IN THE SUPREME COURT OF OHIO

STATE OF OHIO, EX REL., Trumbull County Children Services, Relator vs. JUDGE JAMES A. FREDERICKA Trumbull County Common Pleas Court Division of Probate, Respondent.	CASE NO. 2020-0616 ORIGINAL ACTION IN PROHIBITION EXPEDITED: This action involves the adoption of a minor - S.Ct.Prac.R. 12.09

MOTION FOR JUDGMENT ON THE PLEADINGS OF INTERVENORS MARK E. AND JULIE ANN STIMPERT

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Judge James A. Fredericka
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161 High Street NW
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Respondent

MOTION FOR JUDGMENT ON THE PLEADINGS OF INTERVENORS MARK E. AND JULIE ANN STIMPERT

Intervenors, Mark E. and Julie Ann Stimpert (petitioners in the underlying adoption proceeding), pursuant to S.Ct.Prac.R. 12.04(B)(1), S.Ct.Prac.R. 12.09(B), and Civ.R. 12(C), hereby move this Honorable Court for judgment on the pleadings, dismissing relator's complaint in this case.

Intervenors' motion for judgment on the pleadings is supported by the attached memorandum in support, the pleadings, including attached exhibits, and the applicable law.

Respectfully submitted,

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MEMORANDUM IN SUPPORT OF INTERVENORS' MOTION FOR JUDGMENT ON THE PLEADINGS

I. Introduction

Relator, the Trumbull County Children Services Board, seeks the most extraordinary relief from this Court, asking it to prohibit respondent, Judge James A. Fredericka, from doing that which the Constitution of the State of Ohio explicitly prescribes. This matter involves the adoption of a minor, David. David had lived with the intervenors, his foster parents Mark and Julie Stimpert, from October 19, 2017–just one week after he was born–until relator removed David from his home with the Stimperts on October 3, 2019 and placed him with distant relatives living in North Carolina. (Answer ¶ 7). The Stimperts, seeking the return of David, whom they had raised since his birth, filed a petition for adoption in the Trumbull County Court of Common Pleas, Probate Division, on October 9, 2019 to adopt David. (*Id*.; Complaint, Exhibit E).

Relator argues that a *placement for adoption* with the petitioners is an absolute prerequisite to a probate court exercising its subject matter jurisdiction over adoption proceedings. According to relator, a probate court may exercise jurisdiction in an adoption matter, if, and only if, a child-services agency *first* decides to place the minor child with those who wish to petition a court for an adoption decree.

Relator is incorrect. To the contrary, "[i]n Ohio, probate courts are vested with 'original and exclusive jurisdiction over adoption proceedings.'" *State ex rel. C.V. v. Adoption Link, Inc., et al.*, Ohio St.3d 105, 2019-Ohio-2118, 132 N.E.3d 651, ¶ 29, *quoting In re Adoption of Pushcar*, 110 Ohio St.3d 332, 2006-Ohio-4572, 853 N.E.2d 647, ¶ 9. A placement with the petitioners for adoption *is not* a prerequisite to a probate court's exercise of jurisdiction over an adoption proceeding. The probate court, and respondent in this matter, has exclusive and original jurisdiction over any and all adoption proceedings. This jurisdictional power is derived from Article IV of the Ohio Constitution, Chapter 3107 of the Revised Code, and R.C. 2101.24. Nothing in the Ohio Constitution, in the Revised Code, or in any precedent from this Court suggests that a probate court does not have jurisdiction over an adoption proceeding unless a child-services agency first decides

to confer that jurisdiction. To agree with this proposition would be to place relator, and other child-services agencies, as ultimate arbiters over adoption petitions. Such a reading is unequivocally in contravention of the jurisdictional authority conferred to respondent, and other probate courts of this state, by the Ohio Constitution.

Accordingly, respondent does not patently and unambiguously lack jurisdiction in the underlying adoption proceeding, and relator is not entitled to a writ of prohibition.

II. Motion for Judgment on the Pleadings Standard and Relator's Burden of Proof

S.Ct.Prac.R. 12.04(B)(1) provides that a motion for judgment on the pleadings may be filed at the same time an answer is filed. Further, Civ.R. 12(C) states that a party may move for judgment on the pleadings, "[a]fter the pleadings are closed but within such time as not to delay trial." Intervenors, the Stimperts, are filing this motion for judgment on the pleadings concurrently with their answer, and their motion to intervene.

