CASE NO. S 25-0551

IN THE SUPREME COURT OF THE STATE OF NEBRASKA

IN THE INTEREST OF

JORDON B.
A CHILD UNDER EIGHTEEN YEARS OF AGE

APPEAL FROM

THE COUNTY COURT OF DODGE COUNTY, NEBRASKA

HONORABLE THOMAS J. KLEIN, PRESIDING

BRIEF OF APPELLEE

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STATEMENT OF THE BASIS OF JURISDICTION

On June 11, 2025, the County Court of Dodge County, Nebraska, sitting as the Juvenile Court, entered an Order after an evidentiary hearing, finding that Leah Belmer failed to prove the allegations in her Motion to Rescind Court Order Terminating Parental Rights to Jordon B., and denying her Motion. (T544). Appellant Leah Belmer filed a notice of appeal with the Juvenile Court of Dodge County on July 8, 2025. On July 11, 2025, an order allowing Appellant to proceed *in forma pauperis* was filed, thus providing this court with jurisdiction of this matter pursuant to *Neb. Rev. Stat.*§43-106.01 and, by reference, *Neb. Rev. Stat.* §25-1912.

STATEMENT OF THE CASE

A. ACTION OR NATURE OF THE CASE:

The State, the Nebraska Department of Health and Human Services and the Guardian ad Litem accept and adopt the statement of the case presented by the Appellant.

B. THE ISSUES ACTUALLY TRIED IN THE COURT BELOW:

The State, the Nebraska Department of Health and Human Services and the Guardian ad Litem accept and adopt the issues presented by the Appellant.

C. HOW THE ISSUE WAS DECIDED:

After an evidentiary hearing, the trial court overruled and denied the Appellant's Motion to Rescind Order of Voluntary Relinquishment of Parental Rights and found that the Voluntary Relinquishment signed by the Appellant was not the result of fraud, coercion, duress, or threats; further , the Court found the Voluntary Relinquishment executed by the Appellant was not obtained from any promises of anything by anyone to facilitate her signing the Voluntary Relinquishment. The Court found that the Appellant failed to prove by a preponderance of the evidence (and accordingly not by clear and convincing evidence or by evidence

beyond a reasonable doubt) to demonstrate that the Voluntary Relinquishment resulted from fraud, coercion, duress or threats made to the Appellant. (T504-545).

D. THE SCOPE OF REVIEW:

Juvenile cases are reviewed *de novo* on the record, and the appellate court is required to reach a conclusion independent of the trial court's findings. *In re Interest of Zoey S.,* 22 Neb. App. 371, 853 N.W. 2d 225, 232 (2014). However, when the evidence is in conflict, the appellate court will consider and give wight to the fact that the lower court observed the witnesses and accepted one version of the facts over the other. *In re Interest of Sabrina K.*, 262 Neb. 781, 635 N.W. 2d 727 (2001). In reviewing questions of law arising under the Nebraska Juvenile Code, an appellate court may reach conclusions independent of the lower court's ruling. *In re Interest of Mainor T.*, 267 Neb. 232, 674 N.W. 2d 442 (2004).

PROPOSITIONS OF LAW

I.

A relinquishment of parental rights is considered valid if it is executed "in the absence of threats, coercion, fraud, or duress," and is "signed by a natural parent knowingly, intelligently, and voluntarily." *Monty S. v. Jason W.*, 290 Neb. 1048, 1052-53, 863 N.W.2d 484, 489 (2015) (citing *Yopp v. Batt*, 237 Neb. 779, 467 N.W.2d 868 (1991)). A natural parent who relinquishes his or her rights to a child by a valid written instrument gives up all rights to the child at the time of the relinquishment. *Id*. A valid relinquishment is irrevocable. *Id*.

II.

The burden is on a natural parent challenging the validity of a relinquishment of parental rights to prove that it was not voluntarily given. *In re Interest of Zoey S.,* 22 Neb. App. 371, 853 N.W. 2d 225, 232 (2014).

III.

The appellant's "somewhat unsettled state of mind" and her struggle with depression at the time of the relinquishment is

insufficient to render the relinquishment invalid. *Gaughan v. Gilliam*, 224 Neb. 836 (1987).

IV.

