

IN THE SUPREME COURT OF OHIO

In The Matter Of:

John Steele, et al.

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Case No.

07 - 1310

On Appeal from the  
Cuyahoga County Court  
of Appeals, Eighth  
Appellate District

Court of Appeals  
Case No. 89494

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APPELLANT'S MOTION FOR IMMEDIATE STAY  
OF COURT OF APPEALS' JUDGMENT

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IN THE SUPREME COURT OF OHIO

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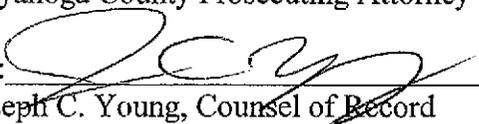
APPELLANT'S MOTION FOR IMMEDIATE STAY  
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Now comes Appellant Cuyahoga County Department of Children and Family Services (hereinafter referred to as "CCDCFS"), by and through counsel, and, pursuant to S. Ct. Prac. R. II, Section 2(A)(3)(a) and S. Ct. Prac. R. XIV, Section 4, moves this Honorable Court for an immediate stay of execution of the judgment of the Eighth District Court of Appeals announced on July 5, 2007 in *In re John Steele, et al.*, Cuyahoga App. No. 89494, and entered on July 16, 2007, which judgment dismisses the appeal filed in the underlying matter by CCDCFS. The reasons for this Motion are more fully stated in the Brief attached hereto and made a part hereof, as if fully rewritten herein.

Respectfully submitted,

WILLIAM D. MASON, ESQ.  
Cuyahoga County Prosecuting Attorney

By:   
Joseph C. Young, Counsel of Record  
Assistant Prosecuting Attorney  
COUNSEL FOR APPELLANT  
CUYAHOGA COUNTY DEPARTMENT  
OF CHILDREN & FAMILY SERVICES

## BRIEF IN SUPPORT

The children in question were removed from their home on December 8, 2004, and have been in agency custody for over two and a half years. The children have remained in foster placement since that time, and are now ages seventeen and fourteen. Throughout their involvement with foster care, the children have remained in the same foster home for their entire period of removal. On November 4, 2005, CCDCFS filed a *Motion to Modify Temporary Custody to Permanent Custody* with regard to the children. Following the proceedings in the trial court, CCDCFS' motion for permanent custody was denied and the trial court ordered that the children remain in the temporary custody of CCDCFS.

CCDCFS filed a timely appeal of said order, yet on July 5, 2007, the Eighth District Court of Appeals granted Appellee Karen Steele's Motion to Dismiss per R.C. 2505.02. The resulting order of dismissal was announced on July 5, 2007 and journalized on July 16, 2007. The practical result of this ruling is that CCDCFS has been denied its right as a party to the action and as a movant to prosecute an appeal of an adverse judgment on the merits of its motion before the trial court. Appellant CCDCFS submits that the reviewing court erroneously dismissed CCDCFS' appeal of the trial court order denying permanent custody and ordering the continuation of temporary custody, and that the dismissal of said appeal is contrary to law. See *In re Murray* (1990), 52 Ohio St.3d 155, 556 N.E.2d 1169, which notes that "a further dispositional order continuing an original temporary custody order, issued pursuant to Juv.R. 34, constituted a final appealable order." *Id.*, 52 Ohio St.3d at 159 (fn. 2), citing as support therefore the case of *In re Patterson* (1984), 16 Ohio App.3d 214, 16 OBR 229, 475 N.E.2d 160. Appellant further submits that, if the instant Motion for Stay is not granted, the trial court will be required to commence further proceedings on the merits, which could,

as a practical matter, render any present assignments of error moot and thereby prevent CCDCFS from exercising its right to appeal the adverse ruling at the trial court.

In *Mills v. Green*, 159 U. S. 651, 653, 16 Sup. Ct. 132, 133, 40 L. Ed. 293, Mr. Justice Gray says: ‘The duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it. It necessarily follows that when, pending an appeal from the judgment of a lower court and without any fault of the defendant, an event occurs which renders it impossible for this court, if it should decide the case in favor of the plaintiff, to grant him any effectual relief whatever, the court will not proceed to a formal judgment, but will dismiss the appeal.

*Miner v. Witt* (1910), 82 Ohio St. 237, 238, 92 N.E. 21. See also *In re Nice*, supra (wherein reviewing court noted that “any issues concerning an extension of temporary custody essentially become moot after a court grants an agency’s motion for permanent or legal custody.” Id., 141 Ohio App.3d at 558-559); *In re Brown*, Columbiana App. No. 04 CO 59, 2005-Ohio-4374 (“Furthermore, the right asserted here is that of the child, not that of the mother. Thus, we do not evaluate potential prejudice to the mother’s case. And, this child has since turned eighteen. Consequently, her custody is moot.” Id., 2005-Ohio-4374 at ¶43.). Cf. *In re Murray*, supra (“Even if the court eventually terminates the temporary custody order and returns the child to his or her parents pursuant to R.C. 2151.415, the initial determination of neglect or dependency will not then be in issue.” Id., 52 Ohio St.3d at 158.).

