No. 129118

IN THE
SUPREME COURT OF ILLINOIS

ANGEL LUSTER-HOSKINS, Movant, v. THE HONORABLE CHARLES C. HALL, Circuit Court Judge of the Fifth Judicial Circuit Respondent.	)	On Motion for Supervisory Order Underlying Case No. 2022-CF-293 Circuit Court of the Fifth Judicial Circuit, Vermilion County, Illinois Honorable Charles C. Hall, Judge Presiding

AMENDED MOTION FOR SUPERVISORY ORDER

Pursuant to Article VI, section 16 of the Illinois Constitution and Supreme Court Rule 383, ANGEL LUSTER-HOSKINS by and through her attorneys respectfully requests that this Court issue a supervisory order directing the Honorable Charles C. Hall (the "Circuit Court") to vacate as unlawful his November 17, 2022 order appointing a guardian ad litem for her fetus ("Order"). A supervisory opinion is appropriate because respondent's order is inconsistent with Illinois law, and because respondent exceeded his authority to issue it. Though the Circuit Court has now purported to vacate its Order "as moot" and to base vacatur on another court's appointment of a separate guardian ad litem, this Court should issue a supervisory order directing the Circuit Court to vacate its Order as void and unlawfully entered.

INTRODUCTION

This case concerns an incarcerated pregnant woman, and the Circuit Court's unlawful interference with her medical care at the late stages of her pregnancy. As part of a series of

Circuit Court "admonishments" and vaguely-worded orders compelling Ms. Luster-Hoskins to "cooperate" with her medical care, the Circuit Court overseeing her criminal case took the unprecedented step of appointing a guardian ad litem *sua sponte* to "protect" the rights of her unborn fetus. But bedrock Illinois law establishes that fetuses have no independent legal rights to protect. The Court's Order is thus defective on its face as a matter of law. It is also contradicted by the law governing guardians ad litem and exceeds the jurisdiction of a Circuit Court presiding over a criminal case, all of which adds up to a clear overreach of judicial authority.

In its attempt to safeguard rights that do not exist, the Order trampled the genuine and fundamental rights of Ms. Luster-Hoskins. It contravenes the Illinois Reproductive Health Act and over fifty years of settled case law establishing that pregnant people have a fundamental right to bodily autonomy and medical decision-making free from State interference. It was also profoundly harmful to Ms. Luster-Hoskins. The Order allowed the State to invade her private relationship with her physician, opened her private medical records to review by State-appointed actors, and subjected her to inherently coercive conditions as she attempted to navigate the most crucial phase of her pregnancy. The gravity of the Circuit Court's overreach justifies granting a supervisory order in this case compelling the Circuit Court to vacate its Order immediately as unlawful and void so as to prevent further and ongoing harm.

BACKGROUND

At the time of filing the original motion, Angel Luster-Hoskins had been incarcerated in Vermilion County since June 1, 2022, and was 38 weeks along in her pregnancy. She has two criminal cases pending, one arising out of a charge of First Degree Murder (2022 CF 293) ("Case 293") and another arising out of a charge of Aggravated Battery with a Firearm (2021 CF 748) ("Case 748").

In late October, Ms. Luster-Hoskins met with her obstetrician to discuss her pregnancy and the impending birth of her child. SR at ii.[1] Ms. Luster-Hoskins's obstetrician advised her that there was not a specific medical indication for her to have her labor induced, and that the decision whether to induce was ultimately up to her. *Id.* Ms. Luster-Hoskins decided not to go through with an induction at that time, preferring to go into labor without medical intervention. *Id.* Her obstetrician informed Ms. Luster-Hoskins that County Jail staff had requested that an appointment be scheduled for Ms. Luster-Hoskins to induce on November 21, 2022. *Id.*

A. November 3, 2022 Hearing and Admonishment

Soon after her October appointment Ms. Luster-Hoskins was subjected to an escalating series of intrusions into her medical care by the State, the Court, and Vermilion County jail staff.

On November 3, 2022, the Circuit Court held a hearing on a bond reduction motion filed by the Public Defender representing Ms. Luster-Hoskins in Case 293, and on a motion filed by Ms. Hallie Bezner – Ms. Luster-Hoskins's counsel in Case 748 – seeking Ms. Luster-Hoskins's release pursuant to 725 Ill. Comp. Stat. Ann. 5/110-5.2, which states that pregnant pretrial detainees shall not be required to deliver while in custody without a hearing determining that they pose a real and present threat to the physical safety of a specific person or the public. SR1, SR2. At the hearing, the Circuit Court allowed brief testimony from Ms. Luster-Hoskins about her inability to post bond, and the status of her advanced pregnancy. SR7 – SR12. The Court also entertained argument from the parties regarding the State's contention that releasing Ms. Luster-Hoskins would pose a danger to the public. SR13 – 24. Citing this supposed danger, the Circuit Court denied both motions, requiring Ms. Luster-Hoskins to remain incarcerated through the end of her pregnancy. SR24 – SR27.

