court Judge

Case No. 2013-DR-10-4057

Case No. 2013-DR-10-4386

Appellate Case No. 2014-000977

Jennifer Brown, ... Appellant,

v.

Baby Girl Harper, a Minor Under
the Age of Seven (7) Years and
Holly Lawrence

Respondents.

RETURN TO MOTION TO DISMISS APPEAL

Appellant Jennifer Brown (Adoptive Mother) files the following Return to the Respondent Holly Lawrence's (Birth Mother's) Motion to Dismiss her appeal of Judge Norton's order mandating that she turn her adoptive child over immediately to Birth Mother without a stay. The order in this case decides the issue of the validity of Birth Mother's consent to the adoption with finality. Further, the family court's order affects the substantial parental rights of Appellant as well as basic due process rights of Baby Girl.

The Court should deny the Motion to Dismiss.

The Order Is Not a "Temporary" Order

Respondent Birth Mother consistently refers to this order as a "temporary" order or *pendente lite* order which is not immediately appealable. She points out that there are other issues in the case, and claims this renders the order on appeal "not final."

Birth Mother conspicuously leaves out the second part of the family court's order, hoping this Court will overlook the mandate in the order and the steps Birth Mother and her lawyers have taken to seek immediate transfer of the child. The Court should not be persuaded by Birth Mother's motion. This order finally adjudicates the issue of the validity of Birth Mother's consent to the adoption under the statute and mandates immediate transfer of the child without a stay or the ability to seek meaningful appellate review.

A temporary or *pendente lite* order is usually one that is "*without prejudice* to the rights of the parties." *Terry v. Terry*, 400 S.C. 453, 456, 734 S.E.2d 646, 648 (2012) (emphasis added). Such orders are temporary by definition – "they neither decide *any* issue with finality nor affect a substantial right within the meaning of" Section 14-3-330(2) of the South Carolina Code. *Terry*, 400 S.C. at 456-457, 734 S.E.2d at 848 (emphasis added).

The order being appealed is *not* a temporary order. It finally adjudicates the validity of Birth Mother's consent to this adoption and mandates immediate placement of the child with Birth Mother. See *Grumbos v. Grumbos*, 393 S.C. 33, 40 n. 4, 710 S.E.2d 76, 80 n. 4 (Ct. App. 2011) (temporary orders must be without prejudice to the rights of the parties at the final hearing). This determination is binding on other trial judges in the future, who may not make a finding that overturns the ruling currently before the Court. *Charleston County Dept. of Soc. Servs. v. Father*, 317 S.C. 283, 288, 454 S.E.2d 307, 310 (1995) ("There is a long standing rule

in South Carolina that one judge of the same court may not overrule another.”); *Dorchester County Dep’t of Soc. Servs. v. Miller*, 324 S.C. 445, 457, 477 S.E.2d 476, 483 (Ct. App.1996) (same).

Even though Birth Mother contends that the order is not appealable under *Terry*, unlike the order in *Terry* (appeal of an order requiring a husband to temporarily vacate the marital home), this order finally decides a dispositive issue in the case and ultimately prevents effective appellate review if review is not taken now.

In *Terry*, the husband withdrew his appeal from the temporary order but tried to continue with his appeal from a contempt finding based on his refusal to leave the marital home. The Supreme Court found the appeal to be “manifestly without merit.” Here, Adoptive Mother has presented this Court with the arguments she intends to make regarding the errors in the family courts order, and she has also demonstrated a likelihood of success on those issues under applicable law. If Judge Norton’s order requiring immediate transfer of this child is left in place, Adoptive Mother will lose the ability to effectively appeal the erroneous decision about the validity of Birth Mother’s consent under the Adoption Statute.

All *Terry* requires for appealability is that the order decide “any issue with finality....” *Terry*, 400 S.C. at 456-457, 734 S.E.2d at 848 (emphasis added). The order on appeal certainly meets that test.

Even if this order is viewed as an interlocutory ruling because it does not “finally determine” the entire case, the ruling would still be subject to immediate appellate review under Section 14-3-330, which provides:

The Supreme Court shall have appellate jurisdiction for correction of

errors of law in law cases, and shall review upon appeal:

(1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; *provided*, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;

(2) An order *affecting a substantial right* made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;

S.C. Code Ann. § 14-3-330 (1976 & Supp. 2013) (emphasis added). This provision applies to

review of family court orders. *Cf. Terry*, 400 S.C. at 457 n. 3, 734 S.E.2d at 648 n. 3. Accord

State v. Isaac, 405 S.C. 177, 189, 747 S.E.2d 677, 683 (2013) (Pleicones, J, concurring)

("appellate courts regularly apply § 14-3-330, which by its title only governs law cases, to equity matters arising from the family courts").

The order in this case affects Adoptive Mother's substantial right to custody and care of this child. It also affects her parental rights to the child, again rights that are substantial in nature. *Compare SC Dept. of Soc. Serv. v. Michelle G.*, Op. No. (S.C. Sup. Ct. filed March 27, 2014) (Shearouse Adv. Sh. No. 13 at 16) (parents have a fundamental liberty interest in the care, custody, and management of their children). And in light of the mandate of immediate transfer of the child to Birth Mother, the order *in effect* determines the action and prevents a judgment from which an appeal may later be taken. Now is the appropriate time to review this order. *Compare McLaughlin v. Strickland*, 279 S.C. 513, 309 S.E.2d 787 (Ct. App. 1983) (Court held order

refusing natural father's motion to withdraw consent to adopt effectively foreclosed father from contesting case on merits affected substantial rights and was immediately appealable under Section 14-3-330).

The text of the order prepared by Birth Mother's attorney and signed by Judge Norton should be instructive. In pertinent part, the order provides:

Adoptive Mother, in her *Motion to Bifurcate* filed March 31, 2014 summarizes this point well: "the pivotal inquiry in this case is the validity of the Consent for Adoption. If the [Birth Mother] is successful in her attempt to invalidate the Consent for Adoption, the [Adoptive Mother's] adoption action will end as [Birth Mother] will be restored to her legal position as natural mother." This Court agrees.

(Order, p. 8-9). Hence, this order itself declares the issues of custody and parental rights to be final upon entry of the order.

Any Alleged ICPC Violation is Irrelevant at This Point

As additional support for her motion to dismiss this appeal, Birth Mother argues her own violation of the Interstate Compact on the Placement of Children (ICPC) was an issue that was bifurcated, meaning there is more to do below. (Motion, pp. 1-2). She states that "this ICPC violation renders the adoption illegal, pursuant to S.C. Code Ann. § 63-9-2200 (4) (2010)¹ and is

¹ This is apparently a cite to "Subsection 4" of the statute enacting the ICPC in South Carolina. That section provides in its entirety:

Subsection 4. Penalty for Illegal Placement:

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either

therefore a separate and independent basis upon which this adoption should be dismissed."

(Motion, pp. 1-2). Birth Mother cites to no authority for this statement.²

The fact that the issue of the ICPC compliance has not been adjudicated does not mean that the order being appealed does not finally determine an issue in the case. As stated above, the family court's order is a final adjudication of the validity of Birth Mother's consent, and this adjudication is binding on any family court judge that would hear the remainder of the issues. Furthermore, the family court's order mandates immediate transfer of the child which is not the typical "temporary" order referenced in *Terry*. As noted above, even the order itself, drafted by Birth Mother's counsel, acknowledges its outcome-determinative nature.

Accordingly, this Court should deny the Motion to Dismiss the appeal and should leave

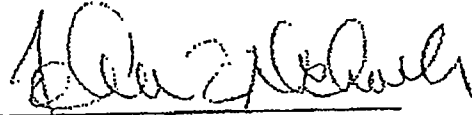
jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place or care for children.

Thus, while this provision certainly provides that Birth Mother has exposed *herself* to criminal and civil sanctions for *her* violation of the ICPC, nothing in this provision automatically invalidates anything. It may well be that there is a violation of some other law that will affect the validity of this adoption (such as the Consent Provisions at issue in this appeal), but Section 63-9-2200 does not require invalidating an otherwise valid adoption. Furthermore, Birth Mother's behavior here rises to the level of "unclean hands" which equity will not assist.

² Further, whether a violation of the ICPC occurred and, if so, whether Birth Mother can use her own violation of the ICPC to invalidate an adoption, are undecided issues here. There is commentary that a "court may grant an adoption despite a violation of the ICPC if granting the adoption is found to be in the child's best interest. The court may therefore order that retroactive compliance with the ICPC be accomplished (sometimes referred to as 'bringing the case into compact compliance')." James Fletcher Thompson, *South Carolina Adoption Law and Practice* (SC Bar 2010) at p. 227 and note 30. Such would seem to be the case here, where it was Birth Mother's own violation, if any, of the ICPC which she now attempts to use in an effort to undo the adoption.

undisturbed the supersedeas this Court granted on May 6, 2014, staying the operation of the family court's orders of April 24, 2014, and May 5, 2014.

Respectfully Submitted,



May 27, 2014

John S. Nichols, SC Bar # 4210
BLUESTEIN NICHOLS
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Attorneys for Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Ronald R. Norton, Family Court Judge

Case No. 2013-DR-10-4057
Case No. 2013-DR-10-4386

Jennifer Brown, ... Appellant,

v.

Baby Girl Harper, a Minor Under
the Age of Seven (7) Years and
Holly Lawrence Respondents.

PROOF OF SERVICE

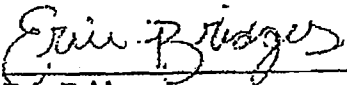
The undersigned hereby certifies that on the date indicated below she served
counsel for the Respondents with a copy of the *Return to Motion to Dismiss* by mailing
copies of the same by United States Mail with first class postage prepaid to the following
addresses:

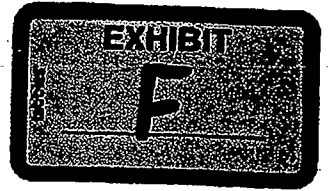
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May 27, 2014


Erin Bridges
BLUESTEIN, NICHOLS,
THOMPSON & DELGADO, LLC



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Jennifer Brown, Appellant,

v.

Baby Girl Harper, a minor under the age of seven, and
Holly Lawrence, Respondents.

Appellate Case No. 2014-000977

Appeal From Charleston County
Ronald R. Norton, Family-Court Judge

Opinion No. 5260
Heard July 23, 2014 – Filed August 4, 2014

AFFIRMED

John S. Nichols, of Bluestein Nichols Thompson &
Delgado, LLC, of Columbia; and Shannon Phillips Jones,
of Shannon Jones, Attorney at Law, LLC, of Charleston,
for Appellant.

James Fletcher Thompson, of James Fletcher Thompson,
LLC, of Spartanburg; and Allison Boyd Bullard, of
Harling & West, LLC, of Lexington, for Respondent.

Jon A. Mersereau, of Charleston, Guardian Ad Litem.

PER CURIAM: In this adoption case, we hold the execution of a consent to
adopt document must strictly comply with section 63-9-340 of the South Carolina

Code (2010). We affirm the family court's determination that the consent document signed by the birth mother was rendered invalid by (1) the failure of the attorney-witness to be present when the birth mother signed the document and (2) the failure of both witnesses to observe the statutorily-required discussion of the provisions of the consent to adopt document.¹

I. Validity of the Consent to Adopt Document

"Adoption exists in this state only by virtue of statutory authority which expressly prescribes the conditions under which an adoption may legally be effected. Since the right of adoption in South Carolina is not a natural right but wholly statutory, it must be strictly construed." *Hucks v. Dolan*, 288 S.C. 468, 470, 343 S.E.2d 613, 614 (1986) (citation omitted).

Adoptions are carried out pursuant to the South Carolina Adoption Act. S.C. Code Ann. §§ 63-9-10 to -2290 (2010 & Supp. 2013). Under the Act, "Consent or relinquishment for the purpose of adoption . . . must be made by a sworn document, signed by the person . . . giving consent or relinquishment" S.C. Code Ann. § 63-9-330(A) (2010). Section 63-9-330(A) sets forth a list of items that must be specified in the consent to adopt document. The requirements for executing the document are set forth in section 63-9-340:

(A) The sworn document . . . must be signed in the presence of two witnesses one of whom must be one of the following:

(1) a judge of any family court in this State;

¹ We disagree with Lawrence's contention that the underlying order is not immediately appealable. The family court's finding that the consent document was invalid constitutes a final decision that Brown cannot proceed with the adoption of the child. Thus, it is a final order that is immediately appealable. *See Terry v. Terry*, 400 S.C. 453, 456-57, 734 S.E.2d 646, 648 (2012) (defining temporary family court orders as "temporary—they neither decide any issue with finality nor affect a substantial right . . .").

(2) an attorney licensed to practice law in South Carolina who does not represent the prospective adoption petitioners;

(3) a person certified by the State Department of Social Services . . . to obtain consents or relinquishments;

....

(B) The persons who witness the signing of the sworn document . . . shall attach to the document written certification signed by each witness that before the signing of the document, the provisions of the document were discussed with the person giving consent or relinquishment, and that based on this discussion, it is each witness' opinion that consent or relinquishment is being given voluntarily and that it is not being obtained under duress or through coercion.

The important facts in this appeal are simple. The attorney-witness was not in the room when the birth mother, Holly Lawrence, signed the consent document, and neither witness observed any discussion with Lawrence before Lawrence signed it.² The adoptive mother, Jennifer Brown, concedes the execution of the consent document did not strictly comply with section 63-9-340.

The plain and mandatory language of section 63-9-340 indicates the legislature intended strict compliance. Subsection (A) states the document "*must* be signed in the presence of two witnesses." (emphasis added). Subsection (B) states the witnesses "*shall*" certify that the provisions of the document were discussed with the person giving consent "*before* the signing of the document." (emphasis added). The requirement in subsection (B) of "certification . . . based on this discussion" indicates the witnesses must have personal knowledge of the discussion based on their observation of it.

² Lawrence was not married when she delivered the child, and we do not address whether the biological father's consent was required. See S.C. Code Ann. § 63-9-310(A)(4), (5) (2010) (setting forth certain requirements that must be met before an unwed father's consent to adopt is required).

Our interpretation of the Act as requiring strict compliance with section 63-9-340 is supported not only by *Hucks*, but also by the Act itself. Section 63-9-20 of the South Carolina Code (2010) provides, "The purpose of this article is to establish fair and reasonable procedures for the adoption of children" The legislature intended that strict compliance with the procedures set forth in section 63-9-340 be required in order to reduce litigation, promote finality, and ensure consent documents are voluntary. See *McCann v. Doe*, 377 S.C. 373, 390, 660 S.E.2d 500, 509 (2008) ("[P]rotections need to be in place for both biological and adoptive parents to ensure the decision to give a child for adoption is a thoughtful and certain one and not likely to be challenged in a long, arduous, and emotionally-wrenching legal process. . . ."). Because the execution of a consent document must strictly comply with section 63-9-340, the consent document is invalid and the adoption may not proceed. Therefore, Lawrence could not ratify the invalid consent by her subsequent acts.

II. Remaining Issues

We decline to determine whether the Rule 62(a), SCRPC, ten-day automatic stay was applicable to the family court's order because our order granting supersedeas rendered that issue moot. See *Sloan v. Dep't of Transp.*, 379 S.C. 160, 167, 666 S.E.2d 236, 240 (2008) ("This Court will not pass on moot and academic questions or make an adjudication where there remains no actual controversy." (internal quotation marks omitted)); *Curtis v. State*, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001) ("A case becomes moot when judgment, if rendered, will have no practical legal effect upon [the] existing controversy."). We do not address the best interest of the child because it is not an issue when the consent document is invalid. Finally, because we are affirming the family court's order in favor of Lawrence, we do not address Brown's request for attorney's fees.

III. Conclusion

For the foregoing reasons, the order on appeal is

AFFIRMED.

FEW, C.J., and WILLIAMS and KONDUROS, JJ., concur.

FILED

STATE OF SOUTH CAROLINA 2015 FEB 19 AM 11:55

COUNTY OF CHARLESTON JULIE J. ARMSTRONG IN THE FAMILY COURT
CLERK OF COURT NINTH JUDICIAL CIRCUIT

JENNIFER BROWN,

Plaintiff,

vs.

BABY GIRL HARPER, A MINOR)
UNDER THE AGE OF SEVEN (7))
YEARS,)

Defendant.)

RULE 59(e) MOTION TO
ALTER/AMEND JUDGMENT

2013-DR-10-4057

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN THE FAMILY COURT
NINTH JUDICIAL CIRCUIT

HOLLY LAWRENCE,)

Plaintiff,)

vs.)

JENNIFER BROWN,)

Defendant.)

2013-DR-10-4386

NOW COMES Holly Lawrence, by and through her undersigned counsel, and moves before this Court pursuant to RULE 59(e) of the South Carolina Rules of Civil Procedure for that Court's order altering or amending its Order of January 29, 2015 based upon the below arguments:

Holly Lawrence's Summons and Complaint included five causes of action. (See Summons and Complaint filed November 26, 2013). Jennifer Brown's Amended Summons and Complaint included four causes of action, including causes of action for termination of parental rights on the

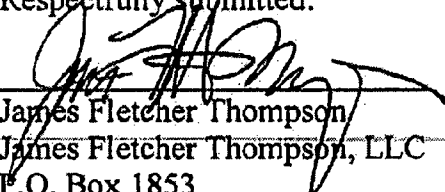
basis of abuse/neglect and abandonment, and a cause of action for custody based on psychological parenthood. (See Amended Summons and Complaint filed March 17, 2014).

On March 31, 2014, Jennifer Brown moved that the Court bifurcate the issues and conduct an evidentiary hearing solely on the *consent for adoption* document. The Family Court hearing on April 7-9, 2014 was focused on this one cause of action, and did not include the balance of Holly Lawrence's causes of action, nor did the hearing address Jennifer Brown's causes of action.

Nonetheless, in this Court's order of January 29, 2015, this Court has held that Holly Lawrence's failure to submit evidence of attorney's fees and costs at the April 7-9, 2014 trial effectively abandoned her right to make a request for attorney's fees. Hence, the January 29, 2015 order would require Holly Lawrence to seek attorney's fees before her causes of action had been heard, and before Jennifer Brown's causes of action, then pending, were heard. Further, Holly Lawrence seeks attorney's fees on the appellate aspects of this trial, which had neither been incurred nor were anticipated during the April 7-9, 2014 hearing.

For these reasons, Holly Lawrence requests this Court to alter or amend its order of January 29, 2015, and to allow Holly Lawrence to pursue attorney's fees and costs against Jennifer Brown.

Respectfully submitted:


James Fletcher Thompson
James Fletcher Thompson, LLC
P.O. Box 1853
Spartanburg, SC 29304
(864) 573-5533, ext. 5

Date: February 16, 2015

ATTORNEY FOR HOLLY LAWRENCE

1 I believe that that costs will be prejudicial to my
2 client and harmful to everyone. So I'd ask that we be
3 ordered to engage in mediation immediately, as soon as
4 possible, and this case be continued.

5 In the event this case is continued, I would ask Your
6 Honor to direct the forensic examiner to produce all
7 information that appears to be relevant. I have no problem
8 with that being submitted directly to Your Honor if you
9 want to review it in camera, the way Judge Cate did of the
10 text messages that she -- I was being told by Mr. Thompson
11 were not relevant, had nothing to do with this case. You
12 know, Judge Cate felt very differently about that after she
13 reviewed them and she ordered them produced. I am fine
14 with Your Honor reviewing whatever the forensic examiner
15 has found and believes is relevant in this case.

16 And I've also asked for fees. Your Honor, my fees
17 have been, you know, substantial in this case. And we've
18 been to several hearings and this has been, you know, an
19 ultimate battle for sure. My client has paid me over
20 twenty-five thousand dollars and we paid the forensic ex --
21 well we owe the forensic expert \$5800 just for what he
22 revealed. I believe my client should be entitled to be
23 reimbursed for that, that, you know, these -- everything
24 that forensic examiner discovered, he discovered were bad
25 acts, illegal acts on behalf of the biological mother, she

1 their position. We accept their position and we believe
2 that's an accurate statement of law based on *McLaughlin v.*
3 *Strickland* and Section 63-9-310 that states a birth
4 mother's consent to an adoption is required. Those issues
5 are matters of law. They are not matters of best
6 interest. They're factual issues. They are not prejudiced
7 if we move forward on this limited issue.

8 As to the issue of mediation, Your Honor, we don't
9 want an appealable issue. So we consent to this Court
10 hearing this case today. And if Your Honor is so inclined,
11 we would be receptive to the Guardian using his best
12 interest -- best efforts to identify a mediator who would
13 be able to see us forthwith, perhaps even, depending on how
14 our case goes, maybe even tomorrow, or certainly soon into
15 the next week. And we would certainly welcome, not getting
16 rid of these two days that are so valuable, but perhaps
17 Your Honor waiting to rule to see if perhaps mediation can
18 resolve this issue. We certainly offer that to Your Honor
19 and agreeing to the mediation in an effort to meet Ms.
20 Jones halfway. I think in chambers we did discuss, and I
21 think that's true, you never know what's going to come out
22 of mediation. So we're receptive to doing that.

23 Finally as to attorney's fees, Your Honor, it's not
24 before the Court today. The issue before the Court today
25 is only the motion that was filed on November 26th. The

1 motion that's before the Court was the issue of ICPC
2 compliance. We've agreed for the bifurcation not to go
3 there. The only issue remaining is this consent document
4 was improperly executed. That's all that we're moving
5 forward on. That's the law of the case, that this case is
6 to hear a temporary hearing, evidentiary hearing, on the
7 issue in the motion. The voluntariness issue was never
8 alleged in the text of the motion anyway, but in the
9 summons and complaint we did raise that, which we've since
10 voluntarily dismissed.

11 The issues are so narrow that there is no prejudice.
12 The only prejudice is delay. And delay is, I think, only a
13 friend to the biolog -- to the adoptive mother as -- and
14 very prejudicial to -- to the biological mother. With
15 that, Your Honor, we're ready to move forward.

16 Thank you for your attention.

17 THE COURT: A brief response, Ms. Jones?

18 MS. JONES: Thank you, Your Honor. I appreciate
19 that. I would say that, you know, if a continuance is a
20 friend of mine, a lack of continuance is a foe to the
21 judicial process. I mean it is -- it is offensive that I
22 would be cut off by illegal acts from completely going into
23 the issue of credibility, which again, has been found and
24 that's the law of the case ruled by Judge Cate, to be
25 central to the issue that is before the Court. But to

1 MS. JONES: Also, Your Honor, I did want to
2 respond, he -- Mr. Thompson apparently believes that
3 attorney fees would not be something that would be before
4 you. I've raised those in my return and I -- I
5 respectfully disagree with him. He may not be asking for
6 attorney fees, but I'm certainly asking for attorney fees
7 and I believe that's before the Court in this evidentiary
8 hearing.

9 THE COURT: All right.

10 All right. With respect to the issue before the Court
11 then, first of all, I'm going to deny the motion to
12 continue. I do understand that Ms. Brown is certainly
13 entitled to additional discovery. But as I understand, the
14 issue before the Court at this evidentiary hearing is for
15 the Court to determine the validity of the consent and
16 relinquishment and I'm convinced that there's enough
17 information available through the testimony for me to make
18 a decision as to whether the consent and relinquishment is,
19 in fact, -- or did it comply with any statutory
20 requirements or any voluntariness that might be alleged.
21 So I am going to deny the motion to continue. That's
22 obviously not going to end this case. And y'all can pursue
23 any additional discovery you deem appropriate.

24 With respect to mediation, I do understand that
25 Charleston County is a mandatory mediation county. I am

1 going to order mediation. But I -- I do note for the
2 record, this is not the final hearing. And as I understand
3 the mediation rules, you can't set this case for trial
4 until mediation takes place. That doesn't mean you can't
5 have an evidentiary hearing before mediation takes place.
6 So we're here for the evidentiary hearing. This is not the
7 trial on the merits of this case. I believe under the
8 mandatory mediation rules you will have to have mediation
9 take place before this case can be set for trial. But
10 since this is, in effect, a stepping stone to that trial, I
11 don't believe that it's required that mediation be held
12 prior to this hearing, but I am -- I am ordering you to
13 comply with the mediation rules and certainly I think that
14 has to be done prior to any trial on the merits of this
15 case. I am hoping that through Mr. Mersereau's work, you
16 might be able to get that scheduled this week depending on
17 the availability of a mediator, so.

18 With respect to the attorney fees, I am holding that
19 in abeyance. Certainly the trial judge, if the matter goes
20 forward for trial, can address attorneys' fees for all
21 issues throughout this particular case. So that's the
22 ruling with respect to the issue that's presented to the
23 Court.

24 And if there's nothing else, I believe, Mr. Thompson,
25 you would be the moving party with respect to the

1 under the guise of one story. This is not the first time
2 she's changed her story. She's changed her story. But now
3 she's changing her story from what she presented under oath
4 to the Court. This is an affidavit entered in this
5 litigation. And I don't think there's any way that you can
6 stipulate that the witnesses that have been telling a very
7 different story all along, is suddenly the story that you
8 want to adopt so that you're prevented from being impeached
9 in this action for giving false testimony or a different
10 testimony or incorrect testimony or however you want to --
11 however you want to term it.

12 But to the extent that I would be prevented from doing
13 that, I think it's extremely prejudicial to my client.
14 She's incurred a lot of attorney's fees. I hope both of
15 these parties have incurred a lot of attorney fees. And
16 it's going to go -- it's going to go to that issue. So
17 some of this evidence is going to roll into that issue.
18 It's before the Court. We've both asked for attorney's
19 fees. I've asked for it in my return today. And if I've
20 been defending an action for five months in part based on
21 an inaccurate version of events, I think that goes directly
22 to the heart of attorney's fees.

23 It goes to credibility, which again, Judge Cate has
24 been very clear in her findings of fact, that was not
25 opposed. There was no motion to reconsider. It's the law

1 credibility regarding the consent document now that we've
2 had a stipulation. You cannot attack a witness if you
3 agree with the testimony or you stipulated to the content
4 of the facts in question.

5 MS. JONES: Your Honor, may I?

6 THE COURT: Yes, ma'am.

7 MS. JONES: Your Honor, credibility is an issue,
8 an important one in every case that comes before any Court
9 and it is an issue in this case. And also ---

10 THE COURT: It's an issue in the case, but why is
11 it an issue in the limited scope of what I am being asked
12 to decide?

13 MS. JONES: Well the stipulation that came --
14 which is now coming from the Plaintiff, came late in the
15 afternoon yesterday for the first time despite very
16 different allegations in the pleadings, different
17 allegations up until this point in the litigation. I have
18 requested in my return attorney fees in this evidentiary
19 hearing. I have placed that affirmatively before the
20 Court. It is an issue. Judge Cate also ruled and I
21 believe ---

22 THE COURT: I believe Judge Cate ruled the way
23 she did based upon information that she had at the time,
24 which is now different from what I have. I don't disagree
25 with her ruling at that time.

1 he is asserting that it is an illegal adoption so that is
2 worthy of questioning and evidence just like ---

3 MR. THOMPSON: I'm not seeking attorney's fees.

4 MS. JONES: That's what ---

5 MR. THOMPSON: Attorney's fees can be brought at
6 any other time. If this Court chooses not to pursue that
7 issue it does not prejudice for those issues to be raised
8 in any other form at any other time and there's a record of
9 these events. So I don't understand what the prejudice
10 that's being alleged is.

11 MS. JONES: And, Your Honor, I do understand that
12 -- your view of this being a very limited issue and -- and
13 I -- and I -- I don't mean to upset the Court in any
14 regard. I want to speed this up. I'm not trying to
15 belabor anything, but I also have a duty -- I have a duty
16 as an advocate for my client to make sure that I lay a
17 proper -- make a proper record. And ---

18 THE COURT: But -- but aren't you making a record
19 on an issue that is not before me?

20 MS. JONES: No, sir, not in my opinion. I -- I
21 believe that credibility is absolutely before you in this
22 case. It -- it is -- I believe it's before you and it's
23 important in every case and I believe that Judge Cate's
24 order is the law of the case and she found that credibility
25 was crucial to the determination of the consent document.

1 And -- and there has been a lot -- you're right. There has
2 been a lot of things that have changed since Judge Cate's
3 order, which has done nothing to help the credibility of
4 the Plaintiff. And I believe that I have a right to make
5 sure that the trier of fact is aware of it.

6 THE COURT: I -- I'm going to let you do it, but
7 again, I mean, I'm looking forward to reading these briefs
8 that y'all are going to submit to me because I -- I think
9 that's going to be the basis of the decision I will
10 ultimately make, not what anybody has indicated on the
11 witness stand only because I think everybody agrees to what
12 was done on the witness stand. I don't think there's any
13 dispute as to the testimony about the execution of the
14 documents. That's where I am.

15 MS. JONES: And I do understand, Your Honor.
16 Respectfully, if I am not -- you know, I just don't -- I
17 think attorney's fees and costs are properly before the
18 Court and that I need to make a record on the credibility
19 issues and I think it also goes to the heart of the case.
20 But I will ---

21 THE COURT: But regarding the heart of the case
22 is not here yet. That's what I keep trying to -- having
23 difficulty with. The heart of the case is somewhere down
24 the road.

25 MS. JONES: And my understanding is I can't ask

1 MR. THOMPSON: A proper objection is always
2 proper before this Court and I intend to apply proper
3 objections. It is not done for any reason other than to
4 protect the record and my client.

5 MS. JONES: Your Honor, I'm not so sure what he's
6 afraid of is the answer. It's just a yes or no answer.
7 She either did that research or she didn't do that
8 research.

9 MR. THOMPSON: And it's irrelevant to the issue
10 ---

11 MS. JONES: It bears directly on whether or not,
12 you know, she's credible and -- and -- and intentionally
13 looking to figure out how she can delete relevant evidence
14 in this case. I'm going to call a witness who's going to
15 talk about it.