We have held repeatedly that a change of attitude subsequent to signing a relinquishment is insufficient to invalidate the relinquishment. Rather, as we noted above, in the absence of threats, coercion, fraud, or duress, a properly executed relinquishment of parental rights and consent to adoption signed by a natural parent knowingly, intelligently, and voluntarily is valid. *Monty S. v. Jason W.*, 290 Neb. 1048, 1052-53, 863 N.W.2d 484, 489 (2015) (citing *Yopp v. Batt*, 237 Neb. 779, 467 N.W.2d 868 (1991)).

V.

In a bench trial of an action at law, the trial court is the sole judge of the credibility of the witnesses and the weight to be given to their testimony. *U.S. Pipeline v. Northern Natural Gas Co.*, 303 Neb. 444 (2019).

VI.

Juvenile cases are reviewed *de novo* on the record, and the appellate court is required to reach a conclusion independent of the trial court's findings; however, when the evidence is in conflict, the appellate court will consider and give weight to the fact that the lower court observed the witnesses and accepted one version of the facts over the other. *In re Interest of Zoey S.,* 22 Neb. App. 371, 853 N.W. 2d 225, 232 (2014).

STATEMENT OF FACTS

Jordon B. (hereinafter "Jordon") is the biological son of Leah Belmer (n/k/a Leah Daniel, "Leah" or "Appellant") and Allen Belmer ("Allen"). On September 25, 2020, Jordon was removed from the custody of his parents and placed in the custody of DHHS. (T1). At the time of removal, Jordon was placed with Jason and Lesley Daniel, the adoptive parents of Jordon's older biological siblings, and then later placed with Andy and Alicia Todd. On July 14, 2021, Appellant Belmer filed a motion to change Jordon's placement to the home of Rita Pospishil ("Rita"), Allen's cousin. In the fall of 2021, the trial court

heard several days' worth of evidence on this placement change. (T43-44). Ultimately, the Court granted the change of placement on October 27, 2021 and Jordon was placed in Rita's home around Thanksgiving 2021.

Approximately one year later, on November 29, 2022, Leah and Allen each signed a relinquishment of parental rights to Jordon. (T297). DHHS accepted the relinquishment, pursuant to Neb. Rev. Stat. § 43-106.01, on January 9, 2023. (T296). The delay in DHHS's acceptance was due to concerns about the potential applicability of the Indian Child Welfare Act and not due to concerns about Appellant's capacity to relinquish.

On May 16, 2023, Appellant filed a motion entitled "Motion to Rescind Order Terminating Leah Belmer [sic] Parental Rights." In the motion, Appellant alleged that she did not sign the relinquishment voluntarily due to her mental limitations and various threats made by Allen, Allen's mother, and Rita. Appellant also alleged that she received ineffective assistance of counsel, as she required a guardian ad litem. (T326-327).

On June 23, 2023, the Court overruled Appellant's motion. (T359-362). Jordon was adopted by Rita on June 26, 2023. Appellant appealed the June 23, 2023 order. The Nebraska Supreme Court held that Appellant was entitled to a full evidentiary hearing on the allegations in her May 16, 2023 motion. (T422-438).

Appellant's motion alleged as follows: (1) Appellant signed the relinquishment under duress due to threats made by Allen Belmer, Julie Johnson, and Rita Pospishil, (2) Rita promised that Appellant could move into Rita's home and continue to be Jordon's mother if she relinquished her parental rights, (3) Appellant was coerced to allow placement of Jordon with Rita by Julie, Rita, and Christina Boydston (Jordon's Guardian Ad Litem), (4) Appellant received ineffective assistance of counsel, (5) Appellant is developmentally disabled and has cognitive issues that render her relinquishment invalid, (6)

Appellant should have been appointed her own Guardian Ad Litem. (T326-327).

