

ORIGINAL

IN THE SUPREME COURT OF OHIO

10-0815

In re Cory Johnson :
: **On Appeal from the Cuyahoga County**
and : **Court of Appeals, Eighth Appellate**
: **District**
In re Mikesean D'Mario Berachum :
: **Court of Appeals**
: **Case Number 94210**
: **(Consolidated with Case Number 94233)**

MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT SYLVIA PASLEY

Marc L. Stolarsky (0066008) (COUNSEL OF RECORD)
Marc L. Stolarsky Law, LLC
P.O. Box 24221
Cleveland, Ohio 44124
Tel. No. 440-655-2342
Fax No. 440-448-4661
Email: MARC@MLSLaw.Net

COUNSEL FOR APPELLANT, SYLVIA PASLEY

Ms. Gina S. Lowe, Esq. (0080036) (COUNSEL OF RECORD)
Assistant Prosecuting Attorney
Office of Cuyahoga County Prosecutor Bill Mason
4261 Fulton Parkway
Cleveland, Ohio 44144
Tel. No. 216-635-3761
Fax No. 216-635-3879
Email: P4GXL@cuyahogacounty.us

FILED
MAY 07 2010
CLERK OF COURT
SUPREME COURT OF OHIO

COUNSEL FOR APPELLEE, CUYAHOGA COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES

Ms. Carla L. Golubovic, Esq. (0061954)

P.O. Box 29127

Parma, Ohio 44129

P.O. Box 29127

Parma, OH 44129

Office Phone: 216-310-5441

Email: cgolubovic@aol.com

GUARDIAN AD LITEM FOR CORY JOHNSON
AND MIKESEAN D'MARIO BERACHUM

TABLE OF CONTENTS

EXPLANATION OF WHY THIS CASE IS OF PUBLIC AND GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION	<u>Page</u> 1
STATEMENT OF THE CASE AND FACTS	2
ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW	6

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

<u>Proposition of Law No. I: Pursuant to the Due Process Clause of the Fourteenth Amendment to the United States Constitution and the Article I, Section 16 of the State of Ohio Constitution Appellant was unconstitutionally denied her right to intervene as a party</u>	6
--	---

CONCLUSION	11
------------------	----

APPENDIX	Apprx. Page
Notice of Appeal to the Ohio Supreme Court (May 6, 2010)	12
Opinion of the Cuyahoga County Court of Appeals (March 26, 2010)	14

TABLE OF AUTHORITIES

	<u>Page</u>
<u>CASES:</u>	
<i>Blakemore v. Blakemore</i> , 5 Ohio St.3d 217, 219, 450 N.E.2d 1140, 1142 (1983)	8
<i>GTE Automatic Electric v. ARC Industries</i> (1976), 47 Ohio St.2d 146	1
<i>In re Estate of Bednarckzuk. et al.</i> , 80 Ohio App.3d 548	8
<i>In re Parsons</i> (May 29, 1996), Lorain App. No. 95CA006217, unreported	10
<i>In re Rundio</i> , No. 92CA35, 1993WL379512 (Ohio App. 4 Dist., 1993)	10
<i>In the Matter of Rhonda Zhang</i> (June 10, 1999), Cuyahoga App. No. 73001, unreported	11
<i>In re Spears</i> (December 10, 1984), Athens App. No. 1200, unreported	10
<i>Norton v. Sanders</i> (1989), 62 Ohio App.3d 39	9
<i>Peterman v. Village of Pataskala</i> (1997), 122 Ohio App.3d 758, 702 N.E.2d 965	8
<i>Smith v. Organization of Foster Families</i> (1977), 431 U.S. 816, 53 L.Ed.2d 14	9, 10

CONSTITUTIONAL PROVISIONS; STATUTES:

