

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

BRENT SWALLERS ON BEHALF	)	
OF ABIGAIL SWALLERS,	)	
	)	
Petitioner,	)	
vs.	)	No. 1:15-cv-01560-TWP-MJD
	)	
MARILYN MOORES, et al.,	)	
	)	
Respondents.	)	

**Entry Denying Motion for Writ of Error**

Brent Swallers, the father of infant Abigail Swallers, filed a next friend petition for writ of habeas corpus on behalf of Abigail Swallers after certain events occurred in a proceeding docketed as No. 49D091509-JC-2845 in the Juvenile Division of the Marion Superior Court. He did so without counsel. The Seventh Circuit Court of Appeals has ruled that a pro se litigant may not bring an action as next of friend. Accordingly, the next friend petition for writ of habeas corpus on behalf of Abigail Swallers was dismissed without prejudice. Mr. Swallers was invited to revive the next friend claim on behalf of Abigail Swallers within 60 days of October 19, 2015 by securing counsel to represent him. His deadline for doing so expired without such an effort.

The claim for habeas corpus relief brought by Brent Swallers himself was dismissed for lack of jurisdiction because he failed to satisfy the “in custody” requirement.

Final Judgment was entered on the clerk’s docket on December 23, 2015. Two days before the entry of such judgment, however, Mr. Swallers filed a *motion for writ of error*, wherein he argues that (1) the Entry issued on December 16, 2015 was improperly issued and docketed, (2) an order should be issued requiring that Abigail Swallers be returned to the custody of her family,

(3) the undersigned should recuse, and (4) the undersigned should be understood as being in indirect contempt of court under Indiana statutes.

"Final judgment necessarily denies pending motions . . ." *Dunn v. Truck World, Inc.*, 929 F.2d 311, 313 (7th Cir. 1991). That is a sufficient basis on which to deny relief sought in the *motion for writ of error* filed on December 21, 2015. It is an equally sufficient basis to deny such relief to note that the *motion* is entirely without merit, is contrary to the prior rulings and development in this action, and is based on wholly inapplicable principles.

The *motion for writ of error* [dkt 30] is **DENIED**.

IT IS SO ORDERED.

Date: 1/11/2016



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TANYA WALTON PRATT, JUDGE  
United States District Court  
Southern District of Indiana

Distribution:

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