[1] "SR" refers to the supporting record filed with this motion and proposed petition.

The State also argued – notwithstanding the successful medical appointment Ms. Luster-Hoskins had completed just days before the hearing – that Ms. Luster-Hoskins was being "uncooperative" regarding her medical care and should be admonished. SR17 – SR18. Specifically, the State's Attorney asked the Circuit Court to "admonish" Ms. Luster-Hoskins to "cooperate for the safety of the child to ensure that she makes her appointments and follows all of the doctor's orders and make sure that she indicates to the jail when she goes into labor so that they can ensure that she is taken care of and is taken to the hospital in an appropriate manner." SR18. In opposing "admonishment" as unnecessary and inappropriate, Ms. Bezner informed the Circuit Court that Ms. Luster-Hoskins was committed to prenatal care, citing the successful appointment with the obstetrician the prior week. SR23. She pointed out that Ms. Luster-Hoskins's next scheduled appointment had been "canceled" only because of Ms. Luster-Hoskins's mandatory attendance at the November 3 hearing. *Id.*

After hearing this testimony and argument, the Circuit Court issued the following admonishment in court:

> And I am going to admonish defendant, you have a duty to your child, as well as to yourself and to society, to protect that child and protect yourself to the full extent of your ability. There are measures in place to provide the assistance you need, but you have to cooperate and you have to treat the correctional people with respect, as well as treat yourself with respect, and your unborn child with respect.
> SR27.

On November 10, the State's Attorney contacted Ms. Bezner to remind her of the court's admonishment and ask Ms. Bezner to "encourage [her] client to cooperate with medical treatment and with jail staff." SR29. Ms. Bezner continued to object to the State's interference with her client's right to make her own decisions regarding her medical care. SR30.

B. November 17, 2022 Hearing and "Re-Admonishment"

On November 16, 2022 the State's Attorney filed an emergency motion to "request the court to re-admonish the defendant to cooperate with jail staff for medical treatment." SR32. The Motion requested that the court re-admonish Ms. Luster-Hoskins to cooperate "for the safety of defendant and the safety of her unborn child." SR34. The Circuit Court scheduled a hearing for 3:30 pm the following day. SR73. Ms. Bezner submitted a response objecting to the motion on the grounds that the Circuit Court had no authority or jurisdiction to order Ms. Luster-Hoskins to undergo any kind of medical care. SR74. Ms. Bezner also objected on the grounds that she was not consulted on the scheduling of the hearing, and was not able to be present to represent her client's interests at the time scheduled. SR 73.

Notwithstanding Ms. Bezner's unavailability, the Circuit Court scheduled a hearing on both of the State's motions. SR 85. The State's Attorney announced at the beginning of the hearing that she was withdrawing her motion as to Case 748, and only pursuing the motion in Case 293. SR86 – SR87. Kaylan Huber, an attorney appearing on Ms. Bezner's behalf due to Ms. Bezner's unavailability, attempted to offer argument against the State's request for "Re-Admonishment," and to provide the Circuit Court with relevant case law underscoring Ms. Luster-Hoskins's right to control her own medical treatment without State interference. SR90. However, the State's Attorney objected to Ms. Huber offering any argument or authority because the State's Attorney had just orally withdrawn her motion in Case 748. *Id.* The Circuit Court sustained the State's objection and refused to allow Ms. Huber to offer any argument or authority. *Id.*

The Circuit Court began questioning Ms. Luster-Hoskins, but she informed the Circuit Court that she wished to speak when her attorney, Ms. Bezner, could be present. SR90 – SR91. The Circuit Court pressed forward with the hearing without Ms. Bezner and without any further

examination of Ms. Luster-Hoskins at all. SR91. The Circuit Court asked the Public Defender assigned to Case 293 whether he had any questions for Ms. Luster Hoskins, and he indicated he did not. *Id.*

Based on the State's Attorney's representations that Ms. Luster-Hoskins was being "uncooperative" regarding her medical care, the Circuit Court proceeded to castigate Ms. Luster-Hoskins for several minutes about her supposed lack of concern for her "unborn child." SR91 – SR94. The Circuit Court stated that "it's clear with that attitude, she doesn't care about her unborn child, but the Court does." SR93. The Circuit Court continued, stating "I don't agree with the fact that she has the right to endanger an unborn child who is at term. That's just not the way the law is, as far as I'm concerned, nor should be." SR92. The Circuit Court went on to state: "Now this honey-cocky attitude from the Defendant about she's all that counts, that doesn't impress me, young lady. You've got another life at stake. You don't seem to recognize that fact." SR93. He concluded the hearing by stating "Young lady, I hope you recognize there are things in this world beyond your own narcissistic lack of care and concern." SR94.

