

IN THE CIRCUIT COURT FOR DICKSON COUNTY, TENNESSEE
AT CHARLOTTE

JOHN E. MCCAUL, JR.,
Plaintiff,

FILED July 28 20 14
12:18 P.M.
Pamela A. Myatt
Circuit Court Clerk

Versus

Docket No. 22CC-2014-CV-33

DAVID HODGIN, KIM HODGIN,
BONNIE CLEAVELAND, ARIA
CLEMENTS, STEPHEN KONIG,
ELIZABETH MURRAY, FLIPS
GYM, SHANNON CRAWFORD TUTEN,
DONNA DOUGHERTY PASCALL,
KATICO CADWALLADER,
KERI HARDWICK HENNING,
LYNDA BARKER GWIN, TAMMY
MCBRIDE, DORIS D. HOWARD,
CHRIS JOHNSON, KENDALL SYKES
AND TRIO SOLUTIONS,
Defendants.

ORDER

This matter came on for hearing on the 19th day of June, 2014, with the Honorable Robert E. Burch, presiding. It appearing to the Court that pending is Defendant's, David and Kim Hodgin and Katico Cadwallader, Motion to Deem Request for Admissions Admitted as well and a Motion to Strike the Notice Hearing filed by the Plaintiff. Upon commencement of the hearing, the Court finds that counsel for the Plaintiff, Carrie Cassaway, has failed to appear and has notified the Court's Administrative Assistant that she left to attend a hearing in Montgomery County, Tennessee. Upon review of the record and argument of Counsel for the Defendants, the Court finds as follows:

It is ORDERED, ADJUDGED and DECREED that Plaintiff's Motion to Strike the Notice of Hearing is denied.

It is ORDERED, ADJUDGED and DECREED that the Defendants', David Hodgin, Kim Hodgin and Katico Cadwallader, Motion to Deem Request for Admissions is granted and the following are facts that are now deemed admitted by the Plaintiff:

1. That in October 2005 John McCaul sent two men of no relation to him from Nebraska to Tennessee to retrieve his child, Sonya McCaul.

2. That Sonya was in Tennessee with Jennifer Gun, the wife of a friend and employee, with John McCaul written permission.

3. That John McCaul was supposed to pick Sonya up approximately two (2) weeks thereafter.

4. That Sonya remained in Tennessee for over two (2) months during this period of time.

5. That during that period of time John McCaul knew how to locate Jennifer Gunn and Sonya and how to contact them at all times.

6. That during the Fall of 2005, John McCaul were using methamphetamines.

7. That in October 2005 a representative from the Tennessee Department of Children's Services requested that John McCaul come to Tennessee to pick Sonya up.

8. That John McCaul a representative from the Department of Children's Services of Tennessee that he did not have the funds to make the trip from Nebraska to pick up Sonya, who was under the age of two (2) years at the time.

9. That John McCaul paid Joshua and Patrick Kidder between \$500.00 and \$800.00 to drive from Nebraska to Tennessee to retrieve Sonya.

10. That as a result of John McCaul not coming to retrieve his child from Tennessee she was placed in protective custody.

11. That in October 2005 John McCaul's address was P.O. Box 7341, Omaha, Nebraska 68107.

12. That John McCaul was advised in October 2005 by representatives from the Tennessee Department of Children's Services that in the event he did not return to Tennessee to pick Sonya up that she would be placed in protective custody.

13. That John McCaul has not provided a truthful explanation for his failure to come and retrieve Sonya from the state of Tennessee in October 2005.

14. That in October and November 2005 John McCaul was not on probation or other court-ordered supervision.

15. That by Order entered on October 5, 2005, the Juvenile Court for Dickson County, Tennessee entered a Protective Custody Order as relates to John McCaul's minor child, Sonya McCaul, born July 18, 2004.

16. That John McCaul was advised that a hearing would take place on October 5, 2005 in the Juvenile Court for Dickson County, Tennessee and that John McCaul failed to appear.

17. That Sonya was placed with David and Kimberly Hodgin by the Tennessee Department of Children's Services in April 2006.

18. That the report to the juvenile Court dated June 5, 2006 states: "Sonya has adjusted very well in the current placement. She refers to Mr. and Mrs. Hodgin as Mom and Dad and gets along well with their son, Derek. Mr. and Mrs. Hodgin have provided Sonya a very loving and stable environment; they report the last contact from Sonya's Mother to be 4/16/06, Easter Sunday."

19. That this report further states: "A diligent search was performed to locate Mr. McCaul and the last record of him was from the Douglas County Correctional Center on 12/07/05."

20. That John McCaul asked his mother, Phyllis McCaul, not to inform the Tennessee Department of Children's Services of his address making it impossible for the Department to mail him a Permanency Plan prior to December 2007.

21. That John McCaul did not personally contact anyone in the Tennessee Department of Children's Services from approximately October 3, 2006 until December 2007 to inquire about his minor child, Sonya McCaul.

22. That on October 4, 2006 an adjudicatory hearing Order was entered after the hearing held on September 27, 2006 before the Honorable A. Andrew Jackson.

23. That the above referenced Order entered on October 4, 2006 states in pertinent part as follows, "Upon the evidence presented and the entire record, from all of which the Court finds that the child, Sonya Jean McCaul, is a dependent neglected child within the meaning of the law as she was in the State of Tennessee without a parent or legal guardian at the time of removal, in that there is no reasonable services available which could have prevented the necessity of said child's removal at that time, and that it is the best interest of said child and the public as follows: ..."

24. That this Order further stated: "That the Court finds that this Order shall constitute the final determination as to the claims of the child, Sonya Jean McCaul, is dependent and neglected for the reasons set forth above; and that this Order shall constitute a final order of disposition awarding custody to the Department of Children's Services; and that there is no just reason to delay entry of the final judgment as to these claims."

