

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
Assigned on Briefs September 3, 2009

**IN RE: SURRENDER OF JASMINE D.**

**Appeal from the Juvenile Court for Davidson County  
No. 2008-4592 Betty Adams Green, Judge**

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**No. M2008-02401-COA-R3-JV - Filed October 6, 2009**

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Jessica D. (“Mother”) executed the necessary forms to surrender her parental rights to her biological child, Jasmine D. (“the Child”). The Juvenile Court approved the surrender of Mother’s parental rights to the Child. Approximately four months later, Mother filed a petition/motion attempting to revoke the surrender. The Juvenile Court denied the petition/motion to revoke the surrender. Mother appeals to this Court. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court Affirmed;  
Case Remanded**

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and JOHN W. MCCLARTY, J., joined.

Dennis L. Nordhoff, Franklin, Tennessee for the Appellant, Jessica D.

Jennifer L. Evans, Springfield, Tennessee for the Appellee, Catholic Charities of Tennessee, Inc.

**OPINION**

**Background**

On May 15, 2008, Mother executed the appropriate forms to surrender her parental rights to the Child, and the Juvenile Court approved the surrender. The Juvenile Court also entered an Order of Guardianship awarding Catholic Charities of Tennessee, Inc. (“Catholic Charities”) partial guardianship of the Child pending finalization of adoption of the Child. In pertinent part, the surrender forms executed by Mother read:

The following information is required by Tennessee Code Annotated 36-1-111 and must be obtained under oath by the Court prior to execution of the Surrender in Part II by the parent or legal guardian:

\* \* \*

14. a. Do you desire to be represented by legal counsel at this surrender proceeding? Yes [ ] No [X]
- b. If not, do you desire to consult with legal counsel prior to the execution of the surrender of the child? Yes [ ] No [X]
- c. Has such counseling been made available to you? Yes [X] No [ ]
15. Do you understand that if you sign the following Surrender of the above named child that you will have no right to act as parent of the above named child in any manner forever, and that the child will become the legal child of other persons? Yes [X] No [ ]
16. a. If you sign the Surrender of the above named child, do you understand that within ten (10) days from the date you sign the Surrender, you may revoke or cancel this Surrender by signing a paper called a REVOCATION OF SURRENDER before the judge who is here today, or his or her successor? Yes [X] No [ ]
- b. By signing the Surrender of the above named child on this date, (Mo/Day/Yr) 5/15//08 [sic], the period of revocation of the Surrender will begin on the day following the signing of the Surrender, or (Mo/Day/Yr) 5/16/08. The revocation period is ten (10) calendar days and will expire on the tenth (10<sup>th</sup>) day or (Mo/Day/Yr) 5/25/08. If the tenth (10<sup>th</sup>) day falls on a Saturday, Sunday or legal holiday, the last day for revocation will be the next day which is not a Saturday, Sunday or legal holiday. If this is the situation in this case, that date will be (Mo/Day/Yr) 5/27/08. Do you understand this? Yes [X]
- No [ ]

c. Do you understand that if you do sign the Revocation of Surrender form within the 10 (ten) day period, Catholic Charities of Tennessee, Inc. will be required to return the child, if you currently have custody of the child, unless the court finds that to do so will likely result in immediate harm to the health and safety of the child, and that you may contest this decision not to return the child to you and you may have legal counsel to represent you in that proceeding? Yes [X] No [ ]

17. Knowing the above, do you freely, voluntarily and without duress or pressure by any other person(s) desire to surrender the above named child so that the child may be placed for adoption and adopted by other persons? Yes [X] No [ ]

The Juvenile Court entered an Order of Guardianship on May 15, 2008 finding and holding, *inter alia*, that Mother had voluntarily executed a Surrender of Parental Rights, that such surrender was approved by the court, and that all the requirements of Tenn. Code Ann. § 36-1-111 had been met fully. The Order of Guardianship awarded partial guardianship of the Child to Catholic Charities.