C. The Circuit Court's November 17, 2022 Order Compelling "Cooperation" With Medical Care, and Order Appointing a Guardian Ad Litem For A Fetus

The Circuit Court also issued two *sua sponte* orders during the hearing. The first order was for the State to take Ms. Luster-Hoskins to the hospital without delay. SR93. The Circuit Court stated: "You can take her tonight. She'll have to remain under guard, and she'll have to stay there until the baby is born, and the baby is out of danger. But I'm just not going to be toyed with with an attitude that could jeopardize another life." *Id.* The State's Attorney asked if she could supply an order requiring Ms. Luster-Hoskins to cooperate with the jail's existing appointment to have her labor induced as scheduled on Monday. SR93 – 94. The Circuit Court agreed. SR94.

The Circuit Court also *sua sponte* ordered a guardian ad litem for Ms. Luster Hoskins's fetus: "Now one more thing. I'm also going to appoint a guardian ad litem for the unborn child, and I'm going to appoint Liya Hussmann-Rogers." *Id.*

The docket entry recorded after conclusion of the hearing states: "Court orders defendant to be transported to the hospital until delivery of the unborn child. State to prepare order. Liya Hussman-Rogers is appointed by the Court as Guardian in Litem for unborn child." SR96.

In its written order, issued in Case 293 only, the Circuit Court ordered (1) "That the defendant is ordered to cooperate with the Vermilion County Jail Staff regarding transport to and from medical appointments," and (2) "That the defendant is ordered to cooperate with the Vermilion County Jail and advise staff if she should go into labor prior to and up until she is transported to be induced as previously arranged by jail staff with the hospital." SR99.

D. Confusion and Threats Following Issuance of the Circuit Court's November 17, 2022 Orders

Although the guardian ad litem appointment was not included in the written order, the Circuit Court apparently reached out to Ms. Hussmann-Rogers to inform her of her appointment shortly after the hearing, and to ask her to arrange to gain access Ms. Luster-Hoskins's medical records. SR at ii.

In the days following the November 17 hearing, jail staff repeatedly threatened Ms. Luster-Hoskins that if she did not agree to have her labor induced at her November 21 appointment, she would be held in contempt. SR at ii. As a result of the confusion surrounding the Circuit Court's Order requiring Ms. Luster-Hoskins "to cooperate with the Vermilion County Jail and advise staff if she should go into labor prior to and up until she is transported to be induced…", Ms. Bezner and the ACLU of Illinois filed appearances in Case 293 and filed a Motion for Emergency Clarification of the Court's November 17 Order, specifically requesting

that the Circuit Court clarify that its order should not be read to compel Ms. Luster-Hoskins to undergo a specific medical procedure (induction) as jail staff apparently interpreted. SR100 – 107. This was a matter of particular concern because Ms. Luster-Hoskins wanted to give birth without medical intervention, and only wanted an induction if a physician advised her that it was medically necessary. SR at ii.

On the morning of November 21, 2022, Ms. Luster-Hoskins's physician contacted her by telephone to discuss her upcoming scheduled appointment, and to inquire about her consent to an induction. SR at iv. After discussing medical issues surrounding her pregnancy Ms. Luster-Hoskins informed her physician that she did not want to medically induce labor at that time, but would be amenable to induction after her November 29 due date if necessary, or prior to her due date if it became medically necessary. SR at v. Her physician suggested changing the purpose of her appointment from "induction" to a general pregnancy screening. *Id.* However, jail staff apparently attempted to intervene in the call, placing the doctor on "speaker phone" and claiming a right to hear the contents of the call between Ms. Luster-Hoskins and her doctor. *Id.* Ms. Luster-Hoskins ended the call because of frustration with the interference. *Id.* Jail staff later informed Ms. Luster-Hoskins that her transportation to the hospital had been canceled, and a new appointment had been scheduled for later in the week. *Id.* The Circuit Court ultimately issued a clarified Order that narrowed its scope to cover only Ms. Luster-Hoskins's transportation to the hospital, and her communication of her labor to jail officials. SR124. But this occurred only after the significant confusion and uncertainty described above regarding her on-again, off-again "appointment to induce."

