IN THE SUPREME COURT OF TENNESSEE

AT JACKSON

In Re: Adoption of A.M. H., A Minor

JERRY L. BAKER and wife,
LOUISE K. BAKER,
Petitioners/Appellees,

W2004-01225-SC-R11-PT
(Trial Ct.#Ch-01-1302-3,
Chancery Court Thirtieth Judicial District at Memphis)

v.

SHAO-QIANG {JACK} HE and wife,
QIN (CASEY) LUO,
Respondents/Appellants.

APPELLANTS' MOTION AND NOTICE TO APPEAR PRO SE AND MOTIONS FOR THE TENNESSEE SUPREME COURT TO

1) DECIDE BOTH PARENTAL RIGHTS AND CUSTODY;

2) SANCTION APPELLEES' COUNSEL LARRY PARRISH FOR MAKING FALSE STATEMENTS TO THE SUPREME COURT DURING ORAL ARGUMENT; AND

3) CONSIDER DR. YUE'S AMICUS BRIEF

We, SHAO-QIANG {JACK} HE and wife, QIN (CASEY) LUO[1], the appellants of this case, have decided to represent ourselves in remaining proceedings of this case in the Tennessee Supreme Court. We request the Tennessee Supreme Court to consider the following motions.

WE REQUEST THE TENNESSEE SUPREME COURT TO DECIDE BOTH PARENTAL RIGHTS AND CUSTODY

We filed our custody petition in April of 2001. The Bakers moved the case to the Chancery Court by filing their TPR and adoption petitions. During the 10-day joint trial at the Chancery court, evidence on both the parental rights and custody were presented. There is no genuine issue of material fact that could affect the outcome of both parental rights and custody determinations. The Tennessee Supreme Court has the controlling authority to decide both parental rights and custody as a matter of law.

1. The Court can decide parental rights based on the tests for willful abandonment

We made a custody agreement with the Bakers on June 4, 1999. Credible witnesses, including Ms. Cloud of the Juvenile Court and Pastor Yau both testified that the arrangement was temporary[2]. Between June 4, 1999 and January 28, 2001, we

[1] In China, a wife does not change last name after marriage.
[2] Appellate court majority opinion page 10-11.

made regular visits to our daughter, average one per week.[3] We wanted to visit more[4]. But the Bakers wanted to cut our visits and reduce the time of visits[5]**.** After failing to negotiate with Bakers' to get our daughter back, we filed a petition with the Juvenile Court in May 2000. But the Juvenile Court denied our petition, saying we had not sufficiently improved our situation. After that, we worked hard to improve our finances and circumstances. Jack He moved to Georgia for a higher pay job. But when Bakers said that Casey could not visit our daughter alone, Jack quit his job in Georgia and moved back to Memphis, so both of us could continue to visit our daughter[6].

After the January 28, 2001 incident, the Bakers decided that they would not allow us back in their home any more[7]. The police told us not to come back. The Bakers testified the same in their written responses in 2002, though they later changed their stories, saying the police only told us not to come back "that day". During the trial, Deputy Astor testified "Possibly, yes" when asked about "that day"; Mr. Baker testified that he heard "that day" after we left[8]. The trial court said that we have zero credibility. But does that mean the Bakers can change their stories in any way they see fit? The Majority of the Court of Appeals says we were not afraid of police, so we did not have an excuse. But, there was no evidence that we ever disobeyed a police order.

The Bakers are owners of their home. We knew that we may not go there without their permission. After we were asked to leave and not to come back, we then made a series of attempts to see our daughter again.

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[3] Id at p. 106-107, quoting trial court's finding of fact.
[4] Id at p.12-13, quoting Bakers' journal.
[5] Id at p.12-13, quoting Bakers' journal.
[6] Id at page 17.
[7] Id at page 19.
[8] See the references to trial testimony in Dr. Dongxiao Yue's amicus brief.

On February 15, 2001 we faxed a letter to the Juvenile Court to complain about Bakers' interference with our visits and sought help[9] from the court. We went to the Juvenile Court many times, met with officers Candice Brown and Sara Cloud to complain about the visits and ask for help. We made phone call to the Bakers[10], expecting them to return our call, so both sides could re-establish communication. But Bakers ignored our phone call. Finally, Ms. Cloud at the Juvenile Court recommended that we file a petition[11], which we did on April 9, 2001. The Majority on appeal says we did not include a request for visitation in the petition, but that petition was prepared by a Court officer to address our complaints. According to our understanding of the Tennessee law today, a custody determination encompasses a visitation determination[12].