On September 4, 2008, Mother, Waynette Helm, and Debbie Helm, R.N. filed a document titled “Per Se Petition to Revoke Surrender” seeking to revoke Mother’s surrender of the Child. This petition was filed along with several other documents. Among those documents is a Power of Attorney for Care of a Minor Child executed by Mother on October 6, 2006 giving Waynette Helm the power to obtain medical, dental, and mental health treatment for the Child, and the power to provide for the Child’s food, lodging, housing, recreation and travel. A second Power of Attorney for Care of a Minor Child was filed. This second Power of Attorney also was executed by Mother on October 6, 2006, ostensibly giving Debbie K. Charman certain powers. Although the second Power of Attorney contains initials, no spaces delegating powers are checked off on this form. Also filed with the petition was a December 2006 order of the Juvenile Court appointing a Guardian Ad Litem for the Child, and a December 2006 order of the Juvenile Court releasing the Child from the custody of the State of Tennessee and restoring custody to Mother with the Child to remain under the care and supervision of Debbie Charman and Waynette Helm “until further orders of this Court.” The Child’s birth certificate and some medical records for the Child also were filed with the petition.

The Juvenile Court held a hearing on the petition and then entered its order on October 13, 2008 finding and holding, *inter alia*:

This matter came to be heard on Tuesday, October 7, 2008, before the Honorable Betty Adams Green upon Petition by [Mother], Waynette Helm and Debbie Helm to set aside the Surrender of [Mother] to [the Child]. The Court treated such Petition as a motion.... Based upon the pleadings and argument of counsel and

Petitioners, the Court finds that the Petition/Motion is not well-taken for the following reasons:

1. [Mother] voluntarily executed a Surrender of Parental Rights to Catholic Charities on May 15, 2008, before the Honorable Sophia Crawford, Referee, Davidson County Juvenile Court. In conjunction with the surrender proceedings, Catholic Charities was awarded partial guardianship of the child. The child has been in the continuous care of Catholic Charities since that time.

2. [Mother] did not revoke her Surrender during the applicable revocation period, thus the termination of her parental rights are [sic] final.

3. Based upon the pleadings filed by [Mother] and the other Petitioners, there is nothing that shows the Surrender was executed improperly or fraudulently. According to Petitioners' Petition/Motion and statements in Court, it appears that there has been a change of heart regarding the adoptive placement and Ms. Waynette Helm now wants custody of the child. [Mother] is not requesting legal custody be returned to her. However, Tennessee law is clear that once a revocation period has passed, a Surrender cannot be revoked by a birth parent just because he or she has a change of mind down the road, in this case almost four (4) months after the surrender hearing.

4. Neither Waynette Helms [sic] nor Debbie Helms [sic] are parents, legal custodians nor guardians of the child. The only legal parent and custodian at the time of the surrender hearing was [Mother]. Even if this were a challenge to the Surrender during the applicable revocation period, they have no standing before this Court to challenge the Surrender or adoptive placement at any time.

5. This Court has no jurisdiction to hear any matters regarding [Mother's] surrender since the revocation period has expired and the parties have no legal standing before this Court.

IT IS, THEREFORE, ORDERED that the Petition/Motion to set aside the Surrender be denied.

Mother appeals the Juvenile Court's October 13, 2008 order to this Court.

### **Discussion**

Although not stated exactly as such, Mother raises one issue on appeal: whether Mother was denied due process at the surrender hearing and the hearing on her motion to revoke because she was not appointed counsel. Catholic Charities requests an award of attorney's fees on appeal.

Our review is *de novo* upon the record, accompanied by a presumption of correctness of the findings of fact of the trial court, unless the preponderance of the evidence is otherwise. Tenn.

R. App. P. 13(d); *Bogan v. Bogan*, 60 S.W.3d 721, 727 (Tenn. 2001). A trial court's conclusions of law are subject to a *de novo* review with no presumption of correctness. *S. Constructors, Inc. v. Loudon County Bd. of Educ.*, 58 S.W.3d 706, 710 (Tenn. 2001).