16 THE COURT: Why?

17 MS. JONES: Because I think it goes to
18 credibility.

19 THE COURT: Okay. But the credibility issue as
20 to attorney's fees as to the limited issue I've been asked
21 to decide, if you can discredit her as to the issue of the
22 validity or the appropriate procedure in executing that
23 document, I'll consider attorney's fees. But finding her
24 credible or not credible on all of these other issues, I'm
25 not asked to decide those. That's for your trial.

1 checking -- checking back up with the doctor. And I
2 avoided conflict by not addressing it and misleading.

3 Q. And is it still your allegation in this case that you
4 had no idea you were pregnant with this child until just
5 weeks before you gave birth?

6 MR. THOMPSON: Objection. Renew the objection as
7 to relevance regarding the execution of the document of
8 when she knew about her pregnancy.

9 MS. JONES: It goes to credibility, Your Honor.

10 THE COURT: And, Ms. Jones, let me just, so that
11 I completely understand, this entire line of questioning
12 that we spent yesterday and today is limited to your
13 request for attorney's fees challenging the credibility of
14 this witness?

15 MS. JONES: Also that I believe it goes to the
16 issue before the Court at this evidentiary hearing on
17 whether or not the consent is void ab initio.

18 MR. THOMPSON: And, Your Honor, may I say -- I
19 know you've been considering the issue of attorney's fees,
20 but now that we've tried the case basically on that, we do
21 hope you would consider that issue. We haven't alleged --
22 requested. So we have secured ours for a later date. But
23 Ms. Jones has now been allowed and continues to be allowed
24 to put that before you and we would hope that in addition
25 to the ultimate issue as to the execution, we think you're

1 hearing a great deal of testimony that doesn't need to be
2 replayed at a later date, we hope that you would consider
3 her request for attorney's fees.

4 THE COURT: And maybe I didn't artfully word my
5 statement a minute ago. I guess what I'm hearing Mr.
6 Thompson say is that this is your bite at the apple for
7 attorney's fees. If this case goes forward, you will not
8 be permitted to request attorney's fees at the next
9 hearing.

10 MS. JONES: No.

11 THE COURT: Am I stating that somewhat correctly?

12 MR. THOMPSON: Well I think ---

13 MS. JONES: Well I don't believe that's a proper
14 objection to make during my cross.

15 THE COURT: I don't know that he's making that
16 objection.

17 MR. THOMPSON: The objection that I made was
18 relevance as to that document, but Your Honor was having a
19 colloquy with counsel about the issue of attorney's fees
20 and I joined the colloquy.

21 MS. JONES: I'm not sure where we were. Am I at
22 liberty to continue?

23 THE COURT: Yes, ma'am.

24 BY MS. JONES:

25 Q. And I had asked you is that still your story that you

1 Q. You testified in your first deposition before it was
2 reconvened that nobody came to see you in the hospital; is
3 that right?

4 A. I do not know. I haven't read the deposition in a
5 while.

6 MS. JONES: Your Honor, give me just a second and
7 I'll see if I can wrap up.

8 THE COURT: Okay.

9 Q. Ms. Lawrence, I'm going to show you a copy of your
10 financial declaration that was provided to me -- I don't
11 know if it has been filed with the Court -- signed on
12 January 28th of 2014 and ask if you recognize that as a copy
13 of your financial declaration?

14 A. Yes.

15 Q. Now I apologize. There is a highlight on this and
16 it's my only copy. I don't know if there's a copy...

17 MS. JONES: Your Honor, I'd move this is in as
18 Adoptive Mother's 9 -- 10.

19 THE COURT: Any objection?

20 MR. THOMPSON: No, sir.

21 THE COURT: Without objection.

22 (WHEREUPON, the financial declaration of Holly
23 Lawrence was marked and admitted into evidence as Adoptive
24 Mother's exhibit number 10.)

25 BY MS. JONES:

1 Q. According to your sworn financial declaration you have
2 gross earnings of \$2002 a month.

3 A. That is correct.

4 Q. And additional income of 132 for a total of -- well
5 there's actually more. You also do some extra temporary
6 work. Your total gross earnings are \$2,284 a month?

7 A. Yes.

8 Q. Is that still accurate?

9 A. Yes, roughly. Yes.

10 Q. And then on the bottom of the first page of the
11 financial declaration you list all the typical payroll
12 deductions. But you also have a \$36 unemployment -- and
13 what does that say? Unemployment?

14 A. I don't -- I cannot tell you. I know it says
15 unemployment, but I don't know what those two letters after
16 that are.

17 Q. Is that some kind of unemployment that you previously
18 received?

19 A. No, that is listed on my -- on my paycheck stubs. It
20 wasn't included in -- I have deductions -- you know, you
21 have like your federal income taxes with how much you get
22 deducted, I just listed everything that was on my paycheck
23 stub and they said that was \$36.

24 Q. Okay.

25 A. It's for unemployment from my paycheck.

1 Q. They do? Okay.

2 A I would assume.

3 Q. It's not related to any unemployment case you ever had

4 ---

5 A. No.

6 Q. --- and you're required to reimburse the unemployment
7 office?

8 A. No, that has nothing to do with unemployment that I've
9 ever received. I've never received unemployment.

10 Q. And then looks like you have total monthly costs of
11 \$288; is that right?

12 A. Yes.

13 Q. And so you have a disposable income every month, after
14 you pay everything you owe, of about \$1600; is that right?

15 A. Correct.

16 Q. And at the time you executed this affidavit in January
17 of this year you had just under \$2000 cash in the bank; is
18 that right?

19 A. Correct.

20 Q. Is that still accurate today?

21 A. Yes.

22 Q. Do you have more than that now?

23 A. No, I would say it's the same, about the same.

24 Q. So you maintain about 2000 in savings in addition to
25 the disposable income you have?

1 A. Correct.

2 Q. Is there anything you didn't list on this financial
3 declaration? Do you own any property or anything you could
4 borrow against?

5 A. No.

6 Q. Do you have good credit?

7 A. Well, no, probably not.

8 Q. Why is that?

9 A. I was late on like a -- I think it was maybe my power
10 bill and late on my rent from my last apartment. I don't
11 know. I haven't checked my credit, but I assume it's
12 pretty poor because I was late on some bills.

13 Q. And I believe your testimony just last week was that
14 this case has only cost you, at least up until last
15 Thursday, \$2000?

16 A. It has cost me more than \$2000. I could only remember
17 the initial \$2000. But we've talked about -- you even --
18 you even mentioned we have paid Guardian fees. I said,
19 yes, I have paid Guardian fees. So I had forgotten about
20 that. So, yes, 2000 was the number that stuck out in my
21 head for the initial retainer.

22 Q. Have you paid your attorney more than that?

23 A. I have paid more than that. Anytime he's asked me to
24 pay, I write a check.

25 Q. All right. Approximately how much has this litigation

1 cost you up until now?

2 A. I'm not really sure. It would be unfair for me to
3 guess a number for me not having an itemized list in my
4 head of every check I've ever written.

5 Q. Well on Thursday you gave me a ballpark figure of
6 2000; is that about correct still or ---

7 A. I think that I -- no, I do not believe that I ever
8 gave you a ballpark figure. I believe my words were I
9 could not give you a ballpark figure because I do not
10 remember or have an itemized list to go on.

11 Q. I think that you said that Mr. Thompson has given you
12 a break and that this is in part pro bono?

13 A. I believe that you are putting words in my mouth.
14 Those are not what I said.

15 Q. Is he giving you pro bono work?

16 A. No, not to my knowledge. I don't even know -- I don't
17 even know for sure what pro bono means. But ---

18 Q. For free?

19 A. No.

20 Q. All right. Or for a substantially reduced price?

21 A. No, he isn't.

22 Q. I'm going to show you a copy of page 320 of your
23 deposition from just last Thursday, not even a week ago.
24 Your testimony at that time was what? If that helps you
25 remember.

1 A. Okay.

2 Q. Your testimony at the time was that you had just paid
3 2000.

4 A. I believe that is one page of many and I do very much
5 remember once you brought up the Guardian fees saying you
6 were right, that I have paid more. So that may have been
7 my statement and then when you jogged my memory I believe
8 that I had said that I paid more.

9 Q. And I'm not talking about the Guardian. I'm just
10 talking about the attorney fees.

11 A. I know the fees -- but I know, fees in general. But
12 that may have been my statement, but when you jogged my
13 memory -- jogged my memory of paying more money, in my
14 head I'm sitting there thinking, What have I paid? And
15 then you jogged my memory.

16 Q. All right. And you remembered that you paid a little
17 bit more than that?

18 A. I -- I know that I have paid anything and everything
19 that I've been asked.

20 Q. Everything ---

21 A. I've wrote checks. I cannot tell you what I've paid,
22 what I've paid for, and how much is left that I wrote
23 checks for.

24 Q. And I believe that as of Thursday of last week you
25 said you've never received a bill?

1 A. Correct.

2 Q. Okay.

3 MS. JONES: That's all I have, Your Honor.

4 THE COURT: Mr. Mersereau, if you have any
5 questions, do you mind waiting until after our lunch break?

6 MR. MERSEREAU: I honestly think it will take
7 five minutes.

8 THE COURT: Let's do it then. Maybe we can ---

9 MR. MERSEREAU: I wasn't there for the signing of
10 the consent, so. I do have to ask a question that goes to
11 the credibility issue because it affects my role as
12 Guardian. I just need to clarify with this witness.

13 THE COURT: Okay. You go right ahead and maybe
14 we can have this witness step down after these questions.

15 CROSS-EXAMINATION BY MR. MERSEREAU:

16 Q. Ms. Lawrence, we've met on more than one occasion; is
17 that correct?

18 A. Correct.

19 Q. I've been up to your home and met you and your family
20 initially?

21 A. Correct.

22 Q. An issue's been raised about -- I've been brought into
23 this discussion on credibility in my role and I really need
24 clarification myself because I want to make sure that I'm
25 doing everything that I was supposed to do on this case.

1 hour?

2 A. Yes.

3 Q. And -- since I was retained have I each month sent you
4 a copy of your billing statement showing how much you have
5 left in your trust account, if you have any money in your
6 trust account, and how much you owe me?

7 A. Yes, ma'am.

8 Q. And you've reviewed all those bills?

9 A. Yes.

10 Q. Do you believe that all of those costs, all of those
11 attorney fees were incurred fairly and reasonably in order
12 to protect your interest in this case?

13 A. Yes.

14 Q. Have I also included on my invoicing any costs -- some
15 costs, not the forensic investigator, but some costs, and
16 you believe those were fairly and reasonably incurred and
17 paid on your behalf by me in order to properly represent
18 you in this case?

19 A. Yes.

20 Q. I'm going to show you ---

21 MS. JONES: Your Honor, I would move to introduce
22 my affidavit of attorney fees, which -- well, I'm sorry.
23 Let me ask her another question.

24 Q. Ms. Brown, I know it's hard. We're just in the
25 beginning of April and my billing cycle for March just

1 concluded. But if I told you that at least as of the end
2 of March you had incurred over \$25,000 in attorney's fees
3 and costs related to this action, outside of the forensic,
4 does that sound ---

5 A. For the month?

6 Q. No, total. Or do you think it's higher than that?

7 A. It's higher.

8 Q. Can you tell me exactly how much you've paid?

9 A. Including from the very beginning?

10 Q. Yes, to me.

11 A. I believe it would be around 60.

12 Q. Sixty?

13 A. Uh-huh. I'm thinking -- I'm adding everything
14 together.

15 Q. Okay. Extra costs incurred? You're thinking about
16 the forensic in this case, all these extra costs, process
17 servers. I'm going to show you my affidavit of attorney's
18 fees and I'm going to show you billing up through March,
19 which is a draft of March. Does that look like what you've
20 received and what you've incurred in this case? And that
21 doesn't include this trial.

22 A. Yes.

23 MS. JONES: Your Honor, I'd move to admit this as
24 my -- Adoptive Mother's I think it's 12.

25 COURT REPORTER: 13.

1 MS. JONES: No? 13.

2 THE COURT: Any objection?

3 MR. THOMPSON: No, sir. We also are willing for
4 counsel to supplement perhaps to alleviate the discrepancy
5 between what we have here and that testimony.

6 (WHEREUPON, Ms. Jones' attorney fee affidavit was
7 marked and admitted into evidence as Adoptive Mother's
8 exhibit number 13.)

9 MS. JONES: And, Your Honor, before I ---

10 BY MS. JONES:

11 Q. And is this a bill that has not been paid yet because
12 it was just sent on March 31st? I'm going to show you some
13 affidavits of nonservice for the birth father in this case,
14 two different nonservices for birth father, attempt to
15 serve him and also an attempt to serve another witness
16 listed as one of the nine, Megan Britton [phonetic]. And
17 you're aware that the process server attempted to serve
18 birth father at the address that was given under oath by
19 Ms. Lawrence?

20 A. Yes.

21 Q. And he was obviously unsuccessful.

22 A. Yes.

23 Q. And he tried that more than once. And I'm going to
24 show you an invoice related to service of process. This
25 includes not just these nonservices, but also service on

1 other -- the -- her parents who we were able to get because
2 they live with her, which total \$595. Is that a cost that
3 you had to incur in addition to the attorney's fees that we
4 just put into evidence?

5 A. Yes.

6 MS. JONES: I would move to collectively submit
7 these as Birth Mother's 14. I mean -- I'm sorry --
8 Adoptive Mother 14.

9 THE COURT: Any objection?

10 MR. THOMPSON: No objection.

11 THE COURT: Without objection.

12 Mr. Mersereau, if you ever have an objection, please,
13 stand up.

14 MR. MERSEREAU: Thank you, sir.

15 THE COURT: I keep forgetting to ask you.

16 MR. MERSEREAU: If I object I will stand.

17 (WHEREUPON, affidavits of service and nonservice were
18 marked and admitted into evidence as Adoptive Mother's
19 exhibit number 14.)

20 BY MS. JONES:

21 Q. Ms. Brown, you feel -- you believe that you've taken
22 good care of her?

23 A. Yes.

24 Q. You've taken her to the pediatrician for all her well
25 visits?

1 MR. THOMPSON: That is not what was said, Your
2 Honor. I said she could supplement to add for this
3 disparity. I did not say -- we said from the beginning
4 there's -- Your Honor's words were one bite at the apple.
5 I agreed for everything to come in. I didn't request them
6 to be bifurcated. That wasn't a mistake. The -- the time
7 for attorney's fees is now and therefore we're asking the
8 -- and the idea, I think as I understood it, if she's I
9 guess going to take some out and go to another judge at
10 another time to try to get other attorney's fees ---

11 MS. JONES: No.

12 MR. THOMPSON: We agreed to try it on attorney's
13 fees and everything that -- that has been billed, that has
14 been offered, would not be subject to being -- it's -- it's
15 in evidence. She can't then go behind that and take some
16 of it out for hopes of another rainy day having another
17 judge order attorney's fees that perhaps she fears this
18 judge isn't going to.

19 MS. JONES: Your Honor, I am not going to double
20 dip. And you can ask judges -- the other judges around
21 here about my reputation. That is not what I'm trying to
22 do.

23 MR. THOMPSON: I didn't say double dip.

24 MS. JONES: In fact I'm trying to do the exact
25 opposite of that. And I just wanted -- I told Mr. Thompson

1 MS. JONES: Sure. And I was kind of just doing
2 that out of an abundance of caution. So the, you know,
3 it's like for you to take judicial notice of a case, the
4 same thing.

5 THE COURT: Anything else?

6 MS. JONES: No, sir, Your Honor. That concludes
7 the Defendant's case at this evidentiary hearing.

8 I would like to say, though, and I haven't had a
9 chance to speak to Mr. Thompson, last night I went back to
10 my office and was attempting the onerous task of figuring
11 out, dividing what would be applicable to just this. And I
12 didn't get a chance to ask if he would agree, but I think
13 that it only makes sense, because of how complicated that
14 would be, to simply submit an affidavit of my fees for the
15 time that I've spent preparing for this case over the
16 weekend, maybe Friday and Thurs -- Friday of last week and
17 my appearance or perhaps just my appearance. Actually, no,
18 I'll just limit it so that it's clear, just my appearance
19 here, you know, in the courtroom, but hold everything else
20 in abeyance.

21 Is that okay with you or no?

22 MR. THOMPSON: No.

23 MS. JONES: Oh, okay.

24 MR. THOMPSON: I think that, you know, we can't
25 change the rules, Your Honor, once the game is in the

1 fourth quarter and attorney fees were asked. The whole
2 amount was put in. Perhaps there's a sense this case
3 hasn't been going well. I don't know. That would be up to
4 her and I won't assign motive. But we've relied on it.
5 All of the issues about credibility, all of this discovery
6 process, the discovery process that went back to the first
7 set, the second set of interrogatories, all of the time of
8 the depositions that we went through, that she used in this
9 trial.

10 MS. JONES: But -- but ---

11 MR. THOMPSON: Excuse me. I'm not finished. All
12 of the time that was used in these depositions that we're
13 now -- if you take the trial plus the depositions, I think
14 we're at eleven hours of testimony. To cherry pick this
15 now and to say, basically, Your Honor, I'm going to go
16 around you and I'm going to get another bite of this apple.

17 MS. JONES: And that's not what I'm trying to do.

18 MR. THOMPSON: Well it certainly appears to me
19 that that would be the result, whether that is the intent.
20 And we'd ask for everything, carte blanche, from the start
21 to finish, whether it's sixty grand or twenty grand or
22 whatever the total is, and -- because we've had three days
23 of trial. And the idea that I'm now going to give you
24 attorney's fees for four or five or six thousand dollars so
25 I can still have fifty-five to try it again, seems to me to

1 be a -- I'll let Your Honor choose that word and I'll rest.

2 Thank you, sir.

3 MS. JONES: Your Honor, I'm not trying to do that
4 at all. In fact I was trying to do quite the opposite.
5 I'll -- I'll go back to what I thought was my understanding
6 that he was going to allow me to submit what was -- the
7 only thing properly before Your Honor, I agree, is any fees
8 that were incurred as, you know, as they pertain to this
9 hearing. And it's going to be under -- under oath. I
10 thought I understood yesterday that he was going to allow
11 me to submit one given that my paralegal has been on
12 vacation. She just got back yesterday. That that wasn't
13 -- I wanted to make sure I'm fair, that I'm only asking for
14 what I believe I'm entitled to ask for.

15 MR. THOMPSON: What I agreed to was the testimony
16 of twenty and then her testimony of sixty, I was going to
17 allow you to bring your attachment into conformity with the
18 testimony. It was going up. It wasn't going down. That
19 was my agreement. That was my understanding.

20 MS. JONES: Well I'm sorry that we misunderstood
21 one another. And I thought that we had an understanding
22 before I let my witness -- my client step down.

23 So, Your Honor, I'll defer to you.

24 THE COURT: I will make my decision based on the
25 exhibits that have been introduced and if you need to

1 supplement that, I'll allow you to do that.

2 MR. THOMPSON: Does supplement mean to add or
3 subtract, Your Honor?

4 THE COURT: Well, it means to get the figure
5 right as to all attorneys fees.

6 MR. THOMPSON: All attorney fees that have been
7 paid or charged?

8 THE COURT: Yes. Based on that affidavit I
9 understood that there may be some tweaking of that based
10 upon the fact that someone in your office might need to
11 take a look at it.

12 MS. JONES: Yeah, there's a final printout, you
13 know, attached monthly bills that -- that is encompassing
14 everything. And then I thought that -- anyway, I thought
15 we had an agreement that I would go back and make sure,
16 because you have to highlight, you know, once you go to
17 final printout. So thank you, Your Honor. I appreciate
18 you allowing me to supplement that.

19 THE COURT: All right. Let me -- let me, I
20 guess, before -- I'll get to this in just a moment. I'm
21 not sure the case is concluded.

22 Do you have any witnesses that you would like to
23 call? You testified, but as the Guardian certainly you may
24 present witnesses if you wish to do so.

25 MR. MERSEREAU: Not at this hearing, Your Honor.

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN THE FAMILY COURT
2013-DR-10-4057
2013-DR-10-4386

JENNIFER BROWN)

PLAINTIFF)

vs.)

BABY GIRL HARPER)

DEFENDANT)

TRANSCRIPT OF RECORD

November 18, 2014
CHARLESTON, SC

B E F O R E:

THE HONORABLE JOCELYN B. CATE, JUDGE

A P P E A R A N C E S:

SHANNON JONES, Esq.
Attorney for the Plaintiff

JAMES FLETCHER THOMPSON, Esq.
Attorney for the Defendant

PATRICIA A. DANNER
Official Court Reporter

1 *THE COURT:* All right, this 2013-DR-10-4047,
2 13-DR-10-4386, this is a consolidated case. Jennifer
3 Brown versus baby Girl Harper. Ms. Jones represents
4 Ms. Brown. Mr. Thompson represents Ms. Lawrence. And,
5 this is before the Court on a pretrial hearing on what
6 issue?

7 *MS. JONES:* Your Honor, exactly. My understanding
8 is that this case is over. This case went all the way
9 to the Court of Appeals, to the Supreme Court. There
10 is a remitter that has been handed down. This case is
11 over.

12 I am confused about why we are here. I
13 understand that Mr. Thompson made a phone call to the
14 Clerk's Office and ask that it be scheduled for a
15 pretrial and my response to that was, why? I didn't
16 get a response, so I don't believe that there is
17 anything to pre-try.

18 The case is over. We had tried a three day
19 trial and it has been vetted all the way through our
20 highest Court. And, this case is over.

21 *THE COURT:* Mr. Thompson?

22 *MR. THOMPSON:* Thank you, Your Honor.

23 *THE COURT:* Yes.

24 *MR. THOMPSON:* The request for a pretrial was
25 specific on the face of it which is for attorney's

1 fees. Our Summons and Complaint, Your Honor, which was
2 filed November 26, 2013 listed several causes of
3 action, one of those being the 5th cause of action was
4 for attorney's fees.

5 We also listed other reasons why the adoption
6 that was filed should be dismissed. There was a motion
7 filed by the adopting mom, Ms. Brown, to bifurcate our
8 case to---

9 *THE COURT:* ---uh-huh---

10 *MR. THOMPSON:* ---to make it shorter in an effort
11 of resolving that. That was filed, Your Honor, prior
12 to the trial March 31, 2014. And in it, it stated that
13 we would look at one issue which would be likely the
14 dispositive issue which was whether the consent was
15 valid, as it turns out, the Family Court found that it
16 was not. The Court of Appeals three to nothing thought
17 that it was not. And, the Supreme Court five to
18 nothing thought that it was not.

19 Well, one of the issues, of course, were
20 attorneys fees if we prevailed, so how in the world
21 could we not have that before our Court until we knew
22 whether we prevailed. And, as early after that
23 remitter came down, we've asked for this pretrial. So
24 the only remaining issue is that of attorney's fees.

25 *THE COURT:* So that wasn't addressed in the prior

1 hearing? Did you not request attorney's fees?

2 MR. THOMPSON: It was bifurcated out.

3 THE COURT: Bifurcated.

4 MS. JONES: And, Your Honor, I mean, I disagree
5 with that. I did ask for attorney's fees and Mr.
6 Thompson did not. He didn't put any evidence in a
7 three day trial. I put forth all of my attorney's fees
8 and they were denied. I lost the trial.

9 That was the time to put forth attorney's fees.
10 He agreed in his return which is essentially where he
11 agreed to bifurcate so that we would move forward, and
12 I quoted his return on the dispositive issue on the
13 validity of the consent for adoption. If that's the
14 dispositive issue, that will end the case, that's the
15 time to do it.

16 THE COURT: Okay.

17 MS. JONES: And for whatever reason, he wasn't
18 asking for attorney's fees.

19 THE COURT: All right. I'm going to need
20 something in writing from both of you as far as the
21 procedural history because I can't -- I'm not going to
22 go through all of this.

23 MS. JONES: Yes, ma'am.

24 THE COURT: And, sometimes all of this -- I am
25 referring to and it looks like four inches in one file

1 and about an inch thick, so I'm talking about a five
2 inch file here and sometimes these records, I'm sure,
3 so many appeals, they've just been shuffled or
4 whatever.

5 So I -- you know, so what I would like to do is
6 review something in writing, a memorandum, if you want
7 to call it a memorandum, that sets forth everything
8 that you have indicated that should -- that the case
9 was closed. That there was nothing that was left open
10 for the trial Court to decide, okay.

11 The same thing with you, Mr. Thompson, if you
12 could do that as well, too. And, if you -- you know,
13 whenever you can get that to me and then I'll decide
14 whether or not there is anything left to litigate and
15 decide then at that point, we will notify you if we
16 need to schedule anything.

17 MS. JONES: Okay.

18 THE COURT: Okay.

19 MS. JONES: Thank you, Your Honor.

20 THE COURT: All right.

21 MR. THOMPSON: Thank you very much.

22 THE COURT: All right. Thank you.

23 *****End of transcript of record.*****
24
25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

)
)
)

I, Patricia Danner, Official Court Reporter for the
ninth Judicial Circuit of the State of South Carolina,
do hereby certify that the foregoing is a true, accurate
and complete Transcript of Record of the proceedings had
and evidence introduced in the trial of the captioned
case, relative to appeal, in the In the Family Court for
Charleston County, South Carolina, on the 18th day of
November, 2014.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto.

March 21, 2016

Patricia A. Danner

Court Reporter

IN THE FAMILY COURT
2013-DR-10-4057

TRANSCRIPT OF RECORD

B E F O R E:

A P P E A R A N C E S:

JAMES FLETCHER THOMPSON, Esq.
Attorney for the Defendant

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1 THE COURT: All right, this is 2013-DR-10-4057,
2 13-DR-10-4386, Jennifer Brown versus Baby Girl Harper
3 and then there is also a caption of Holly Lawrence
4 versus Jennifer Brown. All right, Ms. Shannon Jones is
5 present, is Ms. Brown, present?

6 MS. JONES: Yes.

7 THE COURT: Is that Ms. Brown -- you represent --
8 okay, I'm going to say the Defendant. And, then Mr.
9 Thompson, you represent the Plaintiff Holly Lawrence?

10 MR. THOMPSON: That is correct, Your Honor.

11 THE COURT: All right. This is before the Court
12 on the Plaintiff's motion for reconsideration that was
13 filed on February 19, 2015 from this Court's order
14 filed on January 29, 2015 denying the Plaintiff's
15 request for further hearing as a request for attorney's
16 fees and cost.

17 The Court was first made aware of the filing of
18 this motion for reconsideration upon Mr. Thompson's
19 letter inquiring of the status of the motion for
20 reconsideration. Mr. Thompson acknowledges that he did
21 not comply with Rule 59G by providing the Court with a
22 copy of the motion to reconsider.

23 The purpose of Rule 59G is to not let what
24 happened, happen in this case. Which means that this
25 motion for reconsideration fell through the cracks, has

1 been pending. I didn't know about it. The Clerk's
2 Office didn't let me know about it, so therefore, that
3 is the reason for the delay and the decision on the
4 motion.

5 I believe the history of my handling of 59
6 motions and other post trial motions is that I do
7 handle those on a timely basis. I apologize for
8 anything that the Court may have done or not done to
9 try to avoid this situation.

10 Because of the unusual circumstances of this
11 matter, I require that a formal hearing be held so that
12 all parties could provide the Court with whatever
13 information they deem necessary.

14 Now, in deciding the original motion, the Court
15 asked for and did receive a memorandum in support of
16 the parties' respective positions which I have already.
17 Mr. Thompson, there is -- I mean in reviewing your
18 motion, is there anything that this Court did not
19 address that you felt needed to be addressed in
20 consideration of your motion?

21 MR. THOMPSON: Yes, Your Honor.

22 THE COURT: Okay. Go ahead.

23 MR. THOMPSON: Thank you. First off, I'll
24 acknowledge that any apologies that are due, are mine
25 to the Court and to counsel and also to Ms. Brown

1 because clearly I did not give notice to Your Honor as
2 the rule requires and gave notice only to the Clerk and
3 counsel and the Clerk is not the same thing as Your
4 Honor.

5 So therefore, we did make that request to have
6 some closure on this issue. Our hope is that you would
7 also consider reaching the substance of this, though I
8 looked at a couple of cases that I did cite in my cover
9 letter to Your Honor December 22nd---

10 *THE COURT:* ---uh-huh---

11 *MR. THOMPSON:* ---that Gallagher(sp) versus
12 Everette(sp) case, Kohn versus Kohn, and there it does
13 give the Court authority on that basis alone to dismiss
14 the motion for reconsideration, but also finds it is
15 appropriate for Your Honor to exercise your discretion
16 to reach once again those merits for you to do so.

17 But, one way or the other, we are hoping for a
18 final order. I would like that final order though to
19 also consider the following. I'm not sure that it is
20 as clear in Your Honor's order of certain stipulated
21 facts which are that there was a bifurcation of one
22 issue and that issue of whether the consent was
23 executed properly.

24 At the that bifurcation was entered into -- and
25 that was a bifurcation requested by counsel, Your Honor

1 end of that trial, that's certainly one pot of money.
2 I think Ms. Jones at trial attorney's fees request was
3 in the \$60 thousand range and ours was probably
4 similar.

5 But, then there is no way that we could have
6 asked for attorney's fees on the Appellate part at that
7 time because we hadn't incurred them. So now back on
8 remand we still have attorney's fees being requested
9 and we haven't been allowed an opportunity to present
10 any attorney fee affidavit on those Appellate issues.

11 Anticipating Ms. Jones' argument I'll just move
12 ahead on that. There is that statutory amount of money
13 on a successful appeal of what is it Shannon, \$1,500 or
14 something---

15 MS. JONES: ---one thousand, five hundred and
16 eighty three dollars and thirty-nine cents.

17 MR. THOMPSON: There it is, but that -- receipt of
18 that does not -- is not dispositive. There are two
19 different cases that I can point Your Honor to that
20 states that if there is another basis for the award of
21 attorney's fees, and this case our request for that and
22 this Court's statutory right to consider those under
23 Glasscox(sp) factors and others, that our receipt of
24 that \$1,500 is not dispositive of that issues.