ARGUMENT

I. THE COUNTY COURT CORRECTLY FOUND THAT APPELLANT BELMER'S RELINQUISHMENT OF PARENTAL RIGHTS DID NOT RESULT FROM THREATS, COERCION, FRAUD, AND.OR DURESS

A. THE COURT APPLIED THE CORRECT BURDEN OF PROOF

Case law is clear that the burden of proof is on Appellant to prove that the relinquishment was not voluntarily given. *Hohndorf v. Watson*, 240 Neb. 368 (1992). A relinquishment of parental rights is considered valid if it is executed "in the absence of threats, coercion, fraud, or duress," and is "signed by a natural parent knowingly, intelligently, and voluntarily." *Monty S. v. Jason W.*, 290 Neb. 1048, 1052-53, 863 N.W.2d 484, 489 (2015) (citing *Yopp v. Batt*, 237 Neb. 779, 467 N.W.2d 868 (1991)). A natural parent who relinquishes his or her rights to a child by a valid written instrument gives up all rights to the child at the time of the relinquishment. *Id.* A valid relinquishment is irrevocable. *Id.*

The Nebraska Supreme Court has previously held that the terms "burden of proof" and "standard of proof" are interchangeable. *In re Interest of Jaden H.*, 10 Neb. App. 87 (2001) (citing *Schneider v. Chavez–Munoz*, 9 Neb.App. 579 (2000)). Although statute and caselaw are silent regarding the standard of proof, there are specified standards of proof in juvenile court hearings and cases regarding child custody. The standard of proof for a petition to adjudicate a child as one within the meaning of *Neb. Rev. Stat.* § 43-247 is a preponderance of evidence. *Neb. Rev. Stat.* § 43-279.01(4). However, the standard of proof is clear and convincing when the court determines whether to

sustain a petition for termination of parental rights. *Id*. Cases involving custody of a child generally require proof by a preponderance of evidence. *Neb. Rev. Stat*. § 43-2932. Although the applicable standard of proof appears to be "preponderance of evidence," caselaw further provides significant guidance on what evidence is sufficient for a court to determine a relinquishment is invalid. In applying the preponderance standard, the trial court found that Appellant failed to meet even the lowest standard of proof applicable.

B. APPELLANT FAILED TO PROVE THE SPECIFIC ALLEGATIONS OF HER MOTION BY EVEN A PREPONDERANCE OF THE EVIDENCE

Appellant's motion alleged as follows: (1) Appellant signed the relinquishment under duress due to threats made by Allen Belmer, Julie Johnson, and Rita Pospishil, (2) Rita promised that Appellant could move into Rita's home and continue to be Jordon's mother if she relinquished her parental rights, (3) Appellant was coerced to allow placement of Jordon with Rita by Julie, Rita, and Christina Boydston (Jordon's Guardian Ad Litem), (4) Appellant received ineffective assistance of counsel, (5) Appellant is developmentally disabled and has cognitive issues that render her relinquishment invalid, (6) Appellant should have been appointed her own Guardian Ad Litem.

To the extent that Appellant argues that she also signed the relinquishment under coercion, her motion only alleges that she was coerced into placing Jordon with Rita. However, although Appellant filed the motion to change Jordon's placement to Rita's home, the Court ultimately decided to place Jordon with Rita following a contested evidentiary hearing. Even if Appellant was coerced into agreeing to placement of Jordon with Rita, safeguards exist to ensure that the placement was in Jordon's best interests. The Nebraska Juvenile Code provides that DHHS has the authority, "by and with the assent of the court" to determine placement. *Neb. Rev. Stat*. § 43-285.

Appellant did not, and could not, unilaterally determine Jordon's placement and, therefore, the placement was not due to coercion.

Appellant also alleged that she should have been provided a Guardian Ad Litem. On December 5, 2024, Appellant was appointed an attorney and, on December 18, 2024, a Guardian Ad Litem. She was represented by both at the hearing on the validity of her relinquishment. This issue has now been resolved.

II. THE COUNTY COURT CORRECTLY FOUND THAT APPELLANT'S RELINQUISHMENT OF PARENTAL RIGHTS WAS KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY EXECUTED

Appellant's remaining allegations can be summarized in two arguments (1) Appellant did not relinquish her parental rights voluntarily due to her cognitive ability, and (2) Appellant's relinquishment was not voluntary because it was the result of fraud, coercion, or duress.

A. APPELLANT POSSESSED THE REQUISITE MENTAL CAPACITY TO UNDERSTAND THE RELINQUISHMENT AT THE TIME IT WAS EXECUTED.

Appellant claims that her relinquishment was not made knowingly, intelligently, and voluntarily because she lacks the mental capacity to understand the relinquishment. This claim is not supported by the evidence.

