

ORIGINAL

IN THE SUPREME COURT OF OHIO

Case No. _____

14-1122

STATE OF OHIO ex rel. Stephanie Y. Clough

Relator

v.

FRANKLIN COUNTY CHILDREN'S SERVICES, OHIO et al.,

Respondents

ORIGINAL ACTION IN MANDAMUS

Stephanie Y. Clough
8060 Wright Road
Broadview Heights, Ohio 44147
Phone: 440-417-3382
stephanieclough@hotmail.com

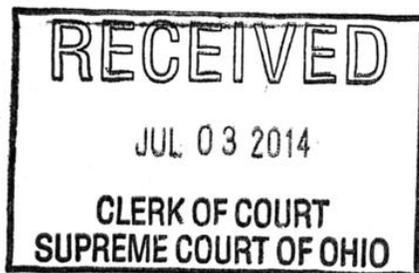
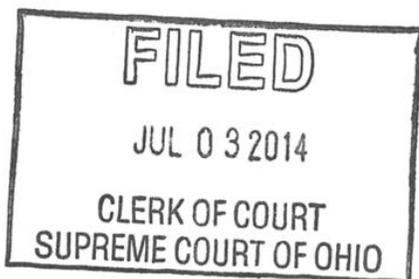
RELATOR, PRO SE

Franklin County Children's Services, Ohio
Charles M. Spinning, Executive Director
855 W. Mound Street
Columbus, Ohio 43223
Phone: 614-275-2571

and

Franklin County Children's Services, Ohio
Anne O'Leary, Chief Legal Counsel
855 W. Mound Street
Columbus, Ohio 43223
Phone: 614-275-2571

RESPONDENTS



COMES NOW the State of Ohio, on relation to one of its citizens, Stephanie Y. Clough (hereinafter, "Relator"), and hereby allege as follows:

1. Relator Stephanie Y. Clough is a citizen of the State of Ohio and a resident of Cuyahoga County, Ohio.
2. At all relevant times herein, Respondent Franklin County Children's Services (FCCS) is a public benefit agency established by federal and state law whose specific case file number 1866149 is at issue in this case.
3. At all relevant times herein, Respondent Charles M. Spinning is the Executive Director for Franklin County Children's Services and, as such, leads the agency to provide protection and care for the county's abused and neglected children.
4. At all relevant times herein, Respondent Anne O'Leary is the Chief Legal Counsel for Franklin County Children's Services and, as such, is responsible for advising the agency on all legal matters.
5. Respondent Spinning as Executive Director is responsible for the oversight, maintenance, and inspection of the records at issue in this case. A true and accurate copy (pertinent part) of the FCCS Board approved "Grievance Procedure and Consumer Rights" policy and procedures granting Relator the right to inspect her case file is being attached hereto as Exhibit A.
6. This case involves and arises from an Inspection of Records Request Letter submitted on behalf of Relator, a copy of said request being attached hereto as Exhibit C, and the inadequate and illegal response by or on behalf of the Respondents being attached hereto as Exhibit D.

Relator's Inspection of Records Request

7. On April 22, 2014, Realtor's authorized agent, former US Representative Steve LaTourette, tendered a verbal Inspection of Records Request to Erin Morgan, FCCS legal department. Erin Morgan requested a little time to review the Relator's case file and to speak to the agency's Director, Respondent Spinning. A true and exact copy of the Consent for Release of Personal Information is attached hereto as Exhibit F.
8. On April 30, 2014, Relator's agent received a written response from Respondent O'Leary indicating that Respondent Spinning did not find good cause to release the records. A true and exact copy of this response is attached hereto as Exhibit B.
9. On or about May 13, 2014, Relator's agent tendered a written request for the Inspection of Records to Franklin County Children's Services and Respondent O'Leary for an office inspection of the Relator's minor daughter's case file number 1866149. A true and exact copy of this request is attached hereto as Exhibit C.
10. A copy of the return letter is attached hereto as Exhibit D and indicates the Inspection of Records Request Letter was received by Respondent, Franklin County Children's Services, Ohio, on May 16, 2014.
11. As indicated in the Inspection of Records Request Letter, Relator's authorized agent sought to review the file pertaining to the minor child JC at the offices of FCCS. Following review there may or may not be records that Relator will seek to have released.
12. The Inspection of Records Request Letter constitutes a "Grievance Procedure and Consumer Rights" mandated under FCCS policies and procedures as approved by the

Board of Directors. A true and accurate copy (pertinent part) of the policies and procedures is attached herein as Exhibit A.