25 So we would like Your Honor to consider

1 specifically whether or not -- and I think you have
2 addressed this issue in your statement, but it was
3 basically too little, too late of submitting the
4 request for attorney's fees on those issues that
5 happened in the Family Court, but also to address
6 whether or not we are able to request those Appellate
7 fees.

8 *THE COURT:* Thank you. Ms. Jones.

9 *MS. JONES:* Thank you, Your Honor, may it please
10 the Court?

11 *THE COURT:* Uh-huh.

12 *MS. JONES:* Your Honor, and -- Your Honor, does
13 have a copy of all of the different motions that were
14 filed in the underlined action that were presented as a
15 part of the original motion? I have given the Court
16 one through seven table of contents with some of the, I
17 think, important documents and Pleadings that happened.

18 In my motion to bifurcate which Mr. Thompson
19 had indicated when I broached the subject that we could
20 possibly agree, we were scheduled for a trial, we all
21 wanted that trial to complete the case, if possible,
22 and not have to go over. And, so in trying to narrow
23 the issues, I made this motion.

24 In my motion, I explained very clearly in
25 paragraph two---

1 THE COURT: ---where is -- what exhibit are you
2 referring to?

3 MS. JONES: This is my notice of motion and motion
4 to bifurcate and to limit the evidence. I have an
5 extra copy if that will help you?

6 THE COURT: Okay. I just have your memorandum and
7 that's what I was -- I think is that what you were
8 referring to as your exhibits?

9 MS. JONES: I had also given this table of
10 contents with the---

11 THE COURT: ---okay, do you mind if I---

12 MS. JONES: ---no, let me just---

13 THE COURT: ---because it is kind of---

14 MS. JONES: ---I think I just pulled what I was
15 getting ready to refer to out.

16 THE COURT: Okay.

17 MS. JONES: But, let me just---

18 THE COURT: ---well, maybe it's in Mr. Thompson's
19 submissions. Where would that motion be? Notice of
20 motion to consolidate---

21 MS. JONES: ---here you are, Your Honor, I just
22 needed to---

23 THE COURT: ---oh, I got it. I got it. Okay,
24 that is filed on March 31, 2014?

25 MS. JONES: Yes, ma'am.

1 THE COURT: Okay.

2 MS. JONES: In paragraph two---

3 THE COURT: ---paragraph, two, okay---

4 MS. JONES: ---I explained that the validity of
5 this consent for adoption which the trial ultimately
6 centered around, the validity of that consent for
7 relinquishment was the pivotal issue, the dispositive
8 issue in the case and that whoever won that issue, was
9 going to win the case. Whoever lost that issue was
10 going to lose the case and any other issues would be
11 rendered moot.

12 Mr. Thompson agrees with me in his return.
13 And, he agrees to bifurcate quoting my language. He
14 agrees to focus solely on the dispositive issue of the
15 validity of the consent for adoption. He also in his
16 motion to the Court on this issue today, for asking for
17 permission to move forward with attorney's fees.

18 He concedes that all of his other issues are no
19 longer viable, the ICPC issue he had raised before is
20 no longer viable, it has been rendered moot by the
21 trial court's decision. And, so he doesn't have any
22 other issues to litigate. The only issue he wants to
23 litigate is attorney's fees.

24 Attorney's fees follow the legal issues in
25 dispute. We are moving forward on the trial of this

1 case to argue about the validity of the consent. He
2 won. That was the time to ask for fees. He got the
3 first check, you know, in the box that he want and the
4 factors would need to be considered.

5 Mr. Thompson must view there to be some
6 advantage to his client to have held back on that
7 issue. There is no question, he did it intentionally.
8 He did not move forward on the issue of attorney's
9 fees. But, I think that was a mistake. I think that
10 was the time and the place to do it.

11 I think that to bring this case back in and,
12 you know, he did it on a motion, just a request for a
13 pretrial hearing and come back before the Court. And,
14 I understand that some of the language that we're using
15 can be confusing because these contested adoption cases
16 are different, no question.

17 But, we went forward on a trial that ended all
18 of the issues and resolved the rights of the parties.
19 And, I believe when he failed to introduce the issue of
20 attorney's fees and put up evidence to support his
21 request, he abandoned that legally and should not be
22 allowed to seek it now.

23 Your Honor, I think that this raises the
24 jurisdictional issue where this case was remanded.
25 And, we know that the Court is empowered -- this Court

1 is empowered to follow the order from our Supreme Court
2 and take any action consistent with the Appellate
3 Court's ruling. This was remitted and there is nothing
4 in that final order that speaks to Mr. Thompson's claim
5 for attorney's fees. No further direction or request
6 of this Court to act on that issue at all.

7 I believe that the doctrine of Res judicata
8 applies because that doctrine holds that a litigant is
9 barred from raising any issues which were adjudicated
10 in the former suit and any issues which might have been
11 raised. He could have raised the issue of attorney's
12 fee, anything that had been incurred, were incurred up
13 to that moment and time.

14 He saw that I was doing it and I had introduced
15 the evidence and cross examined my client on those
16 issues. And, Your Honor, I ask that you -- the only
17 thing that you -- since Mr. Thompson brings it up, I
18 think that your decision was correct and that he did
19 abandoned it, but perhaps this just needed to be
20 dismissed, you know, if this is not something that the
21 Court really had jurisdiction to entertain to begin
22 with.

23 I am concerned that we would set a president
24 that litigants can come back before this Court. For
25 instance, if you don't raise an issue at trial, you

1 haven't reserved it for appeal, and can we come back
2 later because we made a mistake at trial and we ment to
3 preserve something and then just, you know, file a
4 pretrial hearing request and get back into Court, no.
5 I mean, that would be an abuse of our system.

6 My client has incurred attorney's fees, Your
7 Honor, fighting this. We wrote a lengthy memorandum
8 and, you know, I would like to present that to Your
9 Honor for consideration. I think it's important to
10 note, this has been a lengthy battle. Your Honor, may
11 I approach?

12 *THE COURT:* Yes. Thank you.

13 *MS. JONES:* Thank you. We would ask the Court to
14 respectively consider dismissing this matter entirely
15 and awarding my client cost and fees she has incurred.

16 *THE COURT:* Thank you.

17 *MS. JONES:* Thank you.

18 *THE COURT:* Mr. Thompson, I do want you to address
19 the issue of what Ms. Jones had brought up is in my
20 notes when I was reviewing this. Attorney's fees in
21 and of itself cannot constitute a cause of action. It
22 is a form of relief that the Court is to consider. So
23 I think you -- if you could address that issue to, you
24 know, provide me with some sort of authority that says
25 to the contrary. How can you just stand alone your

1 attorney's fees cause of action if all of the other
2 causes of actions have been disposed of?

3 MR. THOMPSON: But, at the time, Your Honor, thank
4 you, they hadn't been and that's the very point. What
5 Ms. Jones is saying is true that now these things are
6 moot, but when the decision was made to present an
7 attorney fee affidavit or to wait, they weren't moot.
8 They were causes of action that she had and we had.

9 She dismissed her other causes of action when
10 the case was pending on appeal, that was afterwards.
11 Therefore, based on the grounds, the factors one looks
12 at, we look at the success on the merits. We look at
13 all of the different factors, but one of those is to
14 have the fees to present.

15 So at the time we didn't do that. We had other
16 causes of action yet to be heard and; therefore, to be
17 able to -- when a case is bifurcated on a limited issue
18 -- and let me go on this whole issue of being
19 dispositive or not dispositive. When a case goes on
20 appeal it has to be a final order, but it has to be a
21 final order on an issue. It does not necessarily have
22 to be a final order in a case.

23 Therefore, if for instance, we had not
24 prevailed, we could have alleged the ICPC violation if
25 we had -- Ms. Jones' client had prevailed -- I'm sorry,

1 had failed to prevail and we had, they could have
2 claimed the grounds for termination, they had alleged
3 abandonment and other things. We still had other fish
4 to fry on both sides.

5 So Your Honor's ruling would be that one must
6 present that affidavit at each stage of a trial and if
7 that's the law, I have never seen that. I have looked
8 at the Boyse(sp) versus Boyse(sp) case and it does talk
9 about, you know, how to preserve it for appeal, but it
10 doesn't state that it has to be presented at an
11 affidavit at every stage of the trial.

12 I've tried to present it when it's all in it's
13 completion, it's finally a fait accompli and that
14 decision to ask the Court to review all of it's cost,
15 fees, and expenses, I think is a good one.

16 The other reason is I looked forward to the
17 issue that we didn't have to reach which was ICPC. We
18 think that was a criminal violation or at least if we
19 had reached that issue, whether it be criminal in
20 nature, it was -- it has a very punitive teneur for a
21 violation under the Family Court code. We thought that
22 would be a strong evidence to support our claim for
23 attorney's fees because it was a separate issue upon
24 which Ms. Brown should not have gone forward at all.

25 Now, the other reason we came back is that we

1 were looking for discovery is because we believe that
2 there was a malpractice case that was contemplated. We
3 know -- by the way, I have evidence of that malpractice
4 case that's been pending since May 2015 and so that
5 aspect of my motion because we wanted to prove her
6 ability to pay and other things. Now, I just want to
7 present my affidavits.

8 *MS. JONES:* Your Honor, may I be heard on that?

9 *THE COURT:* Yes.

10 *MS. JONES:* Because that was a concern of mine
11 that because I'm trying to get my head around and Mr.
12 Thompson is an attorney I respect deeply and he is a
13 very intelligent attorney, but why would he have done
14 this? Was he looking to log this into the future when
15 he could change the circumstances and the facts because
16 he knew that maybe the analysis with regards to the
17 ability to pay wouldn't be in his favor at the trial
18 and so hoping that maybe she was victorious in an
19 action against the lawyer and she would have more
20 money, I don't know, but she is the one who brought
21 that up.

22 So I think that -- that's a dangerous thing.
23 We can't -- that's trying to pick another judge in
24 another place and time to evaluate the facts and for
25 what it was worth, there has been no receipt of

1 anything either, but maybe there is a hope that if this
2 case pends, you know, continue to pend, she will
3 eventually receive something from that underlined suit
4 against that attorney.

5 But, I just want to bring it to the Court's
6 attention that I do not believe that that is what our
7 system is designed to support and encourage that folks
8 are going to try to pick their place and time and pick
9 their judge to analyze the facts.

10 *THE COURT:* Was the issue of attorney's fees
11 addressed in the Appellate level?

12 *MS. JONES:* No, ma'am, because I did not receive
13 the reversal. If I had, you know, if we had gotten a
14 reversal, then it would have been remanded and I'm sure
15 that then I would have been entitled you know to a
16 consideration of attorney's fees.

17 *MR. THOMPSON:* Well, actually they were
18 considered---

19 *THE COURT:* ---okay---

20 *MR. THOMPSON:* ---meaning---

21 *MS. JONES:* ---the issue of Appellate fees, Mr.
22 Thompson received that and that's the last remitter to
23 this Court that was filed on -- well, it is signed by
24 Justice Toal October 29, 2014.

25 *THE COURT:* And, there wasn't an oral or written

1 reservation by you, Mr. Thompson, on the issue of
2 attorney's fees? Was attorney's fees even discussed in
3 the lower court level other than your presentation of
4 the evidence---

5 MR. THOMPSON: ---right---

6 THE COURT: ---on your side?

7 MR. THOMPSON: Yeah, just to answer your question,
8 they were considered on Ms. Jones' side on appeal, not
9 mine.

10 THE COURT: Not yours.

11 MR. THOMPSON: It wasn't brought up because the
12 only issue that was appealed was that limited issue
13 based on the bifurcation and so it was limited in our
14 view based on that bifurcation and based on the trial,
15 there was no discussion in the Family Court of our
16 attorney's fees, it wasn't a request made, they were
17 still pending.

18 THE COURT: Okay. Anything else?

19 MS. JONES: The only thing I wanted to add was he
20 mentioned the dismissal of the causes of action.

21 THE COURT: Uh-huh.

22 MS. JONES: There was a large argument that
23 occurred at the Court of Appeals stage during the
24 emergency phase of, that where there was an argument
25 from Mr. Thompson that this case -- we didn't get a

1 final judgment that was subject to appeal. Now, you
2 plead in the alternative, those were alternative
3 pleadings. Mr. Nichols, John Nichols and I, who is my
4 co-counsel on the appeal, just decided out of an
5 abundance of caution, you know, I don't think that was
6 necessary just like I explained in my motion to
7 bifurcate that that consent document and that issue was
8 going to decide the case, decide the rights of the
9 party finality and Mr. Thompson agreed that that was a
10 dispositive issue.

11 *THE COURT:* Okay. I just want to look at their
12 Pleadings again. So Mr. Thompson, I just want to be
13 clear, this case is over, correct? I mean, you have no
14 further pending causes of action in this case?

15 *MR. THOMPSON:* Well, I hope I do that's why I'm
16 here.

17 *THE COURT:* Other than attorney's fees. What I'm
18 saying is, that your cause of action that Mr. Brown
19 breached the requirements of the interstate compact in
20 the placement of children, okay...

21 *MR. THOMPSON:* Has been mooted by the fact that
22 the case -- the consent was found to be invalid. That
23 was my alternative. I---

24 *THE COURT:* So these were alternative causes of
25 action? I just want to make -- because it's not

1 specifically stated in your complaint that it's
2 alternative?

3 *MR. THOMPSON:* We have now abandoned it. It would
4 have been a separate and distinct cause of action that
5 could have been tried separately or together with that
6 issue and instead we bifurcated it meaning even if I
7 had chosen to, if you will, rub salt in the wound, I
8 could have gone back in on ICPC violation, but thereby
9 spending more time incurring more expenses and it would
10 not have achieved any additional goal because the
11 adoption had already been overturned.

12 But, at the time that I -- that it went up, we
13 didn't know what the result was going to be and I
14 didn't think it was an appealable issue yet. We
15 thought that it wasn't a final order. The Court of
16 Appeals disagreed with us and say, yes, as to that
17 issue it is final so they heard the appeal.

18 But, we believed that there were other causes
19 of action, that it wasn't final; therefore, it wasn't
20 immediately appealable. The fact that the Court chose
21 to hear that now would be divesting us of our ability
22 to ask for attorney's fees.

23 *MS. JONES:* Your Honor, page three of his, you
24 know, motion on this issue before Your Honor today he
25 states that the biological mother no longer seeks a

1 hearing on the ICPC issue as it has become moot by the
2 Supreme Court's determination that the consent document
3 was invalid and that was exactly what he agreed to when
4 he consented to the bifurcation that everything else
5 would fall off and that was the issue.

6 *THE COURT:* Okay.

7 *MR. THOMPSON:* I think you know exactly where we
8 are?

9 *THE COURT:* Yeah, I think so. You know, it may
10 end up that the answer may not end with this Court,
11 okay.

12 *MR. THOMPSON:* Yes, ma'am.

13 *THE COURT:* All right.

14 *MR. THOMPSON:* And, Your Honor, if you could when
15 you make those determination I do think it's two
16 different analysis as to the appellate fees and that I
17 think is not unclearly set out in your previous order.

18 *THE COURT:* Yeah, the appellate one I'm inclined
19 to agree with Ms. Jones that what authority do I have
20 to determine fees and cost that were incurred at the
21 appellate level that were not specifically remitted to
22 this Court?

23 *MR. THOMPSON:* Because the remitter does not have
24 to be specific. The remitter I think there is clear
25 authority on the issue of when it is brought back, you

1 have jurisdiction and any pending issues that still
2 exist that weren't resolved are still before the Court
3 and that remitter doesn't have to be specific, it can
4 be by implication and there are cases where there has
5 been -- the Court has taken up a case and resolved it
6 consistent with that opinion.

7 *THE COURT:* Okay.

8 *MR. THOMPSON:* Where else would we be able to get
9 my appellate fees except right here.

10 *MS. JONES:* You have received appellate fees, I
11 mean, the appellate case from the Supreme Court.

12 *MR. THOMPSON:* And, we're saying that there is
13 that statutory right to pursue attorney's fees over and
14 above that \$1,500 that we want to have exercised.

15 *THE COURT:* I will make sure to address the issue
16 of the appellate fees in my rulings; therefore,
17 maintaining the record.

18 *MR. THOMPSON:* Good deal. Thank you so much.

19 *MS. JONES:* Thank you, Your Honor.

20 *THE COURT:* All right, thank you so much.

21 *MR. THOMPSON:* And, thank you for your courtesy of
22 scheduling the hearing.

23 *THE COURT:* All right. Thank you.

24 *****End of transcript of record.*****
25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

)
)
)

I, Patricia Danner, Official Court Reporter for the
ninth Judicial Circuit of the State of South Carolina,
do hereby certify that the foregoing is a true, accurate
and complete Transcript of Record of the proceedings had
and evidence introduced in the trial of the captioned
case, relative to appeal, in the In the Family Court for
Charleston County, South Carolina, on the 4th day of
February, 2016.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto.

March 22, 2016

Patricia A. Danner

Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON
HOLLY LAWRENCE

Plaintiff,

vs.

JENNIFER BROWN

Defendant.

IN THE FAMILY COURT OF THE
9TH JUDICIAL CIRCUIT

FINANCIAL DECLARATION
OF HOLLY LAWRENCE

Docket No.

HUSBAND/FATHER		WIFE/MOTHER	
Address		Address	4148 Twinham Ln, Charlotte NC
Age		Age	24
Occupation		Occupation	Press Room Operator
Employer		Employer	Stamp Source
Employer Address		Employer Address	1830 Statesville Ave, Charlotte NC 28206

Gross Monthly Income	Husband/Father	Wife/Mother
Principal Earnings from Employment ¹		\$2002
Overtime, Tips, Commission, Bonuses ²		\$132
Pensions, Retirement, and Annuities income		
Additional Employment income		
Social Security Benefits (SSA) and VA Benefits		
Disability and Worker's Compensation Benefits		
Unemployment and AFDC		
Spousal or Child Support (from other marriage/relationship)		
Dividends, Interest, Trust Income, and Capital Gains		
Rental Income and Business Profits		
Other (Specify):		\$150 temp job
TOTAL GROSS MONTHLY INCOME		\$2284

Payroll Deductions from Monthly Income	Husband/Father	Wife/Mother
Federal Income Tax ³		\$136
State Income Tax		\$80
Social Security and Medicare Tax (FICA)		\$153
Self-Employment Tax		
Health and Dental Insurance (Adult)		
Health and Dental Insurance (Child)		
Union Dues		
Voluntary Retirement Contribution (401(k), 457, IRA)		
Mandatory Retirement Contribution		
Savings Plan		
Other (Specify):		\$30 unemplo. med. tax
TOTAL MONTHLY DEDUCTIONS		\$405
NET MONTHLY INCOME⁴		\$1879

Estimate monthly expenses: (Specify which party is the custodial parent and list name and relationship of all members of household whose expenses are included.)

MONTHLY EXPENSES	Husband/Father	Wife/Mother
Residential Rent Payment		
Mortgage Payment on Residence(s)		
Food and Household Supplies ⁶		\$100
Utilities: Water, and Garbage Collection		
Telephone and Cellular Phone		\$28
Medical, Dental and Disability Insurance Premiums (not deducted from paycheck)		
Life Insurance Premiums (not deducted from paycheck)		
Child Support (from other relationship)		
Work Related Day Care		
Spousal Support (from prior marriage)		
Auto Payment		
Auto Insurance, taxes, gasoline, and maintenance ⁷		\$150
SUBTOTAL:	\$238	
Real Property Tax on Residence(s)		
Maintenance for household ⁸		
Adult Clothing		\$10
Children's Clothing ⁹		
Cable Television, Satellite, and Internet/Online Services		
Laundry and Dry Cleaning ¹⁰		
Medical and Dental Expenses (not paid by insurance)		
Prescriptions, Glasses, and Contacts (not paid by insurance)		
Children's incidental expenses ¹¹		
School lunches, supplies, field trips, and fees ¹²		
Entertainment ¹³		
Adult Incidental expenses ¹⁴		\$5
All Installment payments ¹⁵		\$35
Other (Specify):		
SUBTOTAL:	\$50	
TOTAL MONTHLY EXPENSES		\$288

Installment Loan Payments Section

Creditor	For	Monthly Payment	Balance	Owed by ¹⁶

Other Debts and Obligations *not* payable in monthly installments

Creditor	For	Date Payable	Balance	Owed by ¹⁶

Are you currently in Bankruptcy? ☐ YES ☒ NO

Are any obligations listed above, including mortgage and note payments, in arrears? ☐ YES ☒ NO

If yes, please list the obligations in arrears.

All Marital Property Known to Parties

Assets	Husband/Father	Wife/Mother	Joint
Cash and Money in Checking Account(s)		\$1947	
Money in Savings Account(s), Credit Union, Money Market, or Cert. of Dep			
Value of Voluntary Retirement Account(s)			
Value of Pension Account			
Value of Publicly Held Stocks, Bonds, Securities, Mutual Funds			
Value of Privately Held Stocks and Other Business			
Value of Real Estate - Net of Mortgage Balances			
Value of All Other Property			
TOTAL ASSETS		\$1947	

Any Non Marital Property Known to Parties

Description of Asset	Title Owner	Date of Acquisition	Source of Funds to Acquirer	Estimate Present market Value

If total assets are less than \$300,000.00, sign and have notarized.

If total assets are greater than \$300,000.00, itemize assets by completing additional sections below and sign and have notarized.

Financial Accounts Section ¹⁸

Owner	Name of Institution	Type of Account	Balance

Voluntary Retirement Accounts and Pension Accounts Section

Type of Account	Value

Publicly Held Stocks, Bonds, Securities, Mutual Funds Section (Non-Retirement)¹⁹

Name of Company	Number of Shares/Type of Account	Value

Real Estate Section²⁰

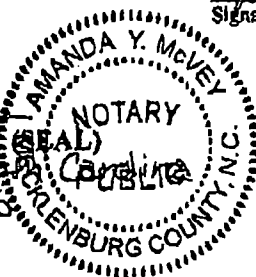
Owner	Address	Value	Mortgage Balance	Mortgage Equity

Other Property Section²¹

Owner	Description of Asset	Value	Loan Balance	Equity

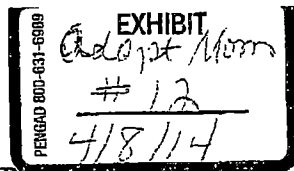
Sworn to before me this 28th day
of JANUARY, 2014.

Amanda Y. McVey
Notary Public for South Carolina
My commission expires: 10/29/2016



[Signature]
Signature

Custodial Parent (if applicable): _____



STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
HOLLY LAWRENCE,)
Plaintiff,)
vs.)
JENNIFER BROWN,)
Defendant.)

IN THE FAMILY COURT
NINTH JUDICIAL CIRCUIT

FINANCIAL DECLARATION
OF
JENNIFER BROWN

FILE NO.: 2013-DR-10-4057 & 2013-DR-10-4386

HUSBAND / FATHER

Address:
Age:
Occupation:
Employer:
Employer Address:

ADOPTIVE MOTHER

Address: 378 Stefan Dr., Chas, SC 29412
Age: 40
Occupation: Catering Server
Employer: Kiawah Island Golf Resort
Employer Address: 1 Sanctuary Beach Dr., Kiawah Island

GROSS MONTHLY INCOME	HUSBAND/FATHER	ADOPTIVE MOTHER
Principal Earnings from Employment ¹	0.00	781.62
Overtime, Tips, Commission, Bonuses ²	0.00	1519.38
Pensions, Retirement, and Annuities income	0.00	0.00
Additional Employment income	0.00	0.00
Social Security Benefits (SSA) and VA Benefits	0.00	0.00
Disability and Worker's Compensation Benefits	0.00	0.00
Unemployment and AFDC	0.00	0.00
Spousal or Child Support (from other marriage/relationship)	0.00	0.00
Dividends, Interest, Trust Income, and Capital Gains	0.00	0.00
Rental Income and Business Profits	0.00	0.00
Other (Specify): Rental Income	0.00	900.00
Other (Specify):	0.00	0.00
Other (Specify):	0.00	0.00
TOTAL GROSS MONTHLY INCOME	\$ 0.00	\$ 2,011.00

PAYROLL DEDUCTIONS FROM MONTHLY INCOME	HUSBAND/FATHER	ADOPTIVE MOTHER
Federal Income Tax ³	0.00	349.00
State Income Tax	0.00	160.00
Social Security and Medicare Tax (FICA)	0.00	185.00
Self-Employment Tax	0.00	0.00
Health and Dental Insurance (Adult)	0.00	0.00
Health and Dental Insurance (Child)	0.00	0.00
Union Dues	0.00	0.00
Voluntary Retirement Contribution (401(k), 457, IRA)	0.00	0.00
Mandatory Retirement Contribution	0.00	0.00
Savings Plan	0.00	0.00
Other (Specify):	0.00	0.00
Other (Specify):	0.00	0.00
Other (Specify):	0.00	0.00
TOTAL MONTHLY DEDUCTIONS	\$ 0.00	\$ 694.00
NET MONTHLY INCOME ⁴	\$ 0.00	\$ 2,507.00

Estimate monthly expenses: (Specify which party is the custodial parent and list name and relationship of all members of household whose expenses are included.

MONTHLY EXPENSES ⁵	HUSBAND/FATHER	ADOPTIVE MOTHER
Residential Rent Payment	0.00	675.00
Note or Mortgage Payment on Residence(s)	0.00	800.00
Homeowner's Insurance (if not included in monthly mortgage payment)	0.00	0.00
Food and Household Supplies ⁶	0.00	300.00
Utilities, Water, and Garbage Collection	0.00	46.00
Telephone and Cellular Phone	0.00	60.00
Medical, Dental and Disability Insurance Premiums (not deducted from paycheck)	0.00	66.08
Life Insurance Premium	0.00	0.00
Child Support (from other relationship)	0.00	0.00
Work Related Day Care	0.00	0.00
Spousal Support (from prior marriage)	0.00	0.00
Auto Payment	0.00	0.00
Auto Insurance, taxes, gasoline, and maintenance ⁷	0.00	200.00
SUBTOTAL:	\$ 0.00	\$2,147.08
Real Property Tax on Residence(s)	0.00	0.00
Maintenance for household ⁸	0.00	0.00
Adult Clothing	0.00	50.00
Children's Clothing ⁹	0.00	50.00
Cable Television, Satellite, and Internet/Online Services	0.00	50.00
Laundry and Dry Cleaning ¹⁰	0.00	12.00
Medical and Dental Expenses (not paid by insurance)	0.00	0.00
Prescriptions, Glasses, and Contacts (not paid by insurance)	0.00	20.00
Children's incidental expenses ¹¹	0.00	50.00
School lunches, supplies, field trips, and fees ¹²	0.00	0.00
Entertainment ¹³	0.00	100.00
Adult Incidental expenses ¹⁴	0.00	20.00
All Installment payments ¹⁵	0.00	127.00
Other (Specify):	0.00	0.00
SUBTOTAL:	\$ 0.00	\$ 479.00
TOTAL MONTHLY EXPENSES	\$ 0.00	\$2,626.08

INSTALLMENT LOAN PAYMENTS SECTION

Creditor	For	Monthly Payment	Balance	Owed by ¹⁶
VISA		82.00	3861.00	Adoptive Mother
Discover		45.00	2980.00	Adoptive Mother

OTHER DEBTS AND OBLIGATIONS NOT PAYABLE IN MONTHLY INSTALLMENTS

Creditor	For	Date Payable	Balance	Owed by ¹⁶

Are you currently in Bankruptcy? ☐ YES ☒ NO

Are any obligations listed above, including mortgage and note payments, in arrears? ☐ YES ☒ NO

If yes, please list the obligations in arrears.

ALL MARITAL PROPERTY KNOWN TO PARTIES

Assets	Husband / Father	Wife / Mother	Joint
Cash and Money in Checking Account(s)	0.00	0.00	0.00
Money in Savings Account(s), Credit Union, Money Mkt, or Cert. of Dep.	0.00	0.00	0.00
Value of Voluntary Retirement Account(s)	0.00	0.00	0.00
Value of Pension Account	0.00	0.00	0.00
Value of Publicly Held Stocks, Bonds, Securities, Mutual Funds	0.00	0.00	0.00
Value of Privately Held Stocks and Other Business	0.00	0.00	0.00
Value of Real Estate -- Net of Mortgage Balances	0.00	0.00	0.00
Value of All Other Property ¹⁷	0.00	0.00	0.00
TOTAL ASSETS	\$ 0.00	\$ 0.00	\$ 0.00

ANY NON MARITAL PROPERTY KNOWN TO PARTIES

Description of Asset	Title Owner	Date of Acquisition	Source of Funds to Acquirer	Estimate Present Market Value
North Carolina Home	Adoptive Mother	2013	Income	200,000.00
Vehicle	Adoptive Mother	2003	Income	6000.00
Checking Account	Adoptive Mother		Income	3200.00
Savings Account	Adoptive Mother			5,485.00

If total assets are less than \$300,000.00, sign and have notarized.

If total assets are greater than \$300,000.00, itemize assets by completing additional sections below and sign and have notarized.