In *Hensman v. Parsons*, this Court discussed the standard for voluntariness as it relates to a parent's capacity to execute a relinquishment of parental rights. *Hensman*, 235 Neb. 872 (1990). In *Hensman*, the mother challenged the validity of her relinquishment, arguing that she did not sign the relinquishment voluntarily and knowingly because it was signed while she was "depressed, under a lot

of stress, and was taking medication." *Id.*, at 874. This Court held that the relinquishments were valid, as "Hensman clearly understood the consequences of her actions. She was properly informed and voluntarily and knowingly relinquished her children for adoption." *Id.*, at 877. See also, *Auman v. Toomey*, 220 Neb. 70 (1985) (holding that relinquishment was executed voluntarily and knowingly, despite testimony from appellant's therapist that appellant was unable to correctly assess the consequences of her behavior).

In *Jones v. Child Saving Institute*, 1995 WL 166858 (1995), an unpublished opinion, Ms. Jones challenged the validity of her relinquishment of parental rights on the grounds that she was not competent to understand the documents. *Id.*, at *1. At trial, an educational psychologist testified that, based on the readability of the relinquishment forms and Ms. Jones's reading comprehension ability, Ms. Jones was unable to understand the forms. A clinical psychologist testified that Ms. Jones was provided a "Wechsler Adult Intelligence Scale which revealed an 'IQ score' of 72…" *Id.*, at *4. A psychiatrist also testified that Ms. Jones "had problems with her ability to understand abstract ideas, some specific memory deficits, and was suffering from 'some form of an affective mental disorder.'" *Id.*, at *5. Two of the three witnesses concluded that Ms. Jones likely could not understand the documents she signed. *Id.*, at *4-5. An expert called by CSI concluded that Ms. Jones could understand the documents, despite her low intellectual ability. Id., at *9.

The Nebraska Court of Appeals held that Ms. Jones's relinquishment was valid. "[O]ur comprehensive review of the record convinces us that one can only accept Jones'[s] position that she did not understand the relinquishment and its consequences by totally ignoring the thoroughly documented contacts Jones had with CSI workers prior to the birth of the child, which detail much of the what was discussed. In these meetings, Jones was purposeful, actively involved, and fully comprehending of what she wanted to accomplish, which was the adoption…" *Id.*, at 9.

Appellant alleged that she receives Supplemental Security Income (SSI) for her mental health, arguing that this supports her allegation that she did not have the cognitive capacity to sign the relinquishment of parental rights. (22:4-9). However, on cross-examination, Appellant admitted that she actually received SSI for issues with her back and her mental health. (49:1-25; 50:1-17). Other than Appellant's testimony, no evidence corroborated her claim that she receives SSI due to a mental disability.

Much of the evidence offered referenced a neuropsychological evaluation that Appellant obtained in 2021. This was eventually offered as Exhibit 31 and received as evidence. This evaluation indicated that the "reason for referral" requested information on Appellant's "general intellectual ability in the context of legal proceedings related to termination of parental rights" yet never provided a conclusion regarding this question. While the evaluation does provide specific test scores for Appellant, including that her full-scale IQ was 72, Dr. Garlinghouse never provided any conclusion, and no expert testimony was offered, on how her IQ, or any other test score, impacted her ability to understand and appreciate the consequences of relinquishment of her parental rights. It should also be noted that the evaluation does not diagnose Appellant with a mild intellectual disability or provide any other diagnosis regarding her cognitive abilities. (see E31).

Like in *Jones*, even if Appellant had provided expert testimony indicating that her IQ and intellectual limitations prevented her from understanding the relinquishment documents, it would not negate the significant evidence indicating that Appellant had conversations regarding her intent to give up her parental rights to Jordon with the assigned caseworker, her attorney, the permanency worker, and Rita.

Additionally, Appellant testified that she previously relinquished her parental rights to two older sons, Jacob and Lucas. She testified that she was not appointed her own Guardian Ad Litem in either case, that she participated in services towards reunification

in both cases, and that she did not attempt to revoke her relinquishment for either Jacob or Lucas. Most interestingly, Appellant testified that she understood the *consequences* of relinquishment of her parental rights at the time she relinquished her rights to Jacob and Lucas. It's clear that Appellant also understood the consequences of signing the relinquishment of parental rights to Jordon, as she was specifically asked "Do you understand that your relinquishment cannot be revoked and involves the complete loss of all rights and responsibilities?" (E33). Appellant did not present any evidence that her cognitive state changed during the time following her relinquishment of parental rights to Jacob and Lucas, and the evaluation by Dr. Garlinghouse even indicated that her test scores were substantially similar to a prior evaluation conducted in 2014. (E31).

