

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

CASE NO. 4D19-774

KELLY KAY LUNSFORD,
Appellant,

L.T. No. 502015DR011293XXXXNB

and

KARA ENGLE,
JAKE PHILLIPS,
Appellees.

_____/

KIMBERLY ENGLE & TRENT ENGLE,
Legal Parents of Minor Child,
Interested Parties.

**LEGAL PARENTS, KIMBERLY ENGLE & TRENT ENGLE’S,
ANSWER BRIEF**

ON APPEAL FROM THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL
CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

Caryn A. Stevens, Esq.

Florida Bar No. 93071

Eddie Stephens, Esq.

Florida Bar No. 117420

WARD, DAMON, POSNER, PHETERSON & BLEAU

4420 Beacon Circle

West Palm Beach, Florida 33407

Tel. (561) 342-8000; Fax (561) 842-3626

eservice@eddiestephens.com

Counsel for the Legal Parents of Minor Child, Interested Parties

TABLE OF CONTENTS

TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iv
TABLE OF CITATIONS	iv
PREFACE	1
STATEMENT OF THE CASE AND FACTS	3
SUMMARY OF THE ARGUMENT	11
STANDARD OF REVIEW	13
ARGUMENT	13
I. The trial court properly dismissed the Florida proceedings for lack of subject matter jurisdiction, as the State of Oregon already had jurisdiction over this matter pursuant to Oregon law and the UCCJEA, and such jurisdiction over the matter continued in the State of Oregon through and including the final disposition of the case.....	13
II. The final judgment of adoption entered by the Circuit Court of the State of Oregon during its proper exercise of jurisdiction over this matter, is valid and binding on all persons after the expiration of one (1) year from its entry, and the validity of such adoption may not be questioned for any reason thereafter.....	18
III. Appellant committed fraud upon this Court by failing to join, and give notice to, the legal and adoptive parents to the underlying proceedings and these appellate proceedings, and also failed to ensure that the record before this Court was complete, and included all pertinent and existing child custody orders from the State of Oregon.....	23

IV. The fact that the Appellant argues she was not permitted to participate in the teleconference between the Oregon and Florida courts is merely an attempt to deflect from the fact that the Appellant had no standing to even participate in this teleconference.....	30
CONCLUSION	33
CERTIFICATE OF SERVICE	36
CERTIFICATE OF COMPLIANCE	37

TABLE OF AUTHORITIES

<u>Statutes / Rules</u>	<u>Page</u>
Fla. Stat. §61.502 (2002)	14
Fla. Stat. §61.503 (2002)	15
Fla. Stat. §61.517 (2003)	5, 14, 16
Fla. Stat. §61.519 (2002)	7, 32
ORS 109.381 (2005)	10, 19, 20, 27
ORS 109.704 (2017)	15
ORS 109.731 (1999)	30, 32
ORS 109.751 (1999)	5, 14, 15, 16
ORS 419B.100 (2020)	4, 14
ORS 419B.328 (2003)	4, 14
ORS 419B.809 (2001)	4
ORS 419B.876 (2015)	8

TABLE OF CITATIONS

<u>Cases</u>	<u>Page</u>
<i>Barnes v. Barnes</i> , 124 So. 3d 994 (Fla. 4 th DCA 2013)	13
<i>Dept. of Human Svcs. v. J. S.</i> , 303 Or. App 324 (2020)	15
<i>J.B.D. v. Plan Loving Adoptions Now, Inc.</i> , 218 Or App 75 (2008)	20, 27
<i>Schaffer v. Ling</i> , 76 So.3d 940 (Fla. 4 th DCA 2011)	13

PREFACE

The Appellant, Kelly Kay Lunsford, is the biological maternal grandmother of the minor child subject to these proceedings, and will be referred to herein as “Appellant” or “Lunsford.”

The Appellees, Kara Engle and Jake Phillips, are the biological Mother and Father, respectively, of the minor child subject to these proceedings, and will be referred to herein as “Kara” and “Jake”, respectively or collectively as the “Child’s Biological Parents.”

The Interested Parties, Kimberly Engle and Trent Engle, are the legal and adoptive parents of the minor child subject to these proceedings (as well as the maternal step-grandmother and biological maternal grandfather of this child), and will be referred to as the “Kimberly” and “Trent” respectively, or collectively as “The Engles.”

Citations to the Appellant’s Amended Initial Brief will be referred to as [IB. ____], where the number following “IB.” is the page number of the Amended Initial Brief. All emphasis is supplied unless otherwise indicated.

Citations to the Record on Appeal will be referred to as [R. ____], where the number following “R.” is the page number of the Record where the cited document is located, with the initial zeroes eliminated. All emphasis is supplied unless otherwise indicated.

Citations to Kimberly and Trent’s Supplemental Record on Appeal will be referred to as [SR. ____]., where the number following “SR.” is the page number of the Supplemental Record where the cited document is located, with the initial zeroes eliminated. Citations to Kimberly and Trent’s Second Supplemental Record on Appeal will be referred to as [SSR. ____]., where the number following “SSR.” is the page number of the Supplemental Record where the cited document is located, with the initial zeroes eliminated. All emphasis is supplied unless otherwise indicated.

Citations to the Trial Memorandum filed with the Circuit Court in the State of Oregon will be referred to as [M. ____]., where the number following “M.” is the page number of the memorandum. All emphasis is supplied unless otherwise indicated.

Citations to the transcript of May 25, 2016 will be referred to as [T. ____]., where the number following “T.” is the page number of that transcript. Citations to the transcript of November 16, 2018 will be referred to as [TT. ____]., where the number following “TT.” is the page number of that transcript. All emphasis is supplied unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

There is one (1) minor child subject to these proceedings, L.R.E., male, born December 14, 2014 in Florida, to the biological parents Kara Engle and Jake Phillips. [SSR. 2-5]. As of the filing of this Answer Brief, the minor child is currently 5 ½ years old. [SSR. 2].

