

**COURT OF APPEALS OF GEORGIA**  
**DOCUMENT RETURN NOTICE FOR BRIEFS OR MOTIONS**

April 13, 2015

**To:** Ms. Leah M. Dibello Dell, 7425 SW 17 Pl, Ocala, Florida 34474

**Docket Number:** A15A1430    **Style:** Leah M. Dibello Dell v. Sarah Dell

Your document(s) is (are) being returned for the following reason(s).

1.  **Your Appellant's Brief, was not accompanied by the statutory filing fee (\$300.00 civil; \$80.00 criminal \*Effective July 1, 2009) or a sufficient pauper's affidavit. OCGA§5-6-4 and Rule 5 Please be advised that your pauper's affidavit should be notarized by a notary public.**
2.  A Request for Oral Argument must be filed as a separate document. Rule 28 (a) (3)
3.  Your document(s) was (were) not signed by counsel (No signatures with expressed permission are permitted). Rule 1 (a)
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8.  Your document was submitted without permission to file (supplemental brief or second motion for reconsideration). Rules 27 (a) and 37 (d)
9.  Letter briefs and letter cites are not permitted. Rule 27 (b)
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13.  The pages were not sequentially numbered with arabic numerals. Rule 24 (e)
14.  Case and/or record citations were not made in the proper form. Rules 24 (d) and 25 (c) (2)
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16.  Your document(s) was (were) not securely bound at the top with staples or round head fasteners. Rule 1 (c)
17.  The Motion to Supplement has not been granted.
18.  **Other: Your Appellant's Brief is limited to 30 pages. Rule 24(f)**

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For Additional information, please go to the Court's website at: [www.gaappeals.us](http://www.gaappeals.us)

From the desk of  
Leah M. DiBello Dell  
7425 SW 17 PL  
Ocala, FL 34474  
04/07/2015

Honorable Clerk of the  
COURT OF APPEALS OF GEORGIA  
47 Trinity Avenue SW  
Suite 501  
Atlanta, GA 30334

RE: A15A1430  
Leah M. DiBello Dell V. Sarah Dell

Greetings!

Please find enclosed the filings for Appeal Case number  
A15A1430.

I have enclosed the original and two copies each of the Appellant's  
Brief and the Appellant's Enumeration of Errors.

As to the filing fees, there is a Pauper's affidavit on file at the  
Gwinnett County Clerk's Office and I am presuming you will have a  
copy of it as well.

Included, there are copies of the latest judgment in the trial that is being  
appealed.

Please do not hesitate to contact me if you need further assistance  
at 352-433-8945 or 352- 304-8676. Please leave a message for me  
at either number if I am not available and I will certainly return your call  
as soon as possible!

Warmest Regards,

*Leah M. DiBello*  
Leah M. DiBello Dell

RECEIVED BY OFFICE  
2015 APR 9 AM 11:12  
LEAH M. DIBELLO DELL  
COURT OF APPEALS OF GEORGIA

IN THE SUPERIOR COURT OF GWINNETT COUNTY  
STATE OF GEORGIA

FILED IN OFFICE  
CLERK SUPERIOR COURT  
GWINNETT COUNTY, GA  
2015 JAN 14 PM 4:43  
RICHARD ALEXANDER, CLERK

SARAH DELL )  
 )  
 Petitioner, ) ADOPTION  
 v. ) FILE NO. 10-134-4  
 )  
 LEAH MARIE DIBELLO )  
 F/k/a LEAH M. DELL )  
 Respondent. )

**FINAL ORDER OF TERMINATION OF PARENTAL RIGHTS OF LEAH  
MARIE DIBELLO AND GRANT OF ADOPTION OF EMILY DELL BY  
SARAH DELL**

This is the Order of the Trial Court on Remittitur from the Court of Appeals of  
Georgia.

On November 12, 2013, this matter was remanded by order of Remittitur to the Superior Court of Gwinnett County. The following order is supplemented to meet the concerns of the Court of Appeals.

Respondent's Motion for Continuance of Trial

On March 7, 2012, this matter of the termination of the parental rights of Leah Marie DiBello<sup>1</sup> to Emily Dell and adoption of Emily Dell by Sarah Dell came on for trial. Petitioner Sarah Dell was present with her husband Dwain Dell and represented by their attorney Drew Mosley. Respondent Leah Marie DiBello appeared through her attorney Adam Ruf but was not present herself. Respondent's Counsel Ruf moved for a continuance, which the Court denied.

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<sup>1</sup> The Court of Appeals refers to Respondent as Leah M. Dibello Dell, perhaps because the record suggests she may never have restored her maiden name legally. Regardless, Leah Marie DiBello, Leah M. Dell, and Leah M. Dibello Dell are one and the same person as contemplated in this order, to wit the former wife of Dwain Dell.

Later, on July 24, 2012, Ruf (then former trial counsel) testified at DiBello's hearing on her Motion for Reconsideration, where DiBello questioned Ruf through her new counsel, Andrea Vega. Ruf testified he requested consent to a continuance from Petitioner's Counsel Mosley on March 1<sup>st</sup>, 2012, the Thursday prior to trial week, which request Mosley would not consent to because "this case has been pending for some time" and his client wanted resolution. (Motion for Reconsideration, Tr. P. 12, Line 16 to P. 13, Line 6). The Court finds based on this raising of the issue of continuance prior to trial week and the whole of the testimony in the transcript of the Motion for Reconsideration that Respondent knew her trial would be taking place during the trial week and on the day in which it did take place and excused herself.

#### Termination of Parental Rights of Leah Marie DiBello to Emily Dell

On March 7, 2012, at trial, the Court heard evidence and spirited argument from each side. The findings of fact and conclusions on law herein being based upon clear and convincing evidence, the parental rights Leah Marie DiBello had by being the natural mother of Emily Dell, born September 14, 2002, are hereby terminated. The Court finds that DiBello has been served and made appearance in this matter *pro se* and then through her appointed counsel Adam Ruf, who made impressive efforts to advocate for DiBello despite her absence at trial.

The Court finds that Respondent has abandoned Emily Dell and has been living in Florida since at least 2008. Respondent has not visited the child since 2006. The Court further finds that for a period longer than a year immediately prior to the filing of the petition for adoption Respondent has significantly and completely failed to provide for the care and support of Emily Dell as required by law and judicial decrees of record

without justifiable cause. The record shows respondent has a history of substance abuse, which both she and her mother Brenda DiBello have been evasive about.

After the trial in this matter took place on March 7, 2012, Respondent moved *pro se* to Reconsider the Court's Order, which had not issued yet, and to Reopen the matter. This Motion was heard on July 24, 2012. Respondent was represented by her counsel, Andrea Vega, who was appointed to Respondent at the prior-calendared rule nisi hearing on Respondent's motion on May 22, 2012. Respondent's mother Brenda DiBello and trial counsel Adam Ruf were also present as witnesses at the hearing on the Motion for Reconsideration, but not for all the hearing as the rule of sequestration had been invoked. Proceeding on Respondent's motion was not yet possible on May 22, 2012 because former-counsel Ruf had to withdraw based on the conflict that had arisen between Respondent and him. Petitioner was represented by Drew Mosley at the May 22 and July 24, 2012 hearings.

