

In the
Supreme Court of Ohio

THE STATE, *ex rel.* ARISTIDES JURADO, *et. al.*,

Relators,

v.

OFFICE OF DISCIPLINARY COUNSEL, *et. al.*,

And

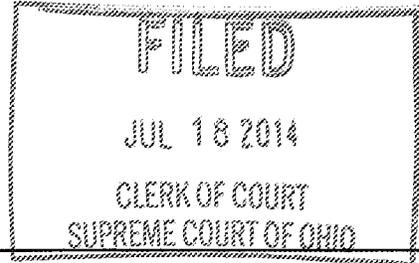
FRANKLIN COUNTY COURT OF COMMON
PLEAS, DOMESTIC RELATIONS DIVISION,
JUVENILE BRANCH, *et. al.*,

Respondents.

14-1225

Case No. _____

ORIGINAL ACTION IN MANDAMUS AND
PROHIBITION



MEMORANDUM IN SUPPORT OF PETITION FOR WRIT

SUMMARY

Relators seek a Writ of Mandamus to compel all Respondents to exercise their legal duty of addressing grievances and complaints regarding the conduct and unlawful acts committed by the Guardian Ad Litem (GAL) in a custody case, who has been appointed by Respondent the Juvenile Court to represent and advocate for the best interest of the child. Relators also petition injunctive relief and any other relief Relators may be entitled to, equitable or declaratory, along with a Writ of Prohibition against Respondent the Juvenile Court to remedy the recent exercise of judicial power that is unauthorized by law while exceeding their jurisdiction and prevent such unauthorized exercise of power that is anticipated to occur in the near future. Respondents'

failure to carry out their duties has enabled the GAL to continue inflicting harm, and is perpetuating the denial of due process and other substantial rights of the Relators. Because these are constitutional claims as well as matters affecting the best interest of a child under both the *Parens Patriae* Doctrine and R.C. 3109.04, time is of essence and no adequate remedy at law is available to Relators.

The GAL is certainly not a party to this case. In a scenario that she is named Respondent to an original action for extraordinary writs, Relators claims against her would not qualify for a writ because adequate remedies at law are available to address those claims. Yet, those same adequate remedies at law to deal with the conduct of a GAL are those that Respondents have refused to perform as part of their legal duties.

Could there be any logical explanation for a GAL to refuse to talk to—not one but—two health care providers speaking on behalf of one of the parents?¹ Could there be any reasoning for a GAL to be readily available to speak with attorneys that represent a third party that lacks significant interest in the custody case while they prepare a lawsuit with the help of one parent to be filed against the other parent?

Is there any logic for a GAL, who professes to act as a mediator, encourage two parents to engage instead of disengage, disparages the recommendations made by Ohio's Parenting Guide, which is published by the Supreme Court of Ohio, for high conflict cases, and ignores attempts made by one parent to minimize conflict by using other alternatives, such as supervised exchange centers?²

¹ See Exhibits D1, D2, D3, D4, D5 and D7

² See Exhibits E1, E1, E3 and E4

Could there be any reasoning for a GAL to knowingly and deliberately make misrepresentations in a court proceeding, so that the father of the child is considered an “Overinvolved Dad” by the court?³

The manifest weight of the evidence, which is now clear and convincing, doesn’t leave room for doubt that, at least, probable cause exists. For Relators, there is no question about the misconduct and intentional harm done by the GAL. The question is *for how long?*

The attorney-GAL acts as she is above the law and she may believe that this is the case. But so far, she has proven to be right. By refusing to act, Respondents are creating a context that we all expect to just be a cliché.

This summary will be closed with the words of wisdom of South American Nobel Prize recipient Gabriela Mistral: *The future of children is always today. Tomorrow will be too late.*

³ See below under (C) and exhibits A1-A5 and Exhibit M – 1st Video footage.

WHAT THIS CASE IS NOT ABOUT

- a. This case is not about the qualifications of the bench in the Juvenile Court. This case is not even about them personally. In fact, Relator admires the role they play in helping many children and juveniles in Franklin County.
- b. This case is not about the adverse party, the child's mother, in the custody case.
- c. This case is not about the civil lawsuit filed in the General Division of the Common Pleas Court of Franklin County.
- d. This case is not about controlling judiciary discretion.