FINANCIAL ACCOUNTS SECTION¹⁸

Owner	Name of Institution	Type of Account	Balance

VOLUNTARY RETIREMENT ACCOUNTS AND PENSION ACCOUNTS SECTION

Type of Account	Value

PUBLICLY HELD STOCKS, BONDS, SECURITIES, MUTUAL FUNDS SECTION (NON-RETIREMENT)¹⁹

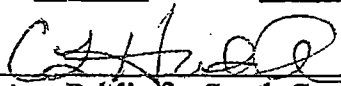
Name of Company	Number of Shares/Type of Account	Value

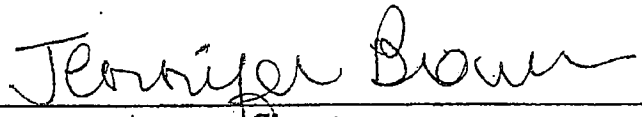
REAL ESTATE SECTION²⁰

Owner	Address	Value	Mortgage Balance	Mortgage Equity

OTHER PROPERTY SECTION¹⁷

Owner	Description of Asset	Value	Loan Balance	Equity

Sworn to and Subscribed before me
 this 7 day of March, 2014
 (SEAL)
 Notary Public for South Carolina
 My Commission expires: December 10, 2023


 Signature

1. A recent pay stub should be attached to the Financial Declaration. To compute Principal Earnings from Employment, first determine whether you are paid semi-monthly, biweekly, or weekly. If you are paid semi-monthly, multiply the gross amount of your pay check by two. If you are paid biweekly, multiply the gross amount of your pay check by 26 and then divide by 12. If you are paid weekly, multiply the amount of your paycheck by 52 and divide by twelve. Round to the nearest whole dollar.
2. To compute Overtime, Tips, Commission, and/or Bonuses, take an average of your monthly earnings from overtime, tips, commission, bonuses, etc. from the past three years or the length of employment if employed less than three years (including this year).
3. To compute State, Local, and Social Security Tax deductions, use the same formula used to compute principal earnings in endnote 1 above, or consult or have your attorney consult an accountant.
4. Net monthly Income is equal to Total Gross Monthly Income minus Total Monthly Deductions.
5. Do not include any expense in the Monthly Expenses section that has already been included in the Deductions from Gross Monthly Income on page one of the Declaration.
6. Food Expense is to include the cost of groceries, toiletries, cleaning supplies, and casual eating out.
7. Auto Expenses are to include gasoline, oil changes, tune-ups, tire replacement, maintenance, and related items.
8. Maintenance for Household is to include appliance and household repairs, landscaping, house cleaning, pest control, pool service, alarm service, and other related items.
9. Clothing Expense is to include shoes and clothing purchases, clothing repair and alterations, and related items.
10. Laundry Expense is to include the cost of laundry service, dry cleaning, and related items.
11. Children's Incidental Expenses are to include allowance, summer camp, nursery school, baby sitters, lessons, activities, participatory sports, and related items.
12. School Expense is to include tuition, supplies, field trips, dues, tutors, locker rentals, school lunches, and other related items.
13. Entertainment is to include movies, theater, vacations, sporting events, compact discs, digital video discs, and related items.
14. Adult Incidental Expenses are to include cosmetics, hair and nail care, books, magazines, newspapers, business dues, memberships, pets, charity, religious dues or tithes, gifts, bank charges, hobbies, and related items.
15. All Installment Loan Payments is the total amount itemized in Installment Loan Payments Section, which should include all loan payments not already listed as a monthly expense. Examples: home equity loan, credit cards, etc.
16. Indicate which spouse legally owes the payment (husband, wife, or joint).
17. Other property is to include automobiles (minus loan balance) boats (minus loan balance), furniture, furnishings, chin, silver, jewelry, collectibles, and other personal property.
18. Itemize Financial Accounts such as checking, savings, credit union, money market, or certificate of deposit accounts in the Financial Accounts Section.
19. Itemize Publicly Held Stocks, Bonds, Securities, Stock Options and Mutual Funds (excluding retirement accounts) in the Publicly Held Stocks, Bonds, Securities, Mutual Funds Section.
20. Itemize each parcel of Real Estate in the Real Estate Section.

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IMPORTANT MESSAGE

HOURS AND EARNINGS

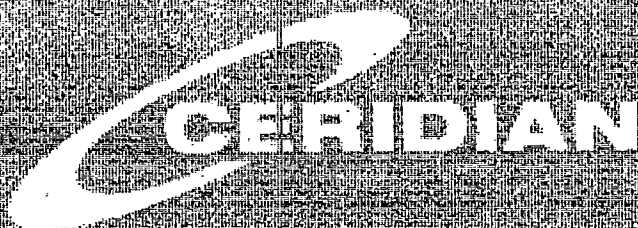
TAXES AND DEDUCTIONS

SPECIAL INFORMATION

[illegible]

PURE-TALK, 15 YEARS.

STATIONARY STATE OF THE SYSTEM



DATE	GROSS	GROSS MIN DED	TAXABLE WAGES	LESS TAXES	LESS WBS	ED NET PAY
04/01/78	155.00	2.00	153.00	1.00	1.00	150.00
04/01/78	155.00	2.00	153.00	1.00	1.00	150.00
04/01/78	155.00	2.00	153.00	1.00	1.00	150.00

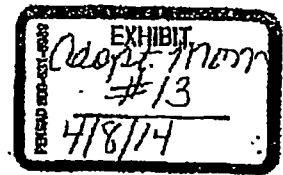
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ATTACHMENT 1

SHANNON JONES

ATTORNEY AT LAW LLC
3 STATE STREET
CHARLESTON, SC 29401

843-720-3100



Jennifer Brown
378 Stefan Drive
Charleston, SC 29412

Statement Date: December 31, 2013
Statement No. 1
Account No. 454.0
Page: 1

RE: Domestic

Fees

			Hours	
2/11/2013	SPJ	Dictate Notice of Appearance	0.20	55.00
2/12/2013	ALN	Review intake sheet, confer with Atty, correspondence to client, draft order of substitution, draft consent order relieving counsel	1.00	100.00
	SPJ	Draft answer and counterclaim, research adoption code, draft memo to Atty Jones	6.60	1,815.00
	SPJ	Dictation to Cassie regarding answer and counterclaim, notice of appearance, pleadings review	0.50	137.50
2/13/2013	ALN	Draft Affidavits, revise order substituting counsel, correspondence to Atty Barker	0.30	30.00
	SVH	Prepare file for Atty Jones	0.20	20.00
	SVH	Deliver to Barker for Signature on order	0.30	30.00
	SVH	Deliver Order Substituting counsel	0.20	20.00
	SPJ	Consult with Atty Jones, telephone calls to Christina Humphries, Cristian Pinto, Jillian Mamer, Doug Berker, April Witzel and Eden Rawls	0.75	206.25
	CLH	Review/research Adoption Code, emails to Christa Pinto and Christina Humphries, emails from/to Doug Barker, telephone call to Client	1.00	150.00
	SPJ	Review file	1.00	275.00
2/14/2013	SPJ	Review pleadings	2.00	550.00
2/15/2013	CLH	Email to Christina Humphries	0.10	15.00
	SPJ	Draft pleadings	2.00	550.00
	CLH	Email to Christina Humphries	0.10	15.00
2/16/2013	CLH	Prepare for hearing	1.50	225.00
	SPJ	Review and revise affidavits, draft answer and counterclaim, draft return, review and revise atty affidavit	6.00	1,650.00
	SVH	Obtain affidavit of Pinto, Barton and Humphries	0.30	30.00
	ALN	Draft affidavit of Atty's Fees, draft affidavit of Gall Brown and Jennifer Brown, telephone call with Client, draft proposed parenting plan, draft table of contents		

Jennifer Brown

Statement Date: 12/31/2013
Statement No. 1
Account No. 454.0

			Hours	
		for temporary package, text client, confer with Atty Jones, email to Christy Cassarly, assist in prep for hearing	1.70	170.00
CLH		Emails from/to Christa Pinto, t/c w/ Client, Jillian Barta, telephone call to D. Baker, email to/from Killia Barta, draft affidavit for Christy Cassarly	0.50	75.00
CLH		Email from/to Christa Pinto, telephone call with same, telephone call with Judge Martin's office, prepare for hearing	0.50	75.00
CLH		Prepare Affidavit for J. Brown, meet with Client and consult with Atty Jones	0.50	75.00
CLH		Research final draft of answer and counterclaim	0.70	105.00
2/17/2013	SPJ	Final preparation and attend	1.00	275.00
	SPJ	Review and reply to multiple emails regarding scheduling of hearing	0.20	55.00
	ALN	Assist in prep for hearing, emails to and from Clerk	0.60	60.00
	CLH	Prepare and attend hearing	1.60	240.00
2/18/2013	SPJ	Telephone call with Atty Thompson regarding GAL	0.20	55.00
	ALN	Email from Clerk, telephone call with Client, calendar trial	0.10	10.00
	CLH	Draft Order, email to Jim Thompson	0.80	120.00
2/19/2013	CLH	Email from Jim Thompson, prepare order for filing	0.30	45.00
2/20/2013	SVH	Motion order and cover sheet	0.10	10.00
	SVH	Deliver order to Court for J. Martin hearing 12/17/13	0.20	20.00
2/23/2013	SPJ	Consult with associate	0.25	68.75
	CLH	Phone call to Client, phone call from Gail Brown	0.20	30.00
2/27/2013	CLH	Research NC Adoption Attorneys	0.75	112.50
		For Current Services Rendered	34.26	7,475.00

	Recapitulation	Hours	Rate	Total
Timekeeper				
SHANNON P. JONES		20.70	\$275.00	\$5,692.50
STEPHANIE VANDER HORST		1.30	100.00	130.00
AMY LEVER-NEILSON		3.70	100.00	370.00
CASSANDRA L. HUTCHENS		8.55	150.00	1,282.50

Expenses:

Copy and postage charges for December	43.91
Total Expenses Thru 12/31/2013	43.91
Total Current Work	7,518.91

Jennifer Brown

Statement Date: 12/31/2013
Statement No. 1
Account No. 454.0

Payments

12/31/2013	Payment	-7,518.91
	Balance Due	<u>\$0.00</u>

Your trust account #1 balance is

	Opening Balance	\$0.00
12/13/2013		5,000.00
12/18/2013		5,000.00
12/31/2013		
	PAYEE: SHANNON JONES	-7,518.91
	Closing Balance	<u>\$2,481.09</u>

SHANNON JONES

ATTORNEY AT LAW LLC
3 STATE STREET
CHARLESTON, SC 29401

843-720-3100

Jennifer Brown
378 Stefan Drive
Charleston, SC 29412

Statement Date: January 31, 2014
Statement No. 2
Account No. 454.0
Page: 1

RE: Domestic

Fees

			Hours	
11/13/2013	SPJ	Review file, dictation to Cassie regarding information to GAL	0.50	137.50
	SPJ	Finalize discovery, dictation to associate regarding responding to Jim Thompson's letter	0.75	206.25
11/02/2014	ALN	Correspondence to Client, correspondence to Atty Thompson and Mersereau, draft certificate of service, cc to Client	0.40	40.00
	CLH	Research NC Adoption Attorneys, telephone call to Professor Bartlett with Duke University, email to NC Bar	0.40	60.00
	SVH	Revise consent order relieving counsel	0.10	10.00
1/03/2014	CLH	Emails from J. Mersereau, research and phone calls to NC adoption attorneys	0.80	120.00
	CLH	Telephone call from Jim Thompson, telephone call to Debra Griffith's, email to/from NC-Bar Association, telephone call to Brinton Wright	0.50	75.00
1/06/2014	SPJ	Review email from Atty Thompson, dictation to paralegal	0.15	41.25
	SPJ	Review email from GAL	0.10	27.50
	SPJ	Telephone call with GAL	0.50	137.50
	SPJ	Telephone call with Client	0.50	137.50
	CLH	Email from Jim Thompson and review subpoena sent to Teresa Smith	0.20	30.00
1/08/2014	ALN	Email from Atty Jones	0.10	10.00
	CLH	Telephone call to/from NC Atty's	0.50	75.00
1/09/2014	SPJ	Review correspondence from Atty	0.10	27.50
	SPJ	Dictation to paralegal regarding copy to Client	0.10	27.50
	SPJ	Meeting with Cassie	0.25	68.75
	SPJ	Call/message to Teresa Smith	0.10	27.50
	CLH	Emails from/to Milan Phal, consult with Atty Jones, draft discovery requests	5.70	855.00
1/10/2014	SPJ	Meeting with staff, dictation to Cassie, review and		

APPX234

Jennifer Brown

Statement Date: 01/31/2014
Statement No. 2
Account No. 454.0

			Hours	
		revise discovery	1.00	275.00
	CLH	Email to/from Milan Phan, consult with Atty Jones	0.50	75.00
11/13/2014	ALN	Confer with Atty Jones, email to Atty Thompson's office	0.10	10.00
	ALN	Scan and email to Client, email to Atty Thompson's office, confer with Atty Jones, email to Atty Thompson, email to Atty	0.40	40.00
	CLH	Consult with Atty Jones, telephone call with Meredith Nicholson, draft and mail discovery requests, email to John Mersereau, review research and report to Atty Jones	2.40	360.00
11/14/2014	SPJ	Meeting with Cassie, dictation to Cassie, call/message to Atty	0.20	55.00
	CLH	Draft subpoena and notice of deposition, prepare documents in response to Jim Thompson's request	1.00	150.00
	CLH	Consult with Atty Jones, telephone call from Client, emails from/to May Waldron, fax and email to Jim Thompson	1.00	150.00
1/16/2014	ALN	Schedule court reporter, telephone call with Court Reporter, email to and from Court Reporter	0.40	40.00
	CLH	Email from Jim Thompson, prepare for deposition, consult with Atty Jones	0.50	75.00
	SPJ	Multiple telephone calls with Atty Corley, telephone call with Teresa Smith	1.00	275.00
	SPJ	Prepare for hearing	1.00	275.00
1/17/2014	ALN	Telephone call with Client, confer with Atty Jones, scan and email to Atty Corley, telephone call with Client	0.40	40.00
	SPJ	Telephone call with GAL, call/message to Teresa Smith	0.20	55.00
	SPJ	Telephone call with Atty Thompson	0.20	55.00
	SPJ	Telephone call with Atty	0.15	41.25
	SPJ	Text to Client	0.10	27.50
	CLH	Emails from/to Mary Waldrop, email from Jon Mersereau, draft subpoena and notice of deposition, mail to Jim Thompson and John Mersereau, email to Rick Corley, email to Client	1.10	165.00
	SPJ	Telephone call with pediatrician, telephone call with Cassie, review standing issue	1.00	275.00
1/20/2014	ALN	Confer with Atty Jones, email to Atty Thompson's office	0.20	20.00
	SPJ	Finalize Reply, text to Rick Corley regarding follow up regarding new home study	0.10	27.50
1/21/2014	ALN	Email from court reporter, email from Atty Thompson's office, telephone call to and from Corley, correspondence to Rick Corley	0.20	20.00
	SPJ	Meeting with Cassie regarding preparation for hearing	0.25	68.75
	CLH	Telephone call to Ann Conniffe, consult with Atty Jones, prepare for deposition, telephone call to Doug		

Jennifer Brown

Statement Date: 01/31/2014
Statement No. 2
Account No. 454.0

			Hours	
		Barker, fax to Jim Thompson	1.50	225.00
1/22/2014	ALN	Confer with Atty Jones, assist in prep for deposition, background check thru SLED for NC	0.80	80.00
	CLH	Prepare for deposition, emails from/to Mary Waldrop, attend deposition, telephone call to Rick Corley, call to April Witzel	6.80	1,020.00
1/23/2014	SPJ	Telephone call with Dr. Kirlis	0.25	68.75
	SPJ	Telephone call with Atty Corley regarding multiple issues, standing	0.30	82.50
	SPJ	Prepare for hearing, dictation to Cassie regarding witnesses	0.40	110.00
	SPJ	Review file	0.20	55.00
1/24/2014	ALN	Complete hospital HIPAA, correspondence to hospital regarding same, research mailing address, confer with Atty Jones and Hutchens, correspondence to Atty Thompson, fax and email same, correspondence to Court regarding consent order of Thompson, scan and email order to GAL, hand deliver Consent Order to Clerk, email to Client, fax to and from Atty Jones, hand deliver consent adoption to Clerk	1.30	130.00
	CLH	Phone message to April Witzel, telephone call to Mila Pham	0.20	30.00
1/27/2014	ALN	Assist in prep of witness subpoenas	1.00	100.00
	ALN	Email from Court Reporter	0.10	10.00
	CLH	Research and memo to Atty Jones	2.30	345.00
1/28/2014	SPJ	Telephone call with Rick Corley regarding post placement and homestudy addendum status, putative father registry	0.30	82.50
	SPJ	Dictation to Cassie regarding subpoenas	0.15	41.25
	SPJ	Telephone call with Atty Corley regarding post placement	0.25	68.75
	SPJ	Telephone call from April Witzel, email to Milan Phan, telephone call with Meredith Nicholson, prepare subpoenas, consult with Atty Jones	2.70	742.50
	CLH	Consult with Atty Jones, emails to/from Jim Thompson, fax to Jim Thompson, telephone call to Christina Humphries and Jillian Banta, email from/to Mila Pham, telephone call to April Witzel	1.10	165.00
	ALN	Email from Rick Corley, email from Atty Thompson, email to Atty Hutchens, hand deliver Father Registry to clerk, email to Atty Thompson	0.30	30.00
	SPJ	Dictation to paralegal regarding Putative Father Registry	0.15	41.25
1/29/2014	CLH	Review discovery responses and documents from Jim Thompson, research consent execution, texts/consult with Atty Jones	1.90	285.00

Jennifer Brown

Statement Date: 01/31/2014
Statement No. 2
Account No. 454.0

			Hours	
	SPJ	Prepare for hearing	1.00	275.00
1/30/2014	CLH	Email to Rick Corley, multiple phone calls to Adoption Investigation	0.40	60.00
	ALN	Confer with Atty Jones, telephone call to/from Client	0.20	20.00
	SPJ	Prepare for trial	6.00	1,650.00
1/31/2014	CLH	Prepare Motion to Blfurcate, Motion to Compel, return to Motion and Motion for Continuance, phone calls to/from Christina Humphries and Christa Pinto, emails to/from Christina Humphries, consult with Atty Jones, emails to/from Jim Thompson, telephone call from Jim Thompson	5.30	795.00
	SPJ	Multiple telephone calls, telephone call with Corley, telephone call with Atty Thompson, telephone call with Client, prepare for hearing	3.50	962.50
		For Current Services Rendered	63.55	12,163.75

Recapitulation

Timekeeper	Hours	Rate	Total
SHANNON P. JONES	23.45	\$275.00	\$6,448.75
STEPHANIE VANDER HORST	0.10	100.00	10.00
AMY LEVER-NEILSON	5.90	100.00	590.00
CASSANDRA L. HUTCHENS	34.10	150.00	5,115.00

Expenses

Mileage and deposition fee - Holly Lawrence	258.14
Background search	
SLED	25.00
North Carolina Background search	
US Info Group	19.95
Copy, postage and fax for January	85.17
Total Expenses Thru 01/31/2014	388.26
Total Current Work	12,552.01

Payments

1/31/2014	Payment	-10,481.09
	Balance Due	<u>\$2,070.92</u>

Your trust account #1 balance is

Opening Balance

\$2,481.09

Jennifer Brown

Statement Date: 01/31/2014
Statement No. 2
Account No. 454.0

01/01/2014		10,000.00
01/15/2014		
	PAYEE: Frederick Corley	-2,000.00
01/31/2014		
	PAYEE: SHANNON JONES	-10,481.09
	Closing Balance	\$0.00

SHANNON JONES

ATTORNEY AT LAW LLC
3 STATE STREET
CHARLESTON, SC 29401

843-720-3100

Jennifer Brown
378 Stefan Drive
Charleston, SC 29412

Statement Date: February 28, 2014
Statement No. 3
Account No. 454.0
Page: 1

RE: Domestic

Previous Balance \$2,070.92

Fees

			Hours	
12/01/2014	CLH	Prepare for Evidentiary Hearing	5.00	750.00
	ALN	Correspondence with Atty Thompson and Atty Mersereau, draft certificate of mailing, assist in prep for hearing	2.60	260.00
12/02/2014	CLH	Prepare for Hearing	5.50	825.00
12/03/2014	SPJ	Prepare for evidentiary hearing, multiple telephone calls with Judge Smoak, telephone call with GAL, Atty Thompson, telephone call with Client, dictation to Cassie, dictation to paralegal, telephone call with Atty Corley, telephone call regarding post placement report	6.00	1,650.00
	CLH	Prepare for hearing, email from Jim Thompson, phone calls and emails to witnesses	3.10	465.00
	ALN	Assist in prep for hearing,	1.80	160.00
2/04/2014	SPJ	Text to Client regarding homestudy, dictation to Cassie regarding bonding articles	0.15	41.25
	SPJ	Meeting with witnesses, draft affidavit	4.00	1,100.00
	ALN	Emails from Atty Meerschaums and Atty Thompson, draft affidavit of April Wilzel, emails from Court	0.30	30.00
2/05/2014	SPJ	Telephone call with Client	0.20	55.00
2/10/2014	CLH	Respond to Ann Cumliffe email regarding scheduling evidentiary hearing	0.20	30.00
2/13/2014	CLH	Telephone call with Clara Williams, CMC Pineville, email to Christine Humphries, Jillian Benton and Crista Pinto	0.20	30.00
2/19/2014	SPJ	Dictation to Cassie	0.10	27.50
	CLH	Phone call from Jim Thompson, phone calls to CMC Pineville, fax to same	0.50	75.00

Jennifer Brown

Statement Date: 02/28/2014
Statement No. 3
Account No. 454.0

			Hours	
2/21/2014	CLH	phone calls to/from CMC Pineville regarding records, email from CMC Pineville	0.20	30.00
2/24/2014	SPJ	Review message from Atty Thompson	0.10	27.50
2/25/2014	ALN	Correspondence to GAL, email to Client	0.30	30.00
2/28/2014	SPJ	Review file, dictation to Amy, Cassie, call GAL	0.50	137.50
	CLH	Consult with Atty Jones, emails from/to Client, prepare for hearing	0.50	75.00
		For Current Services Rendered	31.05	5,796.75

Recapitulation

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
SHANNON P. JONES	11.05	\$275.00	\$3,038.75
AMY LEVER-NEILSON	4.80	100.00	480.00
CASSANDRA L. HUTCHENS	15.20	150.00	2,280.00

Expenses

Journals	78.00
Medical records of Harper Brown from Coastal Pediatric Associates	
RecordQuest	56.42
Motion fee	25.00
Fax, Copy and Postage charges for February	111.43
Total Expenses Thru 02/28/2014	270.85
Total Current Work	6,069.60

Payments

2/28/2014	Payment	-7,000.00
	Balance Due	<u>\$1,140.52</u>

Your trust account #1 balance is

	Opening Balance	\$0.00
02/03/2014		7,000.00
02/28/2014	PAYEE: SHANNON JONES	-7,000.00
	Closing Balance	<u>\$0.00</u>

SHANNON JONES

ATTORNEY AT LAW LLC
3 STATE STREET
CHARLESTON, SC 29401

843-720-3100

Jennifer Brown
378 Stefan Drive
Charleston, SC 29412

Statement Date: March 31, 2014
Statement No. 4
Account No. 454.0
Page: 1

RE: Domestic

		Previous Balance			\$1,140.52
			Fees	Hours	
3/01/2014	CLH	Email from/to client, review and prepare file for motion hearing, update pleadings, update discovery		3.60	540.00
3/03/2014	SPJ	Review file, call/message to GAL		0.25	68.75
3/04/2014	CLH	Prepare for hearing, research and review ADR Rules for Motion, draft memorandum in Support of Motion		1.50	225.00
	ALN	Assist in preparation for hearing		2.50	250.00
	SPJ	Review medical records		1.00	275.00
3/05/2014	SPJ	Final preparation and attend hearing on motion to limit and motion to compel, meeting with Client		4.00	1,100.00
	CLH	Prepare for and attend hearing, meet with Client		0.40	60.00
	ALN	Assist in prep for hearing		1.00	100.00
3/06/2014	SPJ	Review case law, draft letter to Judge Cate,		1.00	275.00
	SPJ	Dictation to Cassie		0.20	55.00
	SPJ	Review memorandum, dictation to paralegal, telephone call with John Nichols regarding appeal of birth father identify		1.00	275.00
	CLH	Draft request to admit and 2nd discovery requests, letter to Jim Thompson, email from Mary Waldrop		1.60	240.00
	SPJ	Review file, telephone call with GAL		0.35	98.25
3/07/2014	SPJ	Telephone call with Investigator		0.20	55.00
	ALN	Revise discovery requests, revise correspondence to Judge Cate		0.30	30.00
3/10/2014	SPJ	Review child's medical records		0.25	68.75
	SPJ	Review Judge Cate Order, meeting with Cassie		0.25	68.75
	SPJ	Review file, meeting with Cassie		0.25	68.75
	CLH	Emails from/to May Waldrop, consult with Atty Jones, phone call to Client, draft responses to discovery request		0.70	105.00

Jennifer Brown

Statement Date: 03/31/2014
Statement No. 4
Account No. 454.0

			Hours	
3/11/2014	CLH	Case preparation meeting with Atty Jones, draft and prepare discovery responses, email to Jim Thompson	4.30	645.00
	CLH	Emails from/to Mary Waldrop, review supplemental discovery responses	1.10	165.00
3/12/2014	SPJ	Meeting with Cassie regarding amended pleadings	0.75	206.25
	CLH	Email to Pat Donner, emails from Pat Donner, phone calls potential witnesses, review discovery, phone call from Jim Thompson and Jon Mersereah records request to Catholic Diocese	5.25	787.50
3/13/2014	CLH	Confer with Atty Jones, emails from/to Mary Waldrop, review psychological case law, phone call to Charlotte Medical Clinic, phone call to Terri Fox, request to Charlotte Medical Clinic, phone call to same	1.70	255.00
3/14/2014	SPJ	Meeting with Cassie	0.20	55.00
	SPJ	Call/message to birth father, call/message to Atty Thompson	0.25	68.75
	CLH	Draft amended complaint, phone call with Client, consult with Atty Jones, phone call to Charlotte Medical Clinic and Charlotte OB GYN	2.70	405.00
	CLH	Fax from Charlotte Medical Clinic, email to Jim Thompson	0.20	30.00
3/16/2014	SPJ	Review email from Mark (birthrate), email birth birthrate, dictation to Cassie	0.20	55.00
3/17/2014	SPJ	Review voice message regarding number for birthfather from atty Thompson, dictation to Cassie	0.15	41.25
	SPJ	Review and revise pleadings	0.25	68.75
	SPJ	Telephone call with Client, Cassie	0.20	55.00
	CLH	Emails from Atty Jones and Birth Father, phone conference with client and Atty Jones, draft subpoenas for deposition, phone call to Mecklenburg County Clerk, consult with Atty Jones, prepare and file amended summons and complaint, phone call to Donna Hamlin, phone calls to/from Chaplin Associates, emails to/from Tommy Blackwood	3.80	570.00
3/18/2014	ALN	Assist in preparation of service of five subpoenas	0.60	60.00
	SPJ	Telephone call with Cassie, dictation to Cassie regarding subpoena to pediatrician	0.25	68.75
	ALN	Correspondence to Atty Mersereau	0.20	20.00
	CLH	Draft NC subpoenas, letters to witnesses, letter to Mecklenburg Clerk, phone call for Irene Kirby, emails from/to Irene, phone call with Client, phone call with Mecklenburg County Clerks office, emails to/from Jen Mersereau, multiple emails to/from Tommy Blackwood, phone call to Jan Barefoot Investigations phone call from Tommy Blackwood, phone call for Sharon Davis with Charlotte Diocese Charities, phone call with Richard		

Jennifer Brown

Statement Date: 03/31/2014
Statement No. 4
Account No. 454.0

			Hours	
		Lucy, mail package to Irene King	3.75	562.50
3/19/2014	ALN	Confer with Atty Hutchens, Internet search for Charlotte OB/GYN mailing address, prepare subpoena	0.50	50.00
	ALN	Correspondence to Atty Thompson and Atty Mersereau, draft acceptance of service, certificate of service, assist in prep of witness subpoenas	3.00	300.00
	SPJ	Multiple texts with Cassie regarding Holly Lawrence deposition	0.16	41.25
	CLH	Draft and send supplemental discovery answers, emails to Jim Thompson and Jan Mersereau, emails to/from Donna Hamen, serve amended summons and complaint to Jim Thompson and Jan Mersereau prepare SC subpoenas, dictation to paralegal, emails from Donna Hamen, prepare and send notices of deposition to opposing counsel, phone calls from Kim Covington with Coastal Peds, email to Tommy Blackwood, emails to/from witnesses	4.30	645.00
3/20/2014	CLH	Phone call with Jim Thompson	0.30	46.00
3/21/2014	ALN	Confer with atty Hutchens, telephone call with Atty Thompson's office, telephone call with Atty Thompson	2.30	230.00
	CLH	phone call from Jim Thompson, consult with GAL, consult with Atty Jones	0.40	60.00
3/24/2014	SPJ	Meeting with Cassie regarding preparation for hearing	0.40	110.00
	SPJ	Telephone call with Atty Corley	0.75	206.25
	SPJ	Telephone call with Catholic Diocese	0.25	68.75
	ALN	Research Judge assignments for upcoming hearing, confer with Atty Jones	0.10	10.00
	CLH	Review evidence in preparation for evidentiary hearing, consult with Atty Jones	2.70	405.00
	CLH	Emails to/from Jeremy Gilbert, phone calls to/from Jeremy Gilbert, email from Mary Waldrop	0.40	60.00
3/25/2014	SPJ	Prepare for hearing, call to Prof Hollinger, call to ICPC director, Patricia Cokley	2.50	687.50
	CLH	Consult with Atty Jones, review information from subpoena, review evidence in preparation for hearing, emails to/from Jeremy Gilbert	3.20	480.00
3/26/2014	SPJ	Meeting with Cassie	0.40	110.00
	SPJ	Meeting with witnesses	2.00	550.00
	ALN	Prepare file for meeting with witnesses, confer with Atty Hutchens, review subpoenas receipt of green card	0.40	40.00
	ALN	Begin gathering evidence for hearing, confer with Atty Hutchens	0.60	60.00
	CLH	Consult with Atty Jones, emails from/to Tommy Blackwood, email from Mary Waldrop, review discovery responses, preservation of evidence letter to Jim Thompson, meet with witnesses	1.90	285.00

Jennifer Brown

Statement Date: 03/31/2014
Statement No. 4
Account No. 454.0

Hours

3/27/2014	SPJ	Telephone call with Patricia Cokley	0.10	27.60
	SPJ	Call/message to Atty Taron Davis	0.10	27.60
	ALN	Continue reviewing file for trial evidence	3.00	300.00
	CLH	Emails from/to Tommy Blackwood, review evidence, prepare for hearing, consult with Atty Jones	3.10	465.00
3/28/2014	SPJ	Prepare for hearing, review discovery	0.75	206.25
	ALN	Telephone call with Client	0.10	10.00
	CLH	Draft supplemental responses to discovery, phone message from Jim Thompson, consult with Atty Jones, phone call to Jim Thompson, letter to J. Thompson	2.10	315.00
3/30/2014	SPJ	Review all pleadings, review discovery, review pl/birthmom deposition, review and respond to text from Cassie regarding inability to serve birthfather with notice of deposition	1.50	412.50
3/31/2014	SPJ	Telephone call with Cassie regarding copy of Hollinger book	0.10	27.60
	SPJ	Meeting with Cassie, dictation to Cassie regarding motion to bifurcate, revisions to Motion	0.30	82.50
	SPJ	Telephone call with GAL, multiple texts with Cassie regarding GAL contact/questions for birth father	1.25	343.75
	ALN	Draft Motion coversheet, email to Court reported	0.20	20.00
	CLH	Research for Statutory Construction, phone call from Christine Humphries, draft and file Motion to Bifurcate, consult with Atty Jones	2.90	435.00
	CLH	Emails from Tommy Blackwood, review affidavits of service, email to Ann Cuniffe, phone calls from/to Jon Mersereau, phone calls from Pat Danner	1.25	187.50
		For Current Services Rendered	89.60	15,378.75

Recapitulation

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
SHANNON P. JONES	21.55	\$275.00	\$5,928.25
AMY LEVER-NEILSON	14.80	100.00	1,480.00
CASSANDRA L. HUTCHENS	53.15	160.00	7,972.50

Expenses

Deposition of Lawrence	1,441.01
William Roberts and Associates	22.59
Federal Express	150.00
Filing fee	69.50
Cricket Communication	25.00
Filing fee	223.97
Postage, fax and copies for March	1,932.07
Total Expenses Thru 03/31/2014	

Jennifer Brown

Statement Date: 03/31/2014
Statement No. 4
Account No. 454.0

Total Current Work 17,310.82

Payments

3/31/2014 Payment -10,000.00

Balance Due \$8,451.34

Your trust account #1 balance is

03/13/2014	Opening Balance	\$0.00
03/31/2014		10,000.00
	PAYEE: SHANNON JONES	-10,000.00
	Closing Balance	<u>\$0.00</u>

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

JENNIFER BROWN,

Plaintiff,

-vs-

BABY GIRL HARPER, A MINOR
UNDER THE AGE OF SEVENTEEN
(17) YEARS,

Defendant.