Respondent's Motion to Reconsider and Reopen is denied. At the hearing on these matters, Respondent appeared and could indicate no grounds that changed or would change the Court's rulings on the matter. The Court finds by clear and convincing evidence and bases its ruling on the fact that Respondent did commit misconduct in failing to support the child. Furthermore, Respondent has not been paying child support for several years, nor made efforts to obtain visitation with her child through the courts. In fact, a decree has been entered by a court of competent jurisdiction, the Superior Court of Gwinnett County, ordering DiBello to support the child, and DiBello has wantonly and willfully failed to comply with the order for a period longer than 12 months despite having knowledge of the order. DiBello admitted at her Motion for Reconsideration

hearing the last time she paid support was over six years prior in 2005. (Motion for Reconsideration Tr., P. 27, Line 17-19). Termination of parental rights is in the best interest of the child. The child has normal physical, mental, emotional, and moral needs and the need for a secure and stable home. All of these needs are being met in the household of Dwain and Sarah Dell, and the child is in good condition with respect to these needs, doing well in school and developing normally. She is in a home with a close bond with a step-mother and sibling. DiBello has contributed nothing to these needs, nor any care or support, for over a year. DiBello also has custody of no children as her mother Brenda DiBello has custody of her fourteen-year-old son. By clear and convincing evidence DiBello has actually deserted her daughter and did so with an intention to sever entirely as far as possible to do so the parental obligations growing out of the parent/child relationship and forego all parental duties and claims. DiBello has not justified her failure to provide care and support by incarceration, mental illness, mental incapacity, hospitalization, or other circumstances beyond her control. Though DiBello claims Dwain and Sarah Dell put the child into hiding (Motion for Reconsideration Transcript, P. 28, Lines 2 to 4), DiBello admits that her mother Brenda DiBello was able to locate Dwain and Sarah and serve Dwain with a grandparent's visitation action in 2010 (Motion for Reconsideration Transcript, P. 28, Lines 8 to 17). The Court does not find DiBello credible because of inconsistencies such as the alleged inability to locate and DiBello's statements that she made "nothing" for income for the past few years and yet was at the time of the hearing "running [her] fiance's company, which [they] just started (Motion for Reconsideration Transcript, P. 37, Lines 11-25).

Grant of Adoption of Emily Dell by Sarah Dell

The Court is of the opinion that the adoption of Emily Dell by Sarah Dell is in the best interests of the child. Having heard sufficient evidence and all prerequisites having been met, pursuant to OCGA § 19-8-10, Emily Dell, born September 14, 2002, who is not possessed of any property and whose sole guardian has been since the 2004 divorce her father Dwain Dell, shall be the lawful child of Petitioner Sarah Dell. Adoptive mother and child shall enjoy all rights and duties associated with their new relationship. Petitioner Sarah Dell shall share joint legal and physical custody of Emily Dell with her husband Dwain Dell, the child's biological father. By clear and convincing evidence, the child has been abandoned by her natural mother Leah Marie DiBello, and the adoption is in the best interests of the child after having considered the physical, mental, emotional, and moral condition and needs of the child, including the need for a secure and stable home. Sarah Dell has demonstrated she currently provides excellent care, support, nurturing, and guidance to the child, along with the child's sibling. She has been in a loving married relationship with the child's father Dwain Dell in Georgia since 2007, the relationship having developed over the two years prior to that, and seeks to adopt the child to act in the child's interest and better plan for the child's welfare and future and to be fully able to act on the child's behalf without the immediate assistance of Dwain Dell, including but not limited to personally enrolling the child in school when needed from time to time.

The Court finds that Sarah Dell was 30 years of age when she filed her petition and has been a resident of Georgia for six months prior to filing this petition. Sarah is married to Emily's biological and legal father Dwain Dell. Sarah is financially,

physically, and mentally able to have permanent custody of Emily at her home at 313 Primrose Lane, Auburn, GA 30011.

Conclusion

The court has reviewed all transcripts of previous hearings (attached) and the Court of Appeals decision. This order addresses the deficiencies found by the Court of Appeals in the previous order and the transcripts provide the evidence to support the finding made.

Given the above, which paragraphs are mutually supporting and not set in isolation by their headings, which are for direction to the main treatment of certain topics only, the Court terminates the parental rights of Leah Marie DiBello to Emily Dell and grants the adoption of Emily Dell by Sarah Dell, which conclusions and orders of law are supported by clear and convincing evidence as recited in this order and as in the record of this case.

Ms. DiBello has thirty days to appeal this order, and, if she so wishes, the court will appoint counsel to assist her. She must inform the Court upon receipt of this order if she desires appointed counsel by contacting the Judge's office at Angela.Reed@gwinnettcounty.com.

IT IS SO ORDERED this <sup>14</sup>~~4th~~ day of <sup>January 2015</sup>~~December, 2013~~.



Judge Robert V. Rodatus  
Sitting as Superior Court Judge by  
Designation

Order Prepared by:

/s/ Drew Mosley

Drew T. Mosley

Drew Mosley LLC

Ga. Bar No. 526406

Attorney for the Plaintiff

600 South Perry Street

Lawrenceville, GA 30046

Telephone: (678) 225-0098

Facsimile: (678) 221-0230

Email: drew@mlawmail.com

THE HONORABLE COURT OF APPEALS OF GEORGIA

APPEAL CASE NUMBER: A15A1430

LEAH M. DIBELLO DELL V. SARAH DELL

PART II: ENUMERATION OF ERRORS

RECEIVED IN OFFICE  
2015 APR -9 AM 11:13  
CLERK OF SUPERIOR COURT  
COURT OF APPEALS OF GEORGIA

1. Malpractice/Dereliction of duty by court appointed attorneys:

Failure to provide for the best interest of the Client:

A. Attorney Adam Ruff committed Malpractice/Dereliction of duty as follows:

His telephone was disconnected for several weeks, he failed to notify the Appellant of a crucial hearing until the hearing was over and he told her she lost because she did not attend.

He took down her defenses and her countersuit, and moved his office without notifying her of his new location.

He misrepresented the desires and interests of the Appellant by testifying in court that the Appellant completely agrees with the adoption of the minor child and that she only hopes that her parental rights are not terminated, a direct contradiction to the expressed desires of the Appellant as clearly expressed in her pro se filings, and countersuit filings.

He failed to bring forth crucial defense witnesses, he failed to properly develop the Appellant's defenses, he failed to present crucial medical and financial evidence to the court, he failed to present crucial child support account evidence to the court, he failed to correspond with the Appellant on several matters.