Ms. Luster-Hoskins's situation at the Vermilion County Jail under the guardian ad litem appointment was precarious and uncertain, with multiple State and State-appointed actors

purporting to dictate her private medical care. The State repeatedly sought to "admonish" Ms. Luster-Hoskins to cooperate with medical treatment, and contacted her attorney to emphasize the "admonishments." The Circuit Court twice ordered Ms. Luster-Hoskins to "cooperate" with the medical care the jail arranged for her, (though it recently altered its second admonishment order), and repeatedly chastised Ms. Luster-Hoskins in open court about her medical situation. Ms. Luster-Hoskins – and jail officials – were confused about the extent of the "cooperation" she was required to provide, including to what extent she was required to submit to medical treatment. Indeed, jail staff told Ms. Luster-Hoskins they believe she was court-ordered to induce under penalty of sanction, have attempted to listen in on discussions with her physician, and ultimately appeared to have cancelled her latest appointment without explanation.

It was in the context of the escalating State interference described above that the Circuit Court's Order subjected Ms. Luster-Hoskins to intervention from yet another outside party – a guardian ad litem – who was directed by the Circuit Court to access Ms. Luster-Hoskins's medical records, and who could have no purpose other than to try to direct Ms. Luster-Hoskins's medical care purportedly on behalf of an "unborn child."

On Wednesday, November 23, 2022, Ms. Luster-Hoskins gave birth to a baby girl. On Monday, November 28, 2022, the Circuit Court purported to vacate its guardian ad litem appointment "as moot," and suggested in its order that the vacatur occurred because of another Court's appointment of a second guardian ad litem for Ms. Luster-Hoskins's "minor child." SR125. As the case stands, therefore, Ms. Luster-Hoskins has been subject to two separate guardian ad litem appointments.

ARGUMENT

Article VI, section 16 of the Illinois Constitution vests this Court with supervisory authority over all lower courts of this state. ILL. CONST. Art. VI, § 16. The Court's supervisory authority is "unlimited in extent and hampered by no specific rules. 'It is bounded only by the exigencies which call for its exercise.'" *Vasquez Gonzalez v. Union Health Serv., Inc.*, 2018 IL 123025, ¶ 15 (quoting *In re Estate of Funk*, 221 Ill. 2d 30, 97-98 (2006)). The Supreme Court generally will issue a supervisory order only when the normal appellate process will not afford adequate relief and the dispute "involves a matter important to the administration of justice, or intervention is necessary to keep an inferior tribunal from acting beyond the scope of its authority." *Burnette v. Terrell*, 232 Ill. 2d 522, 545 (2009). The Supreme Court has granted supervisory orders in cases involving "grave concerns about the procedures employed" that "warrant correction." *City of Urbana v. Andrew N.B.*, 211 Ill. 2d. 456, 470 (2004).

We present here a matter where Supreme Court intervention is necessary both to correct an inferior tribunal's action beyond its authority and to ensure the administration of justice. By appointing a guardian ad litem for Petitioner Luster-Hoskins's fetus, the Circuit Court clearly exceeded its authority, inventing a judicial power to appoint a guardian ad litem to an unborn fetus. As outlined below, this action not only has no basis in the law governing such appointments, but is brazenly and fundamentally at odds with Illinois statutory and common law establishing the reproductive rights of pregnant people, and put Ms. Luster-Hoskins's most personal of rights – the right to bodily autonomy – at grave risk.

The consequences of this unauthorized action are profound. An order allowing the appointment of a guardian ad litem to a fetus to stand undermines both the Illinois Reproductive Health Act and over fifty years of settled case law stating that pregnant people have a right to

bodily autonomy and medical decision-making, risking the orderly administration of justice. As the Circuit Court record currently stands, Ms. Luster-Hoskins, a competent adult, was subject to the oversight of a Court-ordered guardian over a fetus inside her own body, with no indication that the Circuit Court's egregious appointment was in any way improper. As long as this situation persists uncorrected, Ms. Luster-Hoskins's rights, and the rights of all people who are pregnant and incarcerated in the State of Illinois, are at further risk of violation.

I. A Supervisory Order is Appropriate Because the Circuit Court Acted Beyond the Scope of Its Authority in Appointing a Guardian ad litem for a Fetus.

The Circuit Court's order appointing a guardian ad litem to Ms. Luster-Hoskins' fetus is a gross violation of Illinois law, and an improper reach of the Circuit Court's authority.

A. A Fetus Does Not Have Independent Rights Under Illinois Law.

A guardian ad litem cannot represent a fetus. It is that simple. "A fertilized egg, embryo, or fetus does not have independent rights under the laws of this state." 775 Ill. Comp. Stat. Ann. 55/1-15(c). Thus, there are no interests for the guardian ad litem to represent in this case.