Appellant's own testimony does not support Appellant's argument that she lacked the cognitive ability to sign the relinquishment for Jordon, especially considering that she admitted that she understood the consequences of relinquishment of her parental rights to Jacob and Lucas and had months' worth of conversations with various parties regarding her intent to relinquish her parental rights so that Rita could adopt Jordon.

B. NOR DID APPELLANT EXECUTE THE RELIQNUQISHMENT UNDER DURESS NOR THROUGH COERCION

Appellant claims that she signed the relinquishment under duress and coercion, and, therefore, her relinquishment was not made voluntarily. Nebraska appellate courts have provided extensive guidance on what constitutes a voluntary relinquishment of parental rights signed absent coercion, fraud, and duress.

The following Nebraska appellate cases, all decided by this Court, are illustrative of the law and principles which govern the validity of a voluntary relinquishment in the face of a claim of coercion, fraud and duress. In reviewing Appellant's claims in the context of this Court's prior decisions, it is apparent that Appellant has failed to prove her case.

i. *Hensman v.* Parsons, 235 Neb. 872 (1990)

In addition to allegations regarding mental capacity to execute a relinquishment, Ms. Hensman also alleged that she was under the impression that the relinquishment was not permanent. *Hensman*, at 877. Hensman claimed that she believed she was only granting temporary custody to the Parsons when she signed the relinquishment of parental rights. *Id*. However, this Court disagreed, finding that the evidence indicated that neither party testified to conversations regarding the temporary nature of the arrangement, that the placement of Hensman's children with the Parsonses was conditioned upon Hensman's assurance that it would be permanent, that Ms. Hensman signed the relinquishment two days after placement, that Ms. Hensman left the state immediately after executing the relinquishment, and that, following the relinquishment, Ms. Hensman made no attempts to provide for her children. *Id.*, at 877-8. This Court held that this evidence "clearly demonstrates that appellant knew the relinquishments were absolute and permanent" and that Hensman had clearly changed her mind after execution. *Id.*, at 878.

Similarly, Appellant alleges that she was promised that she could continue to be Jordon's mother following the adoption. However, both Rita and Allen testified to the contrary. Appellant also left the state immediately following the relinquishments and made no attempt to see Jordon. Appellant also failed to provide any evidence that she attempted to continue to parent Jordon following her relinquishment. In fact, Rita provided updates to Appellant on her own volition.

ii. *Maria T. v. Jeremy S.*, 300 Neb. 563 (2018)

In Maria T., this Court discussed whether an adoption contact agreement invalidated a relinquishment of parental rights. Maria relinquished her parental rights to her child as part of a juvenile case where her child was in the custody of DHHS and placed in foster care. *Id.*, at 565-8. Although some contact agreement was prepared, it is unclear from the record whether it was approved by the court prior to the adoption. Maria clarified that the agreement referred to in her petition was an oral agreement where the foster parents agreed to maintain contact with Maria. *Id.*, at 579. It is this oral agreement that Maria argued was a condition that led to her relinquishment of parental rights, thereby rendering the relinquishment invalid. *Id.*, at 578-9.

This Court found that the adoption statutes which refer to contact agreements apply to both oral and written contact agreements. *Id*. This Court held, "such an agreement in any form could never be considered an invalidating condition…" *Id.*, at 578.