A motion for judgment on the pleadings pursuant to Civ.R. 12(C) is similar to a Civ.R. 12(B)(6) motion to dismiss for failure to state a claim, "but Civ.R 12(C) motions are specifically for resolving questions of law." *State ex rel. Midwest Pride IV v. Pontious*, 75 Ohio St.3d 565, 570, 1996-Ohio-459, 664 N.E.2d 931; *Peterson v. Teodosio* (1973), 34 Ohio St. 2d 161, 166, 297 N.E.2d 113, 117. Judgment on the pleadings, dismissing this pending action, is warranted when: (1) the Court "construes the material allegations in the complaint, with all reasonable inferences to be drawn therefrom, in favor of the nonmoving party as true, and (2) finds beyond doubt, that the plaintiff [relator] could prove no set of facts in support of his claim that would entitle him to relief." *Id.* A Civ.R. 12(C) motion for judgment on the pleadings should be granted when there are no genuine factual issues, and the moving party is entitled to judgment as a matter of law.

Relator brought this original action seeking a writ of prohibition to prevent respondent, Judge Fredericka, from proceeding with the underlying adoption proceeding filed by intervenors. "A 'writ of prohibition is an extraordinary remedy that is granted in limited circumstances with great caution and restraint.'" *Ohio High School Athletic Association v. Ruehlman*, 157 Ohio St.3d 296, 2019-Ohio-

2845, 136 N.E.3d 436, ¶ 6, *quoting State ex rel. Corn v. Russo*, 90 Ohio St.3d 551, 554, 740 N.E.2d 265 (2001). A writ of prohibition is rare, not routinely issued, and granted "only in cases of necessity arising from the inadequacy of other remedies." *State ex rel. Henry v. Britt*, 67 Ohio St.2d 71, 73, 424 N.E.2d 297 (1981).

This Court has established the standard for when a writ of prohibition may issue:

> Three elements are necessary for a writ of prohibition to issue: the exercise of judicial power, the lack of authority to exercise that power, and the lack of an adequate remedy in the ordinary course of law. However, if the absence of jurisdiction is patent and unambiguous, a petitioner need not establish the third prong, the lack of an adequate remedy at law.

(Internal citations omitted.) *State ex rel. Tri Eagle Fuels, L.L.C. v. Dawson,* 157 Ohio St.3d 20, 2019-Ohio-2011, 131 N.E.3d 20, ¶ 8; *see also State ex rel. Plant v. Cosgrove,* 119 Ohio St.3d 264, 2008-Ohio-3838, 893 N.E.2d 485, ¶ 5 ("In the absence of a patent and unambiguous lack of jurisdiction, a court having general subject-matter jurisdiction can determine its own jurisdiction, and a party contesting that jurisdiction has an adequate remedy by appeal."). If it is not "patent" and "unambiguous" that respondent lacks jurisdiction in the underlying adoption matter, relator is not entitled to the extraordinary relief requested.

Moreover, a relator seeking a writ of prohibition from this Court must prove entitlement to the writ by *clear and convincing evidence. State ex rel. Evans v. McGrath*, 153 Ohio St.3d 287, 2018-Ohio-3018, 104 N.E.3d 779, ¶ 4; *State ex rel. Federle v. Warren Cty. Bd. of Elections,* 156 Ohio St.3d 322, 2019-Ohio-849, 126 N.E.3d 1091, ¶ 10. Thus, relator must prove by clear and convincing evidence that respondent exercised judicial power, that respondent lacked the authority to exercise such power, and that relator has no adequate remedy at law such as appealing an unfavorable decision in the underlying adoption proceeding. In the alternative, relator must prove by clear and convincing evidence that respondent, and the Trumbull County Court of Common Pleas, Probate Division, patently and unambiguously lacked jurisdiction to hear intervenors' petition for adoption. This, it cannot do.