Even before the General Assembly codified this basic proposition, this Court made clear in *Stallman v. Youngquist*, 125 Ill. 2d 267, 277 (1988), that "the law will not treat a fetus as an entity which is entirely separate from its mother." In that case, the Court considered whether a cause of action could be brought by or on behalf of a fetus against its mother for unintentional infliction of prenatal injuries. *Id.* The Court held that no such claim could exist under Illinois law, writing:

> It would be a legal fiction to treat the fetus as a separate legal person with rights hostile to and assertable against its mother. The relationship between a pregnant woman and her fetus is unlike the relationship between any other plaintiff and defendant. No other plaintiff depends exclusively on any other defendant for everything necessary for life itself. No other defendant must go through biological changes of the most profound type, possibly at the risk of her own life, in order to bring forth an adversary into the world. It is, after all, the whole life of the pregnant

woman which impacts on the development of the fetus.

Id. at 278-79.

Applying *Stallman*, the court in *In re Brown*, reversed the appointment of a temporary custodian for a fetus to consent to medical procedures against the pregnant woman's wishes and the appointment of the public guardian as a guardian ad litem for the fetus. 294 Ill. App. 3d 159 (1st Dist. 1997). In reaching its decision, the court recognized that it "cannot separate the mother's valid treatment refusal from the potential adverse consequences to the viable fetus." *Id.* at 171. *See In re Baby Boy Doe*, 260 Ill. App. 3d 392, 401 (1st Dist. 1994) (holding that a cesarean section cannot be compelled because "[t]he potential impact upon the fetus is not legally relevant; to the contrary, the *Stallman* court explicitly rejected the view that the woman's rights can be subordinated to fetal rights").[2] *Stallman* and the cases that follow lead to the inescapable conclusion that no "guardian" can be appointed to protect the rights of an entity with no legal rights to protect.

B. Appointing a Guardian ad Litem For a Fetus Violates A Pregnant Person's Fundamental Right to Autonomous Health Care Decision-Making.

There can be no purpose of a guardian ad litem in this case other than for that guardian ad litem to second-guess or attempt to assert interests at odds with what Ms. Luster-Hoskins wanted, trampling on her fundamental right to make independent medical decisions regardless of the effect of those decisions on her pregnancy. The Illinois Reproductive Health Act provides, in relevant part, that "[e]very individual has a fundamental right to make autonomous decisions about the individual's own reproductive health, including the fundamental right to use *or refuse* reproductive health care." 775 Ill. Comp. Stat. Ann. 55/1-15(a) (emphasis added). "Reproductive

[2] When Ms. Haber attempted to bring this case to the Court's attention at the November 17 hearing, she was not permitted to do so. SR90.

health care" includes healthcare related to labor and childbirth, and all such care "shall be subject to the informed and voluntary consent of the patient." 775 Ill. Comp. Stat. Ann. 55/1-10. The government may not interfere with the fundamental rights set forth in the Reproductive Health Act, *including as to individuals in government custody*. 775 Ill. Comp. Stat. Ann. 55/1-20(a)(1) (emphasis added).

The Reproductive Health Act codified rights already well-established in Illinois case law for pregnant people to exercise independent judgment in their medical care, regardless of the impact on the fetus. *In re Baby Boy Doe*, 260 Ill. App. 3d at 393 (holding that "a woman's competent choice to refuse medical treatment as invasive as a cesarean section during pregnancy must be honored, even in circumstances where the choice may be harmful to her fetus"); *In Re Brown*, 294 Ill. App.3d at 170 (holding that "the State may not override a pregnant woman's competent treatment decision, including refusal of recommended invasive medical procedures, to potentially save the life of the viable fetus").

Federally, the 14th Amendment's due process clause confers a right to refuse medical treatment that extends to people who are incarcerated. *See Knight v. Grossman*, 942 F.3d 336, 342 (7th Cir. 2019) (citing *Cruzan v. Director, Missouri Dept. of Health*, 497 U.S. 261 (1990), and *Washington v. Harper*, 494 U.S. 210, 221 (1990)). In interpreting this right, federal courts have recognized that it must be equally honored with respect to pregnant women. *See In re A.C.*, 573 A.2d 1235, 1243 (D.C. Ct. App. 1990) ("It has been suggested that fetal cases are different because a woman who has chosen to lend her body to bring [a] child into the world has an enhanced duty to assure the welfare of the fetus, sufficient even to require her to undergo caesarean surgery. Surely, however, a fetus cannot have rights in this respect superior to those of a person who has already been born.") (internal quotations and citations omitted.).

In making appointment of a guardian ad litem for a fetus, the Circuit Court acted so far outside its authority that it violated both statutory law and fundamental rights enshrined in statute, common law, and the United States Constitution.