13. The records inspection at FCCS under FCCS supervision is not subject to any restriction, in whole or in part, under the Ohio Revised Code or presumably the right to inspect a case file would not be authorized under the FCCS's "Grievance Procedure and Consumer Rights".
14. The inspection of records sought pursuant to the Inspection of Records Request Letter were created or received by or come under the jurisdiction of the Respondents.
15. The records inspection sought pursuant to the Inspection of Records Request Letter serve to document the organization, functions, policies, decisions, procedures, operations, or other activities of Franklin County Children's Services.

Response to Inspection of Records Request

16. The refusal of Respondents to provide full and complete inspection of records contained within the Inspection of Records Request Letter constitutes a denial of the Relator's request in direct defiance to Relator's rights mandated under FCCS "Grievance Procedure and Consumer Rights", specifically "the right to access and review information related to themselves or their child(ren) that is contained in the Children Services Case Record whether the case is opened or closed, so long as access is not prohibited by law, and excepting specific information that would pose a serious harm to the child(ren), significant other, relatives, contact providers, caregivers, court personnel, agency staff or others".

Legal Duties Pursuant to FCCS Consumer Rights

17. FCCS Board of Directors Policies and Procedures as outlined under “Grievance Procedure and Consumer Rights” mandates that an Inspection of Records Request Letter affords the Relator the right to review all FCCS documents including their notes in the presence of FCCS personnel.
18. Respondent’s denial provides no good reason setting forth why the request was denied. Respondent’s denial on the grounds of confidentiality laws and independent review by the Ohio Department of Job and Family Services (ODJFS) is inadequate. Presumably, FCCS Board of Directors would not approval guidelines affording the Relator the right to review her case file if it were against the law. Additionally, ODJFS reviewing the case file is not germane to the Relator’s request and right to review her case records. Furthermore, ODJFS review was superficial and they have failed to offer any explanation for FCCS’s failure to follow policies and procedures. Relator had even written to the Inspector General of the State of Ohio and Governor John Kasich who sent a letter instructing ODJFS to respond to Relator’s questions and concerns. A true and exact copy of this letter is attached hereto as Exhibit E. To date, ODJFS have failed to respond to multiple Relator’s and Governor Kasich’s requests to provide any explanation for why FCCS has not followed their own guidelines and laws requiring joint investigation of cases where more than one child protective services agency exists within the same county. FCCS actions in Relator’s case were in defiance to FCCS’s signed Memorandum of Understanding and Protocols entered into with the Children’s Advocacy Center, a division of Nationwide Children’s Hospital, Columbus, Ohio and C.H.O.I.C.E.S. a women’s advocacy center

in Columbus, Ohio. Furthermore, Relator has made multiple requests to review her case file during the grievance process and had issued two subpoenas for inspection of the records, the second one in camera. Both subpoenas were quashed, although FCCS's stated procedure is to afford an in camera inspection of the records. During two separate grievance hearings Relator was informed that the disposition in her case would be changed from unsubstantiated to indicative of abuse. Once by grievance hearing officer Jesse Looser, and a second time by then Executive Director, Eric Fenner. Relator has the right to review any notes following the grievance hearings in order to review the records for an explanation on why FCCS changed its decision without providing any explanation. Respondent O'Leary attempts to justify denying Relator her right to inspect and review her case file based on the number of previous requests for review and/or explanation. What Respondent O'Leary fails to mention is that FCCS has failed to satisfactory or otherwise respond to multiple previous requests for review and clarification. To date, FCCS has deliberately stonewalled and denied Relator her right to review and inspect her case file or to even to offer any explanation for their failure to follow their own policies and procedures. This Court should be concerned why.

Writ of Mandamus Shall Issue to Compel FCCS Compliance with its own Policy and Procedures

19. Respondents have failed to comply with their own Board of Director approved "Grievance Procedure and Consumer Rights" policies and procedures.
20. Relator has a clear legal right to inspect her case file at the offices of and in the presence of FCCS personal.