IN THE FAMILY COURT
NINTH JUDICIAL CIRCUIT

AFFIDAVIT OF ATTORNEY FEES
AND COSTS

CASE NO. 2013-DR-10-4057

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

HOLLY LAWRENCE,

Plaintiff,

-vs-

JENNIFER BROWN,

Defendant.

IN THE FAMILY COURT
NINTH JUDICIAL CIRCUIT

CASE NO. 2013-DR-10-4386

PERSONALLY APPEARED before me SHANNON JONES, ESQ., who being duly sworn, states as follows:

1. I represent Jennifer Brown in the above captioned actions.
2. I am actively engaged in domestic litigation and currently 95% of my practice is in the Family Court.

3. I incorporate herein Rule 32, Rules of Practice of the South Carolina Supreme

Court which contains the Canons of Professional Ethics and further call the attention of the Court to the holdings in Nienow v. Nienow, 268 S.C. 161, 232 S.E.2d 504 (Ct. App. 1977) and Atkinson v. Atkinson, 279 S.C. 355, 309 S.E.2d 14 (Ct. App. 1983) concerning the factors and criteria which should be considered in the setting of attorney's fees. I rely upon the discretion of this Court in the determination of the amount of fees, based, among other things, upon the Court's file, the Court's knowledge of the litigation between the parties, which reflects the difficulty of the services rendered, the time necessarily expended, the result accomplished, the fact that there is no contingency of compensation in a domestic relations case, the professional standing of counsel and her firm, and fees customarily charged in this area for similar legal services.

4. Ms. Brown's attorney and her staff have maintained records reflecting time expended and costs incurred since being retained in this matter and believe that such time and costs were necessarily expended to protect Ms. Brown's rights and to reveal Ms. Lawrence's gross misconduct in tampering with witnesses, thwarting the discovery process and denying the GAL as well as counsel for Ms. Brown access to important witnesses and evidence directly pertaining to the allegations in this action that she filed. Ms. Brown's bill for services and costs have been computed as of the end of March, 2014 which total over \$25,000.00. (To be supplemented with precise numbers at the close of the evidentiary hearing or upon supplementation after a continuance is granted). Costs incurred related to the drafting, filing and prosecution of this Motion to Continue total 5.0 hour on behalf of Shannon Jones, Esquire at \$275.00 per hour and two hours for Cassandra Hutchens, Esquire at \$150.00 per hour for a total related solely to the Motion to Continue in the amount of \$1675.00.

5. This case involves a contested adoption action, custody action and includes a

contest regarding attorney fees, and costs and what has proven to be a hotly contested battle over the issue of discovery involving what appears to be intentional interference with the judicial process on behalf of Ms. Lawrence. Based on the time necessary to devote to this case and the other criteria which have been held to be relevant in the setting of attorneys' fees, costs and suit money, Ms. Brown's attorney on behalf of her client, requests that this Court review the file herein, together with this Affidavit, and grant judgment in favor of the Ms. Brown for attorney fees and suit costs in an amount or a sum which may be determined by the Court to be reasonable under the circumstances. In addition, on behalf of Ms. Brown it is respectfully requested that Ms. Lawrence be required to pay her outstanding bill/costs related to revealing Ms. Lawrence's attempts to destroy, hide and conceal evidence in this case as well as her direct efforts to discourage relevant witnesses to speak to counsel for Ms. Brown or the GAL. Total costs for forensic services are specified in the affidavit of the forensic examiner attached to Ms. Brown's "Return and Motion for Continuance" submitted on this date.

SHANNON JONES, ATTORNEY AT LAW, LLC

Respectfully submitted,

SHANNON JONES, ESQ.

3 State Street

Charleston, SC 29401

Telephone: (843) 720-3100

Facsimile: (843) 720-5999

SWORN to before me
this 8 day of April, 2014.

Notary Public for South Carolina

My Commission Expires: Dec 16, 2023



THE LAW OFFICES OF
JAMES FLETCHER THOMPSON
LLC

CIVIL LITIGATION • ADOPTION • SURROGACY

Mailing Address
Post Office Box 1853
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302 E. Saint John St.
Spartanburg, SC 29302
Use for overnight mailing

Charleston
29X State St.
Charleston, SC 29401

December 10, 2015

The Honorable Jocelyn B. Cate
Judge of Family Court
Ninth Judicial Circuit
100 Broad Street, Suite 256
Charleston, SC 29401

RE: Jennifer Brown v. Baby Girl Harper, a minor under the age of seven (7) years and
Holly Lawrence
C.A. No. 2013-DR-10-4057 and 2013-DR-10-4386

Dear Judge Cate:

I write to inquire regarding the status of a Motion to Reconsider that I filed on February 19, 2015 in the above-referenced case. Please allow me to offer a brief procedural history:

November 26, 2013	Holly Lawrence filed Summons and Complaint and motion for emergency relief
December 17, 2014	A hearing was on motion was held and order issued December 30, 2013, for expedited final hearing and expedited discovery.
April 7-9, 2014	The case was tried in Charleston County Family Court
April 24, 2014	Family Court order issued
September 29, 2015	Supreme Court of South Carolina affirms Family Court decision
October 7, 2014	Case remitted to family court

December 10, 2015

Page 2

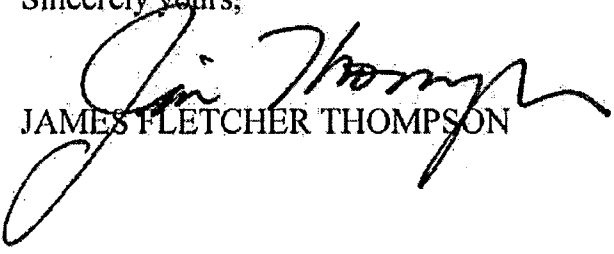
We filed a request for a hearing on the matter of attorney's fees, and that hearing was held on November 18, 2014. After receiving memorandums from both parties, your order was filed on January 29, 2015, and a copy is enclosed.

A motion for reconsideration was filed on February 19, 2015, a copy of which is also enclosed. To my knowledge, no order has been issued from this motion. A follow-up email requesting the status was sent on August 28, 2015 from my office. (See attached.)

I look forward to hearing from you on the present status of this Motion for Reconsideration.

With respect and kind regards, I am,

Sincerely yours,


JAMES FLETCHER THOMPSON

JFT/mhw

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

HOLLY LAWRENCE,

Plaintiff,

vs.

JENNIFER BROWN,

Defendant.

FILED

2015 JAN 29 PM 12:21

JULIE J. ARMSTRONG
CLERK OF COURT

IN THE FAMILY COURT
NINTH JUDICIAL CIRCUIT

CASE NOS.: 2013-DR-10-4057, 4386 ✓

ORDER

(Denying Biological Mother's Request for
Further Hearing as to Her Request for
Attorney's Fees and Costs)

Date of Hearing:
Presiding Judge:
Adoptive Mother's Counsel:
Biological Mother's Counsel:
Court Reporter:

November 18, 2014
The Honorable Jocelyn B. Cate
Shannon Jones, Esquire
Jim Thompson, Esquire
Pat Danner

THIS MATTER was before the Court on Biological Mother's (Plaintiff's) Pre-Trial Hearing Request filed October 24, 2014, which set this matter for a pre-trial hearing on the above date and time. Present and appearing before the Court were the Adoptive Mother's (Defendant's) attorney, Shannon Jones, Esquire as well as the Plaintiff's attorney, Jim Thompson, Esquire.

The Court heard oral argument from counsel, which included Plaintiff's position that she was entitled to continue discovery and conduct further hearing as to her request for attorney's fees and costs. Defendant's position was that the case had ended following a two and a half day trial wherein Plaintiff declined to produce any evidence on the issue of attorney's fees and costs. The parties were ordered to submit memorandums in support of their respective positions, as well as summaries of the procedural history of this matter.

Based upon my review of the memorandums and submissions of the parties, I find that the time for the Plaintiff to request and submit evidence of attorney's fees and costs was at the trial on this matter held from April 7, 2014 to April 9, 2014. I find that the Plaintiff failed to submit any

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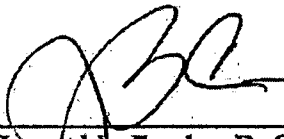
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evidence of attorney's fees and costs at trial, effectively abandoning her right to make such a request, and Plaintiff shall not be allowed to reopen this matter, conduct further discovery and proceed to another trial on the issue of attorney's fees and costs.

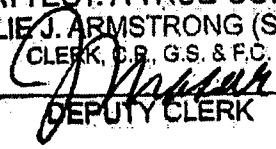
THEREFORE, IT IS ORDERED that Plaintiff's Request for Hearing on the issue of attorney's fees and costs is **DENIED**.

IT IS SO ORDERED!

Charleston, South Carolina
1-29, 2015



The Honorable Jocelyn B. Cate
Presiding Judge, Family Court
Ninth Judicial Circuit

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.B., G.S. & F.C.
By _____
DEPUTY CLERK

FILED

STATE OF SOUTH CAROLINA 2015 FEB 19 AM 11:55

COUNTY OF CHARLESTON)
JULIE J. ARMSTRONG)
CLERK OF COURT)
IN THE FAMILY COURT
NINTH JUDICIAL CIRCUIT

JENNIFER BROWN,)

Plaintiff,)

vs.)

BABY GIRL HARPER, A MINOR)
UNDER THE AGE OF SEVEN (7))
YEARS,)

Defendant.)
_____)

**RULE 59(e) MOTION TO
ALTER/AMEND JUDGMENT**

2013-DR-10-4057

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN THE FAMILY COURT
NINTH JUDICIAL CIRCUIT

HOLLY LAWRENCE,)

Plaintiff,)

vs.)

JENNIFER BROWN,)

Defendant.)
_____)

2013-DR-10-4386

NOW COMES Holly Lawrence, by and through her undersigned counsel, and moves before this Court pursuant to RULE 59(e) of the South Carolina Rules of Civil Procedure for that Court's order altering or amending its Order of January 29, 2015 based upon the below arguments:

Holly Lawrence's Summons and Complaint included five causes of action. (See Summons and Complaint filed November 26, 2013). Jennifer Brown's Amended Summons and Complaint included four causes of action, including causes of action for termination of parental rights on the

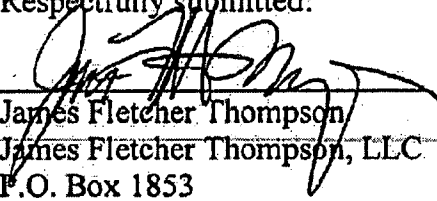
basis of abuse/neglect and abandonment, and a cause of action for custody based on psychological parenthood. (See Amended Summons and Complaint filed March 17, 2014).

On March 31, 2014, Jennifer Brown moved that the Court bifurcate the issues and conduct an evidentiary hearing solely on the *consent for adoption* document. The Family Court hearing on April 7-9, 2014 was focused on this one cause of action, and did not include the balance of Holly Lawrence's causes of action, nor did the hearing address Jennifer Brown's causes of action.

Nonetheless, in this Court's order of January 29, 2015, this Court has held that Holly Lawrence's failure to submit evidence of attorney's fees and costs at the April 7-9, 2014 trial effectively abandoned her right to make a request for attorney's fees. Hence, the January 29, 2015 order would require Holly Lawrence to seek attorney's fees before her causes of action had been heard, and before Jennifer Brown's causes of action, then pending, were heard. Further, Holly Lawrence seeks attorney's fees on the appellate aspects of this trial, which had neither been incurred nor were anticipated during the April 7-9, 2014 hearing.

For these reasons, Holly Lawrence requests this Court to alter or amend its order of January 29, 2015, and to allow Holly Lawrence to pursue attorney's fees and costs against Jennifer Brown.

Respectfully submitted:


James Fletcher Thompson
James Fletcher Thompson, LLC
P.O. Box 1853
Spartanburg, SC 29304
(864) 573-5533, ext. 5

Date: February 16, 2015

ATTORNEY FOR HOLLY LAWRENCE

Mary Waldrop

From: Mary Waldrop
Sent: Friday, August 28, 2015 4:34 PM
To: 'Cate, Jocelyn B. Secretary (Janet Olingy)'
Cc: James F. Thompson; 'shannon@shannonjoneslaw.com'; 'Law Office of Jon Mersereau'
Subject: Brown v. Baby Girl Harper

RE: Jennifer Brown v. Baby Girl Harper, a minor
C.A. No. 2013-DR-10-4057
Holly Lawrence v. Jennifer Brown
C.A. No. 2013-DR-10-4386

Dear Judge Cate:

On February 16, 2015, a Rule 59(e) Motion to Alter/Amend Judgment was filed on behalf of Holly Lawrence regarding the order from the November 18, 2014 hearing, which denied Holly Lawrence's request for a hearing on the issue of attorney's fees and costs. To date, I have not received the Court's decision on this Rule 59(e) motion. Could you please advise if this motion has been ruled upon and if so, provide a copy of the Court's ruling?

With respect and kind regards, I am,

Sincerely yours,

Jim Thompson

James Fletcher Thompson
Law Offices of James Fletcher Thompson, LLC
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Hague Approved



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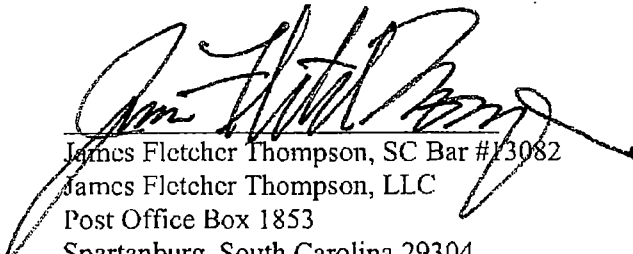
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2013

APPX256

255

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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James Fletcher Thompson, LLC
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(864) 573-5533 ext. 5

Allison Boyd Bullard, SC Bar #100032
Harling & West, LLC
Post Office Box 2485
Lexington, SC 29071

Attorneys for Appellants

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
In the Family Court
Jocelyn B. Cate, Family Court Judge

Appellate Case No. 2016-000479
Trial Court Case Nos. 2013-DR-10-4057
2013-DR-10-4386

Holly Lawrence, ... Appellant,

v.

Jennifer Brown, ... Respondent.

BRIEF OF APPELLANT

James Fletcher Thompson, SC Bar #13082
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(864) 573-5533 ext. 5

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(803) 957-0889

November 15, 2016

Attorneys for Appellant

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<i>Fisher v. Tucker</i> , 388 S.C. 388, 697 S.E.2d 548 (2010)	13
<i>Glasscock v. Glasscock</i> , 304 S.C. 158, 403 S.E.2d 313 (1991)	7
<i>Green v. Green</i> , 320 S.C. 347, 465 S.E.2d 130 (Ct. App. 1995)	17
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<i>Martin v. Paradise Cove Marina, Inc.</i> , 348 S.C. 379, 559 S.E.2d 348 (Ct. App. 2001).	16, 17
<i>Michael Scott B. v. Melissa M.</i> , 378 S.C. 452, 663 S.E.2d 58 (2008).	7
<i>Middleton v. Johnson</i> , 269 S.C. 385, 633 S.E.2d 162 (Ct. App. 2006).	3, 4, 13
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STATEMENT OF ISSUES ON APPEAL

- 1. Did the Family Court err in holding that Biological Mother had abandoned her claim for attorneys' fees against Adoptive Mother?**
- 2. Did the family court err in holding that the family court lacks jurisdiction to address Biological Mother's claim for attorneys' fees against Adoptive Mother following receipt of the remittitur from the Supreme Court?**

STATEMENT OF THE CASE

These parties and counsel were previously before this court, and thereafter before the Supreme Court of South Carolina, where both appellate courts adjudicated the merits of this contested adoption in favor of the Biological Mother. The instant appeal is from the family court's refusal to consider an award of attorneys' fees to Biological Mother, incurred by her during the family court trial and her subsequent appeal.

On , 2013, Holly Lawrence (Biological Mother) gave birth to Baby Girl. On October 30, 2013, Biological Mother executed *Consent to Adopt* documents. Jennifer Brown (Adoptive Mother) then filed an action to finalize the adoption of Baby Girl. That case bears civil action no. 2013-DR-10-4057. (R. pp. 46-52).

On November 26, 2013, the Biological Mother filed her own Summons and Complaint (civil action No. 2013-DR-10-4386) (R. pp. 53-57) as well as an emergency motion for relief (case number 2013-DR-10-4057), seeking return of the child. (R. pp. 58-68). Biological Mother alleged, among other things, that the *Consent to Adopt* which she signed was not validly executed pursuant to South Carolina's Adoption Act, that Adoptive Mother had violated the Interstate Compact on the Placement of Children (ICPC), and that she should be awarded attorneys' fees.

On December 30, 2013, the family court (Judge Daniel E. Martin, Jr.) issued a temporary order consolidating the two matters, scheduling an expedited hearing on the Biological Mother's motion for relief and providing for discovery. (R. pp. 21-22).

On March 17, 2014, Adoptive Mother filed an amended complaint, asserting a number of claims in support of her adoption of the child. Adoptive Mother alleged that in

addition to the *Consent to Adopt* document having been properly executed, the Biological Mother's rights should be terminated pursuant to South Carolina Code Section 63-7-2570 (1) repetition and severity of abuse, and 63-7-2570 (7) abandonment. Adoptive Mother also alleged that the Adoptive Mother should have custody of the minor child pursuant to *Middleton v. Johnson*, 269 S.C. 385, 633 S.E.2d 162 (Ct. App. 2006), alleging that the Adoptive Mother was the psychological parent of the minor child. (R. pp. 104-111).

On March 31, 2014, Adoptive Mother moved that the hearing on Biological Mother's motion for relief be bifurcated, asking that the court determine only whether the Consent was executed properly. (R. pp. 120-128). On April 4, 2014, Biological Mother agreed to this bifurcation. (R. p. 129).

Following discovery, the family court held a hearing on April 7-9, 2014 addressing this one issue (execution of the consent). Neither Biological Mother's ICPC cause of action nor Adoptive Mother's causes of action (abuse, neglect, abandonment, psychological parenthood) were before the court at this two and one-half day evidentiary hearing.

On April 24, 2014, the family court issued an order finding the Consent was not valid and requiring immediate return of the child to Biological Mother. The family court also denied the Adoptive Mother's request for attorneys' fees. (R. pp. 27-37). That same date, Adoptive Mother filed a motion for reconsideration of the order pursuant to Rule 59, SCRPC. Adoptive Mother served a notice of appeal on April 24, 2014 – the same date as the order.

The following day, April 25, 2014, Adoptive Mother filed the notice of appeal and also sought a supersedeas. Biological Mother filed a return to the petition for supersedeas and a motion to dismiss the appeal. Biological Mother moved to dismiss the initial appeal pursuant to *Terry v. Terry*, 400 S.C. 453, 734 S.E.2d 646 (2012), as the family court's ruling did not decide with finality whether the Adoptive Mother or Biological Mother would prevail, as both parties had these yet-to-be-heard causes of action. The Court issued a temporary supersedeas that same date – April 25th.

On May 1, 2014, this Court dismissed the appeal without prejudice pending a decision on the Rule 59 motion. On May 5, 2014, the family court entered an order denying reconsideration.

On May 5, 2014, the Adoptive Mother filed a *Voluntary Dismissal of Amended Complaint*. (R. pp. 130-131). In so doing, Adoptive Mother dismissed her allegations that the Biological Mother had abused, neglected and abandoned the child, and also dismissed her “psychological parent” cause of action under the *Middleton* decision. *Middleton v. Johnson*, 269 S.C. 385, 633 S.E. 2d 162 (Ct. App. 2006).

Adoptive Mother filed and served a second notice of appeal and a second request for supersedeas. This Court entered a temporary supersedeas on May 6, 2014.

On May 16, 2014, Biological Mother filed a return to the petition as well as a motion to dismiss the appeal. On May 23, 2014, Adoptive Mother filed a reply to the supersedeas return, and on May 27, 2014, Adoptive Mother filed a return to the motion to dismiss.

On June 6, 2014, this Court entered an order denying the motion to dismiss the appeal. That same order continued the supersedeas and expediting briefing.

On August 4, 2014, the Court of Appeals issued a decision holding the consent document to be invalid. (R. pp. 17-20).

On August 15, 2014, Adoptive Mother filed a *Petition for Writ of Supersedeas and Expedited Review*, and a *Petition for Writ of Certiorari* to the Supreme Court of South Carolina.

On August 19, 2014, Biological Mother filed *Biological Mother's Return to Adoptive Mother's Petition for Writ of Supersedeas and Expedited Review* and *Biological Mother's Return to Adoptive Mother's Petition for Writ of Certiorari*.

On August 20, 2014, the Supreme Court issued an order granting the Adoptive Mother's petition for writ of certiorari, dispensing with further briefing of the issues raised in the petition, and granting the petition for supersedeas.

Oral argument was heard on September 23, 2014. One week later, on September 29, 2014, the Supreme Court affirmed the Court of Appeals' decision affirming the family court order, and held that the birth mother's consent to the adoption was invalid. (R. pp. 1-12). The Supreme Court further held that because the Adoptive Mother was not the prevailing party on appeal, an award of attorneys' fees would be inappropriate. *Brown v. Baby Girl Harper*, 410 S.C. 446, 766 S.E.2d 375 (2014) footnote 8.

The remittitur from the Supreme Court was issued on October 7, 2014. (R. p. 13). On October 29, 2014, the Supreme Court ruled that, pursuant to Rule 222 of the South Carolina Appellate Court Rules, that the Motion for Costs filed by Biological Mother was granted in the amount of \$1,583.39 against Adoptive Mother, and the family court was directed to add this award of costs to the remittitur. (R. p. 14).

On October 21, 2014, Biological Mother requested a pre-trial hearing regarding Biological Mother's request for attorneys' fees. On November 18, 2014, a hearing was conducted before the Honorable Jocelyn B. Cate. On January 29, 2015, an order was filed denying the Biological Mother's request for further hearing as to her request for attorneys' fees and costs. (R. pp. 41-42). The court concluded that by not submitting an attorneys' fee affidavit following the hearing on Biological Mother's expedited motion for relief, Biological Mother had abandoned her right to make such a request.

On February 19, 2015, a Rule 59(e) motion to alter/amend the judgment was filed by Biological Mother. (R. pp. 163-164). On February 11, 2016, Judge Cate issued an order denying Biological Mother's Rule 59(e) motion.¹ (R. pp. 43-45). Biological Mother filed a Notice of Appeal on February 25, 2016 from Judge Cate's orders issued on January 29, 2015 and February 11, 2016.

¹ The delay in issuing this order is explained by the family court in Footnote 1 of the February 11, 2016, order. (R. p. 44). Biological Mother's efforts to have this issue addressed by the family court are outlined in correspondence to the family court, dated December 10, 2015. (R, p. 248-255).

ARGUMENTS

I. Biological Mother did not abandon her statutory right to request attorneys' fees from Adoptive Mother.

This appeal implicates the family court's jurisdiction to hear and determine requests for attorneys' fees, and a party's right to have her request for these fees analyzed by the family court. When appropriately pled, as Biological Mother clearly did in her Summons and Complaint (R. p. 57), statutory authority exists for the family court to award attorneys' fees in this contested TPR/adoption litigation. See South Carolina Code Ann. § 63-3-530(38); see also *Michael Scott B. v. Melissa M.*, 378 S.C. 452, 663 S.E.2d 58 (2008) (holding that the statutory provision granting the family court general jurisdiction to award attorneys' fees applies in a termination of parental rights (TPR) action.)

Biological Mother acknowledges that an award of attorneys' fees rests within the sound discretion of the trial court and should not be disturbed on appeal unless there is an abuse of discretion. *Patel v. Patel*, 359 S.C. 515, 533, 599 S.E.2d 114, 123 (2004). In this case, no such discretion has yet been exercised; the court has not analyzed the factors to be consider in awarding attorneys' fees as set forth in *Glasscock v. Glasscock*, 304 S.C. 158, 161, 403 S.E.2d 313, 315 (1991) or *E.D.M. v. T.A.M.*, 307 S.C. 471, 476-77, 415 S.E.2d 812, 816 (1992). Instead, the family court held that Biological Mother's time to submit evidence of attorneys' fees and costs was at the evidentiary hearing on Biological Mother's expedited motion for relief, held from April 7-9, 2014: "I find that [Biological Mother] failed to submit any evidence of attorneys' fees and costs at trial, effectively abandoning her right to make such a request, and Plaintiff shall not be allowed to re-open

this matter, conduct further discovery and proceed to another trial on the issue of attorneys' fees and costs." (R. pp. 41-42). In the family court's February 11, 2016 order, the court asserts the following:

. . . [counsel for Biological Mother] points to nowhere in the record of the two and a half day trial where he reserves the right to pursue attorney's fees and costs against the [Adoptive Mother] until such time as his other causes of action were tried despite the fact that the [Adoptive Mother] presented both oral and documentary evidence on the issue to include the [Adoptive Mother's] financial declaration. This was the time to advise the court of her intention so that the court could determine whether that was appropriate in light of the special circumstances of the case. (R. p. 44).

A review of the transcript from the April 7-9, 2014 court hearing belies the trial court's assertion that Biological Mother abandoned her attorneys' fee claim.

At the call of the case, Adoptive Mother asserted that her request for attorneys' fees was before the court. (R. p. 165, line 16). Biological Mother disagreed, asserting that attorneys' fees were not before the court, and that the sole issue, based on the agreement for bifurcation, was whether the consent document was improperly executed. (R. p. 166, line 23-p. 167, line 7). Biological Mother was clear to the court that she was not requesting attorneys' fees in this hearing, but wished to do so at a later date: "We haven't alleged . . . requested. We have secured ours for a later date." (R. p. 175, lines 21-22). Adoptive Mother insisted that the issue of attorneys' fees was before the court, as fees had been raised in her *Return to the Motion*. (R. p. 168, lines 1-8). (Biological Mother had raised attorneys' fees in her complaint but had not pled again for attorneys' fees in the motion for relief, a fact Adoptive Mother presumably believed set her attorneys' fee claim apart from Biological Mother's attorneys' fee claim.) Biological Mother urged Adoptive Mother's attorneys' fee request to be heard at a subsequent

hearing, and that Adoptive Mother would not be prejudiced by holding attorneys' fee issue in abeyance:

MR. THOMPSON: Attorney's fees can be brought at any other time. If this Court chooses not to pursue that issue [attorneys' fees] it does not prejudice [Adoptive Mother] for those issues to be raised in any other form [forum] at any other time and there's a record of these events. So I don't understand what the prejudice that's being alleged is. (R. p. 172, lines 5-10).

Initially, the Family court agreed with Biological Mother, ruling as follows in regards to attorneys' fees:

THE COURT: With respect to the attorney fees, I am holding that in abeyance. Certainly the trial judge, if the matter goes forward for trial, can address attorneys' fees for all issues throughout this particular case. So that's the ruling with respect to the issue that's presented to the Court. (R. p. 169, lines 18-23)

Adoptive Mother continued to insist that attorneys' fees was before the court.