C. The Circuit Court Lacked Jurisdiction to Appoint a Guardian Ad Litem *Sua Sponte* in the Criminal Cases Before It.

In addition to its prohibition by settled law, the Circuit Court's *sua sponte* appointment exceeded its authority because the appointment lacks any independent legal basis.

First, the Court was not permitted to appoint a guardian ad litem to interfere with the medical choices of a competent adult. "It is axiomatic that, under Illinois law, an adult is presumed to be competent to manage his or her legal affairs until the contrary is shown," and this principle that extends to decisions about medical care. *J.H. v. Ada S. McKinley Community Services, Inc.*, 369 Ill. App. 3d 803, 808-809 (1st Dist. 2006) (citations omitted). There has been no suggestion that Ms. Luster-Hoskins is not competent to make her own medical decisions, much less any specific adjudication of incompetence as would be required to permit the appointment of a guardian ad litem to oversee those decisions. *Id.*

Second, the Circuit Court's appointment is contrary to the statutes governing guardian ad litem appointments for minors, which are facially inapplicable to fetuses. The Illinois Marriage and Dissolution of Marriage Act, which authorizes appointment of a guardian ad litem in proceedings "involving the support, custody, visitation, allocation of parental responsibilities, education, parentage, property interest, or general welfare of a minor…" requires that a court-appointed guardian ad litem "interview" the minor in question, thus clearly indicating that it cannot apply to a fetus. 750 Ill. Comp. Stat. Ann. 5/506(a)(2). The Juvenile Court Act, the Illinois law governing guardian ad litem appointments in criminal matters involving minors, defines "minors" as either children under 18 years of age, minors 18 years of age or older, or

newborn infants. 705 Ill. Comp. Stat. Ann. 405/2-17(3); 705 Ill. Comp. Stat. Ann. 405/2-3. The statute further requires that an appointed guardian ad litem "have a minimum of one in-person contact with the minor." As it is impossible to schedule an in-person meeting with a fetus, the statute simply does not allow for the Circuit Court's guardian ad litem appointment, either.

Further, the Circuit Court did not have jurisdiction to appoint a guardian ad litem for a "minor" in any event without instituting an action to do so. In *City of Chicago v. Chicago Board of Education*, the court held that the trial court exceeded its subject matter jurisdiction by making a *sua sponte* appointment of a guardian ad litem for the students of a school who were exposed to lead poisoning in an action for a municipal ordinance violation. 277 Ill. App. 3d 250, 260 (1st Dist. 1995). In making this determination, the court observed that Illinois courts have recognized that judges' authority to appoint a guardian ad litem is not absolute:

> Absent some statutory provision to the contrary, a court treats a minor as its ward only when some suit is instituted relative to the person or property of the minor, and the minor is served with process. The appointment of a guardian ad litem for a minor who has not been joined as a party and who has not been served with a summons does not vest a court with jurisdiction over the person of the minor.

Id. at 261.

The Supreme Court has recognized that supervisory authority is appropriate where courts make appointments outside of the enabling statutory authority for such appointments. In *Doherty v. Caisley*, the Supreme Court directed the Circuit Court to vacate an order appointing a public defender from a different county in a civil case in contravention of the Public Defender Act, finding that it had exceeded its legal authority. 104 Ill. 2d 72, 78 (1984). The Circuit Court's *sua sponte* order here appointing a guardian ad litem to protect non-existent rights of an entity with no independent legal existence, and in a manner with no legal basis and in direct conflict with established law, was an even more egregious overreach of authority.

II. A Supervisory Order is Appropriate Because This Case Presents Matters Important to the Administration of Justice.

A supervisory order must issue because of the serious issues implicated by the Circuit Court's overreach. First, the Circuit Court's order thwarts the clear public policy of this State as codified in the Reproductive Health Act to promote autonomous decision-making in matters of reproductive healthcare without government interference. The fact of Ms. Luster-Hoskins's incarceration makes it even more important – not less so – that her autonomy be respected. *See* Am. College of Obs. and Gyn. Committee Opinion No. 830, Reproductive Health Care for Incarcerated Pregnant, Postpartum, and Nonpregnant Individuals (July 21, 2021) ("[I]ncarceration is inherently coercive in nature and restricts people's sense of autonomy, and [clinicians must] work to ensure that they respect and actively promote patients' autonomy in health care decision making.").

Moreover, the Circuit Court's Order and the hearing that led to it contravene this State's clear public policy of protecting medical privacy. "The confidentiality of personal medical information is, without question, at the core of what society regards as a fundamental component of individual privacy." *Kunkel v. Walton*, 179 Ill. 2d 519, 537 (1997) (holding that Illinois constitutional right to privacy protects medical information). Yet, at 38-weeks pregnant, Ms. Luster-Hoskins was called to the stand to account for her medical choices before a judge handling her criminal cases. The guardian ad litem (and potentially the judge) also had the opportunity to gain access to Ms. Luster-Hoskins's private and confidential medical records. The only possible purpose of the guardian ad litem was to opine on and exert influence over Ms. Luster-Hoskins's reproductive health care, including potentially whether she should be induced for labor.