25. That in the permanency hearing Order entered October 8, 2008 it was found, "Due to Mr. McCaul's incarceration, it has been difficult for the Department to help him complete his necessary tasks. The Department has provided him a copy of the permanency plan, but he has not provided documentation that he has completed any task outlined the plan."

26. That in 2005 John McCaul owned and operated a gentleman's club and a security service.

27. That John McCaul was arrested in 2005 for being a felon in possession of a firearm.

28. In January or February 2006 John McCaul spent approximately two (2) weeks in jail in Nebraska for failure to appear in traffic court.

29. That in April 2006 John McCaul was indicted on federal charges and remained in federal custody from that time until granted supervised release on October 26, 2012.

30. That John McCaul was arrested for being a felon in possession of a firearm in February 2006.

31. That Sonya was placed in Mr. and Mrs. Hodgin's home on or about April 3, 2006 by the Tennessee Department of Children's Services.

32. That on April 4, 2006 the Juvenile Court for Dickson County, Tennessee entered an Order finding that Sonya was dependent and neglected.

33. That by virtue of the entry of the dependent and neglected order entered by the juvenile Court that John McCaul lost his presumption of superior parental rights.

34. That in the Fall of 2006 John McCaul plead guilty to the federal charge of unlawful possession of firearms.

35. That John McCaul received a sentence as a result of his guilty plea for the crime referenced above of fifteen (15) years.

36. That John McCaul testified his sentence to the above referenced charge was reduced to approximately seven and a half years (7.5) by his act of testifying on behalf of the United States government in the prosecution of a long-unsolved murder.

37. That for years after John McCaul did not report his knowledge to authorities about the unsolved murder he subsequently testified about as a witness for the United States government.

38. That John McCaul's brother, Steven McCaul, testified the defendant in the above referenced murder trial used his firearm to murder two men in 1997.

39. John McCaul was told prior to giving his testimony in the above referenced trial that the murder weapon used by the defendant belonged to his brother, Steven McCaul.

40. That John McCaul has been involved in criminal activity since his early teen years and the majority of his adult life.

41. That John McCaul met with investigators and/or representatives of the United States Attorney's Office for the purpose of participating in a proffer prior to his testimony as a witness for the government in the above referenced murder trial.

42. That in the proffer session referenced above John McCaul provided information to the government of criminal conduct known to him conducted by individuals other than himself.

43. That in the proffer session referenced above John McCaul provided information to the government relating to the motorcycle club "Hell's Angels."

44. In the proffer session referenced above John McCaul provided information relating to weapons and narcotics trafficking conducted by himself or other individuals, including individuals associated with the "Hell's Angels."

45. John McCaul is a member and involvement in the Aryan Nation prison gang.

46. Membership in the Aryan Nation prison gang is known as a "blood in/blood out" organization.

47. That as a member of the Aryan Nation John McCaul may not, consistent with their code, unilaterally renounce membership in the gang for the reason that his has been released from prison.

48. That providing the government information about the criminal activities of the Aryan Nation places John McCaul or others close to him at risk of physical harm.

49. John McCaul's membership in the Aryan Nation continued after his release from prison on armed robbery charges in 1997.

50. There is a split amongst members in the Aryan Nation due to the renunciation of the long standing code by leadership that family members of those targeted by the Nation are not to be killed or harmed in retaliation.

51. That providing the government information relating to the criminal activities of the Aryan Nation or the Hell's Angels places John McCaul and anyone close to him at risk of bodily harm or death.

52. That John McCaul has failed to complete a psychological evaluation with a parenting component.

53. That John McCaul was convicted of three (3) charges of armed robbery under the statutes of the State of Nebraska.

54. That John McCaul was not convicted of attempted robbery under the statutes of the State of Nebraska.

55. John McCaul informed a representative of the State of Nebraska or other professional during the course of the ICPC approval process that he was only convicted of attempted robbery.

56. That John McCaul has failed to participate in individual counseling ongoing, as required under the Permanency Plan ratified by the juvenile Court.

57. That John McCaul has not "resolved all your legal issues" as required under the Permanency Plan ratified by the juvenile Court, because he is still under supervised release by the Federal Bureau of Prisons at this time.

58. That John McCaul has not refrained from criminal activity since being placed on supervised release.

59. That on September 25, 2013 John McCaul was provided with a document from the Tennessee Department of Children's Services entitled "Criteria and Procedures for Termination of Parental Rights".

60. That John McCaul was notified prior to the review hearing on January 29, 2014 by Dr. Berryman that Sonya did not want to have any more phone calls with him.

61. That John McCaul was notified by Dr. Berryman prior to the review hearing on January 29, 2014 that Sonya did not want to talk to him as it was one step closer to possibly moving to his home in Nebraska.

62. That Dr. Berryman's letter of January 28, 2014 states, "She is very clear that she does not want to leave her family here." She further stated in the same letter, "Sonya denies anyone is discouraging her from building a relationship with her biological Father."

63. That Sonya had a significant bond with Mr. and Mrs. Hodgkin at the time he took custody of her under the ICPC on January 29, 2014.

64. That Sonya has asked for contact with Mr. and Mrs. Hodgkin since she was sent to live with him in Nebraska under the ICPC.

65. John McCaul has denied Sonya's requests to contact Mr. and Mrs. Hodgkin upon arriving in Nebraska on January 30, 2014.

66. Sonya was aware prior to the juvenile court ordering therapeutic counseling with Dr. Berryman that she had been adopted by the Hodgkins and that she was aware they were not her birth parents.