STATEMENTS OF FACT

A. Neglected Best Interests and Welfare of the Child

A.01. During the first 6 months of life, Relator N.G., as an infant suffered from significant weight-gain challenges. Although the weight/height deviations from the statistical norm (weight charts), fell under the APA's definition of Failure to Thrive (FTT), the term may be avoided by clinicians due to the negative connotations that may imply neglect when used within the contexts of domestic law or Child Abuse and Neglect.

A.02. The APA officially classifies FTT as a set of signs or symptoms rather than a diagnosis.

A.03. Even when some medical professional may argue that the child did not have FTT, he clearly showed signs of FTT or was at risk to experience FTT.

A.04. The child's weight-gain problems started to clear up at the same time A.J. was able to parent his son and his parental rights were restored—around late December 2012/early January 2013. Also, the time period of the onset and peak of the poor weight gain

symptoms corresponded—not coincidentally—with the period that Relator A.J. was unable to parent his son given the mother’s prohibitions and restrictions, including the unlawful access denial to visit his son by the out-of-home care provider/daycare facility.

A.05. Soon after the GAL’s appointment to the case in late March 2013, A.J. communicated his concerns about his son’s weight challenges in terms of the qualification and reliability of the child’s pediatrician, since the pediatrician had been in complete denial that there was anything wrong with the infant.

A.06. In April 2013, a new pediatrician evaluated the child and provided a 2nd opinion that there was certainly a problem with weight gain during the first 6 months, and it was likely caused by the baby not getting enough breast milk from the mother. It was her opinion that the current pediatrician had lost his objectivity due to the 15+ year relationship with the mother, among other factors.

A.07. When the 2nd opinion pediatrician requested to speak with the GAL, she declined the request claiming that doing so would compromise her “neutrality”.⁴

A.08. The 2nd opinion pediatrician also provided a referral for a specialist. However, both the mother and the GAL strongly opposed the child from been seen by a specialist.

A.09. After a long struggle, A.J. was finally allowed to increase the amount of milk used for his son’s bottle feeding by 50%. There were many and obvious signs that his son was constantly unsatisfied and hungry after his feedings, but he was not allowed to do anything about it.

⁴ See Exhibit D2 – Email communications with the GAL

A.10. A.J. concerns regarding the weight and health of his son started in October of 2012. 19 months later as of May 2014, he still has not been able to have his son seen by a specialist/health care provider regarding the possible side effects of the weight gain issues from early on, given that the child presents some behavioral and mild cognitive/developmental issues.

B. Instigated a Lawsuit against A.J. by the Daycare Facility

B.01. The GAL and the mother first created a wedge between A.J. and the daycare facility in early July 2013 by involving the owner of the daycare facility in her deceptive efforts to have the court issue a restriction to prevent A.J. from visiting the daycare. (Refer to section (C) below).

B.02. The deceptive efforts by The GAL and the mother resulted in complaints filed by A.J. in multiple state agencies against the daycare.

B.03. The owner of daycare facility confirmed during a meeting with A.J. on 9/6/13 that the GAL “made up” the statements that were reported to the Magistrate on 7/8/13 by The GAL. The daycare owner conceded that the animosity and friction arising from the multiple complaints filed by A.J. were in fact the responsibility of the GAL and the mother given their actions and misconduct.

B.04. After the 9/6 meeting between the daycare owner and A.J., their relationship was restored. No more than a month had passed by, when the mother and The GAL colluded again to erode the harmony that had just been renewed.

B.05. In late September 2013 and early October, A.J.'s attorney accomplished what was perceived as the GAL's willingness to consider other options for higher quality out-of-home care for the child.⁵

B.06. On October 8, 2013, A.J. took his son to the Emergency Room for the latest of a series of head injuries. By a quirk of fate, A.J. had sent an email to his attorney only 2 days before the 10/7 more serious head injury happened. In the email to his attorney, A.J. shared his concerns regarding the recent injuries the child had suffered while at daycare⁶. A.J. explained his concerns to the doctor that, due to the frequency and not necessarily severity of the head injuries, significant trauma may have been inflicted that is not visible to the naked eye. Naturally, A.J. explained that they were going through a process of proposing new daycares to the court since A.J. was not satisfied with the quality of care of the current facility, without making accusations of purposeful abuse by the facility or by the mother.