The minor child lived with his biological parents in Florida until approximately February 26, 2015 (when the minor child was approximately only 2 months old), at such time the biological parents and the minor child fled Florida in the face of a Florida Department of Children and Families (DCF) investigation, and set out on a nomadic-type lifestyle traveling across the country in a vehicle they allegedly stole from the Appellant, with no jobs, limited finances, and no home (living in the vehicle). [SSR. 14-15]; [SSR. 2-5]. On or about March 24, 2015, the biological parents and the minor child ended up in the State of Oregon, and were involved in a serious car accident (with the minor child in the vehicle), which was caused by a domestic violence incident between the biological parents, Jake Phillips and Kara Engle, which caused the car to go off the road and flip multiple times. [SR. 42]; [M. 1].

The next day, March 25, 2015, the State of Oregon's Department of Human Services (DHS), took the minor child into protective custody in Curry County, Oregon, so as to protect the minor child. [SSR. 2-5]. A petition to establish

jurisdiction was filed with the Oregon Courts by DHS on March 26, 2015, and a shelter hearing was held in the Circuit Court of Curry County, Oregon, also on March 26, 2015, with the biological parents appearing for such hearing. [SR. 12]. The Circuit Court of the State of Oregon, in and for Curry County, entered a Shelter Order on March 26, 2015, and placed the child in the temporary custody of DHS. [SR. 12-15].

Subsequent thereto, the Circuit Court of the State of Oregon entered two (2) Jurisdiction Judgments on May 8, 2015 and May 11, 2015, finding in both judgments that the child was within the jurisdiction of the Court pursuant to *ORS* 419B.100, and was made a ward of the state pursuant to *ORS* 419B.328. [SR. 20-23; 24-27]. The Jurisdiction Judgment further ordered that the minor child was in the temporary custody of DHS pursuant to *ORS* 419B.809(5), and both biological parents admitted to the DHS's jurisdictional petitions, and acquiesced to the ongoing jurisdiction of this matter. [M. 2].

On May 18, 2015, the Circuit Court of the State of Oregon conducted a Disposition hearing, with the biological parents attending. [SR. 28]. The Oregon Circuit Court entered a Disposition Judgment on this same date, noting that the biological mother had gone back to Florida (to live with the Appellant), and with neither parent meeting the conditions to return the child for in-home placement, the Court found that it was in the child's best interests that the child be placed in the

legal custody of DHS for care, placement and supervision. [SR. 28-31]. All such Jurisdiction and Disposition orders were entered while the State of Oregon continued to exercise its temporary emergency jurisdiction pursuant to *OR*. 109.751¹.

Thereafter, Oregon DHS began looking for appropriate foster care placement for the minor child and began conducting home studies for placement of the minor child with relatives. [M. 2]. The Appellant, who was harboring the biological mother in her own home (and continues to harbor the biological mother to this day), was not considered as an appropriate placement for the minor child. At some point in the summer of 2015, the biological mother again fled from Florida and reconnected with the biological father, recommencing their nomadic lifestyle and travels across many states. [M. 2]; [SSR. 16]. Thereafter, the whereabouts of the two biological parents remained largely unknown to Oregon DHS. At some point, the biological father was arrested and incarcerated for another domestic violence incident against the biological mother, now in the State of Texas. [M. 2].

During this same period of time, Oregon DHS approved Kimberly Engle and Trent Engle as an appropriate foster care placement for the minor child, and the

¹ Such Oregon Statute coincides with, and is identical and analogous to, Florida Statute §61.517.

child was transported from Oregon back to the State of Florida to live with The Engles beginning in August 2015. [M. 2].

The Appellant, clearly angry that Oregon DHS had refused her as appropriate foster care placement for the minor child, and obviously disgruntled that the State of Oregon had placed the minor child in foster care placement with Trent Engle (the Appellant's Former Husband) and Kimberly Engle (Trent's new wife), sought to take some sort of action to "get back" her grandson.

On November 17, 2015—almost eight (8) months since the minor child was first taken into protective custody with the State of Oregon—the Appellant filed a Verified Petition for Temporary Legal Custody of the minor child, in the Courts of the Fifteenth Judicial Circuit of Palm Beach County, Florida, through Counsel. [R. 5-9]. The Appellant sought to be appointed temporary custodian of the minor child, claiming that she had the biological mother's consent, while simultaneously claiming that the biological mother had significant and documented mental illnesses. [R. 7]. Despite the fact that custody proceedings had already commenced in the State of Oregon months before, **this was the first time any action had ever been commenced in Florida regarding the custody of the minor child.** As such, there **were no prior custody orders or determinations** emanating from Florida before the State of Oregon commenced custody proceedings on an emergency basis.

Interestingly, this Verified Petition filed by the Appellant was never served upon the Oregon DHS, who, at the time, was the legal guardian and custodian for the minor child. [R. 9]. Moreover, the Appellant took no other action in Florida until March 2, 2016, when the Appellant filed a Motion for Judicial Communication with Foreign Tribunal Pursuant to Florida Statute §61.519—requesting that the Florida court communicate with the Oregon Court (after the child had been placed in the temporary custody of Oregon DHS for nearly one full year). [R. 10-12].

Meanwhile, the State of Oregon held permanency hearings in January 2016 and February 2016 to assess the status of the biological parents' compliance with the DHS case plans. [M. 2]. Since the biological parents had made no efforts or progress to comply with the case plans, Oregon DHS modified the plan goal for the child from “reunification” to “adoption.” [M. 2-3]. Thereafter, Petitions for the Termination of Parental Rights for the biological mother and the biological father were filed by the Oregon DHS. [M. 3].

During this same period of time in February 2016, while she had a custody action filed in Florida, the Appellant also filed a Motion for Limited Participation in the Oregon proceedings through Counsel, seeking to pursue permanent guardianship of the minor child, or to be designated as the alternative temporary placement for the minor child, and also seeking increased grandparent visitation

with the minor child.² [SSR. 12-20]. Such Motion for Limited Visitation by the Appellant was later denied by the Oregon courts. [SSR. 36-38].