	<u>Page</u>
U.S. Const. Amend. XIV	1
State of Ohio Constitution	1, 8
Ohio Civil Procedure Rule 24	8, 9
Ohio Civil Procedure Rule 24(A)(2)	9
Ohio Civil Procedure Rule 24(B)	10
Ohio Revised Code Chapter 2151	10
Ohio Revised Code Section 2151.04	4, 5
Ohio Revised Code Chapter 2152	10
Ohio Revised Code Section 2151.01	10

Ohio Revised Code Section 2151.28 9
Ohio Revised Code Section 2151.281 9
Ohio Revised Code Section 2151.353 9
Ohio Revised Code Section 3109.28 9
Ohio Revised Code Section 5153.16(B)(4) 9
Ohio Juvenile Court Rule 2(16) 8

AUTHORITIES:

Kurtz and Giannelli, Ohio Juvenile Law (1996-97) Section 13.01 10

EXPLANATION OF WHY THIS CASE IS CASE OF PUBLIC AND GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION

The issues in this matter are of great public and general interest and involve substantial constitutional questions of the due process clause of the Fourteenth Amendments to the United States Constitution and State of Ohio Constitution, Article I, Section 16.

The Fourteenth Amendment to the Constitution states that: "[n]o State shall make or enforce any law which shall . . . deprive any person life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. Amend. XIV.

The Ohio State Constitution states that all courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay. State of Ohio Constitution, Article I, Section 16.

A judgment is void if the court acted in a manner inconsistent with due process. In denying Appellant's Motion to Intervene, the Trial Court failed to follow procedures set forth in *GTE Automatic Electric v. ARC Industries* (1976), 47 Ohio St.2d 146, which therefore violated Appellant's due process right.

STATEMENT OF THE CASE AND FACTS

Appellant Sylvia Pasley has worked as a mortgage specialist for nine years and has volunteered her time as an after school advisor, with children's day care and with her church. She has a great affinity with children and has adopted three girls (who are the biological sisters of Cory Johnson, date of birth January 11, 2003, who is one of the children in this action) and they are named Antoinette Johnson, Andrea Johnson and Andreanna Johnson. She has taught them to be good and honest citizens as they grow up to maturity and she has been attentive to all of their special needs.

Appellant's mother is Jessie Garland who is a dedicated foster care mother and is now 70 years of age. Although she is not wealthy, Ms. Garland purchased a home at 3254 East 55th Street, Cleveland, Ohio, with enough room for Appellant to live with the children that they both care for, educate and love.

Ms. Garland was the foster mother of Cory Johnson and Mikesean D'Mario Beachum (date of birth February 12, 2004) and these two children are the subjects of this matter at bar. Cory's mother is Katrina West and his father is Andrew Johnson. Appellant is also a foster parent and worked hand-in-hand with Ms. Garland parenting the boys and was a de facto foster parent for them, being there to comfort them and dry their tears when they needed her.

Cory was with Appellant and Ms. Garland since he was a few days old until he was taken away in July 2008. Although he is an extremely bright child, Cory has a health disorder in that his body does not produce enough calcium. Because of his condition, he requires a lot of attention, medication, close observation and many doctor visits. Ms. Garland and Appellant have been diligent for many years in providing for his care so he develops into a young adult

without any further problems. Primarily because Appellant and Ms. Garland's diligent work with him, Cory was able to read at four years old.

Ms. Garland was also the foster mother of Mikesean D'Mario Beachum (DOB February 12, 2004) before he was removed from Appellant's and Ms. Garland's home in July 2008. The mother of Mikesean is Felisha Beachum and the father is Augustine Maduckwe. He was placed in the home of Appellant and Ms. Garland a few days after his birth and about six months after Cory was placed there. Because of Appellant's personal tutoring, at three years of age Mikesean was advanced in colors and numbers.

The children Cory Johnson and Mikesean D'Mario Beachum will hereinafter be referred to as "the boys".

Appellant is a very loving and caring woman who has dedicated her life to helping children. She wants to keep Cory with his sisters and Mikesean with the children he accepts as his family and assist them with the special physical and emotion concerns that she has become adept at handling. Until they were removed, the boys lived with Ms. Garland, Appellant and Cory's three sisters and they developed a strong bond with them and they became a family. Appellant is very knowledgeable with the health issues of the boys and could react quickly to anything that came up minimizing their suffering.