MS. JONES: She's incurred a lot of attorney's fees. I hope both of these parties have incurred a lot of attorney fees. And it's going to go -- it's going to go to that issue. So some of this evidence is going to roll into that issue. It's before the Court. We've both asked for attorney's fees. I've asked for it in my return today. And if I've been defending an action for five months in part based on an inaccurate version of events, I think that goes directly to the heart of attorney's fees. (R. p. 170, lines 14-22).

Adoptive Mother repeatedly asked the court to revisit the attorneys' fee issue, at least as to the Adoptive Mother, based on her having requested attorneys' fees in her return to the motion: "I have requested in my return attorneys' fees in this evidentiary hearing. I have placed that affirmatively before the Court. It is an issue." (R. p. 171, lines 18-20).

Adoptive Mother and the court continued with their colloquy regarding whether or not Adoptive Mother's attorneys' fees were before the court:

MS. JONES: . . . I think attorney's fees and costs are properly before the Court and that I need to make a record on the credibility issues and I think it also goes to the heart of the case. But I will ---

THE COURT: But regarding the heart of the case is not here yet. That's what I keep trying to -- having difficulty with. The heart of the case is somewhere down the road. (R. p. 173, lines 16-24).

Ultimately, the trial court relented, agreeing to consider the Adoptive Mother's attorneys' fees, if the Adoptive Mother could discredit Biological Mother on the issue of her credibility as to the appropriate procedure in executing the consent document. (R. p. 174, lines 19-23). *Never did the trial court alter the previous ruling holding attorneys' fees in abeyance as to Biological Mother.*

Adoptive Mother appeared to have a singular focus on attacking Biological Mother's credibility, with this alleged lack of credibility fueling her request for attorneys' fees:

THE COURT: And, Ms. Jones, let me just, so that I completely understand, this entire line of questioning that we spent yesterday and today is limited to your request for attorney's fees challenging the credibility of this witness? (R. p. 175, lines 10-14).

Late in the trial, Adoptive Mother began to walk back her request for the family court to consider attorneys' fees, instead seeking to now limit the amount of attorneys' fees she was requesting from the \$60,000 that had been initially set forth, down to a few days of trial preparation and for her appearance at trial. (R. p. 189, lines 8-22). It seemed clear to Biological Mother that Adoptive Mother perceived that the case was not going well, and she was attempting to cut her losses and to request the bulk of her attorneys' fees at a later date, thereby having "another bite at this apple." (R. p. 189, line 24-p. 191, line 1).

Ultimately the court decided that all of Adoptive Mother's attorneys' fees would be considered. (R. p. 191, line 24-p. 192, line 18).

Interestingly, Adoptive Mother's above-referenced request to carve out some of her attorneys' fees to be pursued at a later date is evidence of the parties' and the court's belief that the hearing on Biological Mother's motion for relief was but one, albeit important, stage of the case. After all, if Adoptive Mother prevailed in the consent execution issue, Biological Mother could still attack the adoption as a violation of the ICPC. If Biological Mother prevailed in the consent execution issue, Adoptive Mother could still proceed with the adoption by pursuing her abuse/neglect/abandonment TPR grounds or pursue her claim of psychological parenthood.²

To sum up, Biological Mother did not pursue attorneys' fees at this stage of the trial because it was clear from the then-existing posture of the case that ample opportunities would exist thereafter to present those fees. This shared assumption is evidenced by the court's remarks at the commencement of the trial: "I do note for the record, this is not the final hearing. . . . This is not the trial on the merits of the case. . . . But since this is, in effect, a stepping stone to that trial . . ." (R. p. 169, lines 1-10). Following the trial, the trial court was equally emphatic that he had presided over a "temporary evidentiary hearing" (R, p. 40) and that this hearing ". . . was not a final hearing but rather a hearing to determine the validity of certain evidence which might be

² In his order denying Adoptive Mother's Rule 59(e) motion, Judge Norton underscored his strong opinion that there was much left in this case to be tried: "The ruling at this temporary evidentiary hearing does not prevent either party from going forward with the trial of this case. The Adoptive Mother has several other causes of action in her pleadings and the Birth Mother has several defenses none of which were dealt with at this temporary evidentiary hearing." (R, p. 40).

offered at trial.” (R, p. 38). Biological Mother is not alone in assuming attorneys’ fees affidavits will be submitted at a final hearing.³

In addition, Biological Mother did not pursue attorneys’ fees at this stage because, as will be described below, Biological Mother believed the relative merits of her remaining causes of action versus the merits of Adoptive Mother's remaining causes of action favored seeking attorneys’ fees when all issues were resolved. The family court's February 11, 2016 order noted that the Biological Mother’s other causes of action are moot. (R. p. 44). The court also notes that Adoptive Mother's other causes of actions were voluntarily dismissed. (R. p. 44, fn 3). Biological Mother is uncertain as to the efficacy of the court's finding in this regard, to what end these observations strengthen the court's determination. The only reason the ICPC issue is now moot is because the Biological Mother prevailed in having the adoption overturned (the adoption need not be overturned twice). The only reasons for the Adoptive Mother to dismiss her other causes of action was their lack of merit and to support her claim before the Court of Appeals that the order was a *final* order. If anything, instead of citing these now mooted or dismissed causes of action in support of its ruling, the family court should instead have looked to the posture of the case when tried, and seen those then-pending causes of action as a reason why Biological Mother would have waited to present her attorneys’ fees at a later date. After all, the North Carolina ICPC had already found Adoptive Mother to have violated the Compact. (R. p. 36, fn 18). In addition, as Biological Mother asserted to this

³ “As I understand domestic litigation, in almost every case both parties request attorneys’ fees, and, ordinarily, the attorneys affidavits are given to the court at a final merits hearing.” *Buist v. Buist*, 410 S.C. 569, 766 S.E.2d 781 (2014), Justice Pleicones concurring.

court in the initial appeal, Adoptive Mother's TPR causes of action were legally dubious. The following footnote, which appeared in *Biological Mother's Return to Adoptive Mother's Petition for Emergency Writ of Supersedeas and Expedited Review* to this Court dated April 25, 2014, illustrates the fanciful nature of Adoptive Mother's alleged TPR grounds.⁴

As is evident, Biological Mother perceived her family court case as strong, Adoptive Mother's as weak. Therefore Biological Mother sought to resolve the case in its entirety prior to presenting her claim for attorneys' fees. Biological Mother believed that an attorneys' fee award would be greater if Biological Mother exposed Adoptive Mother's case to be wholly without merit, instead of pursuing fees piecemeal. Further, if she waited

⁴ In Ms. Brown's amended complaint, she alleges that Ms. Lawrence's parental rights should be terminated pursuant to S.C. Code § 63-7-2570 (1) repetition and severity of abuse; and § (7) abandonment. As to this purported repetition and severity of abuse, Ms. Brown suggests that this is based on Ms. Lawrence's failure to obtain prenatal care. Her own expert, Dr. Elizabeth Kirlis, testified that failure to obtain prenatal care can in no way be considered abuse and neglect.

As to abandonment, the legal justification is equally dubious. Abandonment of the child means "a parent or guardian willfully deserts the child or willfully surrenders physical possession of a child without making adequate arrangements for child's needs or for the continuing care of the child." Ms. Brown cannot have it both ways. She contends that the process is a proper adoption, then Ms. Lawrence could not have willfully deserted the child. (An adoption plan, sanctioned by statute is not an abandonment.) If leaving the child with Ms. Brown is not sufficient for "making adequate arrangements for the child's needs for the continuing care of the child," that is a reflection on Ms. Brown and not Ms. Lawrence. Further, the court heard testimony that Ms. Lawrence had sought visitation on multiple occasions and has paid \$500.00 in child support to Ms. Brown – further evidence that there has been no abandonment.

Finally, Ms. Brown alleges that she should retain custody of the child as the child's psychological parent pursuant to *Middleton v. Johnson*, 633 S.E.2d 162 (2006). Ms. Brown has presented no evidence that Ms. Lawrence is anything but a fit and proper parent for this child, and the guardian concurs in his description. In addition, the psychological parent (de facto parent) analysis was codified in S.C. Code § 63-15-60. This codification restrains *Middleton* significantly and requires a six month duration in order to trigger the *de facto* parent analysis – a six month period that cannot count the period of time of litigation. In short, Ms. Brown cited *Middleton* because she fails the statutory requirement of S.C. Code § 63-15-60. Further, the statute pre-empts the common law *Middleton* test (See *Fisher v. Tucker*, 388 S.C. 388, 697 S.E.2d 548 (2010) "common law rules must yield to statutes adopted by the General Assembly.")

to the end of the case, Biological Mother expected to have the "results obtained" factor considered in her favor.

In conclusion, an attorney should be allowed to exercise trial strategy and judgment, and not be required, as the family court would demand, to seek attorneys' fees at every stage of litigation in order to avoid the risk of abandoning the claim. This is especially true when, as here, a fair reading of the bifurcation agreement would not allow evidence of attorneys' fees. As the Adoptive Mother states in her motion to bifurcate, "In an effort to streamline the matters before the court and in the interest of judicial economy, [Adoptive Mother] requests that the court bifurcate the issues so as *to limit the evidence at the temporary hearing to that concerning the consent for adoption.*" (R. p. 120) (emphasis added). Biological Mother's counsel informed the court of his understanding that "We have secured ours for a later date," (R. p. 175, lines 21-22) and that "Attorney's fees can be brought at any other time." (R. p. 172, lines 5-10). Biological Mother did not abandon attorneys' fees when the trial court held, "With respect to attorney fees, I am holding that in abeyance." (R. p. 169, lines 18-23). While the family court later relented and allowed Adoptive Mother to include evidence regarding attorneys' fees, the family court never altered or amended its previous ruling holding attorneys' fees in abeyance as to Biological Mother. And finally, as to the attorneys' fees incurred in the appellate aspects of this case, Biological Mother could not have abandoned a claim for attorneys' fees that she had not envisioned and had yet to incur. For these reasons, Biological Mother has not abandoned her claim for attorneys' fees against Adoptive Mother.

II. The family court is vested with jurisdiction to award attorneys' fees following receipt of the remittitur from the Supreme Court.

Adoptive Mother fervently and repeatedly asserted her belief that following the remittitur from the Supreme Court, the family court had no authority to act on Biological Mother's request for attorneys' fees.

MS. JONES: . . . My understanding is that this case is over. This case went all the way to the Court of Appeals, to the Supreme Court. There is a remitter [sic] that has been handed down. This case is over.

. . . The case is over. We had tried a three day trial and it has been vetted all the way through our highest Court. And, this case is over. (R. p. 194, lines 7-20).

Further, Adoptive Mother raised a jurisdictional issue, claiming that once the case has been remanded to the family court, the family court cannot hear attorneys' fees issues because nothing in the Supreme Court's order speaks to Biological Mother's claim for attorneys' fees. (R. p. 207, line 23-p. 208, line 6). In the court's colloquy with counsel, the family court questioned its authority to determine attorneys' fees.

THE COURT: Yeah, the appellate one I'm inclined to agree with Ms. Jones that what authority do I have to determine fees and cost that were incurred at the appellate level that were not specifically remitted to this Court? (R. p. 217, lines 18-22).

Adoptive Mother and the family court are mistaken in their shared belief that the family court lacks jurisdiction to address Biological Mother's attorneys' fee request. It is settled South Carolina law that the family court is vested with jurisdiction to address attorneys' fees issues following the remittitur from the appellate courts. The family court's jurisdiction includes the ability to award both trial fees and appellate fees. The case of *Austin v. Stokes-Craven Holding Company*, 406 S.C. 187, 750 S.E.2d 78 (2013)

addressed both issues. *Stokes-Craven* held that a trial court “had jurisdiction to rule on Austin’s motions regarding his request for each level of fees as the ‘jurisdiction of the circuit court to hear matters after issuance of the remittitur is well established.’” *Stokes-Craven*, 406 S.C. 187, 199, 750 S.E.2d 78, 84 (quoting *Martin v. Paradise Cove Marina, Inc.*, 348 S.C. 379, 385, 559 S.E.2d 348, 351 (Ct. App. 2001)). This authority is specific; “once the remittitur is issued from an appellate court, the circuit court acquires jurisdiction to enforce the judgment and take any action consistent with the appellate court’s ruling.” *Id.* The *Stokes-Craven* court also addressed the trial court’s jurisdiction to award appellate fees. The Court described “two avenues” that a litigant may attempt to recover appellate-level fees. First, a motion may be brought pursuant to appellate court rules to recover the “standard” appellate fees. *Id.* In the present case, Biological Mother did so and was awarded \$1,583.39. (R. p. 14). The *Stokes-Craven* Court described the second avenue was to file a motion for reasonable attorneys’ fees. *Id.* Further, pursuing the standard appellate fees does not prevent a litigant from pursuing statutory fees before the trial court; these fees “are not mutually exclusive.” *Id.*

The *Stokes-Craven* decision is but a recent decision holding trial courts have the authority to grant attorneys’ fees for both the trial and appellate phases of a case. In *Muller v. Myrtle Beach Golf and Yacht Club*, 313 S.C. 412, 438 S.E.2d 248 (1993), the Court held that statutory attorneys’ fees (as exist in instant case) are to be determined in the court which the action was brought, and those attorneys’ fees shall include both the trial fees and appellate fees; see also *Taylor v. Medenica*, 332 S.C. 324, 504 S.E.2d 590 (1998) (holding that the award of appellate attorneys’ fees, and the amount thereof, are questions to be determined by the trial court.)

The family court mistakenly relies on the case of *Green v. Green*, 320 S.C. 347, 465 S.E.2d 130 (Ct. App. 1995) as limiting the family court's jurisdictional mandate following the issuance of a remittitur to include only those matters specifically addressed in the remittitur. The family court appears to read *Green* as requiring the remand to specify the scope of the family court's jurisdiction, namely, granting specific authority for the family court to address attorneys' fees. The jurisdictional authority of the family court to address attorneys' fees is by no means so limited. *Green* involved a case where attorneys' fees was the issue on appeal, so naturally, the remand included instructions for the family court to consider attorneys' fees in light of that decision. In the present case, Biological Mother's attorneys' fees were not an issue before the appellate court, as Biological Mother's request for attorneys' fees had yet to be considered.

In *Moore v. North American Van Lines*, 319 S.C. 446, 462 S.E. 2d 275 (1995), the Supreme Court of South Carolina held that despite the issuance of the remittitur (and the case not having been expressly remanded) the trial court was, nonetheless, vested with jurisdiction to hear a motion for restitution. *Moore*, 319 S.C. 446, 448, 462 S.E.2d 275, 276. Trial courts are vested with jurisdiction to hear such motions for statutory attorneys' fees (as exist here) after the remittitur has been issued. *Muller*, 313 S.C. 412, 414-16, 438 S.E.2d 248, 250; see also *Bunkum v. Manor Pros.*, 321 S.C. 95, 98-99, 467 S.E.2d 758, 760 (Ct. App. 1996); see also *Martin v. Paradise Cove Marina*, 348 S.C. 379, 559 S.E.2d 348 (2001).

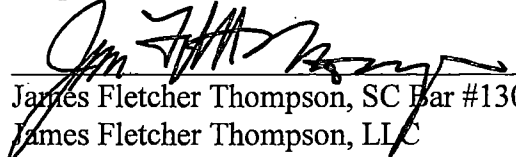
And finally, the family court's reliance on *Lawton v. New York Life Insurance Co.*, 181 S.C. 230, 186 S.E. 909 (1936) is misplaced, and not "compelling" as the family

court urges. (R. 44, fn 4). The family court equated Biological Mother's request for attorneys' fees to "splitting" a cause of action. The *Lawton* case is factually dissimilar to the instant case. In *Lawton*, a plaintiff sought to "split a cause of action into two parts." *Id.* at 230 S.E. at 910. The plaintiff had brought one action in the first suit and then followed up in a second suit for attorneys' fees against his attorneys. While the language in *Lawton* is somewhat archaic and stilted, it appears clear that the present facts are inapposite to the *Lawton* facts: Biological Mother brought one case, alleges all pertinent relief, and was denied the opportunity to present attorneys' fees because the case was appealed following a hearing on an expedited motion for relief, with yet-to-be-heard causes of action still pending on both sides.

CONCLUSION

For the foregoing reasons, the Appellant, Biological Mother, respectfully requests this court to reverse the family court's order and remand the matter for proceedings consistent with this Court's opinion.

Respectfully submitted:


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November 15, 2016

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
In the Family Court
Jocelyn B. Cate, Family Court Judge

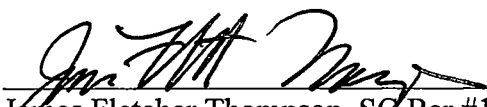
Appellate Case No. 2016-000479
Trial Court Case Nos. 2013-DR-10-4057
2013-DR-10-4386

Holly Lawrence, ... Appellant,

v.

Jennifer Brown, ... Respondent.

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR.



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Jocelyn B. Cate, Family Court Judge

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Holly Lawrence Appellant

v.

Jennifer Brown Respondent

BRIEF OF RESPONDENT ADOPTIVE MOTHER

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COUNTER-STATEMENT OF ISSUES ON APPEAL

- I. The Family Court correctly held Biological Mother cannot re-open discovery in this contested adoption case to pursue an award of attorney fees and costs where Biological Mother chose not to request such relief at trial.
- II. The Family Court correctly denied Biological Mother's request for additional attorney fees and costs incurred at the appellate level where she chose not to request fees and costs at trial and, therefore, that issue was not preserved or considered on appeal.

COUNTER-STATEMENT OF THE CASE

This case involves Biological Mother's request to reopen discovery and pursue an award of attorney fees following a trial on the merits of the underlying contested adoption, during which Biological Mother admits she chose not to seek attorney fees and costs.

On [REDACTED], 2013, Holly Lawrence (Biological Mother) gave birth to Baby Girl. On October 30, 2013, Biological Mother executed a *Consent for Adoption* document in favor of Jennifer Brown (Adoptive Mother). That same day, Adoptive Mother filed an adoption action in the Charleston County Family Court via case number 2013-DR-10-4057. (R. pp. 46-52). No Answer, Counterclaim or other responsive pleading was ever served or filed on behalf of Biological Mother, even after she was granted the right to intervene in that action.

On November 26, 2013, Biological Mother filed an action in the Charleston County Family Court via case number 2013-DR-10-4386 (R. pp. 53-57) attacking the validity of the *Consent for Adoption*, arguing that North Carolina law applied so as to allow her to revoke her consent, alleging non-compliance with the Interstate Compact on the Placement of Children (ICPC) and requesting "reimbursement of attorney fees and costs." (R. p. 57). Adoptive Mother filed an Answer and Counterclaim to Biological Mother's Complaint on December 17, 2013, requesting that Biological Mother's action be dismissed, that attorney fees and costs be awarded to Adoptive Mother, temporarily and permanently, requesting the appointment of a Guardian *ad Litem* (GAL) and asking the Court to direct the parties to participate in mediation. (R. pp. 69-74). Biological Mother never served or filed a Reply.

On November 26, 2013, Biological Mother filed a Notice of Motion and Motion for Emergency Relief and Motion to Intervene and to Consolidate via case number 2013-DR-10-4057 as well as case number 2013-DR-10-4386. (R. pp. 58-60). In this

Motion, Biological Mother alleged that the consent document was improperly executed, that North Carolina law applied so as to allow her to revoke her consent and that the placement of the child in South Carolina violated the ICPC – essentially the same allegations raised in her underlying pleadings, without the specific request for attorney fees. Based on the allegations raised in her Motion, Biological Mother requested immediate legal and physical custody of the minor child, and that she be allowed to intervene in the termination of parental rights and adoption action filed by Adoptive Mother via case number 2013-DR-10-4386 and that both cases, Adoptive Mother's TPR and Adoption Action (4057) and Biological Mother's action to defeat the adoption (4386), be consolidated.

A Temporary Order was issued on December 30, 2013, which granted (by agreement of the parties) the Biological Mother's request to intervene and to consolidate their respective actions. (R. pp. 21-22). Both cases were scheduled for a two-day evidentiary hearing on an expedited basis. The GAL, Jon A. Mersereau, Esquire, was also appointed at that time and both parties were granted discovery, also on an expedited basis. A "Notice of 'A Case' Trial Date" was issued by the Charleston County Clerk of Court on February 25, 2014, notifying both parties that their respective cases had been scheduled as the "A case" or the day certain trial for April 7-8, 2014 to begin at 9:00 a.m. on April 7th. (R. p. 103).

During the pendency of this action, multiple motions were filed by both parties including Adoptive Mother's *Motion to Compel Discovery, to Reconvene Deposition and Continue Evidentiary Hearing*, and Biological Mother's *Motion to Limit Discovery and Motion for Voluntarily Dismissal of Particular Cause of Action*, all of which were heard on March 5 and 7, 2014 by the Honorable Jocelyn B. Cate. (R. pp. 75-102; R. pp. 112-115, respectively). By Order filed March 10, 2014, Judge Cate granted Biological Mother's

request to dismiss her third cause of action and preserved Adoptive Mother's right to request attorney fees and costs as to her defense of that allegation. (R. pp. 23-26). The Court also granted Biological Mother's request to limit her discovery responses in part, and overruled Biological Mother's objection to producing text messages after reviewing the same *in camera*. Biological Mother was directed to produce such text messages to Adoptive Mother within twenty-four (24) hours. The Court also considered the question of whether an unwed biological mother has a fundamental right to withhold the identity of a putative father in an action where she seeks to invalidate her Consent for Adoption of her child based on an allegedly improperly executed consent, finding:

The determination as to whether or not the legal document was properly executed is heavily dependent upon the credibility of the testimony of the witnesses to its execution. The ability of the Court to make credibility assessments is critical. It has been satisfactorily shown to the Court that the putative biological father may have important relevant evidence concerning the credibility of Biological Mother that Adoptive Mother has a right to explore.

(R. p. 25, Order of March 10, 2014).

According to the Court, "Biological Mother should not be entitled to assert the need to maintain the confidentiality of adoption proceeding and her right to avoid disclosure of personal matters where she is attempting to end it." (R. p. 25, Order of March 10, 2014). Therefore, the Court ordered "Biological Mother should be required to disclose the name of the putative biological father of Baby Girl Harper and any and all contact information she has for him." (R. p. 25; Order of March 10, 2014). The Court then held its ruling in abeyance for ten (10) days to afford Biological Mother time to file an interlocutory appeal, if one should be available. No appeal was filed. The Court also issued other relief at that same time, including allowing Adoptive Mother to reconvene the deposition of Biological Mother,

requiring Biological Mother to provide written authorizations requested in addition to any and all necessary information so as to allow Adoptive Mother to obtain certain background information as to Biological Mother on her own. Both parties' request for attorney fees and costs were held in abeyance.

On March 31, 2014, Adoptive Mother filed a Notice of Motion and Motion to Bifurcate Issues and to Limit the Evidence, arguing:

"The pivotal inquiry in this case is the validity of the Consent for Adoption. If the Plaintiff is successful in her attempt to invalidate the Consent for Adoption, the Defendant's adoption action will end as Plaintiff will be restored to her legal position of natural mother. On the other hand, if the Plaintiff fails to meet her burden in challenging the Consent for Adoption, the Defendant will be entitled to move forward with her request for the Court to approve her adoption."
(R. p. 121).

Adoptive Mother *agreed*, stating in her Return to Motion to Bifurcate and Limit the Evidence:

"Holly Lawrence consents to bifurcate the issues raised by Ms. Lawrence in her temporary motion so as to focus solely on the 'dispositive issue of the validity of the consent for adoption.'"
(R. p. 129).

Following a two and a half day trial, the Family Court issued an Order granting Biological Mother's Rule 15(b) Motion to conform her pleadings to the evidence presented so as to amend Biological Mother's first cause of action to read, "the Consent document purportedly signed by Biological Mother was not witnessed pursuant to S.C. Code Ann. Section 63-9-340 and therefore is void, voidable or invalid due to improper execution;" finding the Consent for Adoption signed by the Biological Mother on October 30, 2013 was invalid and without any force or effect; finding that it was in the best interest of the minor child that the child be immediately returned to the Biological Mother without delay and denying Adoptive Mother's request for attorney fees and costs. (R. p. 37; Final Order of

April 24, 2014).

On April 25, 2014, Adoptive Mother filed a Notice of Appeal and Request for Supersedeas to stop the immediate transfer of the child. Biological Mother moved to dismiss the appeal pursuant to *Terry v. Terry*, 400 S.C. 453, 734 S.E.2d 646 (2012), arguing the Family Court's ruling did not decide with finality whether the adoptive mother or the biological mother would ultimately prevail as both parties had yet to be heard on their causes of actions.

On May 1, 2014, the Court of Appeals dismissed the appeal without prejudice pending a decision on the Rule 59 Motion. On May 5, 2014, the Family Court entered an Order denying reconsideration, and on that same date, Adoptive Mother filed a voluntary dismissal of her Amended Complaint in case number 2013-DR-10-4057 as no Answer, Counterclaim or other responsive pleading had been served or filed. (R. pp. 38-40; R. pp. 130-31, respectively).

Adoptive Mother filed and served a second Notice of Appeal and second Request for Supersedeas. The Court of Appeals entered a temporary supersedeas on May 6, 2014, preventing transfer of the child. On May 16, 2014, Biological Mother filed a Return to Adoptive Mother's Petition for Supersedeas as well as a Motion to Dismiss the appeal. (R. pp. 150-56). On June 6, 2014, this Court entered an Order denying the Motion to Dismiss the Appeal. (R. pp. 15-16).

The case was heard before this Court on July 23, 2014 and August 4, 2014; a decision affirming the Family Court was issued. (R. pp. 17-20). This Court also clarified in a footnote that the Family Court's finding that the consent document was invalid constitutes a final decision that Adoptive Mother cannot proceed with the adoption of the child. (R. p. 18

n.8). On August 15, 2014, Adoptive Mother filed a Writ for Supersedeas and expedited review as well as a Petition for Writ of Certiorari to the Supreme Court of South Carolina. On August 20, 2014, the Supreme Court issued an Order granting Adoptive Mother's Petition for Writ of Certiorari and oral arguments were held on September 23, 2014.

On September 29, 2014, the Supreme Court affirmed the Court of Appeal's decision affirming the Family Court's finding that Biological Mother's consent to the adoption was invalid. (R. pp. 3-12). The Supreme Court further held that because the Adoptive Mother was not the prevailing party on appeal, an award of attorney fees would be inappropriate. (R. p. 11 n.8). Brown v. Baby Girl Harper, 410 S.C. 446, 455 n.8, 766 S.E.2d 375 (2014). There was no mention of attorney fees as to Biological Mother in that such issue was not presented at trial and, therefore, not an issue on appeal.

The Remittitur from the Supreme Court was issued October 7, 2014. (R. p. 13). On October 29, 2014, the Supreme Court ruled that pursuant to Rule 222, SCACR, the motion filed by Biological Mother requesting costs and fees was awarded in the amount of \$1,583.39 and the Family Court was directed to add this reward of costs to the Remittitur. (R. p. 14). This award of fees and costs was properly included by the Family Court in its last Order. (R. p. 45).

On October 21, 2014, Biological Mother filed a Pre-Trial Hearing Request, citing the "type of case," as "Contested adoption attorneys fees." (R. p. 132). The scheduling clerk issued a Notice of Hearing on this Pre-Trial Hearing Request which was scheduled for November 18, 2014. The Chief Administrative Judge at that time, the Honorable Jocelyn B. Cate, directed both parties to prepare memorandums as to their respective positions and accepted oral argument as well. As reflected in Biological Mother's Memorandum in

Support of Biological Mother's Request for Hearing on Her Request For Attorneys' Fees, Biological Mother argues, "Now that jurisdiction in this case has been restored to the Family Court, Biological Mother wishes to pursue her Fifth Cause of Action, for attorneys' fees." (R. p. 135). Biological Mother also concedes in her memorandum, "Biological Mother no longer seeks a hearing on the ICPC issue, as it has become moot by the Supreme Court's determination that the consent document was invalid." (R. p. 135). Biological Mother urges the Family Court to allow her to "introduce her attorney fee affidavit in support of her request for attorneys' fees and present testimony on the *Glasscock* and *E.D.M.* factors," as well as, "limited discovery regarding the issue of attorneys' fees." (R. p. 135).

In her memorandum, Adoptive Mother argued that Biological Mother's request was improper, that the case was closed and that the time for Biological Mother to request attorney fees and costs was at the trial of the matter. (R. pp. 137-62). Adoptive Mother argued that where Biological Mother chose not to request fees or to submit any evidence in support thereof at trial (a trial she acknowledged would dispositively decide the parties' rights), Biological Mother effectively abandoned her right to request such relief. (R. p. 138).

On January 29, 2015, an Order denying Biological Mother's request for further hearing as to her request for attorney fees and costs, and denying her request to reopen the matter so as to conduct additional discovery, was filed in the Charleston County Family Court. (R. pp. 41-42). Biological Mother then filed a Rule 59(e) Motion to Reconsider, Alter or Amend, but failed to supply the Court with its motion for months. Biological Mother then urged the Court to consider her untimely Motion and the matter was scheduled for another hearing.

Finally, on February 11, 2016, the Family Court issued an Order upholding its prior ruling as to Biological Mother's request to re-open the matter, conduct additional discovery

and pursue her request for attorney fees. (R. pp. 43-45). The Court supplemented its previous ruling to include additional findings, including the denial of Biological Mother's request for additional costs and fees incurred by her during the appeal. This instant appeal followed.

Notice of Biological Mother's appeal was served on March 2, 2016. Adoptive Mother is unaware of the amount involved on appeal. Adoptive Mother agrees with Biological Mother's Statement of The Case wherein she states that this Court and the Supreme Court of South Carolina, "previously adjudicated the merits of this contested adoption in favor of Biological Mother." (Biological Mother's Brief, p. 2). Adoptive Mother also agrees with Biological Mother's Statement of the Case, wherein she states that her instant appeal is, "from the family court's refusal to consider an award of attorneys' fees to Biological Mother, **incurred by her during the family court trial and her subsequent appeal.**" (Biological Mother's Brief, p. 2) (Emphasis added).