The hearing on judicial communication was conducted on May 25, 2016, at which time the courts conferred and agreed that the State of Oregon had jurisdiction over this matter pursuant to the Oregon statutes, as once temporary emergency jurisdiction was invoked, the State of Oregon became the home state of the child so long as no custody proceeding in another state had been commenced prior thereto, nor had there been any orders entered by another state previously. [T. 5-6]. The Appellant, for all intents and purposes, abandoned these Florida proceedings for nearly two (2) years at that point. In fact, the Florida court entered a Motion Notice and Order of Dismissal for Lack of Prosecution of the case on March 29, 2018, as there had been no activity on the case for an extended period of time. [R. 15-16].

During that two (2) year period of time, the proceedings progressed in the State of Oregon. The biological father's parental rights were terminated by Order of the Oregon Circuit Court on July 25, 2016 [S. 34-37]. The biological mother's parental rights were terminated by Order of the Circuit Court of the State of Oregon on August 30, 2016 [S. 38-53].

² Oregon provides a statutory right for grandparents to request visitation with the minor grandchild, pursuant to ORS 419B.876. Florida does not recognize rights of grandparents for visitation with a child.

The minor child remained in the care of his foster parent placement with Kimberly Engle and Trent Engle throughout this entire process. In fact, since August of 2015, the minor child has never lived with anyone else except The Engles. A General Judgment of Adoption was entered by the Circuit Court of the State of Oregon on March 5, 2018, wherein the minor child was adopted by The Engles, making them the legal parents of the minor child. [SR. 55-57].

Three (3) months after the Circuit Court of the State of Oregon entered the final judgment of adoption of the minor child, the Appellant came back before the Florida court and now filed a Motion to Disregard Oregon Court orders Based upon Lack of Subject Matter Jurisdiction. [R. 19-20]. Again, the Appellant did not serve the Oregon DHS with a copy of this Motion, nor did the Appellant serve a copy of this Motion upon the child's legal and adoptive parents, The Engles. [R. 19-20].

A hearing was held before the Florida court on this Motion, and the Circuit Court Judge correctly raised the concern that the Oregon Court should be a part of these proceedings, wherein Appellant's Counsel erroneously responded "Not at this time, Your Honor." [TT. 4]. Regardless, the Florida Court properly denied the Appellant's Motion on November 26, 2018. [R. 21]. The Appellant then filed an untimely Motion for Reconsideration or Order Dismissing Case So As to Allow Appeal to Ensur some three (3) months later before the Florida court. [R. 22-24]. This Motion was again denied by the Court. [R. 25].

On March 18, 2019, Counsel for the Appellant, Kelly Kay Lunsford, filed a Notice of Appeal to this Court, of the Order Dismissing Case for Lack of Subject Matter Jurisdiction. [R. 27]. On June 4, 2019, the Appellant, through her Appellate Counsel, filed her Amended Initial Brief with this Court. On the first page of the Appellant's Amended Initial Brief, the Appellant's Counsel lists all of the alleged "Interested Parties" to the instant appeal on the Certificate. [IB. 1]. Absent from this Certificate of Interested Persons are Kimberly Engle and Trent Engle, the adoptive and legal parents of the minor child, who was subject to these appellate proceedings. The Appellant completely failed to notify this Appellate Court that the minor child had already been adopted by Kimberly Engle and Trent Engle, well over a full year before that. [SR. 55-57]. Thus, the Oregon adoption judgment was already valid and binding, pursuant to ORS 109.381(3), before the Appellant even filed her Notice of Appeal.

Quite simply, the appellate record and the Appellant's Amended Brief is replete with fraud committed by the Appellant before this Court as will be explained herein, and such fraud directly impacts the parental and legal rights of Kimberly Engle and Trent Engle with regard to this minor child. There is necessary information that the Appellant purposefully omitted from her Amended Initial Brief and the appellate record, and that which should have been brought to this Court's attention. The Appellant has also erroneously represented the law to this Court

regarding the emergency jurisdiction of the State of Oregon's Courts, and the Appellant failed to properly inform this Court of such relevant Oregon laws affecting this appeal, as will be further explained herein.

SUMMARY OF THE ARGUMENT

The trial court properly dismissed the Florida proceedings for lack of subject matter jurisdiction pursuant to Oregon law and the UCCJEA, as the State of Oregon already had jurisdiction over this matter, and such jurisdiction continued in the State of Oregon through and including the final disposition of the case. Since there were no prior custody orders or determinations made by the State of Florida's courts, and no custody proceedings had commenced in the State of Florida's courts before Oregon began exercising temporary emergency jurisdiction over this minor child and this matter, Oregon was the only court which had jurisdiction over the custody matters involving this minor child. As such, Florida had no jurisdiction to adjudicate the custody claims raised by the Appellant. Additionally, the final judgment of adoption of the minor child, entered by the Circuit Court of the State of Oregon, is, and was, valid and binding on all persons after the expiration of one (1) year from its entry, and no one (including the Appellant) may question the validity of this adoption for any reason thereafter.

In addition, the Appellant committed fraud upon this Court by failing to join, and give proper notice to, the legal and adoptive parents of the minor child to the

trial court proceedings and these appellate proceedings, and also failed to ensure that the record before this Court was complete and included all pertinent and existing child custody orders from the State of Oregon. The amended opinion that will ultimately be issued by this Court should recognize that this Court’s original opinion was issued without the Court having the full facts and record before it to make a proper decision—and this lack of information (and lack of inclusion of necessary parties) was a deliberate action undertaken by the Appellant and her Counsel, to omit such relevant information and law from their attempts at a “one-sided” appeal.

Finally, the fact that the Appellant argues she was not permitted to participate in the teleconference between the Oregon and Florida courts is merely an attempt to deflect from the fact that the Appellant had no standing to even participate in this teleconference, and such argument should be disregarded by this Court entirely.

As a result, the trial court’s order on appeal is proper and supported by current Florida law, as well as the laws of the State of Oregon, which are nearly identical in most areas as to substantive language. The Order Dismissing Case for Lack of Subject Matter Jurisdiction rendered on March 12, 2019 should be affirmed. Thus, all orders entered by the Circuit Court of the State of Oregon regarding the termination of the biological parents’ rights, and the subsequent adoption of the minor child, should remain in full force and effect, and should remain undisturbed

and unchanged by any later-issued opinions or orders of the Florida courts in any regard.

