

ORIGINAL

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.

Case No. **2014-1225**

ORIGINAL ACTION IN MANDAMUS AND
PROHIBITION

**MOTION FOR EXPEDITED ISSUANCE OF ALTERNATIVE WRIT
AND EMERGENCY STAY OF PROCEEDINGS
WITH MEMORANDUM AND AFFIDAVIT IN SUPPORT**

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PLEAS, DOMESTIC RELATIONS DIVISION,
JUVENILE BRANCH, *et. al.*,

FILED
JUL 22 2014
CLERK OF COURT
SUPREME COURT OF OHIO

**MOTION FOR EXPEDITED ISSUANCE OF ALTERNATIVE WRIT
AND STAY OF PROCEEDINGS**

Relator-Father Aristides Jurado acting Pro Se, and Relator-Minor Child N.G., through his father Relator Aristides Jurado, respectfully request this Honorable Court for an immediate stay of proceedings in the underlying custody case and expedited consideration of an Alternative Writ of Prohibition to prevent Respondent Franklin County Court of Common Pleas, Domestic Relations Division, Juvenile Branch, *et. al.* (“The Juvenile Court”.) from holding a contempt hearing and moving forward with the final trial and full evidentiary hearing pending disposition of this action.

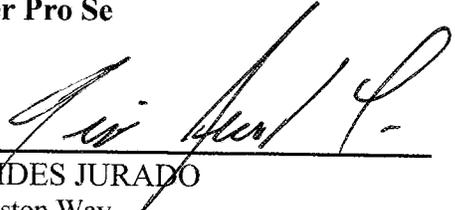
The expedited consideration for temporary and immediate relief is necessary to prevent Relators from being denied fundamental and substantial rights and to avoid irreparable harm to be caused by the looming exercise of judicial power by Respondents that exceeds their jurisdiction and is unauthorized by law. Additionally, the issuance of the alternative writ is to “preserve the existing status of a proceeding, to command the person against who it is issued to show cause to the court why a permanent writ of prohibition should not be ordered.” *State ex rel. Hughes v. Brown* (1972), 31 Ohio St.2d 41, 43, 60 O.O.2d 23, 24, 285 N.E.2d 376, 377 and *State ex rel. Allstate Ins. Co. v. Gaul* (1999), 131 Ohio App.3d 419, 429-34.

The upcoming trial and hearing is scheduled to start tomorrow **Tuesday July 22, 2014 at 1:30pm EDT** and will be presided by Respondent Magistrate Jill Matthews.

Respectfully submitted,

Relator-Father Pro Se

By: _____


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MEMORANDUM IN SUPPORT OF MOTION

INTRODUCTION

A substantial right is a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect.

State ex rel. Bates v. Court of Appeals for the Sixth Appellate Dis., 130 Ohio St.3d 326, 2011-Ohio-5456.

An adequate remedy in child-custody cases is unlike that in other types of cases, because for a child and her parent, *time is the most precious of commodities.*

(Emphasis Added.) *State ex rel. V.K.B. v. Smith*, 138 Ohio St.3d 84, 2013-Ohio-5477, at ¶23.

This is a case in which, for almost two years, Relators N.G. and A.J. have been suffering irreparable harm—a type of harm that is irreversible no matter what remedy may be granted. For the minor child, it means for his first two years of life—his entire life so far—he has been deprived of things that are precious and irreplaceable: time with his parents and full enjoyment of life while completely thriving as an infant. For A.J., his first two years as a father—the most important role he has ever been entrusted with—can never be brought back.

Without the timely intervention of this court, the continuously increasing harm will go on for the next several years.

Even with no means to repair the harm already done, Relators pray that this court exercises its power to maintain the status quo until it can restore the parties to “the same position they occupied before excesses occurred.” *State ex rel. Adams v. Gusweiler* (1972), 30 Ohio St.2d 326.

STATEMENT OF FACTS

As stated in the Petition for Extraordinary Writs and Memorandum in Support filed by Relators on July 18, 2014, this case arises out of child-custody proceedings that have been severely undermined by the wilful misconduct and unlawful acts of the appointed Guardian Ad Litem. Yet, the motion raised herein is focused on preventing the looming exercise of judicial power by Respondents that exceeds their jurisdiction and is unauthorized by law that is expected to start tomorrow, July 22, 2014 with the scheduled trial for the final adjudication of the custody action and the court hearing to address multiple counts of contempt against Relator Aristides Jurado (“A.J.”). To better understand the nature and root cause of the Motions for Contempt, the court may need to learn some additional factual background.