III. Relator's Complaint Should Be Dismissed because Respondent Does Not Patently and Unambiguously Lack Jurisdiction in the Underlying Adoption Proceeding

"The purpose of a writ of prohibition is to restrain inferior courts from exceeding their jurisdiction." *State ex rel. Roush v. Montgomery*, 156 Ohio St.3d, 2019-Ohio-932, 126 N.E. 3d 1118, ¶ 5. Respondent has not exceeded his jurisdiction. The relevant inquiry is twofold: *first*, it must be determined whether the jurisdiction to hear adoption proceedings is conferred on probate courts in Ohio (and thus respondent); and *second*, whether anything in the Constitution or statute removes that jurisdiction. *See Ruehlman*, 157 Ohio St.3d 296, 2019-Ohio-2845, 136 N.E.3d 436, ¶¶ 6-17.

A. Respondent's Jurisdiction to Hear the Underlying Matter is Conferred by the Ohio Constitution

Article IV, Section 4(B) of the Ohio Constitution provides:

> The courts of common pleas and divisions thereof shall have such original jurisdiction over all justiciable matters and such powers of review of proceedings of administrative officers and agencies as may be provided by law.

See also R.C. 2305.01 (stating that a court of common pleas has "original jurisdiction in all civil cases in which the sum or matter in dispute exceeds the exclusive original jurisdiction of county courts and appellate jurisdiction from the decisions of boards of county commissioners"). The "as may be provided by law" provision of Article IV, Section 4(B) means that the subject-matter jurisdiction of courts of common pleas is defined by statute. *Ruehlman*, at ¶ 7. R.C. 2101.24 generally defines the jurisdiction of probate courts in this state. Specifically, R.C. 2101.24(A)(2) provides that a probate court has exclusive jurisdiction over a particular subject matter if another section of the Revised Code confers that jurisdiction, and if no other section of the Revised Code confers that jurisdiction on any other court or agency. In turn, R.C. 3107.04 confers jurisdiction over adoption proceedings to probate courts of this state, and requires a petition for adoption to be filed in the *probate court*. Accordingly, a probate court's jurisdiction over adoption proceedings is provided by law in R.C. 2101.24 and Chapter 3107 of the Revised Code. Because a probate court's jurisdiction over adoption proceedings is defined by statute, its jurisdiction is thus conferred by

Article IV of the Ohio Constitution.

In any event, this Court has long held that adoption petitions are to be brought before a probate court: "[i]n Ohio, probate courts are vested with '**original and exclusive jurisdiction over adoption proceedings**.'" (Emphasis added.) *Adoption Link, Inc.,* Ohio St.3d 105, 2019-Ohio-2118, 132 N.E.3d 651, ¶ 29, *quoting Pushcar*, 110 Ohio St.3d 332, 2006-Ohio-4572, 853 N.E.2d 647, ¶ 9; *Roush* at ¶ 6 ("As a general matter, probate courts have exclusive jurisdiction over adoption proceedings"); *In re Adoption of M.G.B.-E.*, 154 Ohio St.3d 17, 2018-Ohio-1787, ¶ 27 (same, citing *Pushcar*). In sum, probate courts of this state have original, primary, and exclusive jurisdiction to hear and decide adoption petitions. That jurisdiction derives from the Ohio Constitution, and is defined by R.C. 2101.24 and Chapter 3107 of the Revised Code.

In *State ex rel. Portage Cty. Welfare Dep't v. Summers*, 38 Ohio St.2d 144, 311 N.E.2d 6 (1974) this Court expressly held that:

> (1) Adoption is a function which requires the exercise of judicial power which is vested in the courts of this state pursuant to Section 4, Article IV of the Ohio Constitution.
>
> (2) Original and exclusive jurisdiction over adoption proceedings is vested specifically in the Probate Court pursuant to R.C. Chapter 3107.
>
> (3) R.C. 3107.06(D) may not operate to divest the Probate Court of its necessaary judicial power to fully hear and determine an adoption proceeding.

at paragraphs one, two, and three of the syllabus. In *Summers*, the Portage County Welfare Department attempted to advance the same argument as relator in this case. There, the Welfare Department refused to consent to an adoption in the probate court, and sought to prohibit the adoption from going forward by arguing that the court lacked jurisdiction absent the Welfare Department's prior approval of the adoption.