The Majority on appeal says we filed the custody petition for the sole purpose of avoiding deportation. If we believed having our daughter at home could shield us from deportation, why did we send our son Andy to China in May 2001[13]? Dr. Dongxiao Yue, in his amicus brief, pointed out that **option #1** of the proposed agreement between Jack He and Mr. Baker in May 2000 clearly shows that we knew that having the custody of our daughter could **not** avoid deportation. That proposed agreement was presented by the Bakers as evidence.

As Justice Barker said during the oral argument, parental rights are fundamental rights. The U.S. Supreme Court ruled that finding "willfulness" based on complex

[9] Id at page 19.
[10] Id at page 19.
[11] See Dr. Yue's amicus brief, quoting Sara Cloud's testimony.
[12] See TN Code Annotated 36-6-205(3).
[13] Majority opinion at page 20.

statutes requires "voluntary, intentional violation of **a known legal duty**." The attorney for the Attorney General's office first said we should have known the law. He said that publication of the law constituted notice. But, we don't have legal education. We did not know that the Tennessee statute had set number "4" as a limit. The Attorney General's alternative proposal was essentially this: the "awareness of one's duty" test in the 4-prong willfulness test should be refined as "awareness of one's **legal** duty". In other words, the Bakers must prove to the Court that we knew the abandonment statute: 4 months and the jeopardy of losing our parental rights. It was undisputed that we did not have such knowledge of the Tennessee statute prior to Bakers filing their TPR petition in June 2001.

Justice Clark questioned whether the Bakers qualify as "agency" according to the statute. Justice Birch questioned about knowledge and notice. The Bakers said they were just baby sitters. We disagree. The Bakers submitted a "Foster Home Application" in 1997, and served as foster parents for approximately ten children afterwards[14]. The Bakers ask the Court to terminate our parental rights. They knew the statute. They never told us about the statute. They set a trap. They have the burden to prove all four elements of willfulness to the Court.

In summary, we made attempts to visit our daughter; we did not go to Bakers' home because they did not want us back any more and the police ordered us not to go back; we did not know there was a 4 month limit set in the Tennessee statute; and we had nowhere to visit our daughter. There was no willfulness in our failure to visit between

[14] Majority opinion on appeal, page 6.

January 28, 2001 and June 20, 2001.

The Court of Appeals reversed trial court's ruling that we willfully failed to support our daughter. But the Bakers brought up question of support during the oral argument again. Every parent knows that a child must be fed or the child may starve. The reason we gave temporary custody of our daughter to the Bakers was because we were in financial and legal trouble[15]. We had to make sure our daughter did not suffer because of our difficulties. We knew our daughter was taken care of by a rich family and was never in danger of hunger. We had no idea that there is a law that says if one does not pay support, one may lose parental rights. When we tried to pay Bakers' $300, they refused. During oral argument, Justice Holder asked about this detail. The Bakers are rich; $300 is a fraction of their daily income[16]. We gave some small gifts to our daughter and the Bakers. The Bakers, from their testimonies at trial, looked down at these because the gifts were cheap. We were grateful to the Bakers, until they refused to return our daughter back. The Bakers say they had full responsibility for taking care of our daughter and they refused to accept our payment. Relying on Bakers' representations, we made a change in our position. We didn't know the law; we didn't know Baker's true intentions. We stopped paying money. Then the Bakers turn around and say we willfully failed to support our daughter, and ask the Court to terminate our parental rights. This is a setup. The Bakers cannot accuse us of willful failure to support while they claim they had full responsibly for support and they would refuse

[15] At that time, Jack He could go to jail for an alleged felony (he was later acquitted by a unanimous jury), Casey knew little English.

[16] Bakers had annual income of close to half a million. Casey was making only $200 to $300 per month in 1998. See majority opinion at page 3.

our payment[17]. The doctrine of equitable estoppel and promissory estoppel applies here. The Bakers say we gave up our daughter even before she was born, but as Mr. Siegel pointed out during oral argument, the evidence points to the exact opposite. In every occasion, we made sure that the arrangements with Bakers were temporary. The Appellate Court was right to conclude that we did not willfully fail to support our daughter.

Since we did not willfully abandon our daughter, we request the Supreme Court to reinstate our parental rights.

2. The Court can decide custody based on the facts established during the trial

During oral argument, Justice Barker and Justice Wade asked about what happens after our parental rights are restored. We request the Supreme Court of Tennessee to decide both custody and parental rights.