67. John McCaul's mother, Phyllis McCaul, was granted visitation with Sonya by the Tennessee Department of Children's Services during the years of John McCaul's incarceration, but that she only requested one visit with Sonya, which occurred in December 2007.

68. John McCaul's mother, Phyllis McCaul, though a represented participant in the juvenile and chancery court proceedings, never notified any court or the Tennessee Department of Children's Services that she was being denied contact or visitation with Sonya by the Hodgkins.

69. That prior to receiving custody of Sonya under the ICPC on January, 29 2014 there was no court ordered transition period.

70. That prior to Sonya being placed in John McCaul's custody under the ICPC he had only had one (1) telephone call with her.

71. That Sonya reluctantly participated in the sessions with Dr. Berryman, because she knew it could ultimately result in her being made to live with John McCaul in Nebraska, resulting in the severance of her relationship with the Hodgins as well as all her family, friends, and activities in Tennessee.

72. That during the course of the ICPC approval process John McCaul stated his intention was to slowly develop a relationship with Sonya and not to outright remove her from the care of the Hodgins family.

73. That while at the office of the Tennessee Department of Children's Services on January 29, 2014, Sonya personally asked to speak with John McCaul and asked him to please allow her to remain in Tennessee with the Hodgins and in return she would promise to have a relationship with him.

74. That Sonya called the Hodgins every few hours during the evening of January 29, 2014 pleading for them to come to the motel John McCaul was staying at to pick her up so she could return home with them.

75. That on January 29, 2014 at approximately 4:00 p.m., Mr. Hodgins participated in a previously scheduled review meeting telephonically with John McCaul and others who were at the Tennessee Department of Children's Services office.

76. During that meeting nobody asked Mr. Hodgins to come down to the Tennessee Department of Children's Services office or asked why he was not physically present at the meeting, or complained that the Hodgins did not have Sonya at their office at 4:00 p.m.

77. That at the permanency meeting held on January 29, 2014 at the offices of the Tennessee Department of Children's Services that the representative of the Department of Children's Services agreed that it was of the utmost importance for Sonya to have continued communication and contact with the Hodgins.

78. That John McCaul has not allowed such communication and contact to continue with the Mr. and Mrs. Hodgin.

79. That since Sonya was returned to John McCaul's custody under the ICPC he has cut off all communication between her and Mr. and Mrs. Hodgin.

80. Sonya adamantly did not want to go to Nebraska to live with John McCaul.

81. That since Sonya has been placed with John McCaul under the ICPC, neither he nor she has had any communication with Dr. Berryman.

82. That Sonya resided with Mr. and Mrs. Hodgin without interruption for approximately eight (8) years.

83. That Sonya was happy and thriving while living in the Hodgin home.

84. That during the time frame where reintroduction between John McCaul and Sonya became a possibility, John McCaul's personal wishes guided his decisions relating to requesting and subsequently taking custody of Sonya and were not based on the needs, best interests or desires of Sonya.

85. That Sonya's needs relating to a permanent home were not met by the Tennessee Department of Children's Services during the approximate seven (7) years of John McCaul's incarceration.

86. That the sudden removal of Sonya from the Hodgin family has been detrimental to the emotional well-being of Sonya.

87. That John McCaul's failure to allow communication with the Hodgin family poses a significant risk of harm to Sonya's mental and emotional well-being.

88. That the Tennessee Department of Children's Services did not consult with Dr. Berryman regarding a potential reintroduction timeline of Sonya to John McCaul's custody at any time prior to or after the January 29, 2014 review hearing.

89. The Guardian ad litem, Hilary Duke, had never met Sonya prior to the January 29, 2014 review meeting held at the Tennessee Department of Children's Services office.

90. That the attorney ad litem, Jennifer Honeycutt, appointed by the juvenile Court on November 6, 2013 did not meet with Sonya prior to January 29, 2014 after the review hearing in the juvenile Court, nor did she investigate the facts and circumstances of the case or determine Sonya's wishes with respect to moving to Nebraska to live with John McCaul.

91. The attorney ad litem above referenced was appointed by the juvenile Court to protect the rights of Sonya and to advocate for Sonya's preferences, which she failed to do.

92. That Sonya is dependent and neglected while currently in John McCaul's care.

93. That at least since the Permanency Plan was ratified in 2009 that this matter has been designated by the Department of Children's Services as concurrent for reunification and adoption.

94. That Sonya by virtue of her own constitutional rights has a substantial and recognizable interest in preserving her bond with the Hodgins.

95. That the failure of the Tennessee Department of Children's Services throughout these proceedings has encouraged destruction of the bond between Sonya and the Hodgins.

96. That Sonya's rights under both the Tennessee and the U.S. Constitutions have been violated by the Tennessee Department of Children's Services due to its failure to reasonably and appropriately conduct its statutory duties.

97. That the Order granting custody to John McCaul under the ICPC on January 29, 2014 was obtained by fraud.

98. That the Order granting custody to John McCaul under the ICPC on January 29, 2014 was obtained by mistake of law.

99. That the juvenile Court relied upon materially false representations of the State, John McCaul's counsel and the Guardian ad litem at the review hearing on January 29, 2014, in granting custody of Sonya to him under the ICPC.

100. That the ICPC approved by the State of Nebraska was based upon materially false statements or omissions John McCaul had given or failed to give to the representatives of the State of Nebraska.

101. That John McCaul had absolutely no contact with Sonya for approximately eight (8) consecutive years.

102. That John McCaul was released from federal prison on October 26, 2013.

103. That Dr. Janie Berryman was appointed by the Dickson County Juvenile Court in order to facilitate therapeutic contact between John McCaul and Sonya.

104. That prior to the review hearing on January 29, 2014 all counsel, the Guardian ad Litem and the Tennessee Department of Children's Services agreed it was in the Sonya's best interest to follow Dr. Berryman's lead with respect to the appropriate timeline for reintroduction.