**B. Attorney Andrea David Vega committed Malpractice/Dereliction of duty as follows:**

She failed to bring forth crucial defense witnesses, she failed to properly develop the Appellant's defenses, she failed to present crucial medical and financial evidence to the court, she failed to present crucial child support account evidence to the court, she failed to correspond with the Appellant on several matters, and failed to attend the last hearing in this matter, after securing a reopening of the case for which the last hearing had been scheduled.

**REFERENCES/CONCLUSIONS OF LAW:**

UJCR 7.6 states: Findings of Fact. There can be no termination by default. Responsive pleadings are not required. UJCR 7.6.

**STATE COURTS OF THE STATE OF GEORGIA UNIFORM RULES**

**RULE 8. CIVIL JURY TRIAL CALENDAR**

**8.3 Trial Calendar**

The calendar clerk shall prepare a trial calendar from the actions appearing

on the ready list, in the order appearing on such list. The calendar shall state the place of trial and the date and time during which the actions shall be tried. The trial calendar shall be delivered to the clerk of the court and distributed or published a sufficient period of time, **but not less than 20 days, prior to** the session of court at which the actions listed thereon are to be tried, except that the trial calendar for dispossessories, foreclosures, mechanics liens, garnishments and distress warrants shall be published at least twenty-four hours in advance of the hearing and shall be available at the clerk's office.

**O.C.G.A. § 9-11-40:**

**Rule 8.3. Trial Calendar**

The calendar clerk shall prepare a trial calendar from the actions appearing on the ready list, in the order appearing on such list.

The calendar shall state the place of trial and the date and time during which the actions shall be tried. The trial calendar shall be delivered to the clerk of the court and distributed or published a sufficient period of time, but not less than 20 days, prior to the session of court at which the actions listed thereon are to be tried.

[In State Court, see State Court Rule 8.3.]

#### Rule 8.4. Trial Date

The parties and counsel in the first 10 actions on the published trial calendar shall appear ready for trial on the date specified unless otherwise directed by the assigned judge. Parties in all other actions on the calendar are expected to be ready for trial but may contact the calendar clerk to obtain:

(A) A specific date and time for trial during the trial term specified in the calendar; or

(B) Permission to await the call by the calendar clerk of the action for trial upon reasonable notice to counsel.

#### **2. The Appellant is deprived of her child for not attending the adoption/termination proceedings:**

The court defended its position on denying continuance to the trial, due to an alleged "history of failure to appear" based on one missed hearing, yet the judge himself missed a special set hearing without any prior notice to the Appellant who was travelling

from Florida with witnesses in this case.

The court insisted that the most crucial trial of the case would be subject to an unpredictable, unmanageable, week long, trial court calendar, that by no means met the minimum requirements of adequate notice under the Fifth and Fourteenth Amendments of the Constitution of the United States, the minimum requirements of the Uniform Rules of the State Courts of the State of Georgia Rule 8.3, nor the the minimum requirements of rules under O.C.G.A. § 9-11-40. However, the court willingly "special set" two additional hearings after the case went to appeal. So far as the one wherein the judge did not appear himself, the replacement hearing was willingly "special set" due to the fact that "the Appellant has to travel from Florida with witnesses"-- a fact that was completely ignored at the first trial in spite of the Appellant's pleas.

**REFERENCES/CONCLUSIONS OF LAW:**

**STATE COURTS OF THE STATE OF GEORGIA UNIFORM RULES**

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the session of court at which the actions listed thereon are to be tried. [In State Court, see State

Court Rule 8.3.]

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(A) A specific date and time for trial during the trial term specified in the calendar; or

(B) Permission to await the call by the calendar clerk of the action for trial upon reasonable notice to counsel.

### **3. Civil Rights Violations:**

There were also civil rights violations committed in that the Appellant was never notified of the crucial hearing by her attorney, the Appellant was never allowed to present crucial witnesses and crucial evidences in her own defense, and the Appellant was not allowed to have competent legal counsel.

Furthermore, the evidence presented to the court by the Appellee fails to sustain the allegations by clear and convincing evidence ( UJCR 11.2) because there was no evidence presented to support the Appellee's contentions as none exists. However, the Appellant was able to provide evidence contrary to Appellee's contentions and the Appellees' own witness testimony provided contrary evidence to the Appellee's contentions on several occasions.

### **REFERENCES/CONCLUSIONS OF LAW:**

#### **US Supreme Court Cases:**

Fuentes v. Shevin, , (1972).

"At times, the Court has also stressed the dignitary importance of procedural rights, the worth of being able to defend one's interests even if one cannot change the result."

Carey v. Piphus, , -67 (1978);

Marshall v. Jerrico, Inc., , (1980);

Nelson v. Adams, 120 S. Ct. 1579 (2000) (amendment of judgement to impose attorney fees and costs to sole shareholder of liable corporate structure invalid without notice or opportunity to dispute).

### **US CONSTITUTION FIFTH AND FOURTEENTH AMENDMENT**

United States Supreme Court:

(1) Notice. "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."<sup>697</sup> The notice must be sufficient to enable the recipient to determine what is being proposed and what he must do to prevent the deprivation of his interest.<sup>698</sup> Ordinarily, service of the notice must be reasonably structured to assure that the person to whom it is directed receives

it.<sup>699</sup>

Such notice, however, need not describe the legal procedures necessary to protect one's interest if such procedures are otherwise set out in published, generally available public sources.<sup>700</sup>

**AND:**

(2) Hearing. "[S]ome form of hearing is required before an individual is finally deprived of a property [or liberty] interest."<sup>701</sup> This right is a "basic aspect of the duty of government to follow a fair process of decision making when it acts to deprive a person of his possessions.

The purpose of this requirement is not only to ensure abstract fair play to the individual. Its purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment . . . ."<sup>702</sup>

Thus, the notice of hearing and the opportunity to be heard "must be granted at a meaningful time and in a meaningful manner."<sup>703</sup>

**AND:**

**United States Constitution**

Fifth and Fourteenth amendment Rights

United States Supreme Court

1. An unbiased tribunal.
2. Notice of the proposed action and the grounds asserted for it.
3. Opportunity to present reasons why the proposed action should not be taken.
4. The right to present evidence, including the right to call witnesses.
5. The right to know opposing evidence
6. The right to cross-examine adverse witnesses.
7. A decision based exclusively on the evidence presented.
8. Opportunity to be represented by counsel.
9. Requirement that the tribunal prepare a record of the evidence presented.
10. Requirement that the tribunal prepare written findings of fact and reasons for its decision.