Standard of Review

When reviewing a decision by the family court, the Court has the authority to find the facts in accordance with its own view of the preponderance of the evidence. Chisolm v. Chisolm, Op. No. 27092 (S.C. Sup. Ct. filed Feb. 1, 2012) (Shearouse Adv. Sh. No. 4 at 48); Lewis v. Lewis, 392 S.C. 381, 384, 709 S.E.2d 650, 651 (2011). This Court reviews factual and legal issues *de novo*. Simmons v. Simmons, 392 S.C. 412, 414, 709 S.E.2d 666, 667 (2011).

This broad scope of review does not require the Court to disregard the family court's findings. Burch v. Burch, 395 S.C. 318, 717 S.E.2d 757 (2011); Lewis, 392 S.C. 381 (2011). It is the Biological Mother's burden as appellant in this matter to satisfy this Court that the

preponderance of the evidence is against the Family Court's findings. Lewis, 392 S.C. at 391 (2011). *See also*, Chisolm at p. 50 (*de novo* review does not relieve appellant of the burden to "demonstrate error in the family court's findings of fact").

ARGUMENTS

I. The Family Court correctly held Biological Mother cannot re-open this contested adoption case to pursue an award of attorney fees and costs where Biological Mother chose not to request such relief at trial.

It is undisputed that Biological Mother chose not to request an award of attorney fees and costs at trial and that no evidence in support of such an award was presented on her behalf. It is also undisputed that Adoptive Mother *did* request attorney fees and costs at trial. In support of her request for attorney fees and costs, Adoptive Mother introduced her attorney's Affidavit of Fees and Costs (R. pp. 230-47), Adoptive Mother's sworn financial declaration (R. pp. 224-29) and Biological Mother's sworn financial declaration (R. pp. 220-23) - all without objection from Biological Mother. Adoptive Mother also offered testimony as to her request for attorney fees and costs. (R. pp. 184-87).

Both parties agreed that the trial of the case would be limited to the issue of the validity of the *Consent for Adoption* which both acknowledged was the "dispositive issue" that would finally determine the rights of the parties and, therefore, end the case. *See* Biological's Mother's Motion to Bifurcate and Limit Evidence (R. pp. 120-28); *see also*, Adoptive Mother's Return to Motion to Limit Evidence (R. p. 129). Further, Biological Mother and Adoptive Mother agree that all other causes of action raised by their respective

pleadings have either been voluntarily dismissed as of right¹ or rendered moot² by the Final Order of the Family Court, affirmed by this Court and the South Carolina Supreme Court, holding the *Consent to Adoption* was improperly executed so as to defeat Adoptive Mother's adoption action and to restore all rights to the Biological Mother.

The fact that the trial on the dispositive issue would render Biological Mother's remaining causes of action moot was known and acknowledged by both parties prior to trial. Adoptive Mother argued in her Motion to Bifurcate and Limit the Evidence:

The pivotal inquiry in this case is the validity of the Consent for Adoption. If the Plaintiff (Biological Mother) is successful in her attempt to invalidate the Consent for Adoption, the Defendant's (Adoptive Mother's) adoption action will end as Biological Mother will be restored to her legal position as the natural mother. On the other hand, if the Biological Mother fails to meet her burden in challenging the Consent for Adoption, the Adoptive Mother will be entitled to move forward with her request for the Court to approve her adoption.
(R. p. 121).

Biological Mother agreed, stating in her Return to Motion to Bifurcate and Limit the Evidence:

Holly Lawrence (Biological Mother) consents to bifurcate the issues raised...in her temporary motion so as to focus solely on the "dispositive issue of the validity of the consent for adoption."
(R. p. 129).

In addition, counsel for Biological Mother knew or should have known that in the event the Consent was held valid, his client's ability to continue to contest the adoption would

1 Adoptive Mother dismissed her Amended pleadings on May 5, 2014 as no Reply was ever served or filed by Biological Mother. (R. pp. 130-31).

2 See Memorandum in Support of Biological Mother's Request for Hearing on Her Request for Attorney Fees wherein she concedes that that she, "no longer seeks a hearing on the ICPC issue, as it has become moot by the Supreme Court's determination that the consent document was invalid." (R. p. 135).

be jeopardized in that she would no longer have standing. In addition, Biological Mother never served or filed an Answer or other responsive pleading as to Adoptive Mother's Complaint or Amended Complaint in Case No. 2013-DR-10-4057 and, therefore, Adoptive Mother remained at liberty to dismiss her remaining allegations raised by those pleadings at any time. This "legal reality" as to both parties' remaining causes of action further underscores that the time to request attorney fees and costs was at the trial of this contested adoption which both parties acknowledged would finally determine their rights.³ The only issue in this case that is not moot, dismissed or ruled upon on a final basis is Biological Mother's request for attorney fees and costs which she chose not to present to the trial judge and, therefore, voluntarily abandoned.

Despite vigorous argument otherwise by Biological Mother, this Court found the ruling of the trial judge was a final order, clarifying in a footnote to its August 4, 2014 Order, "The family court's finding that the consent document was invalid constitutes a final decision that Brown cannot proceed with the adoption of the child." (R. p. 18 n.1). For reasons unclear to the Adoptive Mother, while knowing and acknowledging that the trial in this matter would finally determine the rights of the parties, the Biological Mother voluntarily declined to introduce any evidence at trial on the issue of her attorney fees and costs. The Biological Mother reaffirmed this seemingly illogical position in her memorandum to the Family Court in support of her request to pursue fees and costs after this matter was concluded wherein she admits she "did not present her request for attorneys' fees, *choosing* instead to pursue fees when all of her causes of action had been presented to the Court." (R. p. 134). (Emphasis

³ Dispositive is defined as being a deciding factor; bringing about a final determination. Black's Law Dictionary (10th ed. 2014).

added). The Adoptive Mother continues to struggle with the Biological Mother's position - why would it make sense to believe you are entitled to attorney fees and costs and yet intentionally fail to present evidence on such issue at a hearing you agree will end the case?

Where the Biological Mother voluntarily failed to submit evidence as to the issue of attorney fees and costs at the very hearing she acknowledged was "dispositive" and would end the case, Biological Mother abandoned her claim for such relief. To raise the issue of reimbursement of costs and fees at this juncture, after final hearing and appeal to both upper Courts is misplaced and improper. Without question the trial judge who received much evidence on the issue of attorney fees and costs on behalf of the Adoptive Mother was in the best position to rule on the issue. Clearly the majority of fees incurred in this case would have been incurred both in preparation for and during the two and a half day trial. Biological Mother chose not to pursue something she apparently believed she was entitled to and is now attempting to secure another bite at the apple, after this case has been concluded, having never asked for or received consent from opposing counsel or permission from the Court to do so. Essentially she is asking this Court to allow her to resurrect an issue she voluntarily abandoned at trial.

One can imagine the abuse of our system that would result if parties were allowed to simply fail to present evidence at trial on certain issues, preferring instead to pocket them for a later time and maybe a different judge. If the Biological Mother's actions and requests are endorsed and this case is re-opened, regardless of the outcome, there will likely be another appeal between the same litigants on an issue ancillary to the same contest. Biological Mother's intentional failure to request attorney fees at the hearing that she acknowledged would end the case constitutes unequivocal abandonment of the issue and Biological Mother

should not be allowed to resurrect it now.

Nothing in the Supreme Court's Remittitur required or authorized the Family Court to address the issue of Biological Mother's request for attorney fees and costs outside of those fees and costs awarded to Biological Mother by the South Carolina Supreme Court as to the appeal in the amount of \$1,583.39. (R. p. 14). The Family Court properly included this award in its Order Denying Biological Mother's Motion for Attorney Fees and Costs, filed February 11, 2016. With the receipt of this final Remittitur, this case was closed. Biological Mother should not be allowed to reopen this matter, conduct further discovery and proceed to another trial on the issue of fees that were voluntarily abandoned at trial.

II. The Family Court correctly denied Biological Mother's request for additional attorney fees and costs incurred at the appellate level where she chose not to request fees and costs at trial and, therefore, the issue was not preserved or considered on appeal.

Biological Mother argues that the Family Court has jurisdiction to award attorney fees and costs she incurred as a result of the appeal; however, such argument is without merit. The Family Court would only be vested with authority to award additional costs and fees incurred pursuant to appeal where such issue was an issue on appeal and the case was remanded for consideration of attorney fees in light of an ultimate decision on remand. Rule 222, SCACR, Green v. Green, 320 S.C. 347, 465 S.E.2d 130 (Ct. App. 1995). In this case, only the Adoptive Mother's request for attorney fees was an issue on appeal. Where Biological Mother failed to raise her entitlement to such fees at trial, such issue necessarily was not ruled upon by the trial judge and not preserved for appellate review. On the other hand, had Adoptive Mother prevailed on appeal, her request for attorney fees was raised to and ruled upon by the trial judge and was properly preserved for appellate review and all fees,

including those incurred pursuant to the appeal, could be considered and awarded by the Family Court in light of such ultimate decision on remand. However, the Adoptive Mother did not prevail on appeal, there was no remand in this case, no further direction to the Family Court and Biological Mother cannot now ask the Family Court to award her fees incurred pursuant to the previous appeal. Therefore, the Family Court correctly denied Biological Mother's requests for additional costs and fees she incurred pursuant to the appeal.

As to Biological Mother's repeated references to the comments and arguments of counsel, as well as her heavy reliance on the trial Court's oral ruling very early in the case holding the issue of attorney fees/costs in abeyance, Adoptive Mother would point out that after hearing all the evidence over the course of the two and a half day trial and, "based upon an examination of the pleadings [and] consideration of all the testimony," the Family Court issued a final, written order which included a ruling on the issue of attorney fees. (R. pp. 27-37). In its final, written Order, the Court thoroughly considered the issue of attorney fees and denied the same to Adoptive Mother, the only party that had requested such relief. (R. pp. 36-37). It is well settled that a judge is not bound by a prior oral ruling and may issue a written order which is in conflict with the oral ruling. Badeaux v. Davis, 337 S.C. 195, 204, 522 S.E.2d 835, 839 (Ct. App.1999). *See also* Owens v. Magill, 308 S.C. 556, 419 S.E.2d 786 (1992) (ruling judge was not bound by prior oral ruling and could issue written order which conflicted with prior oral ruling). In addition, "To the extent the written order may conflict with the prior oral ruling, the written order controls." Parag v. Baby Boy Lovin, 333 S.C. 221, 226, 508 S.E.2d 590, 592 (Ct.App. 1998). "The written order is the trial judge's final order and as such constitutes the final judgment of the court. The final written order contains the binding instructions which are to be followed by the parties." Ford v. State Ethics

Com'n, 344 S.C. 642, 545 S.E.2d 821 (2001) (citing Rule 58, SCRCP). Of note as it relates to Biological Mother's argument in the instant appeal as to her "remaining issues" following the trial, the Family Court Order denying an award of costs and fees to Adoptive Mother specifically includes a consideration of Biological Mother's ICPC allegations as to the issue of fees/costs, ultimately weighing the ICPC issue against Adoptive Mother as it related to her request for fees and costs. (R. p. 36). It, therefore, appears the trial judge ruled on every issue raised by Biological Mother in this matter, except the issue of her entitlement to attorney fees, which issue she admits she chose not to request at trial.

As to Biological Mother's reliance on various cases holding the trial court has jurisdiction to award fees incurred at the appellate level after remittitur are misplaced. None of the cases are family court cases. Austin v. Stokes-Craven Holding Corp. involved the mandatory award of fees to the prevailing party under the South Carolina Regulation of Manufacturers, Distributors and Dealers Act. Muller v. Myrtle Beach Golf and Yacht Club involved attorney fees as provided under mechanics lien statute, and Taylor v. Medenica involved attorney fees under the Unfair Trade Practices Act, none of which are applicable to the analysis here.

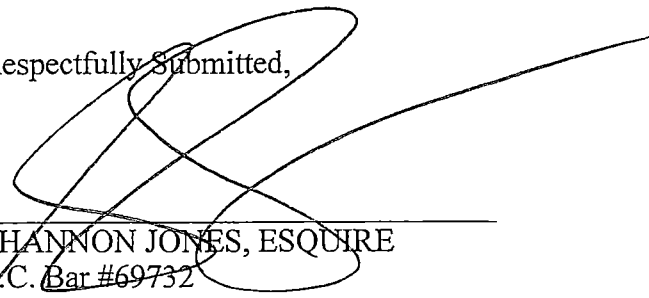
Finally, Adoptive Mother agrees with the reasoning of the Supreme Court of South Carolina in Lawton v. New York Life Ins. Co., which the Family Court found compelling as to the issue raised here. ___, 181 S.C. 230, 186 S.E. 909 (1936). According to the Court, "The rule against splitting is that a single cause of action, claim or demand cannot be split up or divided so as to be made the subject of different actions. The object of the rule is to prevent repeated litigation between the same parties in regard to the same subject of controversy; to protect defendant from unnecessary vexation; and to avoid the costs and expenses incident to

numerous suits. It seems that plaintiff's cause of action in the former case was for \$100 per month, and if he intended to claim anything further in the way of attorney's fees such claim ought to have been made in the suit to recover the claim of \$100 per month." Id.

CONCLUSION

For the reasons stated, this Court should affirm the judgment of the Family Court.

Respectfully Submitted,



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November 15, 2016

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
In the Family Court

Jocelyn B. Cate, Family Court Judge

Appellate Case No. 2016-000479

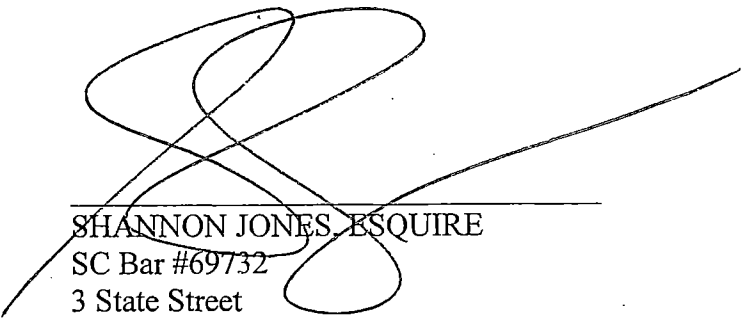
Holly Lawrence.....Appellant,

v.

Jennifer Brown.....Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies this Final Brief complies with Rule 211(b),
SCACR.



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November 15, 2016

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
In the Family Court
Jocelyn B. Cate, Family Court Judge

Appellate Case No. 2016-000479
Trial Court Case Nos. 2013-DR-10-4057
2013-DR-10-4386

Holly Lawrence, ... Appellant,

v.

Jennifer Brown, ... Respondent.

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ARGUMENTS

- I. Biological mother's one-sentence quotation of Adoptive Mother's description of the trial as being "dispositive" concedes nothing. Biological Mother appropriately relied on the then-existing posture of the case – as well as the assurances from the trial judge – in delaying the presentation of her attorney fee affidavit.**

Adoptive Mother characterizes Biological Mother's request for attorneys' fees as follows: "Essentially she is asking this court to allow her to resurrect an issue she voluntarily abandoned at trial." (Adoptive Mother's Brief, p. 13). She argues that Biological Mother described the trial on Biological Mother's motion for temporary relief as "the dispositive issue" and therefore, failure to present a request for attorneys' fees at the end of the trial constituted an abandonment of that claim. Liberally sprinkled throughout Adoptive Mother's brief is the assertion that Biological Mother agreed that the Consent issue was the "dispositive issue." On eight occasions in Adoptive Mother's brief, she asserts that prior to trial, Biological Mother conceded the Consent issue was the "dispositive issue."¹ In Adoptive Mother's view, "Why would it make sense to believe

¹ Adoptive Mother's Brief p. 8 "... a trial she acknowledged would dispositively decide the parties' rights ..."; pp. 10-11 "Both parties agreed that the trial of the case would be limited to the issue of the validity of the *Consent for Adoption* which both acknowledged was the 'dispositive issue' that would finally determine the rights of the parties and, therefore, end the case."; p. 11 "The fact that the trial on the dispositive issue would render Biological Mother's remaining causes of action moot was known and acknowledged by both parties prior to trial."; p. 12 "This 'legal reality' as to both parties' remaining causes of action further underscores that the time to request attorney fees and costs was at the trial of this contested adoption which both parties acknowledged would finally determine their rights."; p. 12-13 "... while knowing and acknowledging that the trial in this matter would finally determine the rights of the parties, the Biological Mother declined to introduce any evidence at trial on the issue of her attorneys fees and costs."; p.13 "... why would it make sense to believe you are entitled to attorney fees and costs and yet intentionally fail to present evidence on such issue at a hearing you agree will end the case?"; p. 13 "Where the Biological Mother voluntarily failed to submit evidence as to the issue of attorney fees and costs at the very hearing she acknowledged was 'dispositive' and would end the case, Biological Mother abandoned her claim for such relief."; p. 14 "Biological

you are entitled to attorneys' fees and costs and yet intentionally fail to present evidence on such issue at a hearing you agree will end the case?" (Adoptive Mother's Brief, p. 13).

Adoptive Mother incorrectly characterizes the posture of the case when tried and seeks to saddle Biological Mother with a concession she never made. Ad nauseam repetition of a statement does not make that statement true. It was the Adoptive Mother, not Biological Mother, who described the consent for adoption issue as the "dispositive issue." (R. p. 121, ¶ 5). It was the Adoptive Mother, not Biological Mother, in her motion to bifurcate who asked the court "to focus solely on the dispositive issue of the validity of the consent for adoption." *Id.* The only time that the Biological Mother used the word "dispositive" was in *Holly Lawrence's Return to Jennifer Brown's Notice of Motion and Motion to Limit Evidence*. Biological Mother was quoting Adoptive Mother's depiction of the consent issue, not adopting Adoptive Mother's view or characterizing that issue herself: "Holly Lawrence consents to bifurcate the issues raised by Ms. Lawrence in her temporary motion so as to focus solely on the 'dispositive issue of the validity of the consent for adoption.'" (R. p. 129).

For Biological Mother to quote Adoptive Mother's description of the Consent issue as being "dispositive" does not miraculously transform the then-existing posture of the case. After all, Adoptive Mother still had her abuse/neglect/abandonment TPR grounds and her psychological parenthood claim yet to be resolved. Biological Mother still had her outstanding ICPC issue, which she believed could scuttle the adoption

Mother's intentional failure to request attorney fees at the hearing that she acknowledged would end the case constitutes unequivocal abandonment of the issue . . ."

regardless of the outcome of the consent issue. By citing Adoptive Mother's characterization of the Consent issue as being "dispositive," Biological Mother was seeking to highlight what she viewed to be a concession made by Adoptive Mother. Through either a scrivener's error or a recognition of the weakness of her other causes of action, Adoptive Mother was putting all of her eggs in the Consent basket. Biological Mother relished pointing out to the trial court this admission made by Adoptive Mother. Biological Mother would, after all, be seeking an immediate transfer of the child following the Consent trial. Laying the groundwork for the transfer of custody by pointing out Adoptive Mother's admission seemed prudent; if Adoptive Mother viewed the consent issue to be dispositive, then the court should not delay in transferring custody, even though Adoptive Mother's other causes of action had yet to be heard. (At the close of the trial, the court did just that, ordering immediate transfer of the child.)

It was not until a month following trial, May 5, 2014, that Adoptive Mother filed a voluntary dismissal of her Amended Complaint, thereby letting go of her TPR grounds and her psychological parenthood claim. Note the timing of this dismissal. Adoptive Mother's first appeal was filed on April 25, 2014. In her brief, Adoptive Mother correctly notes the following: "Biological Mother moved to dismiss the appeal pursuant to *Terry v. Terry*, 400 S.C. 453, 734 S.E.2d 646 (2012), arguing the family court's ruling did not decide with finality whether the Adoptive Mother or the Biological Mother would ultimately prevail as both parties had yet to be heard on their causes of actions." (Adoptive Mother's Brief, p. 6). On May 1, 2014, this Court dismissed Adoptive Mother's first appeal without prejudice pending the trial court's decision on the Rule 59 motion. On May 5, 2014, the family court denied the Rule 59 motion, Adoptive Mother

filed her voluntary dismissal, and the same day, Adoptive Mother filed her second notice of appeal and her second request for supersedeas. Adoptive Mother's appeal hinged on this Court finding the trial court order to have been a final order. While one reason for the Adoptive Mother to dismiss her causes of action was their lack of merit, the timing suggests instead that Adoptive Mother sought to strengthen her argument before the Court of Appeals that the trial order was a final order, and therefore ripe for adjudication.

Whatever her reasons may have been to dismiss her abuse/neglect/abandonment TPR grounds and her psychological parenthood claim, these claims were pending at trial. Restoring the Biological Mother to her position as the natural mother, as Adoptive Mother described that a loss on the Consent issue would do, still would leave Biological Mother susceptible to a TPR. Even natural mothers, with full parental rights, face TPR grounds. By the time this Court characterized the order on the Consent issue as final, Adoptive Mother had voluntarily dismissed her other causes of action. Biological Mother appropriately relied on the then-existing posture of the case – as well as the assurances from the trial judge – in delaying the presentation of her attorney fee affidavit.

An additional reason why it was appropriate for Biological Mother to delay the presentation of her attorneys' fee request is because the attorneys' fees analysis is best analyzed when all causes of action have been heard. It is customary for attorneys' fee affidavits to be given to the court at a final merits hearing.² It is very difficult, if not impossible, to ascertain the "beneficial results obtained" portion of the attorneys' fee

² "As I understand domestic litigation, in almost every case both parties request attorneys' fees, and, ordinarily, the attorneys affidavits are given to the court at a final merits hearing." *Buist v. Buist*, 410 S.C. 569, 766 S.E.2d 781 (2014), Justice Pleicones concurring.

analysis before the case is concluded; one cannot judge results piecemeal. For example, Biological Mother may have won the Consent issue, but later lost her parental rights or custody of the child, based on the yet-to-be-tried claims of Adoptive Mother. It would have been premature to judge the "beneficial results obtained" until the outcome was determined.

II. The trial court described the trial as a "temporary evidentiary hearing" which was "not dispositive of the case," and that there were "additional causes of action" still pending. The trial court, therefore, held Biological Mother's attorneys' fee in abeyance and never issued a contradictory written order.

The trial court held the attorneys' fee issue in abeyance. (Biological Mother's Brief, p. 9, citing R. p. 169, lines 18-23). Adoptive Mother repeatedly asked the court to revisit the attorneys' fee issue, and the court relented and agreed to consider Adoptive Mother's attorneys' fees, if Adoptive Mother could discredit Biological Mother on the issue of her credibility (R. p. 174, lines 19-23). Never did the trial court alter the previous ruling holding attorneys' fees in abeyance as to the Biological Mother.

Adoptive Mother's brief argues that, "It is well settled that a judge is not bound by a prior oral ruling and may issue a written order which is in conflict with the oral ruling." (Adoptive Mother's Brief, p. 15). Biological Mother agrees that this is a correct statement of law; she does not agree that this legal reference, or the four cases cited to support that proposition, is relevant to our present facts. The trial court never issued a written order in conflict with the oral ruling. When the trial judge allowed Adoptive Mother to present her fee request, the judge did nothing to suggest or hint the Biological Mother needed to present her request too. Had Judge Norton done so, Biological Mother

could have filed a Rule 59 motion and secured her claim for attorneys' fees. Because Judge Norton did not address Biological Mother's attorneys' fees, but only Adoptive Mother's fees, there is no conflict between his previous oral ruling and the later written order. Hence, Biological Mother acted reasonably in relying on the trial court's assurance that Biological Mother's attorneys' fees were not before the court. Biological Mother's justifiable reliance that there would be ample opportunity in the future to present attorneys' fees is supported by the trial court's description of the trial:

Therefore, the sole and only issue before this court at this temporary evidentiary hearing was to determine the validity of the Consent to Adopt based upon the process by which it was obtained and executed. The order of this court was not dispositive of the case, only the validity of the consent. To proceed as if this limited issue is dispositive of the case would exceed the mandate of Judge Martin, ignore the agreement to bifurcate and also render the additional causes of action of the Adoptive Mother and the additional defenses of the Birth Mother moot. (R. p. 39).

III. Without offering analysis, Adoptive Mother wrongfully seeks to distinguish legal precedent.

Adoptive Mother argues that the cases cited by Biological Mother – *Austin v. Stokes-Craven Holding Company*, 406 S.C. 187, 750 S.E.2d 78 (2013); *Muller v. Myrtle Beach Golf and Yacht Club*, 313 S.C. 412, 438 S.E.2d 248 (1993); and *Taylor v. Medenica*, 332 S.C. 324, 504 S.E.2d 590 (1998) – are “not applicable to the analysis here,” because “[n]one of the cases are family court cases.” (Adoptive Mother’s Brief, p. 16). Adoptive Mother fails to address, or contradict in any way, that these cases and our present case have a key similarity: each case involves the trial court’s statutory jurisdiction to award attorneys’ fees. Adoptive Mother also does not contest that statutory authority exists for the family court to award attorneys’ fees in contested

TPR/adoption litigation. *See* South Carolina Code Ann. § 63-3-530 (38); *see also* *Michael Scott B. v. Melissa M.*, 378 S.C. 452, 663 S.E.2d 58 (2008) (holding that the statutory provision granting the family court general jurisdiction to award attorneys' fees applies in a termination of parental rights action.) Not only are these cases applicable, their facts and holdings are compelling.

For instance, in *Muller v. Myrtle Beach Golf and Yacht Club*, Party A won at trial and was awarded fees at trial. *Muller*, 313 S.C. 412, 438 S.E.2d 248 (2013). The Court of Appeals reversed the trial court and issued its remittitur. *Id.* at 415, 438 S.E.2d at 250. After the remittitur was issued, Party B unsuccessfully petitioned for Rule 222 fees. *Id.* After this petition was denied, Party B petitioned the trial court for the fees incurred during the trial and for the fees incurred on appeal. *Id.* The trial court denied the fee petition because it did not have a directive to do so from the appellate court. *Id.* The South Carolina Supreme Court reversed and held that Party B was entitled to: (1) attorneys' fees incurred during the trial; (2) attorneys' fees on the appeal; and (3) post-appellate fees incurred in the collection of trial and appellate fees. *Id.*

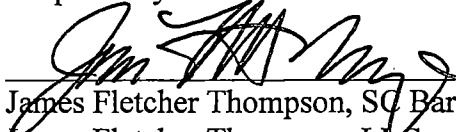
Biological Mother directs the Court's attention to two salient points in the *Muller* decision. First, there is no indication that Party B ever sought fees in the trial court for the trial court work until after the Court of Appeals remitted the case back to the trial court. *Muller* therefore demonstrates that a litigant need not have first sought fees in the trial court to be able to later seek fees for trial court work after the remittitur is issued. Secondly, *Muller* demonstrates that the trial court had jurisdiction to award fees even though the remittitur was silent on that issue. The fee statute in *Muller*, like the fee statute in family court actions cited above, provides for fees without limiting the litigant as to when or how the claim for fees must be made. And as to appellate attorney fees,

logic would dictate that biological mother could not have abandoned a claim for fees that she had not envisioned and had not yet been incurred.

CONCLUSION

For the foregoing reasons, the Appellant, Biological Mother, respectfully requests this court to reverse the family court's order and remand the matter for proceedings consistent with this Court's opinion. Biological Mother requests the opportunity to present an attorneys' fee affidavit regarding fees and costs incurred in the trial of the case, the appeal of the case, and post-appellate fees. Biological Mother also wishes to present a current financial declaration, receive a current financial declaration from Adoptive Mother, and learn of the current status of Adoptive Mother's legal malpractice case against her previous legal counsel.³

Respectfully submitted:


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November 15, 2016

ATTORNEYS FOR APPELLANT

³ See R. p. 211, line 25-page 213, line 4 for colloquy with the trial court as to why Biological Mother was seeking limited discovery regarding a malpractice case pending since May 2015 which would be relevant to the *Glasscock* factors including Adoptive Mother's ability to pay.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
In the Family Court
Jocelyn B. Cate, Family Court Judge

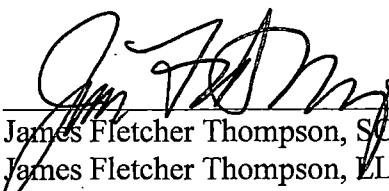
Appellate Case No. 2016-000479
Trial Court Case Nos. 2013-DR-10-4057
2013-DR-10-4386

Holly Lawrence, ... Appellant,

v.

Jennifer Brown, ... Respondent.

The undersigned certifies that this Final Reply Brief of Appellant complies with Rule 211(b), SCACR.


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November 15, 2016

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Holly Lawrence, Appellant,

v.

Jennifer Brown, Respondent.

Appellate Case No. 2016-000479

Appeal From Charleston County
Jocelyn B. Cate, Family Court Judge

Unpublished Opinion No. 2018-UP-268
Submitted May 1, 2018 – Filed June 20, 2018

**AFFIRMED IN PART, REVERSED IN PART, AND
REMANDED**

James Fletcher Thompson, of James Fletcher Thompson,
LLC, of Spartanburg, and Allison Boyd Bullard, of
Harling & West, LLC, of Columbia, both for Appellant.

Shannon Phillips Jones, of Shannon Jones Law Firm,
LLC, of Charleston, for Respondent.

PER CURIAM: Holly Lawrence appeals the family court's orders denying her request for a further hearing as to her cause of action against Jennifer Brown for

attorney's fees and costs. On appeal, Lawrence argues the family court erred in holding (1) it lacked jurisdiction to address her claim for both trial and appellate attorney's fees following receipt of remittitur from the supreme court and (2) she had abandoned her claim for attorney's fees. We affirm in part, reverse in part, and remand to the family court to determine if Lawrence was entitled to trial-level attorney's fees.