This Court discussed, at length, whether the agency could "statutorily deny" the probate court its power over adoption proceedings:

> Section 1, Article IV of the Ohio Constitution, *supra*, vests judicial power in the courts of this state. Therefore, the crucial question is

> whether the process of adopting a child falls within the ambit of subject matter properly relegated to the exercise of judicial power.
>
> * * *
>
> Accordingly, we hold that adoption is a function which requires the exercise of the judicial power which is constitutionally vested in the courts of this state, and **that original and exclusive jurisdiction over adoption proceedings is vested specifically in the Probate Court pursuant to R.C. Chapter 3107.**
>
> * * *
>
> The effect of [the agency consent statute] **is not**, as appellees contend, **to make those agencies the final arbiters in adoption proceedings when agency approval is withheld, thereby depriving the court of its statutory and constitutional authority to hear and determine adoption matters.**
>
> We conclude that such deprivation of authority would not only be anomalous but would constitute an impermissible invasion of the Probate Court's power to act in areas in which the court is specifically vested by statute with authority to perform its judicial power granted by the Constitution.

(Emphasis added.)

A child-services agency's consent is thus not a prerequisite to a probate court's jurisdiction. Applying that same rationale here, neither may the placement statute–R.C. 5103.16–or any other statute that vests *placement* authority with a child services agency, such as relator, operate to strip a probate court, and respondent, of its authority and jurisdiction to hear and determine adoption matters. Because this jurisdiction is granted by the Ohio Constitution, and is properly vested in probate courts via R.C. Chapter 3107, respondent does not patently and unambiguously lack jurisdiction in intervenors' underlying adoption proceeding. *See, e.g. State ex rel. Caskey v. Gano,* 135 Ohio St.3d 175, 2013-Ohio-71, 985 N.E.2d 453 (holding a probate judge did not patently and unambiguously lack jurisdiction in adoption case). Relator's complaint should be dismissed as a matter of law.

B. No Statute Removes Respondent's Original and Exclusive Jurisdiction over Adoption Proceedings

Because a probate court's–and respondent's–jurisdiction over adoption proceedings derives

from the Ohio Constitution, the second inquiry is whether any statute removes that jurisdiction. When this Court has found that an inferior court patently and unambiguously lacks jurisdiction, "it is almost always because a statute **explicitly** removed that jurisdiction." (Emphasis added.) *Ruehlman* at ¶ 9. No statute explicitly removes respondent's jurisdiction over the underlying adoption matter. Nothing in the Constitution, or in the Revised Code, requires a placement by a child-services agency in the first instance in order to confer that jurisdiction to the probate court. Such a requirement would be completely antagonistic to a probate court's exercise of judicial power, and absent explicit directive from the legislature, would be unconstitutional.

Relator argues, by relying on various statutes, that respondent–or any probate court in this state–does not have jurisdiction to adjudicate an adoption, unless the agency first approves of the adoption by placing the minor child with petitioners. Plainly, none of the statutes upon which relator relies *explicitly* provide that a placement is a *prerequisite* to a probate court's *exercise of jurisdiction*. Indeed, R.C. 5103.16, R.C. 3107.051, R.C. 3107.11, and 3107.13 all refer to a "placement." Yet, none of those statutes provide that a probate court cannot hear, and decide, a petition for adoption unless the party petitioning for adoption has a placement. Relator cites to no other legal authority other than the various statutes that merely reference a "placement." Contrary to relator's argument, to which it cites no precedent, Ohio courts have expressly held:

> R.C. 5103.16 **does not state that placement under its terms is a jurisdictional prerequisite for adoption** and nowhere else in the Revised Code is it so stated. We decline to read such a requirement into the statute even though strict compliance with statutory provisions is necessary in authorizing adoptions, as adoptions are purely creatures of statute.

(Emphasis added.) *In re Wilson*, 7th Dist. Jefferson No. 93-J-12, 1995 Ohio App. LEXIS 572, at *7 (Feb. 13, 1995).