105. That at all hearings prior to the January 29, 2014 hearing Department of Children's Services counsel for the State and John McCaul's counsel acknowledged that the Hodgins were in compliance and cooperating with the permanency goals.

106. That at the November 6, 2013 review hearing Judge Jackson opined as follows, relating to Dr. Berryman, "She shoots straight and she knows what she is doing, and she doesn't play games If she says what I think she is going to say about how this problem is going to adversely affect this child, I'm not having this child do that, and I can tell you that now. The child is obviously happy, doing well and doesn't know who her father is."

107. That at the November 6, 2013 review hearing Judge Jackson informed the parties that it would hold one more review hearing on January 29, 2014 and then set the matter for final hearing in the spring.

108. At the review hearing on January 29, 2014 Sonya was not present nor were any witnesses called on her behalf.

109. That despite there being no witnesses called nor Sonya being present, the juvenile Court gave custody to John McCaul under the ICPC without consideration of her best interests. (See Order entered February 12, 2014).

110. That the first time John McCaul had seen Sonya in eight (8) years, she was transported by the Tennessee Department of Children's Services to spend the night with him in a motel.

111. That upon her arrival at the motel Sonya was distraught and confused.

112. That a female representative from the Tennessee Department of Children's Services did not remain with Sonya overnight at the motel.

113. That on the evening of January 29, 2014 Sonya considered John McCaul to be a total stranger to her.

114. That during the night in the motel referenced above Sonya called Mr. and Mrs. Hodgin many times begging and pleading for them to come and get her.

115. That the next morning on January 30, 2014 John McCaul boarded a plane with Sonya and the Hodgins have not seen her since nor has she talked to Dr. Berryman since leaving the State of Tennessee.

116. That the Tennessee Department of Children's Services paid for John McCaul's roundtrip airline ticket from Nebraska to Tennessee as well as his motel room during his stay in Tennessee.

117. The Tennessee Department of Children's Services paid for Sonya's one-way airline ticket from Tennessee to Nebraska prior to the review hearing on January 29, 2014.

118. That John McCaul has cut off all communication between Sonya and Mr. and Mrs. Hodgin and their family as a result of a request made by the Tennessee Department of Children's Services.

119. That all telephonic communication that Sonya has had with other Hodgin family members has been by way of speaker phone with John McCaul presence nearby.

120. That the only telephonic communication John McCaul has allowed Sonya to have with the Hodgins family are with Sonya's grandmothers.

121. That a hearing has never been conducted in the juvenile Court to allow the Hodgins to demonstrate that taking Sonya from them poses a substantial risk of harm to Sonya.

122. That Mr. and Mrs. Hodgins had physical custody of Sonya pursuant to a valid Order of the juvenile Court.

123. That custody of Sonya was transferred to the Tennessee Department of Children's Services.

124. That John McCaul does not currently have legal custody of Sonya.

125. That John McCaul was found to be unfit to have custody of Sonya by the juvenile Court.

126. That no court in the State of Tennessee has ever found John McCaul to be a "fit" parent.

127. That Sonya's interest in a stable and secure environment is at least as important as custody of her being returned to John McCaul.

128. That prior to custody of Sonya being placed with John McCaul under the ICPC there was a valid Order of the juvenile court transferring custody of Sonya to the Tennessee Department of Children's Services.

129. That the Order of the juvenile court transferring custody of Sonya to the Tennessee Department of Children's Services was entered on October 4, 2006.

130. That the Order of the juvenile court transferring custody to the Tennessee Department of Children's Services was not granted or voluntarily agreed to by John McCaul.

131. That no court has ever awarded legal or physical custody of Sonya to John McCaul's mother, Phyllis McCaul.

132. That the "Motion to Return to Custody" that was filed on John McCaul's behalf by his court appointed attorney, Lynn Coffinberry, was not filed in an initial custody proceeding.

133. That the "Motion to Return Custody" that was filed on John McCaul's behalf by your court court appointed attorney, Lynn Coffinberry, sought to modify the valid custody Order of the juvenile Court.

134. That as a result of the Order of the juvenile court transferring custody to the Tennessee Department of Children's Services after finding her to be dependent and neglected John McCaul lost the presumption of parental superior rights under Tennessee law.

135. That prior to Sonya being returned to John McCaul under the ICPC he did not demonstrate to the juvenile court nor did the juvenile court find, a material change in circumstances.

136. Prior to Sonya being returned to John McCaul under the ICPC the juvenile Court did not hold a hearing relating to a material change in circumstances that would justify returning Sonya to his custody.

137. That the juvenile Court never made a finding nor held a hearing to return custody of Sonya to John McCaul based upon a pending Petition to Modify Custody or a Petition for Custody or after having made a best interest determination.

138. That the focus of a best interest hearing after a finding that a child is dependent and neglected is premised on what is best for the child not what is best for the parent.

139. That once a child has been adjudicated dependent and neglected and placed in the custody of the State that the parent's superior rights are secondary to the best interest of the minor child.

140. That Sonya has been adjudicated by the juvenile Court dependent and neglected and that her best interests are superior to John McCaul's personal desire to have Sonya returned to his legal and physical custody.

141. That the Order placing custody of Sonya with John McCaul entered on January 29, 2014 was obtained by virtue of fraud or mistake.

142. That Sonya's constitutional rights of due process were violated as a result of the failure of the Juvenile Court of Dickson County, Tennessee to hold a best interest hearing prior to returning her to John McCaul's custody under the ICPC.

143. That under both the United States and Tennessee constitutions, Sonya cannot be deprived of her constitutional rights without due process of law.

