
Key Issues in AMH Appeal (Summary of Amicus Brief by Dr. Dongxiao Yue, a Citizen of PRC)

For full text of the brief and more information, please visit <http://www.ForAMH.com>

Why does this case matter to you? The AMH case ruling may affect your parental rights.

Hes' regular visits before January 28, 2001

- I. The custody arrangement with Bakers was **temporary** (Cloud, Yau testimonies on 99/06/04 order)
- II. Hes wanted to **visit more** (Bakers' journal)
- III. Bakers' determined efforts to **hinder, restrict and obstruct** Hes' visits (Bakers' journal)
- IV. Hes' attempts to get their child back (Written note with 3 options, May 2000 **petition**)

The 4 months: finding "willfulness" requires "voluntary, intentional violation of a **known legal duty**."

- I. **Attempts** - Hes made repeated attempts to visit
 - A. February 15, 2001 **fax** to Juvenile Court complaining about Bakers' hindrance (trial exhibit)
 - B. **Multiple visits** to Court seeking help on visitation and custody (Brown, Cloud testimonies)
 - C. Filing the **April 9, 2001** custody petition under the advice of Juvenile Court (Court file)
 - D. Custody determination includes **visitation determination** (TN statute 36-6-205(3))
 - E. Hes knew having custody of child could not help their immigration status
 1. **Option #1** of Mr. He's May 2000 proposal to Mr. Baker, saying Bakers must not report Hes to INS after AMH was returned to the Hes (memo, evidence presented by Bakers)
 2. **Willfully failed to appeal** of Court's denial of May 2000 petition (trial court finding)
 3. Sent their second child **Andy** to China in May 2001 (trial court finding of fact)
- II. **Excuses** - Hes had justifiable excuses for failing to visit
 - A. **Bakers did not want Hes back** to their home any more (Bakers' testimony at trial)
 - B. **Police ordered** Hes not to come back to Bakers' home (Bakers' written testimony in 2002)
 - C. Hes had **no place** to visit, Bakers refused to communicate (ignored Hes' phone messages)
 - D. Bakers' **revised** testimony does not meet the standard (hearsay, conflict with prior testimony)
 - E. Police testimony is not clear and convincing (Deputy Astor: "**Possibly**, yes" on "that day")
 - F. Court's finding that Hes were not intimidated is not clear and convincing (**time shifting**)
- III. **No Knowledge** - Hes were unaware of Tennessee abandonment statutes
 - A. Knowledge of a known **legal** duty is necessary in finding willfulness (definition of "factor")
 - B. **Magic number 4** (TN Statute) and due process
 - C. Termination of parental rights is a **state action** (court is a part of the state, equal protection)
 - D. **Bakers have the burden** to prove that Hes knew their legal duty

Invalidity and illegality of the Guardianship and No-Contact order

- 1999/06/04 consent order, guardianship was typed in without Hes' knowledge(Cloud)
- Ex parte guardianship and "no-contact" order between the Judge and Bakers' attorney Parrish on Feb 7, 2002 -- after Hes and their attorney left the court (Parrish testimony)
- Signed the next morning by the Judge and Parrish in private (Parrish testimony)

Conclusion: No **willful** failure. Court erred, must reverse and return child. Hes' rights may not be deprived under any color.

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