Therefore, unless this Court grants an immediate stay of the reviewing court’s dismissal order, there will be no impediment to the trial court’s proceeding with further hearings and rendering any appeal by CCDCFS moot, even if said appeal is later reinstated by this Honorable Court.

Additionally, the present matter involves termination of parental rights and is therefore subject to expedited processing by this Honorable Court pursuant to S. Ct. Prac. R. IX, Section 4 and S. Ct. Prac. R. XI, Section 1. The resolution of this matter by this Honorable Court should be extremely expeditious in that the identical issue presented in this matter has already been accepted for review, briefed and argued before this Honorable Court in the case of *In re Adams*, Case No. 2006-1695, which matter has been submitted to the Court for decision. This Honorable Court can therefore accept this case for review and hold it for the *Adams* decision, which will likely issue in the very near future. As such, the granting of a stay in this matter would not pose undue hardship upon the parties to this matter, nor will it promote undue delay or endanger the best interests of the children at issue, who remain in agency custody pending further order of the court.

WHEREFORE, based upon the foregoing, CCDCFS moves this Court to grant its Motion for Immediate Stay of Execution of the July 16, 2007 Order of dismissal pending review of this matter. Copies of the orders being appealed are attached hereto as required by S. Ct. Prac. R. II, Section 2(A)(3)(a)(ii) and by S. Ct. Prac. R. XIV, Section 4(A). Pursuant to R.C. 2505.12, no bond is required of Movant.

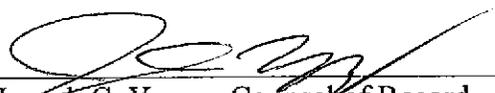
Respectfully submitted,

WILLIAM D. MASON, ESQ.  
Cuyahoga County Prosecuting Attorney

By:   
Joseph C. Young, Counsel of Record  
Assistant Prosecuting Attorney  
COUNSEL FOR APPELLANT  
CUYAHOGA COUNTY DEPARTMENT OF  
CHILDREN AND FAMILY SERVICES

Proof of Service

I certify that a copy of this *Motion for Immediate Stay of Court of Appeals' Judgment* was sent by ordinary U.S. mail to Appellee Karen Steele through attorney John H. Lawson, Esq., 4403 St. Clair Avenue, Cleveland, Ohio 44103, to Appellee John Gooch through attorney Thomas Kozel, Esq., P.O. Box 534, North Olmsted, Ohio 44070, to the appellees children through attorney Michael Granito, Esq., 24400 Highland Road, Richmond Heights, Ohio 44143 and to the children's guardian ad litem Linda Julian, Esq., P.O. Box, 93523, Cleveland, Ohio 44101, on this 18<sup>th</sup> day of July, 2007.

  
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Joseph C. Young, Counsel of Record  
Assistant Prosecuting Attorney

JUL 16 2007

# Court of Appeals of Ohio, Eighth District

County of Cuyahoga  
Gerald E. Fuerst, Clerk of Courts

IN RE: JOHN STEELE, ET AL.

Appellee

COA NO.  
89494

LOWER COURT NO.  
AD 04901713  
AD 04901714

JUVENILE COURT DIVISION

MOTION NO. 398270

Date 07/05/07

Journal Entry

SUA SPONTE, APPEAL IS DISMISSED PER ENTRY NO. 397892.

**FILED AND JOURNALIZED  
PER APP. R. 22(E)**

**JUL 16 2007**

**GERALD E. FUERST  
CLERK OF THE COURT OF APPEALS  
BY: [Signature] DEP.**

**ANNOUNCEMENT OF DECISION  
PER APP. R. 22(B), 22(D) AND 26(A)  
RECEIVED**

**JUL - 5 2007**

**GERALD E. FUERST  
CLERK OF THE COURT OF APPEALS  
BY: [Signature] DEP.**

Adm. Judge, FRANK D. CELEBREZZE, JR.,  
Concurs

[Signature]  
Judge JAMES J. SWEENEY

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also S.Ct.Prac.R. II, Section 2(A)(1).

FRANK MARRIOTT COUNSEL  
FOR ALL COUNTY COURTS TAXED

# Court of Appeals of Ohio, Eighth District

County of Cuyahoga  
Gerald E. Fuerst, Clerk of Courts

IN RE: JOHN STEELE, ET AL.

Appellee

COA NO.  
89494

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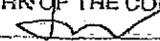
Journal Entry

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MOTION BY APPELLEE, KAREN STEELE, TO DISMISS PER R.C. 2505.02 IS GRANTED.

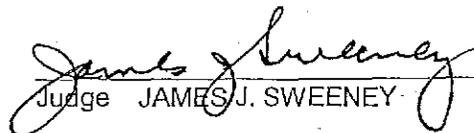
**RECEIVED FOR FILING**

JUL - 5 2007

**GERALD E. FUERST**  
CLERK OF THE COURT OF APPEALS  
BY  DEP.

Adm. Judge, FRANK D. CELEBREZZE, JR.,  
Concurs

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Judge JAMES J. SWEENEY

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NOTICE MAILED TO COUNSEL  
FOR ALL PARTIES-COSTS TAXED