144. That Sonya's liberty interest in preserving her bond with the Hodgins was violated by the Tennessee Department of Children's Services by its act of returning Sonya to you under the ICPC without a hearing taking into consideration her best interests.

145. That due process requires, at a minimum, the opportunity to be heard at an amenable time and in an amenable manner.

146. That Sonya was placed in the care of the Hodgins family as an infant under the age of two (2) years old.

147. That at the time Sonya was placed with the Hodgins family she never really knew John McCaul or her birth mother, nor had a significant bond with either.

148. That under Tennessee law at any time when the best interest of a child conflicts with that of her parent such conflict shall be resolved to favor the rights and the best interest of the child.

149. That Sonya has constitutionally protected interests.

150. That at the May 8, 2013 review hearing there were no allegations by any of the participants at the hearing that the Hodgins were uncooperative or failed to comply with the terms of the Permanency Plan with respect to facilitating therapeutic contact between you and Sonya.

151. That the May 2, 2013 report to the juvenile Court from the Tennessee Department of Children's Services states in pertinent part: "The child was placed with Mr. and Mrs. Hodgins of Dickson, Tennessee. No concerns have been reported. ..."

152. That at the September 25, 2013 review hearing neither counsel for the State, the Tennessee Department of Children's Services nor the Guardian ad litem or your lawyer informed the juvenile Court that the Hodgins had been uncooperative in facilitating Sonya's therapeutic counseling with Dr. Berryman.

153. That at the November 6, 2013 review hearing none of the participants alleged the Hodgins were uncooperative or not complying with the requirements of the Permanency Plan.

154. That at the January 29, 2014 the juvenile Court made the following comment: "How the outcome may affect you folks or the child's Father or any of that cannot enter into my decision, and it doesn't. I, too, am concerned that this child has been in custody for a very very long time. And the child may well have some action against the State. ..."

155. That at no review hearing prior to January 29, 2014 had any party or representative present in the six (6) review hearings ever informed the juvenile Court the Hodgins were uncooperative or noncompliant with the permanency goals.

156. That the entire time John McCaul was in prison he did not send any letters to Sonya nor attempt to make any phone calls to her.

157. That during the entire pendency of this litigation neither John McCaul or his mother, Phyllis McCaul, ever filed a motion nor pleading with the juvenile Court alleging the Hodgins would not allow either of them to call or visit Sonya.

158. That the Tennessee Department of Children's Services failed to provide timely placement of Sonya in a permanent residence.

159. That the Tennessee Department of Children's Services have been under the supervision of the Federal District Court since 2001 for its persistent failure to meet minimum federal standards for the safety and permanency of children in state care.

160. That at the time John McCaul requested the immediate return of Sonya to his custody he had only spoken to her one (1) time in eight (8) years.

161. That at the time John McCaul requested the immediate return of Sonya to his custody he had not seen her since she was a baby.

162. That it was due to John McCaul's actions and/or inactions that Sonya resisted having a relationship with him upon his release from serving a seven (7) year prison sentence.

163. That it was by John McCaul's actions, not Sonya's, that he was absent from her life for over eight (8) years.

164. That it was by John McCaul's actions, not the Hodgins, that he were absent from Sonya's life for over eight (8) years.

165. That John McCaul has consistently placed blame on the Hodgins for his lack of a relationship with Sonya prior to January 29, 2014.

166. That no court has ever found the Hodgins guilty or responsible for interfering with John McCaul's ability to have a relationship with Sonya.

167. That a fit parent does not habitually make decisions to violate the law which may render that parent incarcerated and unable to care for their child.

168. That as an adult John McCaul has never maintained lawful employment for a period of time exceeding two (2) years.

169. That creating legitimate businesses on paper that are actually a front for criminal activity is not "maintaining lawful employment."

170. That John McCaul has been involved in the trafficking of narcotics, which at some point crossed state lines.

171. That John McCaul has been involved in the trafficking of firearms, which at some point crossed state lines.

172. That John McCaul has been involved in the trafficking of narcotics for the motorcycle club, Hell's Angels.

173. That John McCaul has been involved in the trafficking of firearms for the motorcycle club, Hell's Angels.

174. That it was John McCaul's criminal conduct that caused his absence from Sonya for approximately eight (8) years.

175. It was John McCaul who wrote no letters and made no phone calls to Sonya during the eight (8) years she was in state custody prior to his supervised release from prison in 2012.

176. That the ICPC approval granted by the State of Nebraska was based upon John McCaul's materially false statements given to representatives for the State of Nebraska.

177. That the ICPC approval granted by the State of Nebraska was based upon John McCaul's material omissions of information to the ICPC representative for the State of Nebraska.

178. That the Nebraska Department of Health and Human Services made home visits to John McCaul's residence in Nebraska on December 19, 2012 and January 15, 2013.

179. That during the December 19, 2012 and January 15, 2013 home visits to John McCaul's residence by the Nebraska Department of Health and Human Services he omitted material information about his criminal history from the representative interviewing him, who was responsible for recommending approval of Sonya's placement in Nebraska under the ICPC.

180. That John McCaul informed the representative during the above referenced visits that he had only been incarcerated three (3) times when the truth was that he had been in jail on at least six (6) separate occasions beginning at the age of 15 for various crimes.

181. That John McCaul had been incarcerated for two (2) counts of burglary, then another charge of three (3) counts of burglary and another charge for three (3) counts of armed robbery with a

shotgun and one (1) count of resisting arrest, one (1) count of being a fugitive from justice and one (1) count of felony possession of a firearm and one (1) count of possession of narcotics.

182. That John McCaul informed a representative from the Nebraska Department of Health and Human Services that he had never been involved with illegal drugs.