A committed father who consistently attends to his parental obligations

By the time the custody action was filed by the child’s mother in the fall of 2012, when their infant son had yet to turn 4 months of age , A.J. had voluntarily disbursed \$10,000.00 to the child’s mother to help her with the financial burden of medical bills, child-related expenses and even the loss income¹ during her partial-employer-paid maternity leave. The support payment of \$10k for the first 4-5 months of life of the child was in addition to all other expenses incurred by Relator as they prepared for the arrival of the newborn (identical cribs purchased by each parent for both homes, etc.) and despite the fact that Relator was unemployed for the first half of the 2012 calendar year.

When the parents entered into a formal parenting agreement with the court in January of 2013 and a formal child support order was entered, Relator continued making monthly payments directly to the mother, since they both had learned that the Child Support Enforcement Agency

¹ See Exhibit N, pages B.02.c.0001– B.02.c.0004

would create a one-time payment lapse for the child's mother-obligee lasting up to 2 or 3 months during the initial setup of the account². Relator took a significant risk, against the advice of his attorney, because payments made outside of the agency may not be credited towards the monthly obligation or may be very difficult. That information still didn't discourage relator to do what was in the child's Best Interest. But as he was warned, it took a lot of effort and several months before an Agreed Entry was properly approved by the court and filed with the agency to issue Relator credit for several months of payments³.

For the entire 2013 calendar year, A.J. was either self-employed or unemployed. Yet, by the fall of 2013, he had never missed any child support payments.

Direct and Indirect Financial harm caused by Wilful Misconduct and Malice of the GAL

The effect of the actions and conduct of the GAL had significant and immediate effect on A.J. finances and life. Until this day, he continues to experience undue hardship inflicted by the GAL, including:

1. Attorney fees more than doubled soon after the appointment of the GAL in March 2013. Her frequent interference between the parents as a (biased) arbitrator created a substantial disparity between the parents and their legal counsel as the child's mother had a new advocate and no longer needed the involvement of her counsel on every issue or topic.

2. Being enabled and encouraged by the GAL, the child's mother increased her aggression including actions to cause added financial burden to A.J. For example, items that they purchased together or shared the cost and had been sharing cooperatively for the benefit of the child were suddenly confiscated, such as the child's stroller. This forced A.J. to have to purchase a new stroller as his work contract was nearing the end.

² See Exhibit N, pages B.02.c.0006– B.02.c.0008

³ Refer to Exhibit N, pages B.02.c.0010– B.02.c.0017, B.02.c.0050– B.02.c.0053

3. After several months of bullying and harassment, the GAL takes advantage that A.J. lost legal representation and coerced him into signing an agreed order making daycare attendance mandatory for the child⁴, and thus creating an unnecessary expense for A.J., since he was able and wanted to care for his child instead of sending him to daycare, at least on his parenting days.

4. The instigation of a civil lawsuit against A.J. by the daycare facility, forcing A.J. to incur in new litigation costs in addition to the custody litigation expenses⁵.

5. GAL enables mother and, between the two, enrolled the child in a new daycare facility that is the farthest possible location for A.J. to reach, while still within a relatively short distance from the child's mother residence⁶. Not only that A.J. at that point was having to allocate more time of his days to drive 100 miles daily in 2 round trips on his parenting days, and but also his fuel costs increased excessively, and his car maintenance become a new major problem as repair costs surged⁷. It is important to note that they both were aware that A.J.'s car has high-fuel consumption and also that it had a history of mechanical problems as it is expected from an older car⁸.