21. Relator has no adequate remedy in the ordinary course of law.
22. There is no legally valid excuse for the denial of the Respondents to fully and completely provide the Relator the right to review her case file contained in the Inspection of Records Request Letter.
23. The issuance of a writ of mandamus will serve the public interest and provide a public benefit, inter alia, encouraging and promoting compliance in the future by FCCS personal with their own policy and procedures, as well as court decisions thereon.
24. Furthermore, the issuance of a writ of mandamus will serve the public interest and provide a public benefit, inter alia, exposing the operations of FCCS and failure to follow protocols established under a signed Memorandum of Understanding with multiple child(ren) protective services agencies to public scrutiny.
25. Furthermore, the issuance of a writ of mandamus will serve the public interest and provide a public benefit, inter alia, subjecting the organization, functions, policies, decisions, procedures, or other activities of FCCS to public exposure, review and criticism. Such action is necessary for the safety and protection of our most cherished citizens, our children.

WHEREFORE, Relator seeks a Preemptory Writ of Mandamus or, in the alternative, an Alternative Writ of Mandamus commanding Respondents to immediately afford the Relator her right to review her case file and notes mandated under FCCS "Grievance and Consumer Rights" together with any award for statutory damages and costs associated with filing this original

action in mandamus, as well as all other relief to which Relator may be entitled in law or in equity.

Respectfully submitted

A handwritten signature in black ink, appearing to read 'Stephanie Y. Clough', is written over a horizontal line.

Stephanie Y. Clough
8060 Wright Road
Broadview Heights, Ohio 44147
Phone: 440-417-3382
stephanieclough@hotmail.com

K. Burial Expenses for Deceased Children on the Children Services Open Caseload
[History: Approved 10/13/88. Amended 5/28/98]

The Executive Director is authorized to approve the expenditure of Children Services Donated Funds for supplemental expenses necessary for adequate burial of deceased children on the open Children Services caseload. The Executive Director will make the decision in consultation with the Chairperson of the Children Services Board, giving consideration to the following: age of the child, length of Children Services' involvement, type of case and reason for serving, availability of other resources, and the establishment of precedent. When the Executive Director makes a determination of need, funds may be expended not to exceed \$3,000.00 per child.

III. GRIEVANCE PROCEDURE AND CONSUMER RIGHTS

[History: Approved 3/14/79. Amended 9/10/92; 12/9/93; 5/28/98; 6/26/03, 7/29/04]

- A. Ohio and federal law provides specific safeguards for your rights while you are receiving services from Franklin County Children Services. Additional questions regarding your rights can be discussed with staff or the ombudsman, who serves as the client rights officer.
- B. The Children Services ombudsman has established procedures for acceptance and review of client complaints and grievances. The ombudsman also informs clients of their rights under agency policy and Ohio and federal laws and rules.
- C. The ombudsman is responsible for assuring compliance with client rights and grievance procedure rules. The ombudsman is available from 8 a.m. until 5 p.m., Monday through Friday, and is located in the administration building at 855 West Mound St., Columbus, OH 43223, or by calling 614-275-2621.
- D. It is the policy of the Franklin County Children Services Board that adults and children who are clients of the Agency shall have the following rights. The right to:
 1. be treated in a culturally sensitive way with consideration and respect for personal dignity, autonomy, and privacy;
 2. service in the least restrictive, most humane setting feasible. This is defined by Ohio law and rule or in the case/service plan;
 3. access and review information related to themselves or their child(ren) that is contained in the Children Services Case Record whether the case is open or closed, so long as such access is not prohibited by law, and excepting specific information that would pose a serious risk of harm to the child(ren), significant others, relatives, contract providers, caregivers, court personnel, agency staff or others. The following shall apply when requests for medical, psychiatric, or psychological information are made:
 - a. The agency shall disclose the information when prepared by an Agency staff member to a person who is the subject of the information or to the person's legal guardian, unless the staff physician, psychiatrist, psychologist, or other licensed professional determines for the agency that the disclosure of the information is likely to have an adverse effect on the person in which case the information is likely to have an adverse effect, in which case the information shall be released to a physician, psychiatrist, or psychologist who is designated by the person or the person's legal guardian; and

