IN THE SUPREME COURT OF OHIO

ORIGINAL

State of Ohio ex rel. Chance Catudal, 2783 Martin Road # 353 Dublin, Ohio 43017, Relator, vs. Judge Kim A. Browne, 373 South High Street 6th Floor, Courtroom 66, Columbus, Ohio 43215, and Franklin County Common Pleas Court, Domestic Relations Division, 373 South High Street Columbus, Ohio 43215, Respondents.	:	Case # 12-1795 Original Action in Mandamus

RELATOR'S MOTION TO STRIKE
RESPONDENTS' MOTION TO DISMISS

Pursuant to S.Ct. Prac. R. 14.2. (D), Relator moves the Court to Strike Respondents' Motion to Dismiss.

Relator's Motion is more fully supported by the Memorandum in Support that is attached and incorporated herein.

Respectfully submitted,

Chance Catudal, Plaintiff
2783 Martin Road # 353
Dublin, Ohio 43017
ccatudal@ymail.com

FILED
DEC 03 2012
CLERK OF COURT
SUPREME COURT OF OHIO

MEMORANDUM IN SUPPORT

I. RESPONDING TO A MOTION IN GENERAL

In the two years that Relator has been dealing with Case # 10-DR-4934, Relator has never missed a filing deadline in regards to a disputed Motion.

II. RESPONDENTS' MOTION TO DISMISS

Relator was not properly served with a copy of Respondents' Motion to Dismiss. See **Exhibit U**.

III. THE INTERESTS OF JUSTICE

While the Court may be opposed to hearing Relator contend that this was a conspiracy to deprive him of the lawful relief that he is entitled to pursuant to his Original Action, the facts suggest otherwise. See **Exhibit V**.

IV. CONCLUSION

Relator's Original Action will not/cannot be fairly heard if he is not provided with an opportunity to respond to Respondents' Motion to Dismiss.

V. PRAYER FOR RELIEF

WHEREFORE, Relator prays for the Court to Strike Respondents' Motion to Dismiss. In the alternative, Relator prays for the Court to order that the document be properly served and impose a new deadline for filing any responsive document. Relator prays for any other such relief that the interests of justice may require.

Respectfully submitted,

Chance Catudal, Relator

VI. CERTIFICATE OF SERVICE

Plaintiff hereby certifies that a true and accurate copy of the foregoing Motion was served upon all parties or their counsel via Regular Mail or in person on the *3th* day of *December*, *2012*.

Chance Catudal, Relator

EXHIBIT U

From: Chance Catudal [mailto:ccatudal@ymail.com]
Sent: Friday, November 30, 2012 2:59 AM
To: Thies, Paul A
Subject: Case # 2012-1795 - Respondents' Motion to Dismiss

Mr. Paul Thies:

I downloaded a copy of your Motion to Dismiss yesterday. I have not received a hard copy in the mail yet, however.

Please forward me a copy of the Magistrate's Order that you claimed to have been issued on July 9, 2012. In case you have been told otherwise, the Magistrate only issued one Order in July and it was done on July 25, 2012. Said Order was in regards to "Various Motions" and primarily dealt with phone communication.

I will be filing a Response to your Motion to Dismiss today. I will both mail you a copy, as well as email you a .pdf. I would appreciate the same in return moving forward.

Thank you for your time.

Respectfully,

Chance Catudal
(614) 351-5406

IN THE SUPREME COURT OF OHIO

State of Ohio ex rel. Chance Catudal, 2783 Martin Road # 353 Dublin, Ohio 43017, Relator, vs. Judge Kim A. Browne, 373 South High Street 6th Floor, Courtroom 66, Columbus, Ohio 43215, and Franklin County Common Pleas Court, Domestic Relations Division, 373 South High Street Columbus, Ohio 43215, Respondents.	**EXHIBIT V** Case # 12-1795 Original Action in Mandamus

RECEIVED
NOV 30 2012
CLERK OF COURT
SUPREME COURT OF OHIO

RELATOR'S RESPONSE TO RESPONDENTS' MOTION TO DISMISS

Respondents argue that Relator has not stated a claim to which relief can be granted. That is incorrect.

I. FACTS

Relator's Motion for an Emergency Ex Parte Order was continued from July 9, 2012 until July 16, 2012; however, Respondents did not go on the record. The July 9, 2012 transcript will clarify this. See **Exhibit H, Page 17, Lines 3 – 10**.