**AND**

(1) Notice. "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."<sup>697</sup> This may include an obligation, upon learning that an attempt at notice has failed, to take "reasonable followup measures" that may be available.<sup>29</sup> The notice must be sufficient to enable the recipient to determine what is being proposed and what he must do to prevent the deprivation of his interest.<sup>698</sup> Ordinarily, service of the

notice must be reasonably structured to assure that the person to whom it is directed receives it.<sup>699</sup> Such notice, however, need not describe the legal procedures necessary to protect one's interest if such procedures are otherwise set out in published, generally available public sources.<sup>700</sup>

(2) Hearing. "[S]ome form of hearing is required before an individual is finally deprived of a property [or liberty] interest."<sup>701</sup> This right is a "basic aspect of the duty of government to follow a fair process of decision making when it acts to deprive a person of his possessions. The purpose of this requirement is not only to ensure abstract fair play to the individual. Its purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment ..."<sup>702</sup> Thus, the notice of hearing and the opportunity to be heard "must be granted at a meaningful time and in a meaningful manner."<sup>703</sup><http://law.justia.com/constitution/us/amendment-14/36-procedural-due-process-civil.html>

### **3. Failure To Prove The Case Against the Appellant:**

The Appellee was unable to prove every charge she brought against the

Appellant as outlined in her original and subsequent filings. Neither witnesses,

witness testimony, nor evidence was available and/or provided to substantiate the Appellee's claims. Therefore, there was no merit to the Appellee's claims and charges against the Appellant.

Furthermore, what testimony the Appellee and her witnesses did present to the court, fails to sustain the allegations by clear and convincing evidence ( UJCR

11.2) Further, there was no evidence presented to support the Appellee's contentions, as none exists. However, the Appellant was

able to provide evidence contrary to Appellee's contentions and the Appellees' own witness testimony provided contrary evidence to the Appellee's contentions on several occasions. Therefore, the Appellee was unable to satisfy the requirements of burden of proof against the Appellant.

Nevertheless, the Appellant was ruled against on the basis of alleged willfull non-

payment of child support. It is the opinion of the Georgia Supreme Court, that ***intentional*** non payment of child support can be construed as intentional neglect of the needs of the child in question, and therefore can be used as a mechanism by which parental rights can be terminated.

Appellant asserts that there was never intentional neglect of the needs of the child or abandonment of the child. The Appellant was indigent and unemployed for most of the time the account was open, yet still managed to fully pay what she owed during the time the avenues were open to her to do so. Since the closure of the child support account and having no avenue to pay into any type of account whatsoever, the Appellant has also suffered severe medical issues due to the stressors and rigors of losing contact with her daughter, and the rigors and the legal actions taken against her; which caused

her to lose the ability to work for periods of time, in addition to the worst economic conditions in the country since the great depression. Yet, the Appellant has still managed to find enough strength to work and pay child support arrearages to the best of her ability to date. Furthermore, the Appellant has been able to sufficiently establish through evidence, that the child support account had been closed by the child's father in an effort to create circumstances that would allow him to terminate the parental rights of the Appellant. The Appellant was not allowed to testify to this fact in the trial, nor to provide evidence that she had continually attempted to gain access to the account for several years, or that the father of the child intentionally did not provide the court with a Private Collection Agent as is required by law once the child support account is closed by DHS. To have done so would have provided

the Appellant with the information needed concerning his whereabouts and she could have pursued the matters further in court and established visitation with her child.

The only way open to introduce these arguments to the court was by utilizing them to support a motion to dismiss filed on November 12, 2014.

Do Parents lose their children simply because they are poor? As stated below, even the rights of incarcerated parents are not terminated unless there are aggravating circumstances. Are not most incarcerated parents impoverished?

**REFERENCES/CONCLUSIONS OF LAW:**

All orders must contain findings of fact and conclusions of law in support of the petition or dismissal of the petition. UJCR 11.2.

**AND**

**Two-Prong Test.** In deciding the issue of termination, the court shall first determine whether there is present clear and convincing evidence of parental misconduct or inability as provided in O.C.G.A. § 15-11-94(b).

If the finding is positive, then the court shall consider whether there is clear and convincing evidence that termination is in the best interests of the child. The court should consider the physical, mental, emotional, and moral condition and need of the child, as well as the child's need for a secure and stable home. O.C.G.A. §15-11-94 provides an extensive, but not exhaustive, list of legal reasons that may authorize termination of parental rights.

Order for termination was reversed even though the evidence supported the juvenile court's findings that the children were deprived, that the deprivation was due to lack of proper parental care and control, and that the deprivation was likely to continue.

On appeal, the Court held that a mother's inability to care for her children does not necessarily mean that her current relationship with them is detrimental or that continuing the legal relationship between parent and child is inherently harmful to the children.

The Court noted that the record did not contain any expert testimony on these issues.

In the Interest of D.F., L.F., and A.F., 251 Ga. App. 859 (2001).

Aggravating Circumstances. A parent's incarceration alone may not compel a termination of parental rights, but it can support a termination when there are sufficient

aggravating circumstances. In Re M.C.L., 251 Ga. App. 132 (2001).

Aggravating

circumstances include a history of repeated incarcerations for repeated criminal offenses, which are likely to continue upon release, and that prevent one from caring

for a child.

14. Dismissal. In matters involving termination of parental rights, the court shall dismiss the petition, with findings of fact and conclusions of law, if the evidence fails to sustain the allegations by clear and convincing evidence. UJCR 11.2.

**5. Failure to provide written judgment to the Appellant:**

As of the date of the signing of this document, there has been no written order

of judgment provided to the Appellant from the original trial by any party. The

Appellant has tried to obtain the judgment, however, the Gwinnett County Clerk's

office, the opposing attorney, the judge's assistant, and the court itself,

have been extremely uncooperative in this matter in spite of letters and demands asserting the Appellant's rights to such a judgment.

**6. The court maintains its position in spite of numerous instances of evidence and testimony presented to the contrary.**

The court terminated the parental rights of the Appellant in spite of numerous instances of evidence and testimony to the contrary:

A. On several occasions, the court heard testimony from the child's father, that he intentionally hid the child and/or his location and did not want the Appellant to have any contact with the child whatsoever. However, the court ruled based on contradicting statements made by him that he did not hide the child or himself.

B. Evidences presented by the Appellant prove that she has had justifiable cause for not supporting her daughter financially, but instead, has gallantly provided as much financial support for her child as she can, as soon as any type

of avenue has been opened for any reason for her to do so, at any time from 2005 to date; in spite of numerous economic and health setbacks. Further, evidence proves that the Appellant has had justifiable cause for not supporting her daughter due to the complete cutting off of every avenue to pay child support by the court and the child's father for no good reason. However, the court ruled that the Appellant willfully neglected to support her child

C. Evidence and testimony presented by the Appellant, as well as general public knowledge of the economic conditions in the United States, proves that the Appellant was justified in moving to Florida to seek

out work and to survive while she tried to continue seeking her daughter and investigate why the child support account was closed. However the court ruled that she abandoned her child and terminated her parental rights.

D. Evidence and testimony prove that the Appellant was unable to locate her daughter, therefore, she was unable to be a part of her daughter's life, and continue to have meaningful relationship and visitation with her daughter.