The Circuit Court's Order also impermissibly intruded into the physician-patient relationship, leaving several questions unanswered. Was Ms. Luster-Hoskins's physician expected to reveal confidential communications to the guardian ad litem, even though the law governing patient-physician privilege contains no exception that would permit disclosure to a guardian ad litem in this situation? *See* 735 Ill. Comp. Stat. Ann. 5/8-802. Was she required to cooperate with an investigation? Was she required to allow the guardian ad litem in the exam room? Could Ms. Luster-Hoskins's physician—who is required by both medical ethics and the law to perform procedures only after obtaining informed consent or be at risk for discipline or liable for medical battery—be compelled to comply with the guardian ad litem's recommendations? Conduct that threatens the physician-patient relationship in this way directly contravenes public policy. *Petrillo v. Syntex Lab'ys, Inc.*, 148 Ill. App. 3d 581, 588 (1st Dist. 1986) ("public policy strongly favors both the confidential and fiduciary nature of the physician-patient relationship").

These concerns are compelling for Ms. Luster-Hoskins to be sure, but the Circuit Court's egregious Order is also a matter of general importance, having the potential to affect a significant number of people if courts are permitted to intrude unchecked on their bodily autonomy. The United States has 30% of the world's female incarcerated population, despite having only 4% of the world's female population overall, with the rate of increase in women incarcerated since the 1980s far outpacing that of men. *See* Carolyn Sufrin, *et al.*, Pregnancy Outcomes in US Prisons, 2016-2017, Am. J. of Pub. Health (Apr. 10, 2019). Three quarters of incarcerated women are of childbearing age, and up to 80% of incarcerated women report that they had been sexually active with men in the three months before their incarceration. *Id.* It is imperative to protect the rights of this vulnerable population.

Finally, given the lack of appellate review of the order appointing the guardian ad litem, supervisory authority is appropriate in this case. The legal status of the Circuit Court's Order is not clear here, and certainly does not give rise to any clear right to immediate appellate review. The path to immediate resolution is made even less clear by the Court's entry of the order in only one of two companion cases against Ms. Luster-Hoskins, brought about as a result of a dubious procedural maneuver by which Ms. Luster-Hoskins was deprived of representation by her attorney, Ms. Bezner, who already had filed a written objection to any interference in Ms. Luster-Hoskins's ability to control her own medical care. Indeed, it is made even less clear by the Circuit Court's attempt to evade review by voluntarily vacating the Order while simultaneously opining on the reason for its vacatur – claiming it was "mooted" by a competing guardian ad litem order, rather than acknowledging that it was patently unlawful according to settled statutory and common law.

III. The Circuit Court's Vacatur of the Order "As Moot" Does Not Resolve the Question Presented by this Motion.

In its November 28, 2022 Order, the Circuit Court purported to "vacate[] as moot" its appointment of a guardian ad litem for Ms. Luster Hoskins's fetus, and explicitly cited a separate "Shelter Care hearing," and the consequent appointment of a second guardian ad litem, as the basis for its order. SR125. However, this qualified vacatur of the original order does not render the appointment "moot" for purposes of this Motion. A question is moot "if no controversy exists or if events have occurred which foreclose the reviewing court from granting effectual relief to the complaining party." *In re Shelby R.*, 2013 IL 114994, ¶ 15. In other words, "[m]ootness occurs once the plaintiff has secured what he basically sought and a resolution of the issues could not have any practical effect on the existing controversy." *Hanna v. City of Chicago*, 382 Ill. App. 3d 672, 677 (1st Dist. 2008). Ms. Luster-Hoskins certainly has not "secured what she

basically sought," which is a determination that the Circuit Court's appointment was a profound violation of her rights. To the contrary, the Circuit Court's qualified vacatur of its improper Order – explicitly undertaken in deference to a *second* guardianship order – threatens permanently to bake the illegal guardianship appointment into the record of her ongoing criminal case. Public court records currently reflect that Ms. Luster-Hoskins has been adjudicated to submit to the oversight of *two* guardians, not one, and there is no indication that the first appointment was an unprecedented and unlawful arrangement. This has the potential to cloud future proceedings relating to the custody of her two children, not to mention her ongoing criminal proceedings. Even where the material condition underlying the relief has changed, "there may be life in an appeal where a 'decision could have a direct impact on the rights and duties of the parties.'" *Balmoral Racing Club, Inc. v. Illinois Racing Board*, 151 Ill. 2d 367, 387 (1992), as is the case here.