STANDARD OF REVIEW

Generally, on appeal from the family court, this court reviews factual and legal issues de novo. *Simmons v. Simmons*, 392 S.C. 412, 414, 709 S.E.2d 666, 667 (2011); *Lewis v. Lewis*, 392 S.C. 381, 386, 709 S.E.2d 650, 652 (2011). Although this court reviews the family court's findings de novo, we are not required to ignore the fact that the family court, which saw and heard the witnesses, was in a better position to evaluate their credibility and assign comparative weight to their testimony. *Lewis*, 392 S.C. at 385, 709 S.E.2d at 651-52. However, appellate courts review the "family court's evidentiary or procedural rulings . . . using an abuse of discretion standard." *Stoney v. Stoney*, Op. No. 27758 (S.C. Sup. Ct. filed April 18, 2018) (Shearouse Adv. Sh. No. 16 at 9).

JURISDICTION

Lawrence argues, "The family court is vested with jurisdiction to award attorney['s] fees following receipt of the remittitur from the [s]upreme [c]ourt." Lawrence asserts this jurisdiction extends to awards of both trial and appellate attorney's fees. Lawrence also contends the family court improperly relied on *Lawton v. New York Life Insurance Co.*¹ and "equated [her] request for attorney['s] fees to 'splitting' a cause of action." We agree the family court erred in holding it lacked jurisdiction to award Lawrence trial-level attorney's fees; however, we find the family court did not err in finding it lacked jurisdiction to award Lawrence appellate attorney's fees.

First, we find the family court erred in finding it did not have jurisdiction to consider Lawrence's cause of action for trial-level attorney's fees following the issuance of remittitur from the supreme court. See *Martin v. Paradise Cove Marina, Inc.*, 348 S.C. 379, 385, 559 S.E.2d 348, 352 (Ct. App. 2001) ("[C]ourts are vested with jurisdiction to hear motions for statutory attorney['s] fees and costs

¹ 181 S.C. 230, 232, 186 S.E. 909, 910 (1936) ("[T]he rule against splitting is that a single cause of action, claim[,], or demand cannot be split up or divided so as to be made the subject of different actions." (quoting Corpus Juris, 1106, 1107, § 276)).

after the remittitur has been issued."). Initially, we find the family court had statutory authority to determine attorney's fees in this case because (1) the underlying case concerned the validity of Lawrence's consent for Brown to adopt Lawrence's baby girl (Child) and (2) Lawrence requested attorney's fees in her complaint. *See* S.C. Code Ann. § 63-3-530(A)(38) (2010) (providing if a party has requested attorney's fees in a pleading or motion, the family court may generally assess attorney's fees "for or against a party to an action brought in or subject to the jurisdiction of the family court"); S.C. Code Ann. § 63-9-40 (2010) (stating the family court has jurisdiction over adoption proceedings); S.C. Code Ann. § 63-9-310(F) (2010) (authorizing the payment of reasonable attorney's fees to a child-placing agency or person so long as the fees are not provided as "consideration for giving a consent or relinquishment of a child for the purpose of adoption"). Next, we find the family court may rule on Lawrence's trial-level attorney's fees because the supreme court made no inconsistent ruling as to Lawrence's attorney's fees in its opinion. *See Christy v. Christy*, 317 S.C. 145, 151, 452 S.E.2d 1, 4 (Ct. App. 1994) ("Once the remittitur is sent down from the appellate court, the lower court acquires jurisdiction to enforce the judgment and take any action consistent with the appellate court ruling."). Thus, we find the family court had jurisdiction to determine Lawrence's trial-level attorney's fees.

Second, we find the family court did not err by finding it lacked jurisdiction to determine whether Lawrence was entitled to appellate attorney's fees because the supreme court did not remand the issue of attorney's fees to the family court. *See Thornton v. Thornton*, 328 S.C. 96, 113-14, 492 S.E.2d 86, 95 (1997) ("[T]he family court's award of attorney's fees should not include fees incurred in the course of appellate representation."); *Green v. Green*, 320 S.C. 347, 353, 465 S.E.2d 130, 134 (Ct. App. 1995) ("While Rule 222, SCACR, vests authority in appellate courts to grant attorney['s] fees on appeal, nothing in the Rule divests the family court of authority to award fees incurred pursuant to an appeal where . . . the issue of attorney['s] fees was an issue on appeal[,] and the case was remanded for consideration of attorney['s] fees in light of the ultimate decision on remand."). Furthermore, the supreme court awarded Lawrence \$1,583.39 in appellate attorney's fees and costs pursuant to Rule 242, SCACR. We note Lawrence argues *Austin v. Stokes-Craven Holding Corp.*,² *Muller v. Myrtle Beach Golf and Yacht Club*,³ and *Taylor v. Medenica*⁴ all state the award of appellate attorney's fees pursuant to appellate court rules does not prevent a party from also

² 406 S.C. 187, 198-200, 750 S.E.2d 78, 83-85 (2013).

³ 313 S.C. 412, 416, 438 S.E.2d 248, 250 (1993).

⁴ 332 S.C. 324, 325-26, 504 S.E.2d 590, 591 (1998).

seeking statutorily authorized attorney's fees in circuit court, and thus, she should be allowed to seek appellate attorney's fees in the family court. However, we find *Austin, Muller, and Taylor* are all legally distinguishable from this case because they were not decided in the family court. Thus, we find the family court correctly found it lacked jurisdiction to award Lawrence appellate attorney's fees.

Third, we find the family court erred by finding the rule against splitting applied in this case. *See Lawton*, 181 S.C. at 232, 186 S.E. at 910 ("[T]he rule against splitting is that a single cause of action, claim[,] or demand cannot be split up or divided so as to be made the subject of different actions" (quoting *Corpus Juris*, 1106, 1107, § 276)). Here, Lawrence brought one suit against Brown alleging several different causes of action, one of which sought attorney's fees. Lawrence did not address attorney's fees at the family court hearing on April 7-9, 2014, (the consent hearing) because the parties consented to bifurcate the case and only focus on the issue of whether Lawrence validly consented to Brown's adoption of Child. Furthermore, at the consent hearing, the family court stated it would hold the attorney's fees issue in abeyance. After the family court decided the consent issue in Lawrence's favor, Brown voluntarily dismissed her amended complaint and appealed the consent issue. Following remittitur, Lawrence sought to assert her claim for attorney's fees. We find Lawrence asserting her remaining cause of action did not constitute "splitting" a single cause of action, especially given the fact (1) the parties consented to limiting the scope of the consent hearing, (2) the family court told Lawrence it would hold attorney's fees in abeyance, and (3) the family court's order did not address Lawrence's attorney's fees. *See Mitchell v. Fed. Intermediate Credit Bank*, 165 S.C. 457, 465, 164 S.E. 136, 138 (1932) ("But the rule against splitting causes of action cannot be applied unless the two claims separately sued on were both parts of one and the same cause of action, equally available for purposes of suit at the time of the first action, and *equally within the scope and purview of that action*; and where the Court, in its discretion, *limits the recovery in the first action to a part of the claim, a separate action for the residue is not barred.*" (emphasis added) (quoting 34 C. J. 827)). Thus, we find the rule against splitting does not apply in this case.

Accordingly, we affirm the family court's determination that it lacked jurisdiction to consider Lawrence's entitlement to appellate attorney's fees, and we reverse the family court's determination that it lacked jurisdiction to consider Lawrence's entitlement to trial-level attorney's fees.

ABANDONMENT

Lawrence argues she "did not abandon her statutory right to request attorney['s] fees from [Brown]." We agree.

We find the family court abused its discretion by finding Lawrence abandoned her cause of action for trial-level attorney's fees against Brown.⁵ First, Lawrence never expressly withdrew her cause of action for attorney's fees against Brown at the consent hearing. *See Ariail v. Ariail*, 295 S.C. 486, 490, 369 S.E.2d 146, 148 (Ct. App. 1988) (vacating a family court order that addressed alimony when the plaintiff "expressly withdrew her request for alimony"); *Brown v. Howell*, 284 S.C. 605, 610, 327 S.E.2d 659, 662 (Ct. App. 1985) (finding the trial court "committed prejudicial error in charging the jury on the question of unavoidable accident when [the respondent] expressly abandoned consideration of the issue"). Instead, Lawrence told the family court she was not seeking attorney's fees at the consent hearing because attorney's fees were not an issue before the court; she contended the parties had agreed the only issue before the family court at the consent hearing was the validity of her consent for Brown to adopt Child. The family court stated it would hold attorney's fees in abeyance, and Lawrence further contended attorney's fees could be brought at another time without any prejudice and stated while she had not requested attorney's fees at the consent hearing, she had "secured [hers] for a later date." Furthermore, the family court's written order only ruled on Brown's attorney's fees and made no ruling or statement as to Lawrence's cause of action for attorney's fees. Thus, Lawrence did not expressly abandon her cause of action for attorney's fees.

Moreover, the family court may hold attorney's fees in abeyance pending resolution of other issues in a case. *See Sexton v. Sexton*, 310 S.C. 501, 502, 427 S.E.2d 665, 665-66 (1993) (stating attorney's fees, alimony, and equitable distribution were held in abeyance while the issue of "whether the family court had subject matter jurisdiction to divide property held by a third party was determined . . . on appeal"). Here, both Lawrence and Brown consented to the bifurcation of the case and stated Lawrence's consent was the dispositive issue. However, at the time of the consent hearing, each party still had other causes of action pending that the family court would need to decide before Child's custody could be finally determined and the case could end. Specifically, if the family

⁵ Because this issue pertains to the procedural issue of whether Lawrence raised her cause of action for attorney's fees at the appropriate time, not the legal issue of determining the amount of attorney's fees to which Lawrence was entitled, we review this issue under an abuse of discretion standard. *See Stoney*, Op. No. 27758 (S.C. Sup. Ct. filed April 18, 2018) (Shearouse Adv. Sh. No. 16 at 9).

court found Lawrence's consent valid, Lawrence had a claim for violation of the Interstate Compact on the Placement of Children (ICPC); however, if the family court found Lawrence's consent invalid, Brown had a pending termination of parental rights (TPR) action against Lawrence and a claim for custody of Child as Child's psychological parent. Only after the family court ruled in Lawrence's favor on the issue of consent and dismissed Brown's Rule 59(e), SCRCP motion did Brown voluntarily dismiss her remaining claims against Lawrence, which in turn rendered Lawrence's ICPC claim moot. Immediately after voluntarily dismissing her amended complaint, Brown appealed the family court's determination that Lawrence's consent was invalid. Because (1) both parties had other causes of action pending at the time of the consent hearing; (2) Brown immediately appealed the family court's order following her dismissal of her amended complaint; and (3) attorney's fees may be held in abeyance pending resolution of other issues, we find Lawrence did not abandon her cause of action for attorney's fees by failing to argue attorney's fees at the consent hearing, in a Rule 59(e) motion, or on appeal. Thus, we find the family court abused its discretion by finding Lawrence abandoned her cause of action for attorney's fees, and accordingly, we reverse and remand to the family court for a determination of whether Lawrence was entitled to trial-level attorney's fees.

CONCLUSION

For the foregoing reasons, we affirm the family court's finding that it lacked jurisdiction to determine whether Lawrence was entitled to appellate attorney's fees. We reverse the family court's determination that it lacked jurisdiction to determine if Lawrence was entitled to trial-level attorney's fees and its finding that Lawrence abandoned her cause of action for attorney's fees. We remand the case to the family court for a determination of whether Lawrence is entitled to trial-level attorney's fees.⁶

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.⁷

SHORT, THOMAS, and HILL, JJ., concur.

⁶ We make no determination as to whether Lawrence is entitled to trial-level attorney's fees.

⁷ We decide this case without oral argument pursuant to Rule 215, SCACR.

In the State of South Carolina
In the Court of Appeals

Appeal from Charleston County
Family Court

Jocelyn B. Cate, Family Court Judge

Appellate Case No. 2016-000479
Trial Case Nos. 2013-DR-10-4057 and 2013 DR-10-4386

Holly Lawrence, ...	Appellant
v.	
Jennifer Brown, ...	Respondent

Appellant's Petition for Rehearing

In affirming the family court's finding that it lacked jurisdiction to determine whether Lawrence was entitled to *appellate* attorney fees, the June 20, 2018 Opinion misapprehends the scope of South Carolina Code Ann. § 63-3-530(A)(38). Nothing in the statute, the law governing post-remittitur jurisdiction, or in Rule 222, SCACR, limits a family court's power under the statute to award attorney's fees incurred in successfully defending a family court order on appeal. The Court should withdraw its opinion and reverse and remand for the family court to consider all the attorney's fees that Lawrence incurred.

I. Section 63-3-530(A)(38) empowers family courts to award appellate fees.

South Carolina family courts are creatures of statute. S.C. Code Ann. § 63-3-10. The General Assembly that created the Family Court also established what they may do. South Carolina Code Section 63-3-530 enumerates these powers, including “[t]he family court has exclusive jurisdiction” to award attorney fees: “Suit money, including attorney’s fees, may be assessed for or against a party to an action brought in or subject to the jurisdiction of the family court.” S.C. Code Ann. § 63-3-530(A)(38).

This statutory power includes the ability to award appellate-level fees. Applying the 1952 Code, the Court in *Smith v. Smith*, 262 S.C. 291, 297, 204 S.E.2d 53, 55-56 (1974), cited “the entire record in the case,” including counsel’s efforts on appeal, when it reversed the family court’s limited fee award and remanded for the family court to fix a greater, more appropriate fee. Similarly, Chief Justice Littlejohn, authoring an opinion for this Court in *Gore v. Gore*, 288 S.C. 438, 441, 343 S.E.2d 51, 52 (Ct.App. 1986), reversed the family court’s failure to award fees and remanded for the court to consider all the fees incurred, specifically including those incurred on appeal. Embodied in the logic and result of *Smith* and *Gore* is that the *family courts* may award appellate-level fees.

More recently, in *Michael Scott B. v. Melissa M.*, 378 S.C. 452, 456, 663 S.E.2d 58, 60 (2008) the Supreme Court described “the family court[s]’ general jurisdiction to award attorney’s fees” absent a more specific, contrary statute. Applying this reading, the Supreme Court reversed this Court for excluding private TPR actions from the statute’s scope. *Id.* at 456, 663 S.E.2d at 60. The current Opinion makes the same error of limiting the scope of the statutory grant of power to the family court. By its terms, a family court has the power to assess attorney’s fees incurred on appeal as long as the fees were incurred

“for or against a party to an action brought in or subject to the jurisdiction of the family court.” *Id.* This case satisfies these terms.

Lawrence also incurred attorney’s fees on appeal only because she was forced to defend the family court’s order. ROA 3-12. Whether family courts should award fees turns on whether counsel obtained a beneficial result. *E.D.M. v. T.A.M.*, 307 S.C. 471, 476-477, 415 S.E.2d 812, 816 (1992). One cannot evaluate beneficial results until any appeal is completed. *Id.* at 477, 415 S.E.2d at 816 (reversing a fee award where counsel lost the appeal on its merits). Being forced to defend a family court order on appeal likewise affects how much fees a family court should award because the appeal multiplies the complexity of the case and the time one must necessarily devote to it. *Glasscock v. Glasscock*, 304 S.C. 158, 161, 403 S.E.2d 313, 315 (1991).

By culling out the time counsel was forced to spend defending the family court order, this Court not only improperly limits the statutory grant of authority, but also truncates the factors that the Supreme Court instructed family courts to consider when exercising this statutory power to award fees.

II. The family court’s post-remittitur jurisdiction includes the ability to award statutory fees that are consistent with the appellate victory.

After a remittitur issues, a lower court has jurisdiction to “take *any* action consistent with the appellate court’s ruling.” *Austin v. Stokes-Craven Holding Corp.*, 406 S.C. 187, 198, 750 S.E.2d 78, 83-84 (2013)(emphasis supplied). “Any action” includes the ability hear motions for statutory attorney’s fees, including motions for fees incurred during the prior appeal. *Id.* at 198, 750 S.E.2d at 84; *Muller v. Myrtle Beach Golf and Yacht Club*, 313 S.C. 412, 415-416, 438 S.E.2d 248, 250 (1993).

This Court's Opinion acknowledges and applies this broad post-remittitur jurisdiction to the family court's power to award trial-level fees. But, this court then cites *Green v. Green*, 320 S.C. 347, 465 S.E.2d 130 (Ct.App. 1995), to distinguish appellate-level fees. In doing so, the Court mistakes *one* way to satisfy post-remittitur jurisdiction (where the remittitur specifically addresses the attorney fee issue) as the *only* way. It confuses what is sufficient with what is necessary. That is, in *Green*, the attorney's fees were an issue on appeal, and the remand included a charge to evaluate attorney's fees in light of the ultimate decision. *Green* included a description of the procedural posture of that particular case, but did not hold that it was necessarily for the unique scenario to be replicated in the future in order for appellate attorney's fees to be awarded by the family court. The statutory grant of power of South Carolina Code Section 64-4-530(A)(38) cannot be limited by one case's dicta.

In the first appeal in *Green*, the Court reversed and remanded for the family court to consider whether to award trial-level fees. The successful appellant then failed to move for the Rule 222, SCACR, appellate fee. *Id.* at 349, 353, 465 S.E.2d at 131, 134. On remand, the family court nevertheless considered the time spent on appeal. The Court of Appeals affirmed, stating in part that the family court had the discretion to award fees incurred on an appeal where attorney's fees were an issue on appeal and the remand included direction that the attorney's fees issue be addressed. *Id.* at 353, 465 S.E.2d at 134. This statement is dicta, as the family court ruled that the fee awarded was reasonable *even excluding the time associated with the appeal*. *Id.* at 353, 465 S.E.2d at 134. (Emphasis added) In short, jurisdiction to award appellate fees by the family court was not ruled upon. Hence, in

relying on *Green*, this Court is relying on dicta from that decision as a basis to deprive Lawrence of statutorily-granted attorney's fees.

II. Rule 222, SCACR, does not limit § 63-3-530(A)(38).

The view that Rule 222, SCACR, limits the family court's statutory power is in error. Rule 222, SCACR, is part of the appellate rules that govern appellate practice and procedure. Rule 101(a), SCACR. Rules on practice and procedure do not affect a lower court's subject matter jurisdiction. It is Section 63-3-530(A)(38), that governs the family court's subject matter jurisdiction. To the extent the two are inconsistent, the statute governs because the rules were promulgated "[s]ubject to the statutory law." S.C. Const, Art. V, § 4. In short, the General Assembly, not the judiciary, sets the power of the family courts it created.

Neither the family court nor Brown ever cited *Thornton v. Thornton*, 328 S.C. 96, 492 S.E.2d 86 (1997). And because the court issued its opinion without oral argument, this is the first time Lawrence has had a chance to address this case, which is relied upon by this court in holding that the family court may not award fees incurred in the appeal of a family court case.

Thornton had a "long and tortuous history" in which the opinion gives only an "abbreviated" account. *Thornton*, 328 S.C.at 101, 492 S.E.2d at 89. In particular, nothing in the Court's abridged account or in its analysis of appellate fees indicates that attorney's fees were ever part of a remand order. *Id.* at 113-114, 492 S.E.2d at 95. So, the case does not support or suggest this court's reading that a prior remand must involve attorney's fees before a family court may award appellate fees.

Thornton is not completely clear about what the party seeking appellate fees relied on after remand to the family court, Rule 222 or 63-3-530(A)(2) (a companion statute to 63-3-530(A)(38)). The Supreme Court began by noting that South Carolina Code Ann. § 20-7-420(2) [now § 63-3-530(A)(2)] authorized the family court on remand to award trial-level fees. *Id.* at 113, 492 S.E.2d at 95. It then separately analyzed appellate-level fees under Rule 222, SCACR—without addressing whether § 20-7-420(2) likewise authorized an appellate-fee award. *Id.* at 113-114, 492 S.E.2d at 95. It seems that after remand the party seeking appellate fees only asked the family court to apply Rule 222. If so, the Supreme Court’s decision in *Thornton* is not contrary to the appellant’s position; *Thornton* does not limit the scope of the family court to award appellate attorney’s fees *pursuant to statute*, but rather, addresses Rule 222 fees, which Lawrence is not seeking.

Thornton is, in this significant way, distinguishable. In this case, Lawrence’s counsel specifically invoked the family court’s *statutory* jurisdiction, not Rule 222, when she sought appellate fees on remand. Counsel pointed out that her “statutory right” to have the court assess fees was “another basis” to award appellate fees “[a]nd, we’re saying that there is that statutory right to pursue appellate fees over and above” the Rule 222 fees. ROA 203 l.11 – 204 l.7, 218 ll.12-14. On appeal, counsel again relied on § 63-3-350(A)(38) for jurisdiction. Appellant Brief, p. 7; Reply Brief, p. 7.

This court’s reading of *Thornton* is unsupported by that case’s analysis and holding and breaks unbroken precedent rendered before and after *Thornton* was rendered. The Supreme Court has five times squarely addressed the interplay between fee-shifting statutes and the appellate fee-shifting rule, each time holding that the statute vests lower courts with jurisdiction to fully award appellate-level fees, whether or not Rule 222 also applies.

Nothing in the text of S.C. Code Ann. § 63-3-530(A)(38) distinguishes it from these other fee-shifting statutes.

The first decision involves the interplay between the old Supreme Court Rule 38 on fees and S.C. Code Ann. § 15-77-300, which provides that a court “may allow” a prevailing party to recover fees when the state takes unjustified positions. In *McDowell*, the first appeal involved the merits and did not mention attorney’s fees. *McDowell v. South Carolina Dep’t of Social Serv.*, 296 S.C. 89, 370 S.E.2d 878 (Ct.App. 1987). Following that appeal, McDowell did not move for Rule 38 fees.

McDowell then waited weeks after the remittitur issued before petitioning the lower court for trial-level, statutory attorney fees. The lower court denied the petition, but the Court of Appeals reversed and remanded for the lower court to determine the trial-level fees. *McDowell v. South Carolina Dep’t of Social Serv.*, 300 S.C. 24, 28, 386 S.C. 280, 282 (Ct.App. 1989). After this second remand, McDowell sought for the lower court to award additional fees for the work done on appeal. On this remand, the lower court held that her appellate fees were capped at the \$750 fee then provided for in Supreme Court Rule 38, § 4.

The Supreme Court reversed, holding that Rule 38 (now Rule 222) “does not preempt an award of attorney’s fees to which one is otherwise entitled.” *McDowell v. South Carolina Dep’t of Social Serv.*, 304 S.C. 539, 543, 405 S.E.2d 830, 833 (1991). So, the Court held that the appellate rule did not limit the family court’s statutory power to award McDowell all her appellate attorney’s fees.

The next case was also rendered prior to *Thornton* and involves the interplay between Rule 222, SCACR, and S.C. Code Ann. § 29-5-10, the mechanic's lien statute. It too provides that attorney's fees "may be recovered" by the prevailing party.

In *Muller*, the first appeal addressed the merits without mentioning attorney's fees. *Muller v. Myrtle Beach Golf and Yacht Club*, 303 S.C. 137, 399 S.E.2d 430 (Ct.App. 1990). After the remittitur issued, the Supreme Court denied the prevailing party's Rule 222, SCACR, petition as untimely. *Muller v. Myrtle Beach Golf and Yacht Club*, 313 S.C. 412, 414, 438 S.E.2d 248, 249 (1993). The party then petitioned the lower court on remand to award appellate fees under § 29-5-10. The trial court denied fees, specifically ruling that it lacked jurisdiction to do so because the Supreme Court did not direct it to take up the fee issue. The Supreme Court reversed, holding that the mechanic's lien statute vested the lower court with jurisdiction to award fees incurred on appeal even though he could not recover fees under Rule 222, SCACR. *Id.* at 416, 438 S.E.2d at 250.

The *Taylor* litigation is the third case on point and was rendered after the *Thornton* decision was rendered. It involves the fee-shifting provision in the Unfair Trade Practices Act. On the first appeal, the Supreme Court ruled for Taylor on the merits and remanded for the trial court to consider the fees that had been incurred at the trial level. *Taylor v. Medencia*, 324 S.C. 200, 223, 479 S.E.2d 35, 47 (1996). The trial court then ruled on the trial-level fees, prompting a second appeal. 331 S.C. 575, 503 S.E.2d 458 (1998).

After the second appeal, Taylor moved under Rule 222, SCACR, for all the fees he incurred on the second appeal. The Supreme Court granted the standard Rule 222 fees of \$1000 without prejudice to Taylor's right to invoke § 39-5-140(a) and seek additional appellate fees in the trial court. *Taylor v. Medencia*, 332 S.C. 324, 326, 504 S.E.2d 590,

591 (1998). The Court cited the *Muller* and *McDowell* decisions to reaffirm that the lower court on remand was the one to decide whether to award appellate attorney's fees pursuant to a statute.

The next decision involves S.C. Code Ann. § 15-61-110, which provides that the court "may fix attorney's fees in all partition actions" On the first appeal in the *Parker* litigation, the Court of Appeals affirmed an award of trial-level attorney's fees and, after Supreme Court review of another issue, the case was remanded back to the master-in-equity. *Parker v. Shecut*, 359 S.C. 143, 148, 597 S.E.2d 793, 796 (2004). The order remanding the case said nothing about the appellate-level fees, and party seeking fees apparently did not move for a Rule 222 fee award. *Id.* at 148, 597 S.E.2d at 796.

On remand, the master awarded the fees incurred on appeal. *Id.* at 148, 597 S.E.2d at 796. The Supreme Court affirmed, holding that the lower court's post-remitter jurisdiction included jurisdiction to award appellate-level attorney's fees pursuant to a statute. *Id.*, 359 S.C. at 152-153, 597 S.E.2d at 798-799.

Most recently, the *Austin* litigation involved the interplay between Rule 222, SCACR, and the fee-shifting provision in the Dealer's Act. In that case, the first appeal involved in part how much attorney fees the party was entitled to under South Carolina Code Ann. § 56-15-110 for the pre-appeal trial work. *Austin*, 406 S.C. at 191-195, 750 S.E.2d at 80-82. After the Supreme Court remanded on trial-level fees, the party moved the Supreme Court for appellate-level fees under Rule 222, SCACR, and to modify the \$1000 fee specified in the Rule so as to award all the appellate fees incurred. *Id.* at 195, 750 S.E.2d at 82. The Supreme Court denied any Rule 222 fees. *Id.* at 195, 750 S.E.2d at 82.

After the remittitur issued, that same party moved the lower court to award the fees incurred in the appeal. On the second appeal, the Supreme Court held that its denial of Rule 222 fees did not preclude the party on remand from seeking the appellate fees as statutory fees. The Supreme Court reasoned that a party may seek to recover appellate fees under both Rule 222 and under the statute because the two are not mutually exclusive. *Id.* at 199-200, 750 S.E.2d at 84-85. The Supreme Court ultimately remanded for the lower court to award the appellate and post-appellate fees. *Id.* at 201, 750 S.E.2d at 85.

Returning now to the current Opinion, this Court found that such decisions were distinguishable because they were not decided in the family court. Yet the Court does not explain why this distinction makes a difference. There is no apparent distinction between the scope of the jurisdiction conferred in § 63-3-530(A)(38) and that conferred in §§ 15-61-110, 15-77-300, 29-5-10, 39-5-140(a) or 56-15-110. All of these fee-shifting statutes vest the lower courts with jurisdiction to award appellate-level fees on remand, be the lower court a family court or a circuit court. And nothing in any of these statutes' text suggest that the General Assembly intended to treat family courts differently. What is more, and as has been previously mentioned on page 2 of this motion, the *Smith* and *Gore* decisions involved *family* courts awarding *appellate* attorney's fees. The present Opinion is a break from this precedent.

Lastly, treating family courts differently will force family court litigants who desire more than the \$1000 fee to move to modify the Rule 222 fee award and lard their Rule 222 petitions with attorney fee affidavits and other documentation. It would seem that this Court and the Supreme Court would have to begin making their own factual findings—in the first instance—on evaluating counsel's beneficial results; the party's ability to pay his

or her attorney and the effect of the fee on their standard of living; the parties' respective financial condition; the complexity of the case; the time necessarily devoted to achieving a beneficial result; the professional standing of counsel; and the customary legal fees of similar services. *E.D.M.*, 307 S.C. at 476-477, 415 S.E.2d at 816; *Glasscock*, 304 S.C. at 161, 403 S.E.2d at 315. These factual issues are best evaluated initially at the trial level.

Conclusion

Section § 63-3-530(A(38)) does not distinguish between a family court's power to award trial-level fees and appellate-level fees, and is materially indistinguishable from other fee-shifting statutes. All of these fee-shifting statutes grant lower courts the power to award appellate fees on remand if the award is *consistent with* the appellate ruling; the remittitur does not need to specifically mention this statutory jurisdiction in order for it to exist. Awarding Lawrence attorney's fees for the time and effort her counsel was forced to spend to successfully defend the family court order is fully consistent with her appellate victory.

The Court should grant Lawrence's petition for rehearing and reverse and remand for the family court to consider all of Lawrence's attorney's fees.

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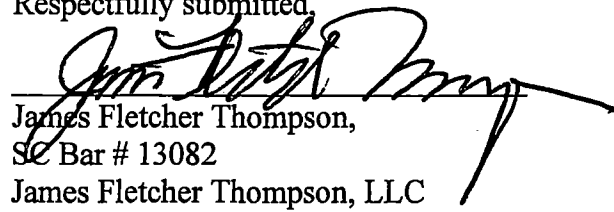
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Respectfully submitted,



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The South Carolina Court of Appeals

Holly Lawrence, Appellant,

v.

Jennifer Brown, Respondent.

Appellate Case No. 2016-000479

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Paul E. Short, Jr.

J.

Paul A. Thomas

J.

Pauli

J.

Columbia, South Carolina

cc: James Fletcher Thompson, Esquire
Shannon Phillips Jones, Esquire
Allison Boyd Bullard, Esquire
The Honorable Jocelyn B. Cate

FILED

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August 16, 2018