Appellant's testimony that Rita promised Appellant could move into Rita's home and continue to be Jordon's mother is not credible. It was rebutted by every witness following Appellant. Rather, what is likely is that the parties did agree to ongoing contact between Jordon, Appellant, and Allen following the adoption by Rita. Any agreement or discussion between Rita and Appellant regarding ongoing contact after the adoption would similarly be governed by Neb. Rev. Stat. §§ 43-162 to 43-166. This is insufficient to render Appellant's relinquishment invalid.

iii. *D.S. v. United Catholic Social Services*, 227 Neb. 654 (1988)

In *D.S. v. United Catholic Social Services*, 227 Neb. 654 (1988), D.S. attempted to revoke her relinquishment of parental rights to her

son, alleging that she did not voluntarily sign the relinquishment due to threats, coercion, fraud and duress. *Id.*, at 655-6. D.S. testified that her family did not support her keeping and raising her son, stating that her mother and the baby's father told her she would ruin everyone's lives if she kept the baby, that her parents would disown her if she did not relinquish her parental rights, and that her parents would not assist in paying for her college education if she did not relinquish. At one point, D.S. was confined to her sister's home to ensure nobody knew of her pregnancy. D.S. testified that she continuously indicated to her family, her attorney, and the UCSS counselor that she was not sure she wanted to pursue adoption. D.S.'s mother sent her "nasty" letters indicating that D.S. was an embarrassment and would not permit D.S. to return to the family home during her pregnancy. Additionally, the attorney who assisted with D.S.'s relinquishment also testified that she was convinced D.S.'s parents would, in fact, disown her, if she did not relinquish. *Id.*, at 658-665.

When the UCSS counselor arrived to take D.S.'s relinquishment, D.S. stated that she changed her mind and did not want to sign. Two days later, D.S. did sign the relinquishment in front of the UCSS counselor and a witness. The relinquishment itself was characterized as one with "many tears and apparent agonizing…" *Id.*, at 663.

The bar in *D.S.* was much lower than in Appellant's case. Because D.S. involved a motion to dismiss, this Court was required to "treat as admitted the truth of all relevant evidence favorable to the plaintiff and must give the plaintiff the benefit of all permissible inferences deducible from the properly admitted evidence to determine whether a prima facie case has been established." *Id.*, at 656.

This Court held, "The evidence in this case… when viewed in the light most favorable to [D.S.], was as a matter of law not sufficient to show that the relinquishment was involuntary or that it was the result of threats, coercion, fraud, or duress." *Id.*, at 665. If the evidence in *D.S.* failed to establish a prima facie case, then the evidence presented

in this case certainly fails to prove that Appellant's relinquishment was not voluntary.

iv. *Auman v. Toomey*, 220 Neb. 70 (1985)

In *Auman v. Toomey*, Ms. Auman sought to challenge the validity of her relinquishment, arguing that it was involuntary and signed under duress. *Id.*, at 72. Specifically, Ms. Auman claimed that her financial stress rendered her incompetent to relinquish and that she believed she had two weeks to change her mind. *Id.*, at 73. Ms. Auman did not tell her own parents about her intention to relinquish, as they did not agree with it. *Id.*, at 74. After the relinquishment, Ms. Auman's parents attempted to gain custody of the child and even prompted Ms. Auman to revoke her relinquishment. *Id.*, at 74-5.

Interestingly, Appellant testified that her reason for challenging the validity of her relinquishment was not to regain custody of Jordon but to have him placed with her parents.(48:1-18). At the May 31, 2023 hearing, Appellant stated "And I would like to have my rights back cause [sic] I want my son to be with his older brothers." (E28). She testified to the same at the March 7, 2025 trial. (48:1-18). Appellant's parents, on behalf of Jordon's biological siblings, made several attempts to gain placement so that they could pursue adoption of Jordon. (E28). It's clear from the record that Appellant has no intention of parenting Jordon; she wants her parents to parent to Jordon. Her position regarding relinquishment only changed after her parents' attempts at obtaining placement and custody of Jordon failed. In fact, Rita testified that Appellant admitted that the reason she was trying to challenge the relinquishment was because her parents told her that she would not be permitted to see Jacob and Lucas unless she got Jordon back. In *Auman*, this Court held "The evidence indicates the petitioner changed her mind and succumbed to the influence of relatives only *after* the relinquishment had been signed. A change of attitude subsequent to signing a relinquishment is insufficient to

invalidate it." *Id.*, at 74 (emphasis in original). Appellant's change in attitude regarding who should adopt Jordon is not sufficient to invalidate her relinquishment.

v. *Gaughan v. Gilliam*, 224 Neb. 836 (1987)