Appellant does not now use any corporal punishment to discipline any of the children. In a total of two times in the past she did spank a child, but that was a light spanking. To resolve any issues regarding her parenting skills, she voluntarily attended classes that demonstrated the effectiveness of time outs and she now uses this method for discipline. As part of this corrective training, Appellant was observed by a social worker and met with Norman Rice every week to

discuss all issues. Appellant was told by Mr. Rice that she had done a great job with the children.

As already stated, Appellant worked hand-in-hand with Ms. Garland who was the foster mother of the boys and assisted her with their day-to-day care, including the health of Cory who requires extensive attention due to his calcium deficiency.

The problems began in July of 2008, when Appellant organized a picnic in which all the children attended with other family and friends. A short time previous to the picnic, the boys had a very short haircut. At the get-together they played in the sprinklers as children do when they are having fun. The mosquitoes bit the boys heads excessively and they scratched them causing what looked like bruises. However, there were actually raised mosquito bites. Someone who observed the boys heads later contacted the Cuyahoga County Department of Child and Family Services [hereinafter "CFS"] to investigate.

A few days after the picnic, CFS social workers Sandra Perciak, Debra Wimberly Rahim, and Paul Stearman to investigate the claim of alleged abuse. One of Appellant's daughters overheard the social workers instructing Cory to claim he was beaten by Appellant and he would be rewarded later. There are significant other allegations of impropriety by CFS, but it would be inappropriate to relate them here in this document.

On June 23, 2009 the Cuyahoga County Juvenile Court determined in the Cory Johnson matter that the alleged allegations of abuse and neglect pursuant to Ohio Revised Code Section ORC 2151.04 were well founded and removed him Appellant's home and Ms. Garland's care.

On July 14, 2009 the Cuyahoga County Juvenile Court determined in the Mikesean D'Mario Beachum matter that the alleged allegations of abuse and neglect pursuant to Ohio

Revised Code Section ORC 2151.04 were well founded and removed him Appellant's home and Ms. Garland's care.

The investigators for the Cuyahoga County Department of Child and Family Services were Paul Stearman and Shaun Thornton. It appears that they did not do a thorough or complete job in this investigation. There never was any factual evidence of abuse and Appellant was never shown any such evidence. Appellant offered to take a lie detector test, but CFS never allowed her to do so.

On or about July 31, 2008, CFS workers communicated to Ms. Garland to bring the boys to the Jane Edna Hunter Building for a meeting. When she arrived they took the boys to a nursery and then took Ms. Garland to see CFS personnel Sandy Perciack, Frank Cizack, Deborah Wimberly-Reheem, Beverly Torres and Val Epps the facilitator. Appellant arrived late due to a malfunction of her car's breaks, but she was told she would not be permitted to enter the building. Neither Appellant nor Ms. Garland ever saw the boys again.

Although the children were removed from Appellants home, no abuse was ever proven and CFS did not take any action regarding Cory's three sisters who are still with Appellant. The CFS did not permit Appellant to have a hearing on the matter and never showed her any evidence or report as to the alleged abuse.

In 2008, Appellant wished to have the boys returned to her home and wanted to adopt them. At Trial Court, for both Juvenile Court matters, Appellant was represented by an attorney who was ineffective and lax in zealously advocating her interests and was more concerned with running a campaign for political office. On August 27, 2009 Appellant, by and

through counsel, filed a Motion To Intervene in both Cuyahoga County Juvenile Court cases, for the boys. The Motions were severally lacking in facts and law and were denied.

Appellant's foster care license was revoked due to this false allegation or abuse. She wanted to adopt the boys, but was told that would be impossible to do with an allegation of abuse. Her attorney at the Trial Court failed to work to clear her name and thus the adoption procedure was never begun.