STANDARD OF REVIEW

Whether a court has subject matter jurisdiction pursuant to the UCCJEA is an issue that is reviewed de novo. *Barnes v. Barnes*, 124 So. 3d 994 (Fla. 4th DCA 2013), citing to *Schaffer v. Ling*, 76 So.3d 940 (Fla. 4th DCA 2011).

ARGUMENT

- I. The trial court properly dismissed the Florida proceedings for lack of subject matter jurisdiction, as the State of Oregon already had jurisdiction over this matter pursuant to Oregon law and the UCCJEA, and such jurisdiction over the matter continued in the State of Oregon through and including the final disposition of the case**

In her Amended Initial Brief, the Appellant, through her Counsel, erroneously argued to this Court that the Florida trial court erred when it dismissed the case for lack of subject matter jurisdiction and declined to disregard the Oregon Court Orders entered “beyond the scope of UCCJEA Temporary Emergency Jurisdiction.” [IB. 11-21]. However, the Appellant, through her Counsel, has clearly misrepresented this law to the Court, as well as has failed to include pertinent law from the State of Oregon, which directly impacts this matter.

The Uniform Child Custody Jurisdiction Enforcement Act (“UCCJEA”) has been adopted by every state across this nation, and as a result, the UCCJEA statutes of both Florida and Oregon are uniform and nearly identical in most respects.

Florida Statutes §61.501-§61.542 coincide with Oregon Revised Statutes §109.701-§109.834, and such substantive language is nearly identical—absent a few places or provisions. Among the general purposes of these statutes is to “Avoid relitigating the custody decision of other states in this state.” Fla. Stat. §61.502(5).

Pursuant to the specific laws of the State of Oregon, once a child is within its jurisdiction under *ORS 419B.100*, the child becomes a ward of the court. See *ORS 419B.328(1)*. *ORS 419B.328(2)* further provides that this “wardship” of the child continues until the court (1) dismisses the petition; (2) transfers jurisdiction to another county; (3) terminates the wardship; or (4) until the child is adopted or reaches 21 years of age.

Once temporary emergency custody determinations and proceedings commence in any state, if a previous custody determination exists, or if a custody proceeding has already been commenced in a state with initial-custody jurisdiction, that court exercising temporary emergency custody would only have authority to make limited custody determinations on an emergency basis. See Fla. Stat. §61.517 (3); *ORS 109.751(3)*. Here, the State of Oregon first began exercising temporary emergency jurisdiction over the 3-month old, transient, minor child pursuant to *ORS 109.751* to ensure the child’s safety, when the minor child came into the care of the Oregon Department of Human Services (“Oregon DHS”) since the child’s

biological parents' actions endangered his safety and welfare while they were in the State of Oregon. [SSR. 2-5].

Since there was no prior custody determination from another jurisdiction, and no custody proceedings had been commenced previously in another jurisdiction, then the court (in this case, Oregon) exercising temporary emergency jurisdiction unequivocally has the authority, as well as subject matter jurisdiction, to continue “exercising temporary jurisdiction to make a custody determination that will continue indefinitely, or even become a ‘final determination,’ if no other court steps up.” *Dept. of Human Svcs. v. J. S.*, 303 Or App 324 (2020). *See also* ORS 109.751(2). A “child custody determination” is defined as “a judgment or other order of a court providing for the legal custody, physical custody, parenting time, or visitation with respect to a child.” ORS 109.704(3) and *Fla. Stat.* §61.503(4).

This is exactly the same situation with this underlying case which was subject to this appeal. Here, Oregon exercised emergency temporary jurisdiction to shelter the minor child subject to these proceedings. [SSR. 2-5]. Oregon thereafter adjudicated the child as a ward of the state, the State of Oregon began exercising temporary custody over the child, and dependency proceedings commenced. [SR. 12-15]. At the time the child was taken into emergency temporary custody by the State of Oregon, no other state (including Florida) had entered any prior custody determinations, and no other state (including Florida) had commenced custody

proceedings previously. As a result, Oregon's emergency temporary jurisdiction pursuant to ORS 109.751³, and the custody determinations made during this exercise of temporary emergency jurisdiction shall remain in place indefinitely, and may even result in final determinations.

Further, because Oregon had already begun exercising temporary emergency jurisdiction over this minor child, and no prior custody determination had been made in any other state, and no custody proceedings had been commenced previously in another state—Oregon became the home state of this minor child. ORS 109.751(2); Fla. Stat. §61.517(2).

As such, Oregon's emergency subject matter jurisdiction over this minor child and this case did not end upon the initial shelter petition adjudicating the child a dependent ward of the state, despite what the Appellant has attempted to argue. Florida had not entered any custody orders on this minor child prior to Oregon's involvement, and Florida did not have any pending custody proceedings open before Oregon adjudicating the child a dependent. Oregon was the first state to assert any jurisdiction over this minor child; and, because of this, Oregon had the subject matter jurisdiction to continue adjudication of this case until its ultimate finality. In this matter, the finality of this case in the State of Oregon was the

³ Identical in substantive language to Fla. Stat. §61.517

termination of both biological parents' rights, and then the adoption of the minor child by Kimberly Engle and Trent Engle.

Interestingly enough, when proceedings did commence (secondarily) in Florida in November 2015, almost eight (8) months had elapsed since the minor child was first taken into protective custody with the State of Oregon. The Appellant, who is the maternal grandmother of the child subject to these proceedings, filed a Verified Petition for Temporary Legal Custody of the minor child, in the Courts of the Fifteenth Judicial Circuit of Palm Beach County, Florida, through Counsel. [R. 5-9]. The Appellant sought to be appointed temporary custodian of the minor child, claiming that she had the biological mother's consent, while simultaneously pleading that the biological mother had significant and documented mental illness. [R. 7]. At no point in time while the proceedings were occurring in the State of Oregon did the biological parent(s) of the minor child ever file any pleadings or custody actions in the State of Florida. The only custody proceedings that were filed (secondarily) in the State of Florida were the Appellant's request for temporary custody of the minor child—as the maternal grandmother of this child—and whom did not have physical custody of the minor child, and whom failed to serve Oregon DHS with a copy of her pleading, when Oregon DHS was the legal guardian and custodian of the minor child at the time.