Ms. Gaughan, a sixteen-year-old, challenged the voluntariness of her relinquishment of parental rights to her child. *Id.*, at 838. Ms. Gaughan placed her child with the child's paternal grandparents, who eventually decided not to further pursue the adoption. The paternal grandparents arranged a meeting with another couple who were interested in adopting Ms. Gaughan's child. During this meeting, Ms. Gaughan became so upset that she ran outside into a storm. Ms. Gaughan told both her mother and the father of the baby that she did not want to relinquish her parental rights. *Id.*, at 837. The paternal grandparents drove Ms. Gaughan to a meeting with an attorney to discuss the adoption, where Ms. Gaughan was advised of the relinquishment forms and process. The attorney testified that he advised Ms. Gaughan that a relinquishment was permanent. During the actual relinquishment, Ms. Gaughan began to sign her name and stopped. She finished her signature only after the child's paternal grandmother put her hand on Ms. Gaughan's shoulder and told Ms. Gaughan that the adoption was best for the child. Ms. Gaughan testified that she felt pressured. *Id.*, at 839.

This Court held that Ms. Gaughan's relinquishment was valid, stating "The very nature of the act of a mother in relinquishing her child for adoption is emotionally traumatic. However, the mere fact that a mother in a situation such as this might be influenced by the real concern expressed by friends or family for the welfare of both the mother and the child does not mean that such act of relinquishment is the product of threats, coercion, fraud, or duress." *Id.*, at 840.

Appellant testified that, when she was asked whether anyone had made any promises or threats to her in exchange for her

relinquishment, she believed this to only include promises or threats that were made in the room at the time of the relinquishment. Appellant further testified that nobody in the room forced her to sign at the time of the relinquishment. If the hand on Ms. Gaughan's shoulder mid-signature was not sufficient to prove that Ms. Gaughan's relinquishment was involuntary, vague testimony about threats that allegedly occurred outside the relinquishment signing should also fail to meet the burden of proof.

vi. *Batt v. Nebraska Children's Home Society*, 185 Neb. 124 (1970)

In *Batt*, Ms. Batt challenged the validity of her relinquishment of parental rights, arguing that it was not voluntarily made and was the product of fraud, duress, or coercion. *Id.*, at 124-6. This Court held that her relinquishment was made voluntarily. *Id.*, at 125. At the time of the relinquishment, the notary explained the forms and asked Ms. Batt if she understood that she could not change her mind and get her child back after she signed. At trial, the notary testified that Ms. Batt indicated she understood and expressed no reluctance. *Id.*

Ms. Batt testified that her mother told her she could not keep the baby and that she could not come home if she did. *Id.*, at 126. Ms. Batt also testified that, at the time she signed, the door to the room was locked and she could not leave. These claims were rebutted by the social worker who assisted with the relinquishment, who testified that Ms. Batt never requested to call anyone or leave the room. *Id.*, at 126-7. The social worker also testified that Ms. Batt did not show any reluctance, or any other emotion except relief. An employee at the hospital who witnessed the relinquishment also testified that it was the "least emotional relinquishment that she had ever seen." This Court held that "the record as a whole indicates a change of attitude long after the execution of the relinquishment, rather than fraud, duress, and coercion at the time of its execution." *Id.*, at 127.

Similarly, Heather Johnson, the permanency worker who assisted with the relinquishment, also testified that Appellant expressed no reluctance or hesitation, that she appeared to be in a good mood. Heather also testified that she has received training in identifying signs of domestic violence and observed no signs of potential domestic violence or coercion at the time Appellant signed the relinquishment. Heather also characterized the relinquishment as one of the shortest she had ever seen.

C. APPELLANT'S ALLEGATIONS WERE OVERWHELMINGLY REFUTED BY THE TESTIMONY AND EVIDENCE PRESENTED AT TRIAL

Finally, Appellant's credibility and the credibility of the witnesses must be addressed. In a bench trial of an action at law, like the present case, the trial court is the sole judge of the credibility of the witnesses and the weight to be given to their testimony. *U.S. Pipeline v. Northern Natural Gas Co.*, 303 Neb. 444 (2019); *In re Interest of Zoey S.,* 22 Neb. App. 371, 853 N.W. 2d 225, 232 (2014). As found by the trial court, Appellant's testimony was not credible. Conversely, the trial court found the testimony of the other witnesses credible.