Magistrate Sieloff did not enter an Order on July 9, 2012. Even if he had, it did not have anything to do with the hearing that was before Judge Browne. Magistrate Sieloff can be called as a witness to clarify this matter. It is truly absurd for Respondents attorney to assert this position. See **Exhibit S**.

II. ARGUMENT

A. Franklin County Common Pleas Court ("FCCPC").

FCCPC has a duty to all citizens of Franklin County. Said entity/party can be held accountable for not performing its duties. If it has been well established that said entity/party cannot be compelled to perform its required duties, then the Supreme Court of Ohio will most certainly dismiss said entity as a party; however, even if that were to happen, it does not void Relator's rightfully requested relief or Judge Browne's obligation to perform such.

B. Relator Did Have a Hearing; Relator Did Not Have a Hearing.

Respondents have made two separate claims with regard to Relator's requested relief. On Page 4, Paragraph 2 of their Motion to Dismiss, it states, "Relator erroneously states that the matter was continued until July 16, 2012." On Page 5, Paragraph 2, it states, "Relator had a hearing on July 9, 2012, and another hearing on July 16, 2012." It cannot be both. Either Relator had a hearing on July 16, 2012 or he did not. Relator contends that he did not. See **Exhibit H, Page 17, Lines 3 – 10**.

It has been well established that courts speak through the journal. See *Joyce v. General Motors Corp. (1990), 49 Ohio St.3d 93, 95, 551 N.E.2d 172*. In this instance, the Court has either refused to do so or Relator is still due a proper hearing. Writ of Mandamus is the only option at Relator's disposal.

C. Relator's Petition is Not an Appeal.

Relator has already been forced to file three appeals. Respondents allowed Chris Heckert as GAL to submit his GAL Report day of trial in opposition to Domestic Local Rule 15 (I)(1). See *Catudal v. Catudal, Case # 11-AP-943*. Respondents held Relator financially liable for a hearing that he prevailed on. See *Catudal v. Catudal, Case # 12-AP-951*. Respondents granted Defendant's request for a SCRA stay on a Motion that was filed four days prior to being heard. See *Catudal v. Catudal, Case # 12-AP-991*. The first appeal was strategically withdrawn by Relator (See **Exhibit L**) and the other two are currently pending.

If Relator had a hearing on July 16, 2012, he would already be in possession of the transcript. Furthermore, if Relator had a hearing that resulted in a ruling that he viewed as unjust, Relator would have already filed an appeal.

Relator cannot do so without due process and/or equal protection under law. That is why Relator filed an Original Action in Mandamus.

D. Clear Legal Right to Requested Relief.

Mandamus may be used to compel a court to exercise judgment or to discharge a function. See *State ex rel. Ney v. Niehaus (1987), 33 Ohio St.3d 118, 515 N.E.2d 914*. Respondents are duty bound to hear and/or rule upon Relator's Motion for an Emergency Ex Parte Order. Respondents did not prove that said duty was previously fulfilled, nor was it proven that Relator had received any ruling/relief. Relator contends that he did not receive either.

The Fourteenth Amendment to the U.S. Constitution states that no state shall "deny to any person within its jurisdiction the equal protection of the laws." Relator's daughter is in an unsafe situation. Relator approached Respondents and requested both a hearing and a ruling. The law is not protecting Relator's daughter; the law is not protecting Relator's right to be heard.

Article I, Section 2, of the Ohio Constitution states, "All political power is inherent in the people. Government is instituted for their equal protection and benefit..." Relator's daughter is in an unsafe situation. Relator approached Respondents and requested both a hearing and a ruling. The law is not protecting Relator's daughter; the law is not protecting Relator's right to be heard.

Hagar v. Reclamation Dist., 111 U.S. 701, 708 (1884). "Due process of law is [process which], following the forms of law, is appropriate to the case and just to the parties affected. It must be pursued in the ordinary mode prescribed by law; it must be adapted to the end to be attained; and whenever necessary to the protection of the parties, it must give them an opportunity to be heard respecting the justice of the judgment sought. Any legal proceeding enforced by public authority, whether sanctioned by age or custom or newly devised in the discretion of the legislative power, which regards and preserves these principles of liberty and justice, must be held to be due process of law." Id. at 708; *Accord, Hurtado v. California, 110 U.S. 516, 537(1884)*.