Evidence on file in the related child support case, as well as in the opposing attorney's possession, further proves that the Appellant attempted to pursue legal visitation with her daughter through the court as soon as she had the chance. However, the court ruled that the Appellant made no attempt to try to find her daughter or to have a meaningful relationship with her in any way.

Therefore, the Appellant prays the court will reverse the judgment set forth in the Superior Court and reinstate the parental rights of the Appellant.

Respectfully submitted,

Leah M. DiBello 04/07/15

Leah M. DiBello Dell, Appellant

**THE HONORABLE COURT OF APPEALS OF GEORGIA**

**APPEAL CASE NUMBER: A15A1430**

**LEAH M. DIBELLO DELL V. SARAH DELL**

**PART I: APPELLANT'S BRIEF**

The cause, having come before the Honorable Judge Robert Rodatus in the Superior court of the County of Gwinnett, Georgia, regarding the adoption by the Appellee in this action, Sarah Dell,

(hereinafter referred to as "Appellee")

of the minor child, E.D., whose mother Leah M. DiBello Dell, is the Appellant in this action;

(hereinafter referred to as "Appellant")

and

the subsequent termination of parental rights of the Appellant; is being appealed.

The Appellant, Leah M. DiBello Dell, respectfully requests that the court examine the issues as set forth in this brief, and the attached Enumeration of Errors.

The Appellant prays the court will reverse the judgment set forth in the Superior Court and reinstate the parental rights of the Appellant.

1. The Appellant has been deprived of her child for allegedly knowingly "excusing herself" from the adoption and termination of parental rights proceedings.

On or about July 30, 2011, the Appellant was served a summons by the Appellee's attorney, Drew Mosely, at her residence in Ocala, FL, regarding a suit for adoption of the Appellant's minor child, E. D.

The Appellant financially indigent and unable to afford legal counsel to defend herself; responded pro se with an answer to the adoption action, and a countersuit for emotional distress, fraud, and parental kidnapping. After several hearings and motions during the course of the case, the Appellant requested and received appointed legal representation when she discovered that by law she was entitled to it in spite of never being told she was by any officer of the court.

The attorneys proceeded to attempt to try the case and defend the Appellant, however, both attorneys failed to properly defend and represent the interests of the Appellant, neither did they present evidences and call the most crucial witnesses in the case.

The Appellant was not informed of the most crucial hearing by the first appointed attorney, Adam Ruf, and therefore missed the hearing due to failure by her attorney to properly inform her that the hearing had been rescheduled on a 24 hour notice, and the Appellant was at her home 400 miles away at the time. The Appellant, who had been renting a residence owned by her fiance's out of town brother for five years, had moved, due to the fact that the brother was thinking of putting the

home for sale on the market. This move had depleted all of the available finances.

Prior to the trial on March 7, 2012, the Appellant had asked Adam Ruf on February 19th, to request a continuance until April. The Attorney failed to address the matter for an additional ten days and ultimately made an oral request for continuance on February 29th, 2012, eight days prior to the trial. The continuance was denied and the trial was placed on the trial calendar for the week of March 5th. The attorney failed to inform the Appellant that she and her witnesses would be required to come to Georgia and be available to attend this trial on a day's notice if necessary regardless of creating the hardship of loss of work and provision for accommodations while waiting for days or a possibly a week to see if they would be called to testify or not in the trial. (Transcript Termination of Parental Rights and Adoption Trial March 7, 2012 P4 lines 20-25, P5 lines 1-9).

Two of the witnesses had asked for the opportunity to appear by telephone due to the fact that they reside in Florida and one was expecting a child, and the other was the sole caregiver to her mother who was dying of cancer.

The Appellant had assumed that the flipping of the court dates back and forth had finally settled on March 8th, 2012, as her attorney had instructed her, and the Appellant managed to gather up enough funds to come herself with one witness on the 8th, only to be called by her attorney after the hearing which had been rescheduled on the 6th to

the 7th and not the 8th, informing her that she had lost and that the hearing had been held on that morning-- having never been informed of the less than 24 hour change.

The court defended its position on denying the continuance based on an alleged "history of failure to appear" because of the Appellant's missing her divorce hearing, the only time in the Appellant's life that she has ever missed any kind of hearing prior to the trial.

However, once in the past year since the remittitur, In May 2014, specifically for a "special set" hearing date of May 12, 2014, the Appellant has gathered her witnesses from Florida who put their own lives and work on hold to travel to Georgia, only to discover the judge himself did not come to work that morning. The Appellant was given no prior notice that the hearing had been cancelled and had gone to great lengths and cost to provide transportation and provide for the needs of the most crucial witnesses in this case.

Several attempts to contact the judge's assistant were answered by a temporary assistant who offered no explanation as to why the Appellant had not been notified that the hearing had been cancelled within 24 hours.

Furthermore, the Appellant once again gathered her witnesses for a November 2014 hearing date, another "special set" date, that was subsequently changed three times--once before the Appellee was informed of any changes at all via email by the judge's assistant, once again by email and ultimately changed and "special set" again

for the 21st of November after the Appellant pleaded for help because of the work schedules and the witnesses.

Remarkably, in spite of the insistence of the court that the most crucial trial of the case would be subject to an unpredictable, unmanageable, week long, trial court calendar, that by no means met the minimum requirements of adequate notice under the Fifth and Fourteenth Amendments of the Constitution of the United States, the minimum requirements of the Uniform Rules of the State Courts of the State of Georgia Rule 8.3, nor the the minimum requirements of rules under O.C.G.A. § 9-11-40, the court willingly "special set" two additional hearings after the case went to appeal. So far as the one wherein the judge did not appear himself, the replacement hearing was willingly "special set" due to the fact that "the Appellant has to travel from Florida with witnesses"-- a fact that was completely ignored at the first trial in spite of the Appellant's pleas.

The witnesses were asked by the Appellant to travel to Georgia for the last two hearings in this case for fear that the judge would call the hearing into an immediate new trial and the Appellant greatly desired for the court to hear from a 25 year social services veteran who has been assisting with seeking out and trying to find the child and has tirelessly investigated the child support matter since 2007. This same witness, having been interviewed during the guardian ad litem's investigation in 2012, testified to the guardian ad litem's investigating personnel that she personally knows the Appellant and that there has

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been no drug abuse, or homelessness since she has known the Appellant as of 2005. She has worked with families, organizations, and individuals in both Central and South Florida and has worked in government grant writing and research as well as international service contracts in the past, and is well qualified to testify in this case. The court did not allow for hearing from the witnesses, even though they had travelled from Florida for a second time, and were seated outside of the courtroom after being removed from the courtroom upon identifying themselves as witnesses for the Appellant. The court was more interested in correcting the erroneous judgment than allowing the Appellant the opportunity to provide further evidence and witness testimony on her behalf. The court has repeatedly defended its stance in this case based on the fact that the Appellant did not attend her divorce hearing, nor the trial-- without due consideration that the Appellant had not missed one hearing prior to the trial nor has she missed one hearing since.