183. That John McCaul has a documented criminal history of drug abuse.

184. That one of the reasons John McCaul was denied bond by the Federal District Court presiding over his felony weapons charges was due to his "substantial drug abuse history."

185. That the above referenced finding of "substantial drug abuse history" can be found in the United States District Court's "Detention Order."

186. That the above referenced "Detention Order" is a matter of public record and can be accessed off the PACER website by the general public.

187. That John McCaul was deceptive or downplayed his prior criminal history with the Nebraska Department of Health and Human Services representative.

188. That the United States District Court presiding over John McCaul's felony weapons charges found "by clear and convincing evidence that no condition or combination of conditions will reasonably assure the safety of any other person or community."

189. That the above referenced finding can be found in the United States District Court's "Detention Order," which is accessible by the general public.

190. That the United States District Court found John McCaul to have a history related to drug abuse and a substantial prior criminal history, including crimes of violence.

191. That the above referenced finding can be found in the United States District Court's "Detention Order," which is accessible by the general public.

192. That the United States District Court presiding over John McCaul's felony weapons charges found that he have a substantial drug abuse history.

193. That the United States District Court's "Detention Order" states John McCaul had two (2) outstanding orders of protection against him.

194. That the United States District Court's "Detention Order" states that on two (2) separate traffic stops John McCaul was found with firearms in his possession.

195. That the Tennessee Department of Children's Services failed to inform the juvenile Court that the Nebraska ICPC administrator's approval of placement of Sonya with John McCaul was done so "with hesitation and reservation" and the cautionary instruction to "please review section IX (C) of the home study carefully."

196. That the following recommendations, serving as basis for the ICPC approval by the Nebraska ICPC administrator, states under Section IX (C): "1. urinalysis; 2. family and individual therapy before and after the child returns; 3. phone calls and letters with Sonya as soon as possible, likely therapeutic first; 4. visits with Sonya before she is placed; 5. gradual transition of Sonya to the home of the Father."

197. That prior to Sonya being placed with John McCaul under the ICPC on January 29, 2014 he had no face to face visits with Sonya.

198. That prior to Sonya being placed with John McCaul under the ICPC on January 29, 2014 Dr. Berryman had not recommended face to face visits between he and Sonya.

199. That John McCaul was upset that Dr. Berryman's timeline of reintroduction between he and Sonya was progressing slower than he preferred.

200. That prior to Sonya being returned to John McCaul under the ICPC on January 29, 2014 there had been absolutely no transition period prior to the transfer.

201. The juvenile court never approved or ordered a specific transition plan for transfer of custody to John McCaul prior to or any time after the January 29, 2014 review hearing.

202. That prior to the January 29, 2014 review hearing the juvenile court had never ruled that Sonya would be returned to John McCaul's custody.

203. The Hodgin family was never informed by the juvenile court prior to the January 29, 2014 review hearing that John McCaul would be granted custody under the ICPC and that Sonya would be immediately transferred to him.

204. That Mr. and Mrs. Hodgin did not fail to comply with a transition plan as none ever existed.

205. That Mr. and Mrs. Hodgin were not notified prior to January 29, 2014 that Sonya would be immediately transferred to John McCaul's custody under the ICPC, which prevented them from preparing Sonya for the transfer.

206. There is no duty to prepare a child for an event you have no knowledge is going to occur.

207. That prior to January 29, 2014 review hearing, the juvenile court never informed the Hodgins that custody of Sonya would be transferred to John McCaul under the ICPC.

208. That John McCaul has had others disseminate false information publicly on his behalf that the Hodgins failed to abide by a transition plan.

209. That John McCaul can provide no documentation supporting his assertion that there was a transition plan in place for the transfer of Sonya to his custody.

210. That John McCaul can provide no affirmative date the alleged transition plan was formulated, agreed to, or otherwise approved by the Tennessee Department of Children's Services or any affirmative date the alleged transition plan was subsequently ratified by or ordered to occur by the juvenile court, because no such transition plan ever existed.

211. That as a result of John McCaul's dissemination of the false narrative that the Hodgins failed to prepare Sonya to be transferred to him through their alleged failure to abide by an alleged transition plan that he cannot prove ever existed, he has caused them to suffer extreme public ridicule.

212. That as a result of John McCaul's dissemination of the false narrative that the Hodgins have failed to provide Sonya any of her personal belongings he have caused them to suffer extreme public ridicule.

213. That John McCaul has no evidence of any defamatory statements or comments by either Mr. or Mrs. Hodgin.

214. That truth is an affirmative defense to a claim of defamation.

215. That John McCaul has filed this claim of defamation against Mr. and Mrs. Hodgin in an attempt to silence them or from obtaining public support in their endeavor to have Sonya placed back in their custody.

216. Admit that you have previously filed a claim against Mr. and Mrs. Hodgin in Nebraska state court for a protective order alleging harassment by them of both you and Sonya.

217. That the Nebraska state court outright dismissed John McCaul's request for a protective order against Mr. and Mrs. Hodgin finding he provided no evidence or even a clear statement of any harassing conduct on their part.

218. That John McCaul's filed for the protective order above referenced in February 2014, which was within a few weeks of Sonya being returned to his custody under the ICPC.

219. That at the time John McCaul filed for the above referenced protective order in Nebraska state court Mr. and Mrs. Hodgin had not spoken to Sonya since January 30, 2014.

220. That after John McCaul filed for the above referenced protective order, Sonya mailed to Tennessee valentines for individual members of the Hodgin family.

221. That Sonya wanted to send valentines to members of the Hodgin family in February 2014.

222. Sonya did not believe Mr. and Mrs. Hodgin were harassing her at the time John McCaul filed for the above referenced protective order in Nebraska state court.

223. Sonya wanted more contact with Mr. and Mrs. Hodgkin, not less, at the time John McCaul filed for the above referenced protective order.