Moreover, even if the request for relief was moot, the public interest exception to mootness would apply here. The public interest exception "allows a court to decide a moot case when (1) the question presented is substantially of a public nature, (2) there is a need for an authoritative determination for future guidance of public officers, and (3) there is a likelihood that the question will recur in the future." *In re Torry G.*, 2014 IL App (1st) 130709, ¶ 27. The question presented here – whether a Circuit Court may appoint a guardian ad litem for a fetus – is of a public nature, as it involves infringement on Ms. Luster-Hoskins' most personal and fundamental rights. *See, e.g., People ex rel. Wallace v. Labrenz* 411 Ill. 618, 623 (1952) (finding public interest exception applied to consent to blood transfusion for an infant over infant's parents' religious objections, noting the "highly sensitive area in which governmental action comes into contact with the religious beliefs of individual citizens."). *See also People ex rel.*

Illinois Dep't. of Corr. v. Millard, 335 Ill. App. 3d 1066, 1070 (4th Dist. 2003) ("the issue of whether the Department must force-feed a starving inmate against his will or allow the inmate to starve to death while committed to the Department is a matter of public importance"); *In re E.G.*, 133 Ill. 2d 98, 105-106 (1989) (finding that question of whether a minor has a right to refuse medical treatment was of a public nature and justified examining case under the public interest exception). Indeed, the Circuit Court's Order's violation of a clearly established statute (the Reproductive Health Act) – on a matter of broad public importance – itself counsels in favor of applying the public interest exception. *See Lakewood Nursing and Rehab. Ctr. v. Dep't of Pub. Health*, 2015 IL App (3d) 140899, ¶ 25 (holding that "any time a State agency exceeds its statutory authority, it is a matter of public concern").

There is also a demonstrated "need for an authoritative determination" of the impropriety of the Circuit Court's Order for the "future guidance" of the Circuit Court and other judges. The Circuit Court itself suggested a misunderstanding of Ms. Luster-Hoskins's rights, and a likelihood of entering similar orders in the future. During the November 17, 2022 hearing that led to the unlawful Order, the Circuit Court stated that while it understood the "argument" that Ms. Luster-Hoskins had a right to make decisions about her medical treatment, it continued that "I don't agree with the fact that she has the right to endanger an unborn child who is at term. That's just not the way the law is, as far as I'm concerned, nor should be." SR92. The Order itself solidified the Circuit Court's misunderstanding of the law. This Court should issue a supervisory order to clear up any confusion on this key civil rights issue, both for the Circuit Court below and for future judges in the position to consider appointment of guardians at litem for pregnant people. *See, e.g., In re Rob W.*, 2021 IL App (1st) 200149, ¶ 56 (finding need for authoritative determination for future guidance to instruct trial judges on whether they are

authorized to impose a period of involuntary medication longer than that requested in the original petition).

Given the growing population of incarcerated pregnant people as discussed above, not to mention pregnant peoples' appearance as litigants before Illinois courts in a variety of contexts, it is also likely that the question of whether a court may appoint a guardian ad litem for a fetus will recur in the future. In these future scenarios, because of the time limitations inherent to pregnancy, pregnant people who are incarcerated are unlikely to be able to obtain appropriate relief before giving birth. *See People ex rel. Wallace v. Labrenz*, 411 Ill. 618, 623 (1952) (holding that public interest exception should be applied because "the very urgency which presses for prompt action by public officials makes it probable that any similar case arising in the future will likewise become moot by ordinary standards."). Generally speaking, the scope and limits of guardianship rights are an important and frequently-litigated topic where Illinois courts have seen fit to apply the public interest exception as recently as this year. *See, e.g.*, *In re V.C.*, 2022 IL App (4th) 210484, ¶ 25 (2022) (even where court order terminated parental rights of child's relative, public interest exception applied because "it is not uncommon for a child to live with a relative other than his or her parents" and authoritative guidance on scope of those rights was important.).

CONCLUSION

The Circuit Court's Order appointing a guardian ad litem lacks any legal basis and purports to protect rights that do not exist under Illinois law. It also violates settled legal principles and tramples on fundamental rights, and caused immediate harm to Ms. Luster-Hoskins while threatening to more broadly undermine the right of pregnant people to control their own medical care. The Order is a gross abuse of the Circuit Court's authority, and this

Court should issue a supervisory order directing the Circuit Court to vacate its November 17, 2022 Order appointing a guardian ad litem as void and unlawfully entered.

DATED: November 30, 2022

Respectfully submitted,

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VERIFICATION BY CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Kevin M. Fee
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