While Appellant made various, vague allegations against Allen, she failed to detail a single instance of domestic violence perpetrated by Allen. She stated that she was emotionally and physically abused throughout the course of their marriage, which culminated in her relinquishment of her parental rights to Jordon. However, DHHS had been involved with the family since 2014. Jack Leonard, the assigned case manager, testified that absolutely nothing in the case files maintained by DHHS indicated that Appellant was the victim of domestic abuse by Allen. Rather, the records and Jack's observations showed that Appellant was emotionally abusive to Allen.(95:8-17;106:1-10). Appellant had anger issues and called Allen names and belittled him regularly. Jack testified that he received significant training in domestic abuse, identifying the signs of domestic abuse,

and the behaviors of the perpetrators, and Appellant and Allen's behaviors were simply not consistent with his education and training. Appellant also testified that Allen took her SSI money, but later admitted that she never allowed Allen to have control of the money or be her payee.

The petitions and affidavits for protection orders Appellant filed against Allen lacked detail and Appellant herself filed a motion to vacate the first order of protection. (E29, E30). The day prior to the filing of Appellant's motion to vacate, Allen was arrested for violating that protection order. Officer Wyatt Tremayne with the Fremont Police Department testified that, while on duty, he initiated a traffic stop. In the vehicle were Allen, Appellant, and a third party. (148:1-25). The video of the traffic stop was admitted into evidence as Exhibit 32. (E32). Officer Tremayne testified that he was able to observe Appellant's demeanor, and she did not appear to be afraid of Allen. (150:11-25; 151: 1-3). This is supported by the video, which shows that Appellant told Officer Tremayne that she had already attempted to vacate the protection order, but that the court was taking too long. (E32). This is refuted by Exhibit 29, which shows that Appellant went to the courthouse the day following the traffic stop to file her motion to vacate. (E29).

At one point, Appellant claimed that she was forced to leave the state after the relinquishment due to Allen's abuse. She stated that Allen moved his new girlfriend and her daughter into their shared home and threatened to throw her cats and her stuff out into the snow. However, at trial, she admitted that she went to Arkansas to be with a boyfriend and this was supported by Jack's testimony. She also admitted that Allen did not attempt to follow her. At no point while she was gone did she attempt to revoke her relinquishment. (65:1-25).

Additionally, Appellant testified that she felt forced to sign the relinquishment by Rita and Julie, yet this was contradicted by every witness. While there were conversations regarding ongoing contact between Allen, Appellant, and Jordon after the adoption, those

conversations did not involve threats, coercion, or force. It is much more likely that these conversations were regarding Appellant and Allen's ability to care for Jordon, given their financial situation and limited intellectual abilities. Appellant also testified that Rita only sent pictures and updates on Jordon around the time a court hearing was scheduled, but Rita testified that she sent pictures and updates at least once per month.

Appellant also testified that she was never provided any opportunity to meet with any case professionals, including her own attorney, without Allen's attendance. (51:1-125). However, she later testified that Allen was frequently working and left her to participate in supervised visits with Jordon alone. Appellant's attorney, Adam Tripp, also testified that he met with Appellant alone several times. Jack Leonard testified that he had regular contact with Appellant and Allen, and a large number of those contacts involved Appellant alone.(84:1-15).

Appellant's story that she was forced to relinquish her parental rights is not logical, is not supported by the evidence, and is refuted by the other witnesses who testified at the evidentiary hearing. It is much more likely that Appellant reconnected with her parents after the relinquishment, and her parents persuaded her to file this action.

CONCLUSION

For these reasons, DHHS, the State, and the Guardian Ad Litem respectfully request that this Court affirm the Order of the Dodge County Court and find that Appellant's relinquishment was made voluntarily, knowingly, and intelligently and was not the product of fraud, coercion, or duress.

Dated this 30th day of January, 2026.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Neb. Ct. R. App. P. 2-103(C)(4), the undersigned hereby certifies that this Brief complies with the typeface requirements, being Century Schoolbook font, 12-point type. The document was prepared using Microsoft 365 Word and relying on the word processor word count feature, contains 6,365 words.

Dated this 30th day of January, 2026.

/s /Jennifer D. Joakim
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Certificate of Service

I hereby certify that on Friday, January 30, 2026 I provided a true and correct copy of this *Brief of Appellee State-GDLCE-HHS* to the following:

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