224. That John McCaul is afraid if Sonya were able to see or speak to Mr. and Mrs. Hodgkin she would make it very clear that she wants to return to Tennessee to live with them.

225. That John McCaul and members of his family have told Sonya that the Hodgkin family lied to her throughout the years regarding the circumstances relating to her continued placement in their home in Tennessee for over eight (8) years.

226. That John McCaul and members of his family have exposed Sonya to situations and conduct that are inappropriate for a 9-year old girl.

227. That John McCaul can afford to pay for legal counsel but continue to hold himself out as indigent so that he can maintain court-appointed, free legal counsel in the juvenile court proceedings.

228. That John McCaul is able to afford legal counsel in support of his claim of defamation due to proceeds he has obtained outside of his regular employment checks from Tyson Food Corporation.

229. That John McCaul chose some or all of the named defendants in this defamation suit based on the recommendation of others and not based on any personal or actual knowledge of alleged defamatory conduct.

230. That the purpose of filing this defamation suit is an attempt to silence the defendants from publicly supporting the effort to bring Sonya back to Tennessee to live with Mr. and Mrs. Hodgkin and to intimidate other supporters or potential supporters from publicly commenting on or supporting this endeavor.

231. That John McCaul has not seen any comments regarding Sonya or the juvenile court case by either Mr. or Mrs. Hodgkin on any public website or through any social media at any time after January 29, 2014.

232. That neither Mr. nor Mrs. Hodgkin have a current Facebook account.

233. The Hodgins mailed to John McCaul's address in Nebraska Sonya's iPad prior to any formal requests by the attorney ad litem, Jennifer Honeycutt.

234. That John McCaul did not give Sonya her iPad that the Hodgins mailed to his address in Nebraska.

235. That John McCaul lied to the attorney ad litem, Jennifer Honeycutt, when he told her Sonya had not received her iPad from Mr. and Mrs. Hodgin.

236. Mr. and Mrs. Hodgin mailed to Sonya at John McCaul's Nebraska address numerous articles of her winter clothing within approximately a week of her being sent to Nebraska to live with him.

237. Mr. and Mrs. Hodgin immediately mailed Sonya her bathing suit upon her request.

238. That any time Sonya has personally requested an item through her grandmothers in Tennessee, Mr. and Mrs. Hodgin have complied with her requests.

239. That John McCaul has never personally contacted anyone in the Hodgin family requesting any items belonging to Sonya.

240. John McCaul has Mr. and Mrs. Hodgin's home telephone number.

241. That John McCaul has failed to complete a psychological evaluation with a parenting component.

242. That John McCaul's mother, Phyllis McCaul, has lived with depression for approximately twenty (20) years, which was documented by the Tennessee Department of Children's Services.

243. That John McCaul stated his mother, Phyllis McCaul, did not have any mental health issues during interviews relating to the ICPC approval process.

244. Eric Warbelton is the son of John McCaul's ex-wife Carol McCaul.

245. John McCaul holds Eric Warbelton out publicly as his child.

246. John McCaul has stated on numerous occasions that he raised Eric Warbelton as one of his children even though he is not his biological child.

247. Eric Warbelton is a convicted felon.

248. Eric Warbelton along with some friends threw a concrete block off a bridge which fell through the windshield of a woman driving, killing her.

249. That John McCaul has allowed pictures of Sonya to be placed on social media depicting her with Eric Warbelton and his girlfriend, who is also a convicted felon.

250. That John McCaul has not enrolled Sonya in any of the extracurricular activities she enjoys such as gymnastics or softball since she was sent to Nebraska to live with him.

251. That due to John McCaul's request for immediate custody of Sonya under the ICPC, she was unable to participate in her FHA, softball, or gymnastics activities, which have been an important part of her childhood in Tennessee.

252. That John McCaul failed to pay all taxes relating to his previously owned corporation, Security Alternatives.

253. That when Sonya was returned to John McCaul under the ICPC on January 29, 2014 he had absolutely no meaningful relationship with her.

254. That during John McCaul's psychological evaluation conducted by Dr. Stephanie Peterson on October 23 and November 21, 2012 that he displayed a purported high level of empathy for Sonya's feelings in the event she was returned to him in Nebraska.

255. That it is reasonable that Dr. Peterson relied upon John McCaul's statements as having a basis in truth and fact in her evaluation of him as an appropriate placement for Sonya.

256. John McCaul told Dr. Peterson that it was his intention to "leave her in place with the Hodgins until he established a relationship with her".

257. That John McCaul acknowledged to Dr. Peterson that any transition away from Sonya's home with the Hodgins would be a great trauma to Sonya.

258. That John McCaul stated to Dr. Peterson that it was his expectation to have individual and joint counseling sessions with Sonya combined with progressively longer and less supervised visits prior to any transfer of custody to him in Nebraska.

259. That the above actions never occurred prior to his filing the "Motion to Return Custody" in the juvenile court on January 21, 2014, requesting Sonya be immediately returned to his custody.

260. That John McCaul's standardized psychological testing produced a validity scale profile suggestive of a high degree of defensive denial.

261. The examiner conducting John McCaul's psychological testing stated, "based upon these observations as referenced above, it is the examiner's opinion that the current evaluation provides a limited reflection of Mr. McCaul's psychological functioning at the time of the evaluation."

262. The examiner conducting John McCaul's psychological testing stated, "The validity of these results is limited by (McCaul's) rigidly defensive response style, and should confirmed or disconfirmed over time by direct observation of his parenting behaviors and life choices over time."

263. That the validity of the results of John McCaul's psychological testing have never been confirmed or disconfirmed by direct observation by any official with either the State of Tennessee or the State of Nebraska or any mental health professional.