6. Even when A.J., through his new attorney, shared that he had started a part-time job⁹, which almost immediately started demanding hours above 20, they continued to be uncooperative. Furthermore, the new daycare location imposed by the GAL created a conflict with the demands of A.J.'s new client, due to the new distances he had to drive in

⁴ Refer to Exhibits A2 (Email From GAL) and A5 (Magistrate's Order) filed with Initial Petition for Writs

⁵ Refer to Exhibits C1-C6 filed with Initial Petition for Writs

⁶ Refer to Exhibits G1-G4 filed with Initial Petition for Writs

⁷ Refer to Exhibit N, pages B.02.c.0040– B.02.c.0041, B.02.c.0054– B.02.c.0057

⁸ Refer to Exhibit N, page B.02.c.0009

⁹ See Exhibit N, pages B.02.c.0029– B.02.c.00031

the morning and afternoon¹⁰, they were uncooperative and ended up obtaining an Ex-Parte Restraining Order

Hostility and Retaliatory Conduct reflects in first Motion for Contempt

With all the obstacles and undue financial burden created by the GAL and the child's mother, A.J. was unable to keep up with his Child Support obligations and high monthly GAL fees. In a cooperatively and friendly manner, A.J. notified the child's mother that for only the last 2 months of the 2013 calendar year, he would only be able to pay a partial amount for child support¹¹. He also made a commitment that by January 2014, he would start paying in full plus an additional amount to pay arrears, because he expected to be working additional hours or have a full-time job sometime after the start of the New Year.

A.J. also continued communicating with the CSEA case worker to keep her aware of the situation, and she was very helpful and understanding.¹²

Without even providing a courtesy answer to A.J.'s email communication, the child's mother and her counsel proceeded to file their first Motion to Hold Father in Contempt¹³ in November 2013, which included highly hostile language such as "Father is in contempt of this Court's order and *should be punished.*" (Emphasis Added.)¹⁴

Less than 2 months later, the GAL followed suit and filed a similar motion which also included Sanctions for A.J. to be precluded from introducing evidence for the final trial.

¹⁰ Refer to Exhibit G4 filed with Initial Petition for Writs

¹¹ Refer to Exhibit N, page B.02.c.0042

¹² Refer to Exhibit N, page B.02.c.0049

¹³ Refer to Exhibit N, pages B.02.c.0043– B.02.c.0048

¹⁴ Refer to Exhibit N, page B.02.c.0044

Extreme Hostility and Attacks inside the Courtroom, Allegations of a Leak in the ODC.

The GAL's hostility can be observed in her performance the day of the March 26, 2014 hearing with Magistrate Matthews. First, in respect to my Motion for Removal of GAL, she asked the court to limit the number of pages allowed¹⁵ in the Affidavits, so that A.J. would not introduce all his evidence collected against her. Most notably, the GAL stated to the Court that "I know what has been submitted to the Supreme Court"¹⁶ referring to the content of the filing in the Grievance with the **Disciplinary Counsel and alleging actual leak of information**. It is also important to note that the GAL openly stated that she opposes A.J.'s Motion to allow (not to appoint) Stand-By Counsel. When A.J. asked her for her reasoning to oppose that Motion, she just answered "why should you get special treatment?"¹⁷, During a court recess in which the Magistrate left the room for at least 15 minutes, the GAL proceeded to bully, intimidate¹⁸ and harass A.J. She even accused him of having someone "ghostwriting" his legal briefs.¹⁹ Fortunately, the court recording system continued recording during the recess and captured the incident. Although the transcript of the proceedings may give some idea of the degree of hostility, A.J. intends to Subpoena the actual audio recording for filing with this Court, for a better grasp of the evident hatred that is predominant and that A.J. has experienced since April, 2013 when the GAL was recently appointed.

No Longer able to meet basic personal and family needs

Starting in November 2013, A.J. was no longer able to charge his credit cards in order to make ends meet. With the help of family and friends, he was able to meet some of his basic needs after meeting all of the child's needs, but there were consequences nevertheless:

¹⁵ Refer to Exhibit O, page 72 (Official Transcript of Proceeding).

¹⁶ Refer to Exhibit O, page 72, lines 22-24 (Official Transcript of Proceeding).

¹⁷ Refer to Exhibit O, page 72, lines 1, 2, 3 (Official Transcript of Proceeding).