In both cases the Trial Court denied Appellant's Motions To Intervene in the Cory Johnson matter and that determination was Journalized on September 17, 2009.

On December 2, 2009, Appellant filed a Notice of Appeal with the Cuyahoga County Juvenile Court. Here, Appellant attempted to represent her own interests by initially bringing the appeal with the Ohio Eight District Court of Appeals. However, as a non-attorney Appellant was unfamiliar with the procedures of the Appeals Court.

On December 14, 2009, this attorney filed a Notice of Appearance, Motion To Merge the two Appellate Court cases, and a request for a 30-day extension of time to file a brief. Appellant was granted until January 15, 2010 to file a brief.

On March 26, 2010, the Cuyahoga County Eighth Appellate District denied Appellant's appeal to reverse the Trial Court's judgment denying her Motion to Intervene.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law No. I: Pursuant to the Due Process Clause of the Fourteenth Amendment to the United States Constitution and the Article I, Section 16 of the State of Ohio Constitution Appellant was unconstitutionally denied her right to intervene as a party.

Appellant readily acknowledges that this case is extraordinary and not the typical case which should generate precedent-setting rulings from this Honorable Supreme Court of Ohio. The relief which is sought by Appellant is rooted in the proposition that (1) Appellant must be afforded due process of law; and (2) Ohio juvenile courts have broad-based authority to make decisions which attempt to promote the best interests of any given child. Fears that all foster parents and related parties may bring actions for adoption can be allayed as this case has facts that distinguish it from the typical foster care situation as it will be explained in detail below. First, Appellant has already adopted the three girls and the best interests of the boys would be to keep them together as a family. Second, Appellant knows the health concerns of the boys and has been successful at resolving serious health concerns before they escalate. Third, Appellant's original attorney at the trial court was ineffective and failed to pursue adoption of the boys as Appellant had urged.

Due Process of law requires that parties shall have a day in court. The Fourteenth Amendment of the United States Constitution and the Article I, Section 16 State of Ohio Constitution requires due process of law through orderly legal proceedings appropriate to the nature of the case. Therefore, due process is mandated for in all litigation, including those involving children in the juvenile court.

In denying Appellant's Motion to Intervene, the Trial Court failed to decide for the "best interest of the children" and abused its discretion. As defined by the Supreme Court of Ohio, "abuse of discretion" means more than a mere error of law or judgment; it implies an attitude on the part of the trial court that is unreasonable, arbitrary or unconscionable." *In re Estate of Bednarckzuk. et al.*, 80 Ohio App.3d 548, 551-552,

Citing *Blakemore v. Blakemore*. 5 Ohio St.3d 217, 219, 450 N.E.2d 1140, 1142 (1983);

Peterman v. Village of Pataskala (1997), 122 Ohio App.3d 758, 702 N.E.2d 965

Appellant seeks to become a party to actions in Cuyahoga County Juvenile Court so that she may present evidence as to custody of the children and what would be in their best interests.

Ohio Juvenile Court Rule 2(16) defines "party" as follows:

(16) 'Party' means a child who is the subject of a juvenile court proceeding, his spouse, if any, his parent, or if the parent of a child be himself a child, the parent of such parent and, in appropriate cases, his custodian, guardian or guardian ad litem, the state and any other person specifically designated by the court.

Juv.R. 2(16)

The first step of this analysis is whether Appellant has a right to intervene pursuant to Ohio Civil Procedure Rule 24 which states:

(A) Intervention of right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of this state confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction that is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(B) Permissive intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of this state confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

* * * *

Civ.R. 24

The juvenile court erred in its application of R.C. Section 3109.28 when it rejected the Appellant's motion to intervene. Although Appellant's Trial Court attorney was ineffective in representing her interests, there were the requisite allegations or evidence set forth in the motion to intervene that would reasonably indicate that the Appellant had a "right" to become a party and attend the hearing, file pleadings and have a right to be represented in all issues. In addition, Appellant should have been permitted to intervene as she had shown a serious interest in adopting the boys, but was thwarted false allegations of abuse by CFS.