In 2019, in *State ex. rel Roush v. Montogomery*, this Court decided a very similar case where a relator sought to prohibit the probate court from hearing an adoption based on a jurisdictional argument. 156 Ohio St.3d, 2019-Ohio-932, 126 N.E. 3d 1118. In that case, the relator, Roush, was the incarcerated father of a minor child and challenged the probate judge in Franklin

County from granting an adoption of Roush's biological child. *Id*. at ¶ 1. Roush argued that because he withheld consent to the adoption, he therefore unilaterally deprived the probate court of exercising jurisdiction in the adoption matter. *Id*. at ¶ 2. Roush sought a writ of prohibition in the court of appeals, which dismissed his claim holding that the probate court had proper jurisdiction to determine whether Roush "had failed without justifiable cause to provide more than de minimis contact with the minor for a period of at least one year." *Id*. at ¶ 3.

On appeal, this Court held that the probate court nevertheless had jurisdiction to hear the adoption matter even if Roush did not give his consent:

> For support of his argument that Judge Montogomery was unauthorized to rule on the adoption, Roush points to R.C. 3107.06, which states that an adoption petition "may be granted only if" written consent has been executed by certain people, including "the father of the minor" **But that statute sets forth a substantive criterion for the probate court to apply; it is not a jurisdictional limitation on the probate court's authority.**

(Emphasis added.) *Id.* at ¶ 7. Roush also argued that the exception to parental consent in R.C. 3107.07(A) was improperly invoked against him due to his imprisonment and a no-contact order against him. The Court, again, explained that was irrelevant to the jurisdictional question:

> Like R.C. 3107.06, R.C. 3107.07(A) does nothing more than prescribe a **substantive criterion** to be applied in adoption cases. **Because the probate court clearly possessed jurisdiciton** to determine whether Roush's consent was required and because Roush **could appeal any adverse judgment, the court of appeals correctly concluded that the prohibition claim should be dismissed**.

(Emphasis added.) *Id.* at ¶ 9.

Likewise, here, relator's assertion that R.C. 5103.16(D)'s language that "[n]o child shall be placed or received for adoption . . . unless placement is made by a public children services agency . . ." is merely a "substantive criterion for the probate court to apply" in determining whether to grant the petition. R.C. 5103.16 does not transfer jurisdictional power from the probate courts of this state to public children services agencies. *See id.*

In addition, while R.C. 5103.16 provides a "substantive criterion" for the probate court to

consider, it is entirely inapplicable in the underlying adoption proceeding. That Revised Code section, and its placement "requirement" only applies to *private*, independent adoptions. In *In re J.A.S,* 126 Ohio St.3d 145, 2010-Ohio-3270, 931 N.E.2d 554, ¶ 7, this Court stated as follows: "R.C. 5103.16 sets forth the procedure for **independently** placing a child for adoption **when no public agency,** certified institution or association, or foreign custodian **is involved.**" (Emphasis added.) R.C. 5103.16 only applies when an adoption is *privately arranged* between the minor's parents and a third-party. *In re Adoption of G.M.B.*, 4th Dist. Pickaway Nos. 19CA12, 19CA13, 2019-Ohio-3884, ¶ 18.

R.C. 5103.16(D) provides that "[n]o child shall be placed or received for adoption or with intent to adopt **unless placement is made by a public children services agency** . . . ." (Emphasis added.) "Stated otherwise, unless the child has been placed or received for adoption by a public children services agency or related institution, 'the biological parents must appear before and obtain approval from the probate court.'" *In re Adoption of G.M.B.* at ¶ 18, *quoting In re Placement of A.R.V.*, 2016-Ohio-4929, 68 N.E.3d 410 (11th Dist.), ¶ 13. Here, a placement was made by relator, albeit with a different party than intervenors. R.C. 5103.16 *does not* require that placement must be made by the agency *with the petitioners.*

The General Assembly's intent in enacting R.C. 5103.16 reaffirms the fact that this section only applies to private adoptions. "R.C. 5103.16 was enacted to curb black-market adoptions by requiring some agency supervision or court approval of private placements." *J.A.S.* at ¶ 13, *citing In re Adoption of Zschach* (1996), 75 Ohio St.3d 648, 656, 665 N.E.2d 1070 (plurality opinion). This Court in *J.A.S.* further explained that by enacting R.C. 5103.16, the General Assembly sought "to prevent private independent placements that may involve fraud, misrepresentations, or the exchange of money to coerce parents to relinquish a baby." *Id.* This Court went on to explain:

> The intent of the legislature in enacting R.C. 5103.16 was **to provide some measure of judicial control over the placement of children for adoption which is not conducted under the auspices of a statutorily recognized and authorized agency**. That measure of

> judicial control is accomplished by having the parents of the child personally appear before the proper probate court for approval of the placement and adoption.