Mother's brief on appeal argues, in part, that "an indigent parent facing a hearing affecting parental rights may be entitled to the assistance of counsel as a matter of due process" and relies upon *State ex rel. T.H. v. Min* for this proposition. *State ex rel. T.H. v. Min*, 802 S.W.2d 625 (Tenn. Ct. App. 1990). While we agree with this proposition, there is a key critical difference between *State ex rel. T.H.* and the case now before us on appeal. In *State ex rel. T.H.*, the plaintiffs were not represented by counsel at the adjudicatory hearing and "the juvenile court did not ask the plaintiffs whether they were able to hire counsel or whether they desired to have counsel appointed to represent them." *Id.* at 626. In the case now before us, Mother was asked specifically by the Juvenile Court during the surrender hearing if she desired to be represented by legal counsel or to consult with legal counsel and Mother answered "No" to both questions. The Juvenile Court also asked Mother if legal counsel had been made available to her, and Mother answered "Yes."

In *State ex rel. T.H.*, this Court noted:

that the United States Supreme Court's decision in *Lassiter v. Department of Social Services*, 452 U.S. 18, 101 S. Ct. 2153, 68 L. Ed. 2d 640 (1981), still represents the law in a case involving an indigent parent's right to counsel in a proceeding affecting parental rights. In that case, the Supreme Court held that a parent does not have an absolute right to counsel in such a proceeding.

*Id.* (discussing *Lassiter v. Dep't of Social Servs.*, 452 U.S. 18, 101 S. Ct. 2153, 68 L. Ed. 2d 640 (1981)). Mother was offered legal counsel, and Mother chose not to avail herself of this offer. Given this, we find that Mother was not denied due process because an attorney was not appointed for her.

As for the second part of Mother's issue, whether she was denied due process because she was not appointed an attorney during the hearing on her motion to revoke, we find that the dispositive issue is whether the Juvenile Court erred in denying Mother's motion to revoke her surrender of the Child. The Juvenile Court found that Mother had voluntarily executed the surrender of parental rights forms and that Mother did not revoke her surrender within the applicable revocation period. As pertinent to this appeal, Tenn. Code Ann. § 36-1-112 provides:

(d) After the revocation period has expired or after the court has entered an order confirming a parental consent, no surrender or waiver of interest or parental consent shall be set aside by a court except upon clear and convincing evidence of duress, fraud, intentional misrepresentation or for invalidity under § 36-1-111(d), and no surrender, waiver of interest, or parental consent may be set aside for any reason under this part unless the action based on these grounds is initiated within thirty (30)

days of the execution of the surrender, waiver of interest or within thirty (30) days of the date of entry of the order of confirmation of the parental consent.

Tenn. Code Ann. § 36-1-112(d) (2005).

Mother made no attempt to revoke the surrender within the revocation period. Nor did she attempt to revoke the surrender within the thirty days. Further, the Juvenile Court found that Mother's petition/motion did not show that the surrender was executed improperly or fraudulently. Instead, the Juvenile Court found that "it appears that there has been a change of heart regarding the adoptive placement and Ms. Waynette Helm now wants custody of the child." The statute is clear that a surrender cannot be revoked once the revocation period has passed because of a change of mind, or heart. As Mother did not attempt to revoke during the revocation period, we find that Mother was not denied due process because an attorney was not appointed for her.

Further, the Juvenile Court found that Mother was not requesting that legal custody of the Child be returned to her. Rather, Waynette Helm was requesting custody of the Child. The Juvenile Court correctly found that "[n]either Waynette Helms [sic] nor Debbie Helms [sic] are parents, legal custodians nor guardians of the child," and, as such, have no standing to challenge the surrender even if the motion for revocation were timely brought.

We find no error in the Juvenile Court's October 13, 2008 order and, therefore, we affirm this order. Exercising our discretion, we decline to award any attorney's fees.

### **Conclusion**

The judgment of the Juvenile Court is affirmed, and this cause is remanded to the Juvenile Court for collection of the costs below. The costs on appeal are assessed against the Appellant, Jessica D. and her surety.

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D. MICHAEL SWINEY, JUDGE