The job of a foster parents fits into the definition is "custodian" as stated in R.C. 2151.353 by and through the Department of Welfare or Children Services Board. These government agencies are charged with providing care "as the board or county department considers to be in the best interests of any child." R.C. 5153.16(B)(4). To accomplish this, the agencies may place the child in a certified foster home and the foster parent becomes an agent of the custodian. In this case, Cuyahoga Child Services was granted permanent custody of the children and placed them in the foster care of Appellant who served as its agent and be permitted to intervene in this case. R.C. 2151.28, R.C. 2151.281

Appellant also has a right to intervene pursuant to Civ.R. 24(A)(2). *Norton v. Sanders* (1989), 62 Ohio App.3d 39, 41. *Smith v. Organization of Foster Families* (1977), 431 U.S. 816, 53 L.Ed.2d 14, stands for the proposition that foster parents have a liberty or property interest in the juvenile proceedings. In that case, the Supreme Court held that procedures for removal of a foster child from a foster home "[E]ven on the assumption that the [foster parents] have a protected 'liberty interest,' the District Court

erred in holding that the preremoval (sic) procedures presently employed by the State are constitutionally defective." *Id.* at 847, 53 L.Ed.2d at 37 (emphasis added).

Finally, pursuant to Civ.R. 24(B), the Trial Court should have permitted Appellant to intervene for the best interests of the children. What is best for Ohio's children subject to juvenile court should not be restricted and must have liberal authority. Pursuant to Ohio Revised Code Section 2151.01, each child's case must be afforded the best outcome available. O.R.C. Section 2151.01 requires juvenile courts to liberally interpret and construe this code to effectuate, among others, the following purpose: (A) to provide for the care, protection, and mental and physical development of children subject to Chapter 2151 of the Revised Code; and (B) To provide judicial procedures through which Chapters 2151 and 2152 of the Revised Code are executed and enforced, and in which the parties are assured of a *fair hearing*, and their constitutional and other legal rights are recognized and enforced. O.R.C. Section 2151.01 The mandate creates the responsibility for Ohio juvenile court judges who must apply the "best interest" test in each child's case. *In re Rundio*, No. 92CA35, 1993WL379512 (Ohio App. 4 Dist., 1993) and *Kurtz and Giannelli*, Ohio Juvenile Law (1996-97) Section 13.01.

In Ohio, a foster parent has been permitted to intervene in custody cases when the foster parents were most likely to know the present situation and circumstances of the child. *In re Parson* (May 29, 1996), Lorain App. No. 95CA006217, unreported (permitting intervention because "it many cases, it is the foster parents who know the most about the child's present situation and circumstances"). Other cases have also permitted foster parents to intervene in certain circumstances, i.e. *In re Spears* (December 10, 1984), Athens App. No. 1200, unreported (allowing intervention where foster parents

are likely to know the most about the child's current situation, "as long as dispositional, 'best interests' evidence by [the foster parents] is excluded)," and *In the Matter of: Rhonda Zhang* (June 10, 1999), Cuyahoga App. No. 73001, unreported, the trial court's decided to allow the foster mother to intervene and act as plaintiff. *Id.*

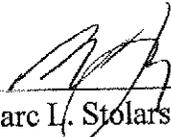
CONCLUSION

In the case at bar, Appellant was denied Due Process by the Juvenile Court and denied the right to intervene and thus file pleadings and speak to the issues in an open courtroom. Appellant was the only mother that the boys knew until they were taken away on a charge that was manufactured and never proven. They were happy and well adjusted with her. Cory, who had special needs, was well taken care of by Appellant who knew exactly how to help him when he became ill. He was also happy to be in the same home with his three sisters who took care of him.

Granting Appellant's Motion To Intervene would not award Appellant custody of the boys, it would merely give her the opportunity to show to the Trial Court what would be in the best interests of the boys.