B.07. The ER doctor recommended the involvement of a social worker and specific tests for the child to identify any unknown past injuries. After witnessing the mother behavior of hostility and defensiveness against A.J. while being protective of the daycare facility, both the social worker and the ER doctor were more inclined to report/make a referral to Franklin County Children Services (FCCS).⁷

B.08. Having the GAL on speed dial, the mother immediately contacted The GAL as well as the daycare facility to give them a heads up that FCCS had been called and would be soon on their way to the facility.

⁵ See Exhibit C1

⁶ See Exhibits C2, and C3.

⁷ See Exhibit M (DVD) – 2nd Video footage, and Exhibit C4 – Video transcript

B.09. During the initial interview with the FCCS case worker assigned to the case, A.J. shared his position that he didn't believe child abuse had been committed by anyone at the facility and was uncomfortable hearing the word "perpetrators". A.J. conceded that he had issues with the quality of care at the center but that they amounted to not enough training for employees and teachers as well as deficient oversight by the administration.

B.10. One more time, The GAL—acting as an officer of the court in the role of GAL—did not demonstrate any concerns regarding the child's condition and overall well-being. Instead, her focus was directed at finding any flaws or faults in A.J.'s actions, while advocating for the mother's interests⁸. The mother's intentions, were to discredit A.J.'s opinions and concerns while opening a new front of aggression: Creating the perception that the Daycare staff and administrators had been victimized. Between the mother and the GAL spread rumors and false allegations that A.J. had made explicit child abuse accusations against the child's teachers at the facility.⁹

B.11. As soon as the mother learned about the involvement of FCCS, she called the daycare administrators while still at the hospital to warn them about the impending investigation and also contacted the Guardian Ad Litem for assistance in advocating for her and for the daycare facility. Immediately and in abuse of her role as officer of the court, The GAL (inappropriately) contacted FCCS the very same day that the child was at the ER and FCCS

⁸ Refer to Exhibit C5

⁹ Refer to Exhibit C6

first got involved, with the purpose of interfering, creating prejudice and to damage A.J.'s credibility with them.¹⁰

B.12. Although the lawsuit filed against A.J. a week later implies that the involvement of FCCS as part of the ER visit is what triggered the civil action by the daycare, The GAL had already been in contact with the attorney for the Daycare center days before the ER incident as proven by the calls logged in the Itemized Bill from the GAL.¹¹

B.13. As The GAL took advantage of the credibility inherited by her role of GAL, she abused the powers entrusted in her, continued her misleading conduct, and exhorted undue influence in the opinions of the ER doctor, ER social worker, FCCS case worker and supervisor.

C. The "Overinvolved Dad" not to be allowed to Visit Son at Daycare

C.01. Between September 2012 and January 2013 and prior to their first court appearance, the mother successfully restricted A.J.'s access to the daycare facility to visit his son. She claimed that the daycare staff and parents would have a problem with a parent spending time with his child while at the facility, even if it was just to feed the child his/her lunch.

C.02. Between September 2012 and January 2013 and prior to their first court appearance, the mother successfully prevented A.J. from spending a full day with his son based on the rationale that it is more important for the child to follow the routine and scheduled offered at a daycare facility than for father-son to form a bond by spending uninterrupted quality time together. This occurred long before the GAL's appointment of GAL in the case.

¹⁰ Refer to Exhibit D7

¹¹ Refer to Exhibit D7

C.03. After his parenting rights were reinstated by the court on January 23rd, 2013, A.J. had normal interactions with the Daycare daycare staff and administrators. For the next 5 months, he continued picking up and dropping off his son at the daycare facility and visited his infant son during lunch/feeding times 2 times a week on average, during the few days that A.J. was not working in Chicago, IL.¹²

C.04. During the 5 months preceding the July 8 2013 hearing, there was not a single incident, event, dispute, argument or the like between A.J. and the daycare workers. However, he felt uncomfortable due to the fact that at least a couple of the workers were constantly communicating with the mother to report A.J.'s activities that were being monitored.