Furthermore, the court has repeatedly defended its stance in this case based on the fact that the Appellant did not attend her divorce hearing, and has continued to berate and penalize the Appellant for missing her divorce hearing in spite of hearing testimony from the Appellee's husband, Dwain Dell, testifying under oath that the reason he did not try to contact the Appellant regarding her child, was that he was aware that the papers that were served on her for the divorce were not "forwarded" to the Appellant properly. (Transcript Termination of Parental Rights and Adoption Trial March 7, 2012 P25, lines 1-19 and ), and that he "did not

know how to contact her". Thereby supporting the Appellee's argument in the response to the Petition for Adoption, that the father did indeed know that she had not been properly served at the time of the divorce and continued to provide false information to the court at that time.

(Respondent's Answer to Second Amended Petition for Adoption, Pages 1-2, items V-A thru VI --clerk's index item 21, P4)

The father of the child testified to these things speaking of a time years prior to the current proceedings, thereby admitting that he knew at the time of the divorce that the Appellant had not received the paperwork for the divorce. He used this as the excuse for not further attempting to contact the Appellant or allowing her to see her child. There is no way he could have considered that she could not have been served or located otherwise for any other reason that far in advance of the current proceedings as this is the first time the Appellant has brought up the issue of not being served since the divorce with a court of law. However, the Father and Appellee and their attorney had no problem whatsoever locating the Appellant to serve her for the adoption action through her mother's contact information, in spite of the fact that the Appellant was living in Florida.

Furthermore, the Appellant did not move to Florida until November of 2007, the father and the Appellee moved and did not disclose their whereabouts prior to the Appellant moving to Florida, so the Father did know how and where to contact the Appellant.

2. The Appellant was represented at the trial by Adam Ruf who proceeded to completely misrepresent the Appellant's interests to the court, stating that his client completely agreed with the adoption, and only desired that her parental rights were not terminated, knowing that his client had filed countersuits pro se that clearly expressed her interests to remain as a fully engaged parent in the child's life with all rights and privileges intact and that the Appellant wholeheartedly disagreed with her daughter being adopted by the Appellee. (Transcript Termination of Parental Rights and Adoption Trial March 7, 2012, P9 lines 17-25 Also Countersuit for Parental alienation, Emotional Distress and torment parental kidnapping, and fraud filed August 23, 2011, Clerk's index item 20 page 4 Clerk's index). This stance led to an argument by the judge that the adoption could not go forth without terminating her parental rights. (Transcript of Termination of Parental Rights and Adoption March 7, 2012, Pages 61-67, AND page 72, lines 19-25).

The second attorney Andrea David Vega, misrepresented the Appellant in that she failed to bring forth crucial defense witnesses and evidence, she failed to correspond with the Appellant on several matters, and failed to attend the last hearing in this matter, after securing the last hearing which had been scheduled.

Both attorneys failed to call or even make provision for crucial witnesses to appear on behalf of the Appellant, who would testify as to participation in the intense search that was ongoing from 2007 to 2011, to find this child, her father and his current wife or to present crucial evidences.

Both attorneys failed to properly question witnesses, failed to present crucial medical evidence in the Appellant's defense, failed to prepare and execute proper questioning, failed to present crucial evidence of domestic abuse, and failed to properly question the Appellant on the stand so that crucial testimony, and evidence could be brought to light in the courtroom and the Appellant's defense could be properly developed and executed.

The Appellant has had to represent herself pro se since then.

3. The father of the Appellant's daughter has denied purposely hiding the child, yet testifies under oath, on several occasions, that he took the child and did not disclose his location because he did not want the Appellant to see her child. (Transcript Termination of Parental Rights and Adoption Trial March 7, 2012, P16, lines 5-21, P38, lines 22-25, P39, lines 1-10, P63, lines 14-25, P64, lines 1-11, Also, Transcript Motion for Reconsideration P54, lines 18-25, P59, lines 3-12)

The father and his wife took the Appellant's child and hid her until the expiration of the statutory time to file for adoption and termination of the parental rights of the Appellant. This, after having made visitation arrangements without the court's assistance, that allowed the Appellant to have consistent weekend custody of the child and to take the child to Florida on vacation. (Transcript Termination of Parental Rights and Adoption March 7, 2012, page 13, lines 18-23, Page 22 lines 1-22, Page 38 lines 22-25, Transcript Motion for Reconsideration July 24, 2012, Page 58 lines 7-11)

An intense search ensued for four years to find them and was conducted by the very witnesses that were refused an opportunity in court to testify to that effect.

The intense search, at times, extended to attempting to follow the child's father to his hidden residence after locating his work, on several occasions, to no avail.

Ultimately, the Appellant's mother found the father at work and secretly followed him home. ( Transcript Motion For Reconsideration, July 24, 2012, P 49 lines,3-12)

As soon as possible thereafter the Appellant's mother filed a suit for visitation on behalf of the child's half brother. The Appellant did not participate in that case for fear of being a hindrance in some way for her son during the pendency of that case because of the animosity and jealousy of the Appellee in this case.

Therefore, the Appellant had decided to wait and file suit after that case, but the adoption proceedings were already established and underway during the time that the Appellant was attempting to gather the finances together to hire a family law attorney and was seeking an affordable attorney after her mother's case was disposed of.

Furthermore, In spite of the testimony of the opposing attorney that the Appellant has allegedly met the requirements of felony child abandonment, the Appellant has never been formally charged with, nor convicted of Felony child abandonment. The Appellee and her husband never sought legal recourse for felony abandonment from the time the child support account was voluntarily

closed in 2005, until the last hearing date in the current proceedings in 2014. Nine years is more than ample time to file a complaint for felony child abandonment. It stands to reason that the Appellee and her husband would have sought relief if indeed it were truly believed that the Appellant had indeed willfully abandoned her child. Furthermore the Appellant was easily located for a termination and adoption proceeding, so an alleged inability to locate the Appellant in order to charge her does not stand in this case either. Rather, the Appellee and her husband knew that there was no intentional or willful abandonment of the child because they had hidden the child. Further, the court obviously does not truly believe the Appellant has willfully abandoned her child and willfully failed to support her child. At no time has the court pursued a formal, criminal, charge of felony child abandonment against the Appellant during the five year pendency of this case. Neither have the family court judges while addressing the issue of child support arrearages in the related case.

4. The Appellant has suffered inequality as a litigant in this case, insofar as she has never received a copy of the first judgment from the trial in March 2012, she has never been allowed equal access to the court file, has never been allowed to review her case via the internet utilizing a password or account, has had to present all defenses as well as write her first appeal in this case from memory as best as she could, never actually knowing exactly what the court had ordered against her, nor exactly what what the court has done comparatively in either

judgment.