Respectfully submitted,

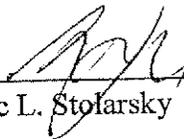
Marc L. Stolarsky, Counsel of Record



Marc L. Stolarsky
COUNSEL FOR APPELLANT
SYLVIA PASLEY

Certificate of Service

I certify that a copy of this Memorandum in Support of Jurisdiction was sent by ordinary U.S. mail to: Ms. Gina S. Lowe, Esq., Assistant Prosecuting Attorney, Office of Cuyahoga County Prosecutor Bill Mason, 4261 Fulton Parkway, Cleveland, Ohio 44144 attorney for the Cuyahoga County Department of Child and Family Services; and Ms. Carla L. Golubovic, Esq., P.O. Box 29127, Parma, Ohio 44129 the Guardian ad Litem for Cory Johnson and Mikesean D'Amario Berachum on May 6, 2010.



Marc L. Stolarsky

COUNSEL FOR APPELLANT,
SYLVIA PASLEY

IN THE SUPREME COURT OF OHIO

In re Cory Johnson :
: **On Appeal from the Cuyahoga County**
and : **Court of Appeals, Eighth Appellate**
: **District**
In re Mikesean D'Mario Berachum :
: **Court of Appeals**
: **Court of Appeals Case Number 94210**
: **(Consolidated with Case No. 94233)**

NOTICE OF APPEAL OF APPELLANT SYLVIA PASLEY

Marc L. Stolarsky (0066008) (COUNSEL OF RECORD)
Marc L. Stolarsky Law, LLC
P.O. Box 24221
Cleveland, Ohio 44124
Tel. No. 440-655-2342
Fax No. 440-448-4661
Email: MARC@MLSLaw.Net

COUNSEL FOR APPELLANT, SYLVIA PASLEY

Ms. Gina S. Lowe, Esq. (0080036) (COUNSEL OF RECORD)
Assistant Prosecuting Attorney
Office of Cuyahoga County Prosecutor Bill Mason
4261 Fulton Parkway
Cleveland, Ohio 44144
Tel. No. 216-635-3761
Fax No. 216-635-3879
Email: P4GXL@cuyahogacounty.us

**COUNSEL FOR APPELLEE, CUYAHOGA COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES**

Ms. Carla L. Golubovic, Esq. (0061954)

P.O. Box 29127

Parma, Ohio 44129

P.O. Box 29127

Parma, OH 44129

Office Phone: 216-310-5441

Email: cgolubovic@aol.com

GUARDIAN AD LITEM FOR CORY JOHNSON
AND MIKESEAN D'MARIO BERACHUM

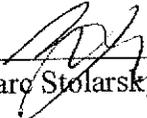
Notice of Appeal of Appellant Sylvia Pasley

Appellant Sylvia Pasley hereby gives notice of appeal to the Supreme Court of Ohio from the Judgment of the Cuyahoga County Court of Appeals, Eighth Appellate District, entered in the Court of Appeals case No. 94210 (consolidated with Court of Appeals case No. 94233) on March 26, 2010.

This case raises a substantial constitutional question and is on of public and great general interest.

Respectfully submitted,

Marc Stolarsky, Counsel of Record



Marc Stolarsky (0066008)

COUNSEL FOR APPELLANT,
SYLVIA PASLEY

Certificate of Service

I certify that a copy of this Notice of Appeal was sent by ordinary U.S. mail to: Ms. Gina S. Lowe, Esq., Assistant Prosecuting Attorney, Office of Cuyahoga County Prosecutor Bill Mason, 4261 Fulton Parkway, Cleveland, Ohio 44144 attorney for the Cuyahoga County Department of Child and Family Services; and Ms. Carla L. Golubovic, Esq., P.O. Box 29127, Parma, Ohio 44129 the Guardian ad Litem for Cory Johnson and Mikesean D' Amario Berachum on May 6, 2010.



Marc L. Stolarsky

COUNSEL FOR APPELLANT,
SYLVIA PASLEY