Due process of law is violated when the government vindictively attempts to penalize a person for exercising a protected statutory or constitutional right. See *U.S. v. Conkins, 9 F.3d 1377, 1382 (9th Cir. 1993)*.

R.C. 3109.04 allows for modification of custody when abuse and/or

neglect have taken place, when the residential/custodial parent moves without providing notice, and/or when there has been a willful denial of visitation/contact with the child in question. All of these factors are present in this matter; however, the former (i.e., abuse and/or neglect) specifically relates to Relator's Motion for an Emergency Ex Parte Order, as well as this action to see said Motion through.

III. CONCLUSION

Relator has a right to a hearing, as well as a ruling. Relator was not provided with either. The Court should note that **Exhibit H, Page 17, Lines 8 – 10** clarifies what would have happened if Judge Browne properly held a hearing on July 16, 2012. Judge Browne stated on July 9, 2012, "If it's not properly done, there might be an emergency. I will see you all next week." Judge Browne was referring to Relator being provided with the alleged babysitter's contact information. Relator learned from his daughter that she was being left unattended every morning for one to two hours for the entire year leading up to the hearing on July 9, 2012. Defendant denied this and alleged that a babysitter had been watching the parties' child.

Defendant committed perjury in response to Judge Browne's verbal order. See **Exhibit N**. The alleged babysitter's contact information was registered to Defendant. In *State v. Bell (1994), 97 Ohio App. 3d 576*, it was held that the submission of false affidavits in support of a motion to reduce child support is a sufficient enough basis for perjury prosecution, as should this be. Relator contends that Judge Browne did not go back on the record to address this issue because she would then have been forced to rule in Relator's favor, "If it's not properly done, there might be an emergency." Defendant committed perjury in response to Judge Browne stating, "...I want the exchange of information done, and I want it in writing, and I want proof that it was done."

The Supreme Court of Ohio should be appalled that Relator had to resort to filing a *pro se* Verified Petition and Complaint for Writ of Mandamus to receive the hearing/ ruling that he is entitled to. Relator is trying to legally get his six-year-old daughter out of an unsafe environment. Relator even asked the new GAL, Dirk Winkler, what would happen if he did not return Haley A. Catudal ("Haley") to Defendant. Dirk indicated that Relator should trust the law and take the matter to the Court. Ironically enough, Relator did just that and this is what he got for it.

It is difficult for Relator or any citizen to put trust in the courts when this is how someone gets treated by a judge that simply does not like them. Relator was

raised to believe that justice blind; however, as an adult, Relator has discovered that *so-called* blind justice is an idealistic fantasy. Relator and Haley deserve better than this.

Pursuant to R.C. 2935.09 (A) and (D), Relator has filed an Affidavit of Criminal Charges with the Franklin County Municipal Court today against Defendant for perjuring herself in response to Judge Browne stating, "...I want the exchange of information done, and I want it in writing, and I want proof that it was done." See **Exhibit T**. Said perjury was conducted indirectly through Defendant's attorney (See **Exhibit J**), as well as directly through Relator's discovery efforts (See **Exhibit M**).

IV. PRAYER FOR RELIEF

WHEREFORE, Relator prays that this Court will deny Respondents Motion to Dismiss. Relator prays for any other such relief that the interests of justice may require.

Respectfully submitted,

Chance Catudal, Relator
2783 Martin Road # 353
Dublin, Ohio 43017
ccatudal@ymail.com

V. CERTIFICATE OF SERVICE

Plaintiff hereby certifies that a true and accurate copy of the foregoing Response was served upon all parties or their counsel via Regular Mail or in person on the *30th* day of *November, 2012*.

Chance Catudal, Relator

Exhibit S

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO
DIVISION OF DOMESTIC RELATIONS AND JUVENILE BRANCH

IN THE MATTER OF: _____

[illegible]
PLAINTIFF/PETITIONER

v.