(Emphasis added.) *Id.*, quoting *Lemley v. Kaiser* (1983), 6 Ohio St.3d 258, 260, 6 OBR 324, 452 N.E.2d 1304; *see also In re Harshey,* 40 Ohio App.2d 157, 163-164, 318 N.E.2d 544 (8th Dist.1974) ("R.C. 5103.16 has no application to the case at bar, which does not involve a proposed 'independent or non agency' placement of a child for adoption.").

The effect of R.C. 5103.16 requires a parent who wishes to privately arrange an adoption of his/her child to obtain prior approval of the probate court before the placement. *See, e.g. In re Proposed Adoption of a Child by Micheal S.*, 131 Ohio App.3d 358, 362, 722 N.E.2d 574 (6th Dist.1998). Here, in the underlying matter, there is no *private arrangement* of an adoption. The relator has been involved every step of the way in the underlying matter, and has made a placement of the minor child. R.C. 5103.16 only ensures that there is some form of oversight–whether by the probate court or by a child services agency–when a biological parent wishes to place a child for adoption.

R.C. 5103.16 does not apply in the underlying adoption proceeding, which is not an independent or privately arranged adoption. Therefore, relator's reliance on it is misplaced. The fact that a child is not placed in the home of the petitioners in the underlying adoption matter with the consent of a children-services agency does not deprive respondent of jurisdiction in this matter. *See Harshey* at 165 (Krenzler, J., concurring) ("R.C. 5103.16 does not require that a child in the permanent custody of the Cuyahoga County Welfare Department be placed in a proposed adoptive home prior to a petition for adoption being filed.*"*).

Finally, relator's citation to this Court's decision in *State ex rel. Allen County Children Services Board v. Mercer County Common Pleas Court,* 15-Ohio St.3d 230, 81 N.E. 3d 380, 2016-Ohio-7382, ¶ 25, stating that "a prerequisite to adoption is the placement of the child with the prospective adoptive parents" does not support relator's argument that respondent patently and unambiguously lacks jurisdiction in the underlying adoption proceeding. This Court *did not* hold

in *Allen County Children Services Board* that a "prerequisite to **a probate court's jurisdiction** is the placement of the child with the prospective adoptive parents." Again, the placement question is but one criterion for the underlying probate judge to consider in an adoption petition. It does not act to divest the court of its exclusive and original jurisdiction. In fact, in *Allen County Children Services Board*, this Court explained that placement under R.C. 5103.16 is not a limitation on the probate court's jurisdiction, but rather is a mechanism over which a probate court has jurisdiction:

> Accordingly, the authority of the probate court to order preadoption placement pursuant to R.C. 5103.16(D) is **therefore within its exclusive, original jurisdiction over adoption proceedings,** notwithstanding the fact that the child is subject to the continuing jurisdiction of the juvenile court.

(Emphasis added.) *Id.* at ¶ 36. This Court's decision in *Allen County Children Services Board* does not aid relator's request for a writ of prohibition.

Consequently, because respondent's subject-matter jurisdiction over adoption proceedings derives from the Ohio Constitution and is explicitly set forth in statute, his exercise of jurisdiction in the underlying matter is not patently and unambiguously improper. A placement by a child-services agency with the petitioners is not a prerequisite to a probate court's exercise of jurisdiction. There is no explicit statutory support for such proposition and to find otherwise would completely derogate this Court's precedent, would give adjudicatory authority to child-services agencies, and would be contrary to the Ohio Constitution and adoption statutes. Judgment on the pleadings should be granted in intervenors' favor and relator's complaint should be dismissed.