On September 13, 2003, the Bakers filed a motion asking the chancery court to consolidate our April 9, 2001 custody petition and their petition to terminate our parental rights for joint trial. On March 29, 2004, the chancery court granted the Bakers' motion to consolidate. The trial held at Chancery Court lasted 10 days, most of the days lasted until 9:00 PM; twenty eight witnesses were called to testify. There is a mountain of evidence for the Court to determine whether there was a change of circumstance that would permit us to get our daughter back. The guardian ad litem

[17] Dr. Yue presented this argument to the court of appeals through us.

made a full report on our conditions on Court's order. Multiple witnesses testified on our fitness as parents. There is no genuine issue of material of fact and we are entitled to judgment as a matter of law. The Justices of the Supreme Court are very familiar with the facts. The Supreme Court has the ultimate authority to make an equitable decision on custody determination. Furthermore, only the Supreme Court has the authority to give the final word, because both sides raised complex legal theories on fundamental rights.

2.1 There is no genuine issue of fact for our custody petition

The June 4, 1999 custody transfer was a temporary arrangement. Pastor Yau testified specifically that it was done so our daughter could have health insurance. Sara Cloud also testified that the arrangement was temporary. On the custody order, the reason was "that the parents are unable to financially care and provide for said child ***at this time.***" (emphasis added). These are all in appellate court's finding of fact.

At trial, credible witness Pastor Yau testified about the June 4, 1994 custody order (See majority opinion, page 69-70):

> Q. And what specifically — based on that, what specifically did you explain to Ms. He?
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> A. In summary — you know, I can't recall the word for word question — said that because the Hes were unable to financially support the baby at that time, that some family was willing to take care of their baby on their behalf, but **because of the legal procedure that necessitate to buy insurance or to administer medication or whatever to the baby by the custodian,** Ms. He needs to give the authority to the custodian by signing a document.

Q. Did you hear the word "temporary" in that meeting?

A. Yes.

Sara Cloud also testified about June 4, 1999 custody order:

Q. All right, and did either Mr. or Mrs. He tell you that they wanted the Bakers to take care of their child on a permanent basis?

A. No.

Q. Did the Hes ever say anything to you that indicated to you that they were interested in either a temporary or permanent arrangement?

A. Temporary.

Q. Can you tell us what you recall?

A. I recall mainly talking to Casey, that she was very concerned that it was not a permanent situation. She did not want it to be a permanent situation.

Q. She made that very clear to you?

A. Yes, sir.

. . . .

Q. When Mr. and Mrs. Baker and Mr. and Mrs. He were before you on June 4 of 1999, did they appear to be in agreement?

A. Yes.

Q. It did not appear to be a contested matter. Is that correct?

A. No.

Q. You understood Ms. He, through the interpreter, to wanting this matter to be temporary only. Is that

your understanding?

A. Yes.

. . . .

Q. If you understood that Mr. and Mrs. Baker wanted language in the consent order that said that, "We will be able to raise this child until she's 18 years of age," would you consider that to be consistent with what Ms. He understood on that day?

A. **No**.

. . . .

Q. Ms. Cloud, what was the agreement that you were so sure that all parties had consented to? Was it temporary or permanent?

A. Temporary.

. . . .

Q. Temporary because it could be changed; right?

A. That would be one of the reasons, but I believe Casey was fairly adamant that at some point she wanted her child back.

Based on these facts, it is undisputed that the June 4, 1999 custody transfer was a temporary arrangement due to our inability to financially care and provide for our daughter in June 1999. The sole purpose of that temporary arrangement was for child care and health insurance at that time. It was also clear that the parties were in agreement (see Ms. Cloud testimony) that we wanted our child back once our situation improves and the condition for the temporary arrangement ceases to exist. **The custody arrangement was temporary because our financial and legal hardship was temporary**.

We filed a petition to get our daughter back in May 2000; the Juvenile Court

found that there wasn't sufficient change in our circumstances back then. However, since October 2000, we have successfully raised two other children. Andy, our second child, was born on October 28, 2000. Avita, our third child, was born on September 9, 2002. Both children have been doing great. Prior to the trial, Ms. Mullins visited our home and presented a big report to the court. Ms. Mullins observed our parenting skills and observed our other children. Ms. Mullins later testified that she found no negative aspects. We demonstrated our ability to care and provide for our children. It is thus also undisputed that our circumstance has changed to the good. We no longer have any problem to care and provide for our children, including Anna.

Once the facts establish the material change in our circumstances and our fitness as parents, the "superior parental rights doctrine" should apply. As this Court has ruled before:

> In a contest between a parent and a non-parent, a parent cannot be deprived of the custody of a child unless there has been a finding, after notice required by due process, of substantial harm to the child. Only then may a court engage in a general "best interest of the child" evaluation in making a determination of custody.
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> ***In re Adoption of Female Child***, 896 S.W.2d 546, 548 (Tenn. 1995).