As a result of the foregoing, once the State of Oregon began exercising temporary emergency jurisdiction over this minor child and these proceedings, the State of Oregon became the home state of the child, since no custody proceeding had been commenced in any other state prior thereto, nor had there been any orders entered by another state previously regarding custody determinations. Such emergency jurisdiction of the State of Oregon continued over this minor child and these proceedings until the finality of this case. Here, the finality of this case in the State of Oregon was the termination of both biological parents' rights, and then the adoption of the minor child by Kimberly Engle and Trent Engle.

II. The final judgment of adoption entered by the Circuit Court of the State of Oregon during its proper exercise of jurisdiction over this matter, is valid and binding on all persons after the expiration of one (1) year from its entry, and the validity of such adoption may not be questioned for any reason

In addition to the foregoing, by the time the Appellant filed her Notice of Appeal in Florida to contest the entry of orders by the State of Oregon on the basis of an alleged lack of subject matter jurisdiction, the issue was already moot under the Oregon law. Since the State of Oregon's subject matter jurisdiction over this matter continued until the finality of the case, the Oregon case was not closed nor disposed of until the Final Judgment of Adoption was entered by that Court.

The Final Judgment of Adoption of the minor child by The Engles was entered by the Circuit Court of the State of Oregon on March 5, 2018 [SR. 55-57].

The Engles were thereafter issued a State of Florida birth certificate for the minor child on April 11, 2018, which lists The Engles as the child’s parents. [SR. 17]. The Appellant filed her Notice of Appeal on March 18, 2019. [R. 27]. The Appellant ultimately filed her Amended Initial Brief on June 4, 2019. Such appellate action pending before this Court was filed by the Appellant more than one (1) year after the Oregon Court had already entered the Final Judgment of Adoption of the minor child.

The State of Oregon’s laws regarding adoption judgments clearly provide that after the expiration of one (1) year from the entry of a Final Judgment of adoption in this state, regardless of any circumstances or issues—including jurisdiction disputes—an Oregon Final Judgment of Adoption shall not be disrupted nor disputed by any person. *See ORS §109.381*. In fact, *ORS §109.381(3)* clearly states, in pertinent part, as follows:

“After the expiration of one year from the entry of a judgment of adoption in this state the validity of the adoption shall be binding on all persons, and it shall be conclusively presumed that the child’s natural parents and all other persons who might claim to have any right to, or over the child, have abandoned the child and consented to the entry of such judgment of adoption, and that the child became the lawful child of the adoptive parents...**all irrespective of jurisdiction or other defects in the adoption proceeding.** After the expiration of the one-year period **no one may question the validity of the adoption for any reason,** either through collateral or direct proceedings, and all persons shall be bound thereby....” *[emphasis added]*

See also J.B.D. v. Plan Loving Adoptions Now, Inc., 218 Or App 75 (2008) (“Statute providing that no one may question validity of adoption after expiration of one year following entry of adoption order did not authorize birth mother, who consented to adoption and who did not attempt to revoke adoption or intervene in adoption proceedings, to have adoption order set aside.”)

The Appellant and Appellant’s Counsel deliberately failed to include such relevant, significant Oregon law in the Amended Initial Brief to this Court, and since the Appellant and Appellant’s Counsel also fraudulently failed to inform this Court (in any regard, as is detailed hereinabove) that such adoption judgment had been entered in the State of Oregon on March 5, 2018—such Oregon judgment became binding on all persons, and was not subject to any challenge after March 5, 2019. As such, the Florida Courts have no authority to disturb, question and/or set aside the valid Final Judgment of Adoption of the minor child, as entered by the Circuit Court of the State of Oregon.

Even assuming, *arguendo*, that the Oregon courts did not have the proper jurisdiction to enter the Final Judgment of Adoption, such judgment was, in fact, entered—and no one contested the adoption judgment for the entire one (1) year period of time after it was entered. As such, regardless if such jurisdictional issues existed with the State of Oregon’s proceedings (they did not), the Final Judgment of Adoption shall be binding on all persons. *ORS* §109.381(3).

If the Appellant truly believed that the adoption judgment was entered in error, the Appellant had every right to file such appropriate pleading in the State of Oregon to dispute said final judgment. The Appellant filed nothing. Instead, the Appellant chose to wait over an entire year to file a Notice of Appeal with the Florida Courts, and essentially “forum shop” her argument over to this appellate court now, and take the position that Oregon lacked subject matter jurisdiction, and any orders entered by the Oregon Courts after their alleged exercise of temporary emergency jurisdiction are void. Notably, the Appellant never served the Oregon DHS and/or the Oregon Circuit Court with copies of the pleadings she was filing here in Florida (at the trial court level nor the appellate court level) to contest the validity of the orders entered by the Oregon Court, and her certificates of service of such pleadings evidence this lack of notice to Oregon DHS and the Oregon court, as well as the child’s adoptive parents (The Engles). [R. 19-20; R. 22-23; R. 27].

Moreover, any collateral attack on the Oregon Final Judgment of Adoption of the minor child must be done with proper notice and due process properly afforded to the parties to the adoption case—specifically the adoptive parents. Here, the Appellant’s pleadings filed with the Florida Courts did not (and could not) satisfy those notice and due process rights afforded to The Engles, as the legal and adoptive parents. To this very day—because the Appellant never included and never notified the adoptive parents (The Engles) of her “alleged challenge” of such final

judgment of adoption—the Appellant still has never challenged the adoption judgment pursuant to Oregon law.