264. That the recommendations of the evaluation referenced above are in pertinent part as follows: "Initial contacts with the child should be brief and supervised by a qualified family therapist who has an established relationship with the child."

265. That the recommendations of the psychological evaluation further states, "Increase in the frequency, duration and intimacy of contact with the child should take place only as recommended by the therapist working with the child."

266. That the above recommendation was never followed by John McCaul, the Nebraska Department of Human Services, the Nebraska ICPC administrator, or the Tennessee Department of Children's Services.

267. That John McCaul ignored the above referenced recommendations when he filed a "Motion to Return Custody" in the juvenile court on January 21, 2014.

268. That contrary to John McCaul's psychological evaluation which states he has "an unusually high level of empathy for children" that he have not exhibited any such empathy for Sonya.

269. John McCaul's lack of empathy demonstrates the validity of the results of the psychological evaluation has in fact been "disconfirmed."

270. That all mental health care professionals and counselors consulted during this process have generally stated that Sonya should not be unified with John McCaul prior to building a relationship through a gradual transition which would include the Hodgins.

271. That John McCaul purported to agree with the above referenced opinions when truth in fact he did not.

272. That in the report from the State of Nebraska Division of Children and Family Services dated January 24, 2013, that the agency never conducted a national criminal history check.

273. That John McCaul's Father, John McCaul, Senior, was in and out of John McCaul's life as he were growing up.

274. That John McCaul has never really had a relationship with his own Father.

275. That at the age of 17 John McCaul broke into the Goodrich Dairy Store in order to steal money.

276. That for the offense referenced above John McCaul wase incarcerated for approximately one (1) year.

277. That John McCaul was incarcerated again when he was 19 years old after being found guilty of three (3) charges of armed robbery.

278. John McCaul was incarcerated approximately eight (8) years in the State of Nebraska after being found guilty of three (3) charges of armed robbery.

279. John McCaul has been arrested for being a felon in possession of a weapon and during that particular traffic stop police authorities also discovered drug paraphernalia in a baggie with drug residue in your automobile.

280. John McCaul told the arresting officer that neither the gun nor the baggie containing the drug residue or the drug paraphernalia were his.

281. When John McCaul was released on his felon in possession of a firearm charge in May of 2012 he were sent to a halfway house.

282. John McCaul is still on supervised release for his conviction in the United States District Court for being a felon in possession of a firearm.

283. John McCaul has not taken any drug or alcohol tests to determine your use of illegal narcotics since October 2012.

284. John McCaul gave Jennifer Gunn written permission to take Sonya to Tennessee.

285. John McCaul's statement that he was told by officials from the State of Tennessee in October 2005 not to come to Tennessee to retrieve Sonya, because he would be arrested for child abandonment is a lie.

286. That a representative from the State of Tennessee Department of Children's Services called John McCaul and asked him to come and pick Sonya up.

287. That since being released from federal prison in 2012 John McCaul has consumed beverages containing alcohol.

288. That since being released from federal prison in 2012 John McCaul have associated with people known to be felons.

289. That John McCaul has failed to maintain consistent legal employment for all or part of the period of time since October 26, 2012.

290. That John McCaul are no longer employed at Tyson Food Corporation.

291. That John McCaul was terminated from employment at Tyson Food Corporation.

292. That John McCaul was terminated from employment at Tyson Food Corporation for violating your terms of hire.

293. That John McCaul was terminated from employment at Tyson Food Corporation for incident(s) relating to drug and/or alcohol use.

294. That John McCaul maintaining ongoing legal employment is a listed condition in the Permanency Plan ratified by the juvenile court.

295. That John McCaul has not taken any drug or alcohol tests in the last sixty (60) days.

296. That John McCaul has not reported to his probation officer or any representative of the State of Nebraska or Tennessee that he have failed a drug or alcohol test.

297. That John McCaul has failed to inform third parties of risks occasioned by his criminal history, in violation of the terms of his supervised release.

298. That John McCaul has used controlled substances, other than any legally prescribed to him by his physician, since his supervised release began in October 2012.

299. John McCaul has had alcohol or beverages containing alcohol in his residence since being placed on supervised release in October 2012.


300. John McCaul has been in a romantic relationship with a person he failed to disclose to the Tennessee Department of Children's Services, the Nebraska Department of Human Service, the ICPC

representative, or the psychological examiner who conducted his standardized exam, since his supervised release began in October 2012.

301. That John McCaul has failed to abide by all of the terms of his supervised release.

302. That John McCaul has failed to abide by or complete all of the goals and conditions stated in the Permanency Plan ratified by the juvenile court.

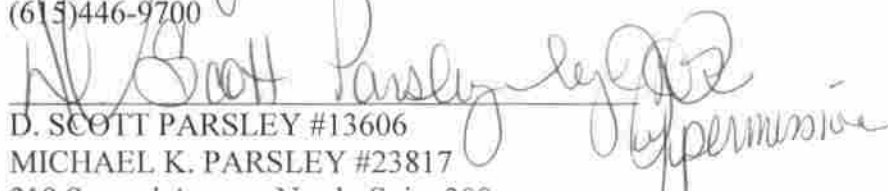
THIS the 25 day of June, 2014.


ROBERT E. BURCH
CIRCUIT COURT JUDGE

APPROVED FOR ENTRY:



JENNIFER DAVIS ROBERTS #12772
106 Center Avenue/P.O. Box 944
Dickson, Tennessee 37056
(615)446-9700


D. SCOTT PARSLEY #13606
MICHAEL K. PARSLEY #23817

219 Second Avenue North, Suite 300
Nashville, Tennessee 37201
(615)244-8118

Attorney for David Hodgin, Kim Hodgin and Katiko
Cadwallader