- b. For all information, reports and correspondence from a non-Children Services' medical, psychological, psychiatric, mental health counseling or drug and alcohol counseling professional, the client shall be provided with the name and address of the organization that provided Children Services with the client's information so that the client can obtain the information from the entity directly;
4. insert any statement into their the case record and to review any statements provided by Agency staff in response to the client's statement;
5. have an opportunity to participate in the creation of the case plan and be provided a copy of the case plan and case plan amendments, and of proposed or current services, treatment or therapies;
6. consent to or refuse any service, treatment, or therapy upon full explanation of the expected consequences of such consent or refusal unless ordered to participate in services by a direct court order or a case/service plan journalized by a court of competent jurisdiction. A parent or legal guardian may consent to or refuse any service, treatment, or therapy on behalf of a minor client unless ordered to participate in services by a direct court order or a case/service plan journalized by a court of competent jurisdiction;
7. a current, written, individual case/service plan that addresses child safety, mental and physical health, and social or economic needs, and that specifies how available, appropriate, and adequate services are to be provided either directly or by referral;
8. active and informed participation in the establishment, periodic review, and reassessment of the case/service plan;
9. freedom from unnecessary or excessive medication;
10. freedom from unnecessary restraint or seclusion;
11. be informed of and to refuse any unusual or hazardous treatment procedure;
12. participate in any appropriate and available Agency service, regardless of refusal of one or more other services, treatments, or therapies or regardless of relapse from earlier treatment in that or another service, unless there is a valid and specific necessity which precludes and/or requires the client's participation in other services. This necessity shall be explained to the client and written in the client's case/service plan;
13. have the opportunity to consult with independent treatment specialists or legal counsel at one's own expense;
14. confidentiality within the limitations and requirements of Ohio and Federal laws or rules, court orders, or a journalized case/service plan. Any person having the legal capacity to consent to the release of information regarding an Agency client may do so consistent with Ohio and Federal laws or rules;
15. be informed in advance of the reason or reasons for discontinuance of service and to be involved in planning;
16. receive an explanation of the reasons for denial of service;



April 28, 2014

Steven C. LaTourette
101 Constitution Avenue NW
Suite 600 East
Washington, D.C. 20001

Re: Information Request Re: Stephanie Clough

Dear Mr. LaTourette:

This letter is in response to your recent request for records concerning Stephanie Clough. Investigatory records concerning allegations of abuse and neglect are confidential pursuant to Ohio Revised Code 2151.421 and 5153.17 and may only be released in limited circumstances.

The executive director reviewed your request along with the history of agency responses on this matter. This matter has been reviewed multiple times at the request of the mother and agency staff reviewed the issues raised by the mother through the agency grievance process which involves multiple steps, including the executive director.

The mother and the maternal grandfather then brought this matter to the Franklin County Children Services Board of Trustees for review and also issued multiple subpoenas for the agency to produce the materials/information in court proceedings in another county.

The matter has also been reviewed by the Ohio Department of Job and Family Services. I have enclosed a letter from ODJFS concerning their review.

Based upon the above-mentioned steps and actions taken by the agency, the executive director did not find good cause to release the records to you. Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "AOL", is written over the typed name.

Anne C. O'Leary
Chief Legal Counsel

855 W. Mound Street
Columbus, OH 43223
(614) 275-2571 Phone
(614) 275-2755 Fax



McDonald Hopkins
GOVERNMENT STRATEGIES™

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Anne C. O'Leary
Chief Legal Counsel
Franklin County Children Services
855 W. Mound St.
Columbus, Ohio 43223

Dear Ms. O'Leary:

Thank you for your letter to me, dated April 28, 2014.

I want to make certain, before I discuss next steps with my client, that my request and your denial thereof are consistent. My request, although inartfully drafted perhaps, was that I be permitted to present myself at the offices of Franklin County Children Services and review the file that pertains to Jasmine Clough. I am amenable to doing so under any conditions that the agency would seek to impose. Following said review, there may or may not be records I may seek to have released. That, naturally, would be the subject of an additional conversation.

Your letter makes reference to subpoenas issued in the Lake County visitation matter. If I am not mistaken, there was no independent review of the file as your agency moved to quash said subpoenas. Further, I have reviewed the letter of May 6, 2011 from ODJFS and the transcript of the hearing that that board conducted. Although I find a conclusion that FCCS followed the Ohio Revised Code, I also fail to see any independent review of the case file.

