

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR ORANGE COUNTY

CIVIL ACTION

Carolyn Glass

Plaintiff,

CASE NO. 10-1421

vs.

DIVISION C

Jeff Hart,
Mary Hart, and
Good Shepherd Adoptions

Defendant.

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MEMORANDUM OF LAW SUPPORTING PLAINTIFF'S
MOTION FOR WRIT OF HABEAS CORPUS TO SET ASIDE THE CONSENT TO
ADOPTION

The plaintiff, CAROLYN GLASS ("Glass"), requests the court grant the Writ of Habeas Corpus Motion to Set Aside the Consent for Adoption as provided § 63 Fla. Stat. (2021).

Glass became pregnant in December of 2019. Glass and the biological father, Anthony Torrez ("Torrez"), agreed they would get married and start a family after they complete their education, so they explored the option of adoption; the young couple contacted Good Shepherd Adoptions ("GSA") to attempt to grasp the process. During this time, Glass resided and relied on her mother for financial support throughout the pregnancy. The mother was adamant that Glass should terminate the pregnancy and contemptuous of Glass's relationship with Torrez.

Glass gave birth to a child on September 23, 2020, a mere day after the violent murder of Torrez. Much to Glass' distress and dismay, on September 24, 2020, Patti Kelley, a representative of GSA, arrived at the hospital with two attendant witnesses and a notary for the sole purpose of executing the consent agreement and obtaining the child. Glass' mother was also present. Glass' mother cajoled and urged Glass to sign the documents, ignoring the apparent signs symptoms of grief and depression; informing Glass that this is the only way to "avoid a lifetime of poverty." Glass sapped of her will by a fog of postpartum depression, grief due to the loss of her loved one and her mother's unrelenting barrage, signs the consent agreement despite her own desires. GSA subsequently takes custody of the child and places them with Jeff and Mary Hart ("Harts"). The court granted the Harts' petition for adoption in December 2020.

Unfortunately, this downward spiral continues as Glass is diagnosed with postpartum depression a week after giving birth and prescribed heavy antidepressants. Glass is subsequently bedridden

and dazed for the next four months. Eventually, Glass manages to extricate herself from the depths of despair by stopping the medication and restoring her to normalcy. Today Glass is gainfully employed, self-supporting, and enrolled in college.

§ 63.00 Fla. Stat. (2021) is the governing Florida statute on adoption. The statute states consent is irrevocable except for an instance of fraud or **duress**. The statute also provides the form and structure for the disclosures; it requires that the typeface of the disclosure and consent order be in 12-point boldface font. Any breach of form and substance is only grounds for revocation if failing to meet the requirement results in a material failure of fundamental fairness. The statute also gives clear legislative intent that the court should act in the child's best interests in making any determinations.

Glass is a victim of duress. The combination of despair, depression, and grief converted Glass from a confident, capable young woman into a malleable creature devoid of any will of her own. Nevertheless, Glass' mother proceeded to exert her will on Glass and compel Glass to sign the consent documents despite Glass' protestations.

Herald v. Hardin, 116 So. 863 (Fla. 1928) renders a definition of duress. "Duress is a condition of mind produced by an improper external pressure or influence that practically destroys the free agency of a party and causes him to do an act or make a contract not of his own volition."

In Hearld, a wife pledged real property to a third party against her husband's debts. The third party subsequently foreclosed, and the wife argued the contract was void. The wife contends the husband's threat to take her children and divorce her constitutes duress. The court did not accept that this destroyed the wife's free agency as no evidence existed of her duress beyond her testimony.

More recently, in K.C. v. Adoption Services, Inc., 721 So. 2d 811 (Fla. 4th DCA 1998), a mother executed a consent for adoption, and an agency took custody of the child. The mother subsequently sought to have the motion set aside on the grounds of fraud or duress. In this instance, the court found no evidence of duress, but the court espoused the opinion that the consenting parent must prove that duress occurred via clear and convincing evidence. The GSA agent, two witnesses, and the notary are all able to testify to Glass' obvious distress and the mother's insistence that Glass sign the consent agreement. Glass' mother is the external force that exerts improper influence on a grieving, medically depressed young mother facing the most difficult decision of her life.

In re I.B., 142 So. 3d 919 (Fla. 5th DCA 2014), a mother in custody signed a consent for adoption awarding her child to the foster parents; the mother subsequently claimed a lack of understanding of the consent and its terms. The court held that evidence of duress was lacking but remanded the case to originating court to consider whether other grounds existed for striking the consent form. The court envisioned other circumstances would give rise to a revocation of consent, not just fraud or duress, such as breaches of statutory or other requirements.

GSA fails to produce the documentation compliantly, which obfuscates the documents. Glass' is constantly crying and distraught while attempting to read documents; this renders the documents

indiscernible to Glass. Glass could not comprehend the consent order she signed due to her mental state and the illegible font. GSA's failure to produce the document in 12-point boldface font constitutes a material failure of fundamental fairness and a blatant inequality of bargaining position.

The supporting case is F.R. v. Adoption of Baby Boy Born November 2, 2010, 135 So. 3d 301 (Fla. 1st DCA 2010), a mother did not read or speak English and signed consent orders surrendering her child, with no translation. The court held this was a clear breach of fundamental fairness as well as misrepresentation. Understanding the proceedings is the most fundamental tenant of any contractual obligation, as agreement cannot exist sans understanding. Glass could not comprehend the documents presented to her adequately.

Glass does not minimize the importance of the court's duty to consider the child's best interests but does submit that the court gives worthy weight to the contention that only the court's consideration absent the matter of duress. The Hart's adoption cannot be in the child's best interests for consent obtained via duress. Nonetheless, the child's best interest is to be with the natural mother. Glass can provide a stable home and a modest but financially secure lifestyle. Additionally, the child will have access to the natural family of both biological parents. Glass has access to a rich and in-depth family medical history. Glass provides something to the child that the Harts cannot provide the primal parental bond between mother and child. The bond the Harts have made with the child should not be the determining factor.

Matter of Adoption of Doe, 543 So. 2d 741 (Fla. 1989) a biological father contested the adoption of his child when his consent was deemed implied because of abandonment. The trial court held that prebirth conduct could imply abandonment, the appellate court reversed. The court contemplated the question of bonding and opined thusly "the child's best interest as evidenced by subsequent bonding to the adoptive parents was not a significant consideration in this case. This must be the rule because, otherwise, a tentative placement or erroneous judgment would be effectively unreviewable, and we would have adopted a rule that physical custody, because of subsequent bonding, is determinative in contested adoptions." It is not to say bonding should never be considered, but it should not prevent the court from exercising justice in the circumstances.

The court should note that Glass is not a capricious creature, and this motion is not borne from remorse but the restoration of faculty. Glass was a strong, confident young woman before the moment she gave birth and is finally whole again. Glass's mother chose the most importunate moment to exert the force of her will on Glass, and GSA was all to happen to stand idly by and benefit from that moment.

Therefore the court should provide Glass relief, grant the Writ of Habeas Corpus, and Set Aside the Consent to Adoption because there is clear and convincing evidence that Glass was under duress. Furthermore, the failure of GSA to comply with the statutory requirements during Glass' impaired circumstances constitutes a material failure of fundamental fairness. Such findings are in the child's best interest and consistent with the provisions of § 63, Fla. Stat. (2021) and in the interests of equity and justice.