IV. Relator's Complaint Should be Dismissed Because Relator Has an Adequate Remedy in the Ordinary Course of Law Through an Appeal

Relator states, "[t]he availability of other remedies, such as an appeal, is immaterial when a court patently and unambiguously lacks jurisdiction to proceed with a Petition for Adoption when petitioners do not have a placement for adoption." (Complaint ¶ 13). While that statement of law may be correct, it fails for the reasons stated above. Accordingly, relator's complaint should be dismissed under the 12(B)(6) standard for failure to state a claim because, (1) its patent and unambiguous jurisdictional argument fails as a matter of law, and (2) it does not even allege in its

complaint the third element for issuance of a writ of prohibition–that it lacks an adequate remedy at law. Nevertheless, assuming relator properly alleged that it lacks an adequate remedy through the ordinary course of law, judgment on the pleadings is still warranted in intervenors' favor.

"[A] tribunal having general subject matter jurisdiction of a case possesses authority to determine its own jurisdiction, **and a party challenging its jurisdiction has an adequate remedy by postjudgment appeal from its holding that it has the requisite jurisdiction**." (Emphasis added.) *State ex rel. Dailey v. Dawson*, 149 Ohio St.3d 685, 2017-Ohio-1350, 77 N.E.3d 937, ¶ 14, *quoting State ex rel. Rootstown School Dist. Bd. of Education. v. Portage County Court of Common Pleas,* 78 Ohio St.3d 489, 491, 678 N.E.2d 1365 (1997). "Prohibition will not issue as a substitute for appeal to review mere errors in judgment." *State ex rel. Nalls v. Russo*, 96 Ohio St.3d 410, 2002-Ohio-4907, 775 N.E.2d 522, ¶ 28. Even assuming the judgment in the underlying matter was incorrect, relator's proper remedy is to pursue an appeal of that judgment. *See State ex rel. Stefanick v. Mun. Ct. Of Marietta*, 21 Ohio St.2d 102, 104-105, 255 N.E.2d 634 (1970). Relator "cannot use prohibition as a substitute for appeal." *Id*.

Here, relator has adequate remedies available to it in the ordinary course of law. A final hearing on the petition for adoption is scheduled for July 14, 2020. If the relator were to receive an unfavorable decision, it can appeal. Adoption proceedings are no different than other civil cases in that appeals of unfavorable decisions are available. *See, e.g. In re Adoption of M.B.,* 131 Ohio St.3d 186, 2012 Ohio 236, 963 N.E.2d 142; *In re Jeffrey Michael A*., 6th Dist. Lucas No. L-08-1006, 2008-Ohio-5135. Relator cannot, now, substitute following through with the appellate process by seeking a writ of prohibition.

Respondent has subject matter jurisdiction over the underlying adoption proceeding and has the authority to determine its own jurisdiction, which it did:

> As this Court explained in its Jan 23, 2020 Judgment Entry, though the consent of the agency having permanent custody of a minor is required by statute, the refusal of consent to an adoption by a public children's services agency does not impair the jurisdiction of the probate court to proceed on the adoption. Adoption is a function which requires the exercise of judicial power which is vested in the

> courts of this state pursuant to Section 4, Article IV of the Ohio Constitution. Original and exclusive jurisdiction over the adoption proceedings is vested specifically in the Probate Court pursuant to R.C. 3107. R.C. 3107.06(D), which indicates that the consent of the public children's services agency having permanent custody is required for the adoption to proceed, may not operate to divest the Probate Court of its necessary judicial power to fully hear and determine an adoption proceeding. [*citing Summers, supra*]. Similarly the lack of a formal adoptive placement under R.C. 5103.06 [sic] may not operate to divest the Court of its jurisdiction over this adoption proceeding.

(Complaint, Exhibit H). If relator finds fault with Judge Fredericka's reasoning, it can appeal. Therefore, relator has an adequate remedy in the ordinary course of law by way of appeal.

V. Conclusion

For all of the foregoing reasons, relator, Trumbull County Children Services Board's request for a writ of prohibition should be denied, its complaint dismissed, and judgment on the pleadings entered in favor of intervenors, Mark and Julie Stimpert.

Respectfully submitted,

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PROOF OF SERVICE

A copy of the foregoing motion for judgment on the pleadings was served by e-mail this 22nd day of May, 2020 to the following persons:

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