In reviewing the Ohio Revised Code sections that you cite in your letter, I found it helpful to read them in conjunction with the Client Rights booklet that your agency provides. Specifically, on page 7, it would appear that Ms. Clough has the right to request a review of her records unless doing so would cause the likelihood of harm to someone or if the release is prohibited by law. Since there is no harm at issue, I must assume that the agency is claiming the release is prohibited by law. That would be an odd reading of the agency's procedures since all records appear to be confidential under the Ohio Revised Code unless another avenue exists. Since the 'Rights' pamphlet doesn't suggest that a client may never review their records unless the Executive Director assents, it is reasonable to assume that the Rights adopted by the FCCS Board contemplate the procedure under which the records will be made available by the agency.

Therefore, I would ask that, at your earliest convenience, you either permit me to inspect the records in your offices or reaffirm that the Executive Director is declining to release the records, pursuant to the Ohio Revised Code and the Client Rights policies adopted by the governing board of FCCS.

Very truly yours,



May 20, 2014

Steven C. LaTourette
 101 Constitution Avenue NW
 Suite 600 East
 Washington, D.C. 20001

Re: Response to Letter received May 16, 2014 re: Stephanie Clough

Dear Mr. LaTourette:

I am writing in response to your request to review the investigatory records related to Jasmine Clough. I apologize if I was not clear in my explanation regarding the records we have concerning this matter. The only records we have on the Clough family are considered investigatory. We did not open a case *after* the investigation. Unfortunately, the references in our client rights pamphlet do not provide great detail concerning the law regarding access but simply state "prohibited by law". However, the FCCS board policy concerning access to records does go into more detail and states:

*It is the policy of the Franklin County Children Services Board that adults and children who are clients of the Agency shall have the following rights. The right to review their case record, subject to applicable federal and state statutes and regulations. **Please be aware that specific provisions in the law prohibit the release of referral source information and investigatory records.** Requests for review are considered by the Executive Director, and may be approved, or approved with limitations (information redacted) as mandated by the provisions of RC 149.43, 2151.421, 1347., 5101.131-5101.134, 5153.17, and OAC 5101:2-33-21, and 22. For open cases, the agency will follow FCCS policy "Client Access to Records," which will be produced for the requestor. To summarize, the request must be made on the A-12 Consent for Information Release Form. The Legal Department will redact a copy of the record, as required by law and the Regional Director or designee will be the contact person to arrange the viewing.*

855 W. Mound Street
 Columbus, OH 43223
 (614) 275-2571 Phone
 (614) 275-2755 Fax

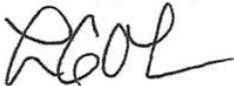


b. For closed cases, requests will be forwarded to the Legal Department, pursuant to agency policy. The Legal Department will redact any confidential information that is not subject to release, and will forward the information to the requestor. Decisions made to deny access to records will be documented and offered to the requestor. (Emphasis added).

You referenced a belief that an independent review was not conducted. The Ohio Department of Job and Family Services is the state agency with oversight responsibilities for the eighty-eight county public children services agencies. The "case record" is housed in *SACWIS* (the Statewide Automated Child Welfare Information System) and this information system is maintained by ODJFS. The correspondence I included previously references that the case was reviewed by ODJFS staff.

Hopefully this reference to our board policy and additional citations will clarify our policy and the law concerning investigatory records. In conclusion, it is the agency's position that the Clough investigatory records are confidential pursuant to law and that while the executive director may authorize the release of certain records, he is not exercising his discretion to do so regarding these records. Please let me know if you have any questions. Thank you.

Very truly yours,



Anne C. O'Leary
Chief Legal Counsel

Franklin County
**Children
Services**

"Protecting Children by Strengthening Families"

Exhibit E



JOHN R. KASICH
GOVERNOR
STATE OF OHIO

February 27, 2012

Ms. Stephanie Clough
2638 Rustling Oak Boulevard
Hilliard, Ohio 43026

Dear Ms. Clough:

Thank you for your recent letter regarding ongoing case with the Ohio Department of Job and Family Services. I appreciate you taking the time to contact me about this important matter.

I have taken the liberty of forwarding your letter to the Ohio Department of Job and Family Services and I have asked that your concern be reviewed and addressed as promptly and thoroughly as possible.

Thank you again for taking the time to write and please feel free to contact my office in the future.

Sincerely,

A handwritten signature in cursive script, appearing to read "John R. Kasich".

John R. Kasich
Governor

JRK/ed

**PURSUANT TO SUP.R. 45(C)(2), THIS
DOCUMENT OR PORTIONS OF THIS
DOCUMENT ARE NOT AVAILABLE
THROUGH REMOTE ACCESS.**