Instead, the Appellant and Appellant’s Counsel quite carefully, and strategically failed to inform this appellate court that the State of Oregon had already entered a valid, Final Judgment of Adoption of the minor child well over a year before, and that such adoption judgment is not subject to question by any person. This is a significant piece of information that the Appellant deliberately attempts to conceal from this Honorable Court. In fact, the Appellant writes in her Amended Initial Brief that:

- “While the Petition for Temporary Custody was pending in Florida, the Oregon court continued to exercise jurisdiction over L.R.E. and entered multiple orders including termination of the Father’s parental rights in July 2016, and then the termination of Mother’s parental rights in September 2016.” [*emphasis added*] [IB. 8-9].
- “Instead, Oregon entered various other custody order [sic] including the termination of each parent’s parental rights.” [*emphasis added*] [IB. 19-20].

Of course—there is no mention by the Appellant that a final judgment of adoption had been entered by the Oregon court, or that this final judgment of adoption was one of the “various other custody orders” entered by the State of Oregon. Clearly, this final judgment of adoption is certainly the most important order entered by the Oregon courts—as it is the order that gives the minor child permanency for the rest

of his life, and is also not subject to question by any person after the expiration of one (1) year from the entry.

As a result, the Appellant's instant appeal to contest the entry of orders by the State of Oregon (including the final judgment of adoption) on the basis of an alleged lack of subject matter jurisdiction was already moot at the time it was filed, and not subject to dispute under Oregon law. The Appellant should not be rewarded for underhandedly "forum shopping" her complaints back to the Florida courts on a tardy basis, in an attempt to somehow now overturn the valid orders of the circuit court of another state which she does not like.

III. Appellant committed fraud upon this Court by failing to join, and give notice to, the legal and adoptive parents to the underlying proceedings and these appellate proceedings, and also failed to ensure that the record before this Court was complete, and included all pertinent and existing child custody orders from the State of Oregon

As this Court recognized in granting The Engle's Motion to Recall and/or Vacate the mandate previously entered, there was a manifest injustice which needed to be corrected as a result of the fraud upon this court committed by the Appellant. Such fraud perpetrated by the Appellant in this matter includes:

- the Appellant's deliberate refusal to include and/or inform interested and required parties to this matter so that they could participate in the appellate proceedings;
- the Appellant's calculated actions to ensure that the child's legal parents were

excluded from participating in these appellate proceedings;

- the Appellant’s deliberate omissions of relevant orders from the appellate record, which were entered by the Courts of the State of Oregon long before these appellate proceedings were initiated;
- the Appellant’s intentional failure to discuss and address certain relevant Oregon laws and statutes which directly affect these appellate proceedings in Florida, as such laws would render Appellant’s appeal moot, and thus the Appellant guided this Court into error;
- this appeal was moot, as filed by the Appellant and her Counsel, before it even began pursuant to relevant Oregon law, and thus the Appellant has wasted this Court’s judicial time and labor; and
- the Appellant’s complete disregard for the best interests of the minor child subject to these appellate proceedings.

As discussed previously, when the Appellant, through her Appellate Counsel, filed her Amended Initial Brief with this Court, the Appellant lists all of the “Interested Parties” to the instant appeal on the Certificate. [IB. 1]. Noticeably absent from this Certificate of Interested Persons are Kimberly Engle and Trent Engle, the adoptive and legal parents of the minor child. The Appellant and the Appellant’s Counsel completely failed to notify this Appellate Court that the minor child had already been adopted by Kimberly Engle and Trent Engle. [SR. 55-57].

The Appellant and the Appellant's Counsel also failed to notify this Court that the minor child had lived with Kimberly Engle and Trent Engle for over four (4) years by the time the Notice of Appeal was filed.

In fact, in this Court's original opinion dated January 22, 2020, this Court noted that "Our record contains **no information regarding** the outcome of Oregon DHS's request for the Oregon court to terminate the mother's parental rights, **or any other information regarding the Oregon court's proceedings.**" [*emphasis added*] [*See this Court's Opinion dated 1-22-2020, at 4*]. Such information is not only relevant, but it was absolutely necessary for this court to be aware of when considering this case de novo.

Moreover, the appellate record provided by the Appellant also fails to include any Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) affidavit filed by the Appellant, which would have shown unto this Court that another party (or parties) "has physical custody or claims to have parental responsibility for, custody of, or time-sharing or visitation" with respect to the child. The Appellant clearly left this UCCJEA affidavit out of the appellate record, as it would most certainly have called attention to this Court that the minor child had been living with The Engles since August 2015 and that The Engles had already adopted the minor child.

Because the Appellant purposely failed to include The Engles in her initial appellate proceedings, The Engles had absolutely no knowledge such appellate proceedings were occurring, and they were denied the right to join into the proceedings. In fact, this Court had already issued an Opinion, and then a Mandate before The Engles ever knew such proceedings had occurred—even though such proceedings directly affect their rights as the legal and adoptive parents of this minor child.⁴

Interestingly enough, now cognizant that The Engles had been made aware of the fraudulent appellate proceedings before this Appellate Court, the Appellant

⁴ The first time that Kimberly Engle & Trent Engle became aware that an appeal had been undertaken by the Appellant was a month after the Mandate had been issued by this Court, when the biological mother of the child (who is the Appellee of this case, who never filed any brief whatsoever in the appellate proceedings), contacted Trent Engle by written correspondence dated March 4, 2020 that “the Fourth District Court of Appeals reversed the rulings of the Oregon Court, which included the reinstatement of my parental rights...[I] hope you will assist me in making this a very smooth transition for [minor child’s name redacted] so that he may to [*sic*] return to live with me, his mother...”

Even though the Appellant in this matter is the maternal grandmother who was fighting for temporary legal custody of the minor child against the biological mother, the maternal grandmother has now stepped to the side, and has been silent since the mandate has been handed down. Now the same Attorney who represented the Appellant in these proceedings against the Appellee, is now representing the Appellee (biological mother) in divorce proceedings against biological father, and is seeking to have the trial court issue a “pick up” order for the minor child from Kimberly Engle and Trent Engle, by way of a pending Motion for Child Pick-Up Order pending before the lower court.

has agreed to permit Kimberly Engle and Trent Engle to intervene in the underlying proceedings in the trial Court at this late juncture. The Engles filed a Verified Motion to Intervene on March 10, 2020 [SR. 1-8]; and soon thereafter, the Appellant agreed to the entry of an Agreed Order Granting The Engles' Motion to Intervene, entered on May 1, 2020. [SR. 9-10]. Such act by the Appellant and her counsel is certainly indicative of their understanding that The Engles should have been a part of these proceedings from the very beginning.