The Appellant has further been left out of important scheduling of hearings, and lost this case in part, by virtue of not being informed of scheduling changes at the time of the trial and even after hearings were "special set", and has had to literally fight to get information about hearings, judgments, decisions, discussions, and changes in this case.

This in spite of numerous requests both oral and in writing to the court, the judge's assistant and the clerk of courts. The only reason the Appellant has a copy of the latest signed judgment is because the Appellant issued a "Demand For Production of Signed Judgment" requesting copies of all judgments against her in this case and still has yet to receive the original judgment from the trial in spite of the demand and assertion of her rights to the court to receive one by law. (Demand For Production of Signed Judgment P11 Clerk's index, Item 79, filed January 26, 2015.)

Also see, Clerk's index item 48 P 8 listed as "Final order of Adoption by Sarah dell and Temination of Parental Rights of Leah Marie DiBello" filed July 25, 2012--this is the final order that apparently exists that has never been sent to the Appellant in spite of numerous requests and demands. In fact, the Appellant never really knew if the order did, in fact, exist, until she saw it in the Clerk's listing in this current Appeal action.

Furthermore, the Appellant never received indexes from the clerk of courts as to what was sent in the first Appeal filed in this case, therefore the Appellant was literally blind as to what the Appeals court was seeing and had access to, including transcripts that were missing—one being mis-filed for at least two years into an unsealed case file. The Appellant has had to contact the Clerk of courts to make sure the transcripts were all properly located and to inform them of the mis-filing of the Motion for New Trial Transcript of November 27, 2012. The only way the Appellant found that particular transcript was through an online listing of the child support arrearages case number 12-A-0876-3. In fact, the Appellant has actually received sealed adoption case file information from someone else's case in the mail from the Judge's Assistant included in a hearing notice. The Appellant still has no clue as to the prior whereabouts of the Transcript of the Motion For Reconsideration July 24, 2012 since its recordation for over two years . The Clerk had no knowledge of the existence of the two missing Transcripts for these two proceedings until the Appellant brought it out with a request for the finding and inclusion of the transcripts, which resulted in the Clerk's finding of the transcripts and issuing them to the Appeals court with a supplemental index. The opposing attorney raised no issue with the missing transcripts in either situation in spite of the fact that they may or may not serve as a crucial part of his defense to these Appeals actions.

Furthermore, all of the Appellant's pro se actions have been either ignored or treated as "frivolous". They have either been ignored or never ruled upon by the

court with the exception of the motion for continuance in January 2014 based on a medical emergency, and the Motion to Dismiss, which is recognized by the court in the transcript heading, discussed in the court proceeding, but never ruled on nor properly addressed. The court has agreed with the opposing attorney's view that the countersuits for emotional distress, parental kidnapping, parental alienation and fraud are "frivolous" actions brought on as if by some form of alleged drug induced behavior or paranoia. The court has failed to recognize that the Appellant filed those actions in good faith and was harmed in such a way and to such an extent by the actions of her former husband and his wife, and has suffered grievously, that it would only be natural for any normal, living, individual to respond to such long term torment in such a way--and that the Appellant fully intended to follow through with the actions having the witness testimony and evidence available to fully support them.

5. The Appellant has been deprived of her child for allegedly abandoning her daughter based on the fact that she has moved to the State of Florida. The move to Florida has been repeatedly explained to the court as out of a motive purely for survival. The court is well aware that the economy fully crashed in 2007-2008 and has not fully recovered since. To single the Appellant out of millions of families nationwide whose jobs were lost and whose companies went bankrupt and who had to relocate to try to survive and find work is absurd. The construction industry, which is the industry that the Appellant had trained into at that time, as a newly trained tile helper, was the first industry to suffer the greatest losses and that is a well known fact. Attempts by the Appellant to

find other types of work at that time were also futile for her as well as hundreds of thousands of other residents of the State of Georgia.

In fact, at that time, the Georgia Child Support Division instituted programs to assist parents who could not pay their child support because of the jobs situation. Never, at any time, was there any intent to abandon the Appellant's daughter. In spite of its strict family laws, Georgia has yet to become a gulag wherein its residents are forbidden to cross state lines without serious penalties such as being accused of abandoning their families and being deprived of them for searching for work, food, and survival in other areas.

6. The Appellant has been deprived of her child because of alleged non-support without justifiable cause. The stressors of not seeing her daughter, trying to conduct intense searches and travelling to Georgia at every opportunity and at the expense of the Appellant's mother, in order to try to physically find the father and her child, proved to be stressful enough to cause the Appellant to miscarry a child in 2008, develop skin cancer and undergo treatments in 2010, and again, miscarry another child in 2013, the final miscarriage posing a serious threat to the Appellant's life and she was forced to undergo cancer testing for several months because of it. All of these facts were effectively kept out of evidence and testimony during the proceedings until the Appellant was able to include them as evidence attached to the motion to dismiss filed on November 12, 2014, which was never ruled on by the court. (Motion to Dismiss, listed as filed December 2, 2014, clerk's index item 75, p11)

The Appellant's poverty since the economic crash has been portrayed as a drug fueled, irresponsible, lifetime problem. The Appellant has been portrayed and treated as if she is an irresponsible, homeless, drug addicted, drifter who cannot support herself and does not care at all for the welfare of her child.

The Appellant has lived in Florida for going on 8 years. The Appellant lived at one residence for five years and has lived at the second residence for going on three years. At no time has the Appellant been evicted, or threatened with eviction for non-payment of rent, at no time has the Appellant lost any utilities for non-payment. At no time has the Appellant ever been convicted of a crime, served time in jail for a crime, been arrested for possession of drugs, for using drugs, or for any other reason than for confronting a drug addicted friend of the father and the father's family, who left her children in the care of the Appellant for three weeks while she went out on a drug binge. The charges were dropped against the Appellant once all of the facts of the case were presented in court. (Exhibit F, Respondent's answer to Second Amended Petition for Adoption of Minor Child, Clerk's index item 21 P4). However, the father of the child has been arrested for driving under the influence, and for physical abuse of the Appellant for which he served time. The domestic abuse has been addressed in the Motion to Dismiss recorded in the Clerk's index as being filed on December 2, 2014 and has been discribed as one of the new issues/other material by the opposing attorney in the transcript of Appellant's

Motion to Dismiss and to Amend Final Order With Findings of Facts and Conclusions of law Hearing held on November 21, 2014.

(Transcript Motion to Dismiss and to Amend Final Order With Findings of Facts and Conclusions of Law Hearing, November 21, 2014, P8 lines 18-25, also P9, lines 9-17).

The Appellant lives in a secure environment with her fiance, helps out with the fiance's small , two person, business as best as she can, and should not be discriminated against for being a stay at home female who helps out with the family business.

The Appellant is dearly loved by her extended family, namely her fiance's family, as well as her own immediate family, and is respected as a dedicated, loving, family member who has suffered greatly since the loss of her child in 2005.

To single out the Appellant from millions of stay at home females who try to work at whatever they can and meet their responsibilities as best as they can in America is pure discrimination.