In our case, the temporary nature of the custody arrangement hinged on the temporary nature of the hardship we experienced in 1999. Since the condition and reason for the 1999 temporary custody arrangement no longer exists and the change of circumstances is clear, we, the biological parents of our daughter, ask the Supreme

Court to grant our April 9, 2001 petition to modify custody as a matter of law[18].

2.2 Requiring us to re-litigate custody in Juvenile Court would be fundamentally unfair

We filed our petition for custody on April 9, 2001, more than five years ago. Our daughter is seven years old now. To have our custody petition tried in the Juvenile Court again is fundamentally unfair to us. The Bakers preempted our custody petition five years ago. They set a trap of abandonment. They (through their lawyer) made the no-contact order and guardianship order under the table. We lost contact with our daughter because of these orders. The word "factor"[19] in case law was incorrectly interpreted on appeal. All this time, we can't see our daughter, and have to struggle in this seemingly endless legal battle. We can't endure such suffering any longer. We request the Supreme Court of Tennessee to end this suffering once and for all. The Supreme Court can base on the facts from the trial, and make the decision on custody as a matter of law.

The Bakers say they have obtained guardianship of our daughter, and somehow we have to terminate their guardianship. As we will show below, Bakers obtained guardianship improperly. The Court should take into account of Bakers' inequitable conduct, and rule in our favor.

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[18] Furthermore, only the Tennessee Supreme Court can definitively resolve the dispute on how the word "temporary" should be interpreted and whether the exception in ***Blair v. Badenhope***, 77 S.W.3d 137, 141 (Tenn. 2002) applies in the instant case.

[19] See Dr. Yue's amicus brief.

WE REQUEST THE COURT TO SANCTION LARRY PARRISH FOR MAKING FALSE REPRESENTATION TO THE SUPREME COURT ON THE ORIGIN OF THE GUARDIANSHIP ORDER

During the October 4, 2006 oral argument at the Tennessee Supreme Court, Mr. Parrish claimed that the February 8, 2002 guardianship order was issued because we refused to turn in our daughter's passport. Why did Judge Alissandratos issue a guardianship order because of a passport? That simply does not compute.

Regarding the issuance of the "no-contact[20] and guardianship" order, Larry E. Parrish testified during the trial on March 2, 2004. The following is a quote from Parrish's testimony.

> **"**So, the hearing ended on February 7th, and the court reporter has winding up and everybody was winding up and headed out of the court, and Mr. Alissandratos had stood up and started to leave the bench. And I can tell you exactly where I was standing in the chancery court, and he turned around to me and he said, draft me an order on making this Court the guardian. He didn't ask me what I thought about that or anything else. He just told me that, and he said, I want No Contact until I order otherwise. Bring me an order tomorrow. He didn't want this included in any of the other orders. I was taking instructions only."
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> (Transcript, March 2, 2004, examination of Parrish, pages 6-8)

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[20] During oral argument, Justice Holder questioned Mr. Siegel whether we appealed the February 8, 2002 "no contact order". Mr. Siegel seemed to be hesitant when answering that question. In fact, on February 20, 2002, Mr. Siegel filed a **MOTION FOR IMMEDIATE VISITATION PUSUANT TO T.C.A $36-6-302 AND TO VACATE "NO CONTACT" ORDER**. It was one of the very first motions Mr. Siegel filed after he offered to help us *pro bono*.

During the trial, on March 1, 2004, guardian *ad litem* Kim Mullins testified that she "really don't" have any memory of why the "no contact" order was issued. But, on March 22, 2004, Ms. Mullins filed a motion to reopen proof[21]. Ms. Mullins stated that she recalled that the "no contact" order was issued because she learnt from Mr. Sossaman[22] that we refused to turn in our daughter's passport and she recommended the no-contact order during a conference call. However, according to a written statement by Mr. Sossaman, "I do remember such a conference call taken place, however, I have zero recollection of no contact instruction being given." See exhibit A.