In addition, the Appellant and Appellant's Counsel also erroneously misrepresented the law to this Court regarding the emergency jurisdiction of the State of Oregon's Courts. The Appellant also failed to properly inform this Court of such relevant Oregon laws affecting this appeal, especially with regard to the final judgment of adoption entered by the Oregon court well over a year before the Appellant commenced her appellate proceedings. Such final judgment of adoption (which the Appellant completely failed to advise this Court existed) was not subject to question or disturbance, and became valid and binding on all persons after the expiration of one (1) year from its entry. *See ORS §109.381(3); J.B.D. v. Plan Loving Adoptions Now, Inc.*, 218 Or App 75 (2008). How could this Court possibly fully evaluate and review the appellate proceedings before it, *de novo*, without a complete record of the case occurring in both Florida and Oregon, as well as the pertinent and controlling law affecting this matter?

Moreover, at the root of these proceedings should be a consideration of the best interests of this minor child. Clearly, the Appellant disregarded such responsibility when she brought these one-sided appellate proceedings before the Court, without any notification to the child's legal and adoptive parents, without notifying this Court of the orders entered by the Oregon Courts, including the final judgment of adoption, and without advising this Court of the appropriate and relevant laws of the State of Oregon which would directly impact this matter. Instead, the Appellant mislead this Court into believing that the Oregon courts lacked subject matter jurisdiction (they did not) and that it was somehow in the child's best interests to disregard appropriate Oregon law (without notice to the State of Oregon's courts, nor the legal parents of the minor child) and have this court "**disregard any orders which the Oregon court** entered after the Oregon court had completed its exercise of temporary emergency jurisdiction." [emphasis added] [*See this Court's Opinion dated 1-22-2020, at 10*].

Disregarding the orders of the Oregon court, which were entered appropriately while the Oregon court exercised its continuing temporary emergency jurisdiction, would mean that this Court was 'throwing out' the two (2) orders terminating each of the biological parents' rights some 3 ½ years prior, on July 25, 2016 (the biological Father) and on August 30, 2016 (the biological Mother). In addition, disregarding the orders of the Oregon court, which were

entered appropriately while the Oregon court exercised its continuing temporary emergency jurisdiction, would also ‘throw out’ the valid and binding Final Judgment of Adoption entered by the Oregon court on March 5, 2018, nearly two (2) years earlier. This would also disrupt the minor child’s entire life and stability—by removing the child from the care of The Engles, whom the child has lived with (first as foster parents, and later as the adoptive and legal parents) since the child was approximately eight (8) months old.⁵ Clearly, not only are these actions not supported by current-existing law, they certainly fail to consider the minor child’s best interests.

Had the Appellant, through her Counsel, been honest and forthcoming with her Amended Initial Brief with all of the complete information, all of the existing Oregon orders and judgments, all of the relevant Oregon law affecting these proceedings, and giving proper notice to the appropriate interested parties whom these proceedings directly affect, then this Court would have been able to appropriately decide this appeal and review this matter appropriately, de novo.

Instead, the Appellant committed fraud upon this Court by failing to join, and give notice to, the legal and adoptive parents to the underlying proceedings and these appellate proceedings, and also failed to ensure that the record before this Court was complete, and included all pertinent and existing child custody orders

⁵ The minor child, born December 14, 2014, is now 5 ½ years old.

from the State of Oregon. Such deliberate actions should not be condoned by this Honorable Court.

IV. The fact that the Appellant argues she was not permitted to participate in the teleconference between the Oregon and Florida courts is merely an attempt to deflect from the fact that the Appellant had no standing to even participate in this teleconference

The Appellant raises, in her Amended Initial Brief, that she was improperly denied the ability to participate in the teleconference between the Oregon and Florida courts. Such argument is nothing more than an attempt to deflect from the fact that the *Appellant had no standing to even participate in this teleconference*.

As explained hereinabove, Oregon was the court exercising continuing temporary emergency jurisdiction over the minor child and these proceedings, through and including the entry of the final judgment of adoption. As such, Oregon law would apply to the proceedings involving this matter and the minor child—including any request for communication between the Courts. It should be noted that Oregon’s Revised Statutes regarding communication between the Courts, *ORS* 109.731 differs, in part, with the analogous *Fla. Stat.* §61.511. *ORS* 109.731(2) states, in pertinent part, that “The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision

on jurisdiction is made.”⁶ As such, the participation of a party to a proceeding in the communications between the courts is not required under Oregon law.

Moreover, the Appellant was not a party to the proceedings in either Oregon or Florida at the time this call took place. The Appellant filed a Verified Petition for Temporary Legal Custody of the minor child, in the Florida court, on November 17, 2015—nearly eight (8) months after the initial custody proceedings had commenced in Oregon. [R. 5-9]. However, the Appellant essentially abandoned this Florida action for almost four (4) months, taking no further action until March 2, 2016; and in the meantime, the Appellant pursued her cause out in Oregon, by filing a Motion for Limited Participation in the Oregon proceedings. [SSR. 12-20]. Such Motion for Limited Visitation by the Appellant was later denied by the Oregon courts. [SSR. 36-38]. Clearly, the Oregon court had allowed the Appellant to make her arguments to the Court as to why she should be permitted to be involved in the Oregon proceedings, and the Court determined that the Appellant’s request should be denied.

Upon seeing that her involvement in the Oregon court proceedings was not “going her way,” the Appellant traversed back to the Florida court, and filed a Motion for Judicial Communication with Foreign Tribunal Pursuant to Florida

⁶ In contrast, *Fla. Stat.* §61.511 states that “The Court shall allow the parties to participate in the communication. If the parties elect to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made,” making such participation of the parties required.