C.05. During her first 4 months in the case, between March–June 2013, the GAL established a set of rules for the child not to be with his dad during the week, in support of the mother's efforts to limit A.J.'s time with his son.

C.06. the GAL's restrictions affecting A.J.'s parenting time were intensely sought by her and by the mother, despite the fact that the GAL was aware of A.J.'s amount of time out of state.

C.07. Much more than just being aware of A.J.'s weekly travel to/from Columbus and Chicago, the GAL interfered with and sabotaged the almost-successful negotiations of an interim parenting schedule change needed for A.J. to meet his obligations with his demanding work schedule in Chicago.

¹² See Exhibit A4 – Airline travel history

C.08. On July 8, 2013, during a court hearing, the GAL alleged that she had a conversation with the owner of the daycare facility, the daycare administrator/owner, that same morning. The GAL reported to Magistrate Matthews that A.J. was visiting the daycare facility 2 times a day/5 days a week; that the workers felt intimidated and described A.J. as aggressive; that other parents had been complaining about A.J. and that his visits were stressful for his son.¹³

C.09. Based on the allegations of the GAL, both the GAL and the Magistrate labeled A.J. as an overinvolved father, and sought to have his access to the daycare restricted to only drop-offs and pick-ups. The GAL's allegations of the frequent visits of 5 days a week contradicted her sound knowledge that A.J. had a job that required him to travel out of town every week for the past year.

C.10. Although the transcript of the 7/8/13 court hearing was not available to A.J. for several months, he obtained from the GAL, 1-2 days after the hearing, a written explanation of what was discussed in court regarding the topic of his visits to the daycare.¹⁴

C.11. During a meeting that took place on September 9, 2013 between A.J. and the daycare owner, the owner made specific statements implicating the GAL in the premeditated action of misleading the court and deceptive conduct. Specifically, she asserted that almost every statement and information the GAL provided to the Magistrate on July 8 that reportedly

¹³ See Exhibits A1 and A3

¹⁴ See exhibit A2

came from the daycare owner were not simple misunderstandings but outright fabrications, as shown in video recording.¹⁵

D. Safety Neglected-Commute in Bad Weather

D.01. After the minor child was permanently expelled from his first daycare, the GAL made it an urgent matter to find a replacement daycare, even when Relator was available to care for the child.

D.02. In less than 48 hours, the mother of the child came up with her recommendation, which was a facility on the outskirts of Franklin Count on its west side—the westmost point of the county or farthest away from Relator.¹⁶

D.03. Even though Relator provided with two excellent alternatives that were practical for both parents and the qualifications were better than the facility provided by the child's mother, the GAL made her recommendation of placing the child at the facility chosen by the mother, forcing Relator to have to drive 100 miles for each day of his parenting days, since he would need to complete two round trips across the metropolitan area from east to west.¹⁷

D.04. The fervor of the mother and GAL of keeping the child from being cared by Relator A.J., even on his parenting day, may explain why they pressured him to drive the child during a snow storm across the city¹⁸ to attend daycare, all 100 miles, while most children that age were safe at home with their parents, or if they had to attend daycare, they likely

¹⁵ See Exhibit M (DVD)- first video footage and Exhibit A3 (transcript of video).

¹⁶ See Exhibits G1

¹⁷ See Exhibits G2 and G3

¹⁸ See Exhibit M (DVD) – 3rd video footage and Exhibits G4-G10

attended one near their homes. A.J. could have stayed home with his son on that day, as it was the case when the child was dropped off at daycare when having a communicable disease just so that A.J. would not care for him at home.

CONCLUSION

There are many examples to support the merits of this petition for Writs of Mandamus and Prohibition. But most importantly, expediency is a necessity for temporary relief as well as the final adjudication of the claims, given the nature of this case.

We are guilty of many errors and many faults,
But our worst crime is abandoning the children,
Neglecting the fountain of life
Many of the things we need can wait
The child cannot wait.
Right now is the time bones are being formed,
His blood is being made,
And his senses are being developed.
To him we cannot answer 'tomorrow.'
His name is TODAY¹⁹.

Respectfully submitted,

Relator-Father Pro Se

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¹⁹ Poem His name is Today by Gabriella Mistral