[illegible]
DEFENDANT/PETITIONER

CASE NO. [illegible]

JUDGE [illegible]

MAGISTRATE [illegible]

MAGISTRATE'S ORDER

This matter came on for hearing pursuant to [illegible]

Upon consideration of the matter, it is ORDERED [illegible]

MAGISTRATE

[illegible]
Attorney for Plaintiff/Petitioner

[illegible]
Attorney for Defendant/Petitioner

J-300 (Rev. 4/2007)

On or about
July 25, 2012

IN THE FRANKLIN COUNTY MUNICIPAL COURT
COLUMBUS OHIO

November 30, 2012

2012 NOV 30 AM 11:20

Franklin County Municipal Court
Attn: Ms. Lori M. Tyack, Clerk of Court
375 South High Street
Columbus, Ohio 43215

Ms. Lori M. Tyack:

I am submitting the attached Affidavit Charging Criminal Offenses ("Affidavit") to the reviewing official in accordance with R.C. 2935.09 (A).

Per R.C. 2935.09 (D), "A private citizen having knowledge of the facts who seeks to cause an arrest or prosecution under this section may file an affidavit charging the offense committed with a reviewing official for the purpose of review to determine if a complaint should be filed by the prosecuting attorney or attorney charged by law with the prosecution of offenses in the court or before the magistrate. A private citizen may file an affidavit charging the offense committed with the clerk of a court of record before or after the normal business hours of the reviewing officials if the clerk's office is open at those times. A clerk who receives an affidavit before or after the normal business hours of the reviewing officials shall forward it to a reviewing official when the reviewing official's normal business hours resume."

Please forward the attached Affidavit to the reviewing official so that criminal charges and an arrest warrant can/will ensue.

If you have any questions or concerns, please feel free to contact me.

Thank you very much for your time.

Respectfully,

Chance Catudal
2783 Martin Road # 353
Dublin, Ohio 43017
(614) 657-2646
ccatudal@ymail.com

IN THE FRANKLIN COUNTY MUNICIPAL COURT
COLUMBUS OHIO

AFFIDAVIT CHARGING CRIMINAL OFFENSES

STATE OF OHIO
COUNTY OF FRANKLIN, ss:

The undersigned, having personal knowledge of the same and being duly cautioned and sworn, deposes and states the following:

Anna Catudal ("Catudal"), Defendant in Franklin County Domestic Relations Case # 10-DR-4934, perjured herself on September 13, 2011. Evidence of this perjury can be seen in the Trial Transcript, *Page 57*, *Lines 23 – 25* and *Page 58*, *Lines 1 – 7*. Catudal lied about being in a relationship with Marcus Van Cleave (See ***Exhibit A1, A2, & A3***). Said lie affected the outcome of the divorce proceedings. This was in opposition to ORC 2921.11(A).

Catudal lied under oath or affirmation having been forced to admit to being in a relationship with Marcus Van Cleave (See **Exhibit B**). Said admission was only facilitated by an extensive discovery effort that preceded the court ordered 2012 Summer Break with my daughter, Haley A. Catudal. This was in opposition to ORC 2921.11(D).

Evidence of further perjury can be seen in the Trial Transcript, *Page 81*, *Lines 21 – 25*, *Page 82*, *Lines 13 – 15*, and *Page 83*, *Lines 6 – 10*. Catudal lied to cover up her previous commission of child abuse and/or neglect (See **Exhibit C**). Catudal lying about this fact affected the outcome of the divorce proceedings. This was in opposition to ORC 2921.11(A).

Catudal lied under oath or affirmation by providing me with fraudulent contact information for my daughter's babysitter (See **Exhibit D**). The telephone number that I was given for Maria Goncalvez turned out to be registered to Catudal herself (See **Exhibit E**). This was in opposition to ORC 2921.11(A).

The undersigned further deposes and states that the above is true and correct under penalty of perjury and that a photocopy of this Affidavit Charging Criminal Offenses shall have the same effect(s) as the original.

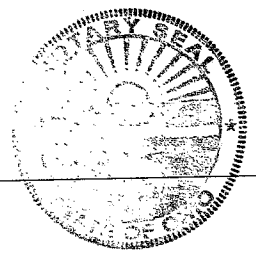
Further affiant sayeth naught.

Chance Catudal

Chance Catudal, Affiant

Sworn to before me and subscribed in my presence this *30th* day of *November*, *2012*.

Margaret M. Fahy
Notary Public



MARGARET M. FAHY
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES MARCH 7, 2016