Furthermore, at no time, while the option to pay the ordered child support was open to her, did the Appellant ever intentionally fail to support her child. The court has maintained that the Appellant has willfully refused to support her child, and has stated that child support was willfully not paid for a period of at least one

year. The Appellant has proven that the child support case was voluntarily closed by the child's father. Exhibit B attached in support of the Motion to Dismiss filed November 2014, evidences that the father closed the account after the Appellant had paid Child support. The final divorce decree is dated December 2, 2004, wherein the original order for support is stated. The Appellant was arrested in June 2005, for an unpaid arrearage of 370.00. From the time of the original order until the arrest, seven months, the total amount owed for child support was 1,020.00 The Appellant had paid 650.00 of the total child support due up until that time. The cause for the lack in payment of the 370.00 was unemployment at the time due to less work for a few months in the industry. The child's father petitioned the child support division to close the case and the case was officially closed on 11/ 03/ 2005, by order of Judge Robert Rodatus. The case was closed less than four months after the Appellant had paid all she owed in July 2005. The Appellant further paid up all owed support after the closing of the child support division case by the court in the enforcement action that had been taken for one month's total payments due, until 2006 when she was told by the division that she could no longer make payments and was given no explanation as to why. So, the evidence shows that there was never one year of non-support prior to the time the account was closed by the judge and the child support division. Furthermore, the Appellee and the child's father had disappeared and had left no address to be served after the child support account was closed which left the Appellant no recourse to establish visitation or to rectify the child support payment situation through the courts. The Appellant was also financially unable to obtain legal counsel, and the legal aid group was not available to her because

the child's father had used them. The Appellant was denied assistance due to the creation of a conflict of interest. Furthermore, the child's father's attorney at the time, never sent the order closing the account to the Appellant, or the Appellant would have been prompted to act and at least try to start an action in the court while the child's father and the Appellee could have been contacted through his attorney. Furthermore, the father of the child falsely testified at the Trial for Termination of Parental Rights and Adoption that he did not have an attorney to assist him with the termination of the child support account and to help follow through with what needed to be done to establish the child support through a PCA, when the evidence clearly shows that the actual termination was executed by attorney Charles Gallanza, who also filed a certificate of service. However, the Appellant never received the termination paperwork, hence the nine year investigation and fight, and ultimately contacting the Governor's office in 2014, to try to establish why the child support account had been closed, and when and by whom. (Transcript of Termination of Parental Rights and Adoption March 7, 2012, P23, lines1-16 AND Exhibit B, Motion to Dismiss filed November 12, 2014, Clerks index item 75 P11 listed as filed on December 2, 2014.)The court has maintained that the Appellant could have opened a case whether or not she was able to locate the father of the child, and that she could have deposited the child support into a registry account with the clerk of courts. The Appellant tried each of the avenues described by the court and was rejected because there was not an open and ongoing case allegedly after six months of inactivity and the Appellant was denied the option to try to reopen a case by the clerk's office because of no address or contact information for the child's father.

Furthermore, the father was required to provide a Private Collection Agent after closing the Child Support Division case, and was repeatedly contacted by the agency to provide the contact information for his chosen PCA.

The child's father never followed through with the required actions and effectively prevented the Appellant from paying child support in any fashion so that he could carry out his intentions of depriving the Appellant of her child. (Transcript Termination of Parental Rights and Adoption Trial March 7, 2012, P23 lines 9-16.)

The child's father has sued the Appellant in family court in 2012 for child support arrearages in spite of the fact that he, himself did not want child support all of the years the account has been closed. Nevertheless, the Appellant has paid the arrearages starting out at 250.00 per month for one year--getting the money to do so from helping her fiance. The payments were then lowered to 60.00 per month when the Appellant suffered for months, and is still suffering, from the miscarriage in December 2013 because the Appellant has been unable to help out with the company as much as before the illness. Therefore, the Appellant has never failed to do her best to provide financial support to her daughter at any time the avenues have been open for her to do so.

Furthermore, the Appellant has contacted the Governor's Office; after being told by Judge Rodatus in the "Motion for reconsideration" hearing that the payments

could have been made even if the Appellee "lived on Mars"; in an effort to get the Governor to compel the Department of Human Services to cooperate and furnish the information regarding the events surrounding the closed child support account to the Appellant. The Department had been unresponsive to several requests sent by certified mail and by telephone since 2006, when the Department had informed the Appellant that she could not pay without explanation during a telephone inquiry by the Appellant.

In January 2014, "Ms. Washington" from the Department of Human Services called the Appellant and explained that the Appellee had petitioned for closure of the account and had failed to provide a "PCA" or "Private Collection Agent" and that after four years of trying to get the Appellee to cooperate the account was officially closed in 2009. In a follow up letter, she states that any payments recieved thereafter would have been returned as they cannot post payments to a closed account. (Motion to Dismiss, Exhibit B. Clerk's index item 75 P 11). For a total of nine years, the Appellant was unable to obtain information as to what was going on with the child support division until she threatened to take legal action against the Department and had to write a request to Governor Nathan Deal for assistance in the matter.

The Appellant has had to suffer the consequences of a suspended driver's license regardless of paying up all that she owed, yet being unable to seek relief for lack of ability to instiute court proceedings due to the actions of the Appellee and the child's father, constant fear of a warrant for child support as

did not attempt to contact the Appellant for years because having done so would have exposed their location thereby enabling the Appellant to pursue legal action against them, knowing fully how to easily contact the Appellant--and then sued her to terminate her parental rights for not visiting or supporting the child. This is just as ludicrous as murdering someone and then suing them for dying.

Furthermore, a mother who is not interested in her child does not suffer great emotional harm resulting in great physical harm and illness.

A mother who does not care and has intentionally abandoned her child does not fight for nine years to try to find the child, fight to try to establish and pay child support to the best of her ability to the extent of enlisting the help of the Governor, does not fight in court for four years, and conduct intensive physical, internet, and telephone searches to try to find and serve the child's physically abusive father in order to be with her child.

A mother who does not love her child does not risk trying to find the ex husband who physically abused her during the marriage, to the point of having to bring charges against him, knowing she could possible face physical danger again--just so she can see and hold her daughter and be a substantial part of her daughter's life.

Simply by virtue of the facts of physical, mental, and emotional, suffering, and the untiring, unwaivering searches and attempts to find the child, as well as the

four year fight to stop this adoption action, let alone the testimony and evidence presented during the proceedings, the Appellant proves that the assertions by the Appellee that she intentionally abandoned her daughter are patently false.

The issues in this brief are discussed and accompanied by arguments of existing law in the attached Enumeration of Errors. Therefore, the Appellant prays the court will reverse the judgment set forth in the Superior Court and reinstate the parental rights of the Appellant.

Respectfully Submitted,



LEAH M. DIBELLO DELL, APPELLANT

Date: 04/07/15