Regardless of the origin of the "no contact" order, the guardianship part of the February 8, 2002 order was issued under the table, even according to Larry Parrish's modified testimony. In his "RESPONSE OF PETITIONERS TO MOTION OF GUARDIAN AD LITEM TO REOPEN PROOF" filed on March 19[23], 2004 with the Chancery Court, Mr. Parrish changed his story about the "no contact" order. But on the guardianship part of the order, Mr. Parrish re-testified:

> "27. All to which Counsel testified concerning the directive of Chancellor Alissandratos, in the courtroom on the morning of February 7, 2002, i.e., to **draft an order appointing the Bakers guardians with full custody, occurred just as testified by Counsel**; before the order appointing the Bakers was delivered to the Court, the late afternoon conference occurred during which the "no contact" directive was added to the directive earlier in the day; thus, the February 8, 2002 order includes parts dictated by

[21] Appellate court majority opinion, page 31.
[22] Mr. Sossaman was our government assigned attorney at the time, before Mr. Siegel came to our help.
[23] According to Parrish's response, Ms. Mullins communicated with Parrish on March 18, 2004 to reopen proof.

> both directives, one concerning the guardianship and the other concerning the "no contact", with each directive having been given on Feburary 7, 2002 but at different times of the day on Feburary 7, 2002."

Parrish's reopening proof, page 6 (exhibit B) (emphasis added)

Based on the record above, it is crystal clear that the guardianship order was issued under the table as Mr. Parrish originally testified during trial. Mr. Parrish was thus making a false representation to the Tennessee Supreme Court when he said that the guardianship order was issued because of the passport.

We were never found making false testimonies to a judge. Mr. Parrish destroyed our credibility during the trial[24]. *Falsus in uno, falsus in omnibus*, Mr. Parrish says.

But, Mr. Parrish's own statement to the Supreme Court of Tennessee regarding the guardianship order was knowingly false. Since Mr. Parrish is extremely intelligent and is one of the only two people who have personal knowledge of the "no contact and guardianship" order[25], and since Mr. Parrish had to deal with his reopening proof many times[26], he must have a clear memory of the origin of the guardianship order and his own under oath testimonies. Mr. Parrish's false

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[24] Parrish used the following against Jack He: Jack He testified during his deposition that he could borrow one million dollars; Jack He entered factious names when filling the contacts information in a car purchase paper work (not a loan application). Casey He was never found making any false verbal representations, but the trial court ruled that her tears were "theatrical".

[25] Judge Alissandratos is the only other person who knows the origin of the "no contact" order. Ms. Mullins wasn't present when Parrish talked to the judge on February 7, 2002 and the next morning, in private. Thus, even if Ms. Mullins' story about making a "no contact" recommendation was true, it served no proof that Parrish and Alissandratos hadn't decided on a "no contact" order prior to her alleged recommendation.

[26] Once in the Chancery court, once to the court of judiciary, once during oral argument in the Court of Appeals, once during oral argument at the Supreme Court, and potentially other occasions.

statement was thus made intentionally and with the purpose to deceive and mislead. Mr. Parrish's ultimate goal in making this false statement was to cause our constitutionally protected rights to be deprived[27]. The amount of documents in this case is huge; Mr. Parrish was apparently counting on us forgetting his own words.

We ask the Court to impose monetary and non-monetary sanctions against Mr. Larry E. Parrish for intentionally making false representations to the Supreme Court of Tennessee, under the inherent power of the Court to sanction and any applicable rules and laws.

WE REQUEST THE SUPRME COURT TO CONSIDER DR. YUE'S AMICUS BRIEF

During the oral argument, the Attorney General's alternative interpretation[28] of title 36 of the Tennessee statute was in agreement with what Dr. Yue proposed in his amicus brief, we request the Court to consider Dr. Yue's amicus brief.

CONCLUSION

We, SHAO-QIANG {JACK} HE and wife, QIN (CASEY) LUO, respectfully ask the Supreme Court to adjudicate both parental rights and custody of this case. We ask the Court to return our daughter to us. We respectfully ask the Court to

[27] Since Mr. Parrish is a lawyer and thus an officer of the court, we reserve the right to seek action against him under relevant federal statutes.

[28] We agree that Attorney General's alternative interpretation of title 36 of the Tennessee statute that awareness of one's duty is the awareness of the abandonment statute offers equal protection to our parental rights as in title 37.

sanction Mr. Larry E. Parrish for his misrepresentations to the Court. We respectfully ask the Court to consider Dr. Yue's amicus brief.

In the alternative for the custody determination, we respectfully ask the Court to remand it to the Chancery Court (instead of the Juvenile Court) with explicit and detailed instructions on all key relevant legal and procedural issues.

Respectfully submitted,

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By: _____

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document has been forwarded by US First Class Mail, on October ___, 2006 to the following:

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EXHIBITS

A: Dennis Sossaman's statement on the February 8, 2002 "guardianship and no contact" orders

B: Larry Parrish's "RESPONSE OF PETITIONERS TO MOTION OF GUARDIAN AD LITEM TO REOPEN PROOF"