Statute §61.519—requesting that the Florida court now communicate with the Oregon Court (after the child had been placed in the temporary custody of Oregon DHS for nearly one full year). [R. 10-12]. The Appellant attempts to argue that she was now somehow denied the right to participate in the call between the Florida court and the Oregon court, but this was because the Oregon court had already made custody determinations in the State of Oregon, and the minor child had been in temporary custody of Oregon DHS for almost a year at this point. Moreover, the Appellant had already sought to participate in these Oregon proceedings, and the Court denied her request—long before the Courts even conducted their hearing on judicial communication.

Further, *ORS* §109.731(2) provides that “The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.” The Oregon court had already conducted a hearing on the Appellant’s Motion for Limited Participation in the Oregon proceedings, allowed her (through Counsel) to present facts and legal arguments, and then ultimately made a decision on her participation--denying such Motion as filed by the Appellant. [SSR. 36-38].

The Appellant’s filing in the Florida courts was simply an attempt for a ‘second bite at the apple’ through ‘forum shopping,’ after the Appellant was already

told “no” once by the Oregon courts. As such, because the Oregon court was exercising (and was continuing to exercise) jurisdiction over this matter and the minor child, the Appellant had no standing to even participate in this teleconference between the Courts, nor was it a mandated requirement under Oregon law. The Appellant’s arguments in her Amended Initial Brief as to this issue is nothing more than an attempt to deflect the attention from the fact that the Appellant simply had no legal right to be a part of these proceedings—as the Florida proceedings were commenced after the Oregon proceedings, and Oregon was the state with subject matter jurisdiction over these proceedings through and including the finality of the matter.

CONCLUSION

WHEREFORE, KIMBERLY ENGLE and TRENT ENGLE, as the Legal Parents of the Minor Child and Interested Parties to this action, for all of the reasons set forth above, respectfully requests in good faith that the Order Dismissing Case for Lack of Subject Matter Jurisdiction **should be affirmed, in its entirety.**

It is patently clear that the trial court properly dismissed the Florida proceedings for lack of subject matter jurisdiction pursuant to Oregon law and the UCCJEA, as the State of Oregon *already had jurisdiction over this matter*, and such jurisdiction continued in the State of Oregon through and including the final disposition of the case. Additionally, the final judgment of adoption of the minor

child, properly entered by the Circuit Court of the State of Oregon, is, and was, valid and binding on all persons after the expiration of one (1) year from its entry, and no one (including the Appellant) may question the validity of this adoption for any reason thereafter. No one appropriately challenged such final judgment of adoption, and thus such judgment should remain undisturbed by any persons, and should be enforced.

In addition, the Appellant committed fraud upon this Court by failing to join, and give proper notice to, the legal and adoptive parents of the minor child to the trial court proceedings and these appellate proceedings, and also failed to ensure that the record before this Court was complete and included all pertinent and existing child custody orders from the State of Oregon. The amended opinion that will ultimately be issued by this Court should recognize that this Court's original opinion was issued without the Court having the full facts and record before it to make a proper decision—and this lack of information (and lack of inclusion of necessary parties) was a deliberate action undertaken by the Appellant and her Counsel, to omit such relevant information and law from their attempts at a “one-sided” appeal.

Finally, the fact that the Appellant argues she was not permitted to participate in the teleconference between the Oregon and Florida courts is merely an attempt to deflect from the fact that the Appellant had no standing to even participate in this teleconference, and such argument should be disregarded by this Court entirely.

As a result, the trial court's order on appeal is proper and supported by current Florida law, as well as the laws of the State of Oregon. which are nearly identical in most areas as to substantive language. Simply put, the Order Dismissing Case for Lack of Subject Matter Jurisdiction rendered on March 12, 2019 should be affirmed. Thus, all orders entered by the Circuit Court of the State of Oregon regarding the termination of the biological parents' rights, and the subsequent adoption of the minor child, should remain in full force and effect, and should remain undisturbed and unchanged by any later-issued opinions or orders of the Florida courts in any regard.

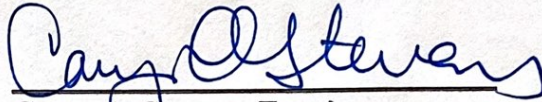
[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

CERTIFICATE OF SERVICE

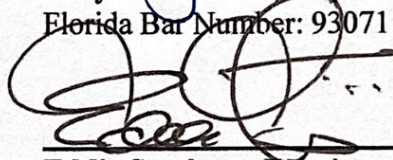
I certify that a copy of this document was furnished by e-mail (or U.S. Mail, as so indicated) to the persons on the attached Service List, and pursuant to Administrative Order No. 2011-1, the e-filing of this document has been completed, this 28th day of May, 2020.

Ward, Damon, Posner, Pheterson & Bleau
*Counsel for Minor Child's Legal Parents,
Interested Parties*
4420 Beacon Circle
West Palm Beach, FL 33407
Telephone: 561-842-3000
Email: eservice@eddiestephens.com

By:



Caryn A. Stevens, Esquire
Florida Bar Number: 93071



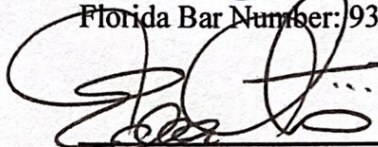
Eddie Stephens, Esquire
Florida Bar Number: 117420

CERTIFICATE OF COMPLIANCE

I certify that this brief submitted complies with the font requirements set forth in Florida Rules of Appellate Procedure 9.210(a)(2).

By: 

Caryn A. Stevens, Esquire
Florida Bar Number: 93071



Eddie Stephens, Esquire
Florida Bar Number: 117420

SERVICE LIST

John F. Schutz, Esq.
Counsel for the Appellant
11211 Prosperity Farms Road, Suite C208
Palm Beach Gardens, FL 33410
ServiceDocument@PalmBeachDivorceLawyer.com
Service via Email

Kara Engle
Appellee
2563 Pepperwood Circle N.
Palm Beach Gardens, FL 33410
Service via U.S. Mail

Jake Phillips
Appellee
1050 Pacific Coast Hwy #C
Dana Point, CA 92629
Service via U.S. Mail