¹⁸ Refer to Exhibit O, pages 79-82

¹⁹ Refer to Exhibit O, page 81

- a) Loss of Life Insurance coverage under a grandfathered plan that he obtained over 10 years ago, due to the lapse of payment²⁰. With much difficulty, A.J. managed to maintain a \$2M life insurance policy during the past two years that for him were very economically unstable. He still made the sacrifice because of his first and only child. Now at his age, even if his finances are stabilized, it may be impossible for A.J. to get the same type of life insurance coverage for the benefit of the child.
- b) As the entire nation moved to a new era of mandatory health care coverage under the Affordable Care Act starting on 1/1/2014, A.J. for the first time in his life lost health insurance coverage for lapse of payment.²¹
- c) Loss of Long Term Care Insurance Coverage for lapse of payment.²²
- d) Became eligible for eviction at his place of residence.²³

Harm Compounding

With depleted financial resources, A.J. lost his Legal Representation²⁴ after he was unable to continue making payments to his attorney and his outstanding balance exceeded \$8,000.00 as the trial date was approaching, when a substantial amount of attorney fees are expected to be incurred.

In the worst possible time, A.J. has been incurring new penalties and fees for bank account over-drafting and over-the-limit credit card balances²⁵.

²⁰ Refer to Exhibit N, pages B.02.c.0063–B.02.c.0064

²¹ Refer to Exhibit N, pages B.02.c.0090

²² Refer to Exhibit N, pages B.02.c.0058, B.02.c.0093

²³ Refer to Exhibit N, pages B.02.c.0092

²⁴ Refer to Exhibit N, pages B.02.c.0059, B.02.c.0068, B.02.c.0070

²⁵ Refer to Exhibit N, pages C.01.a.0010– C.01.a.0014

After several months of involuntary employment²⁶ and without income in 2013, relator A.J. was able to find a part-time job²⁷ that offered him some extended hours at year end, and the likelihood of a full-time job after a few more months. While struggling with the challenges of the custody case and the GAL, he managed to perform satisfactorily for his client, which now turned to be his employer after finally being hired in a full-time position with full benefits about 4-5 months ago. But the effect of the custody case, the misconduct by the GAL, and the demanding task of being a Pro Se litigant is currently putting his job in jeopardy. A.J. is at risk of losing his current new full-time position after putting so much time and effort into getting it.

Procedural facts of Relator the Juvenile Court

On April 9, 2014, A.J. filed a Motion to Stay proceedings²⁸ with the Juvenile Court based on his intentions of filing this Original Action in Mandamus and Prohibition. On May 12, 2014, May 12, 2014, Judge Jamison denied the Motion²⁹ without A.J. having the opportunity to fully explain all the reasons for filing the Action during a hearing referred by the Magistrate. The court decision was entered on the record³⁰ on June 5, 2014.

On May 28, 2014, A.J. filed his 2nd Subpoena along with a Motion to Compel for the GAL file³¹. Then on May 30, 2014, the GAL files a Motion Quash³². A.J.'s motion to Compel gets set for Hearing in front of the Magistrate³³ and the GAL's Motion to Quash gets set for hearing in front of the Judge³⁴.

²⁶ Refer to Exhibit N, pages B.02.c.0018–B.01.a.0028

²⁷ Refer to Exhibit N, pages B.02.c.0028–B.02.c.0031

²⁸ Refer to Exhibit N, pages C.01.a.0004–C.01.a.0009

²⁹ Court Transcript not yet unavailable for review

³⁰ Refer to Exhibit N, pages C.01.a.0068–C.01.a.0069

³¹ Refer to Exhibit N, pages C.01.a.0023–C.01.a.0059

³² Refer to Exhibit N, pages C.01.a.0018–C.01.a.0022

³³ Refer to Exhibit N, page C.01.a.0017

³⁴ Refer to Exhibit N, page C.01.a.0070

c) Motions to Set Aside Magistrate Order: Judge Jamison refused to hold an oral hearing⁴² to address A.J.'s Motion to Set Aside Magistrate Order, even after he insisted. She stated that A.J. was not entitled to make such request because I failed to submit my Affidavits in the first place. The Judge decided to take both Motions filed by both parties "upon consideration".⁴³

ARGUMENT

Hearing to Show Cause for Contempt Exceeds the Court's Jurisdiction

The court should have addressed Relator's Motion to Modify Child Support that has been pending for 9 months. If the Child Support Obligation would have been modified to a reasonable amount, or based on the standard calculation, for A.J. to become the obligee and become the recipient of the child's mother child support payments, A.J. would have stayed in Compliance with all orders that rely on his financial condition (i.e. payments of any kind).

If the Court would have addressed the Motion to Remove the GAL on a timely manner as their legal duty, or even better, if the court would have investigated the GAL and *Sua Sponte* consider her removal, thousands of dollars would have been saved between both parties by avoiding the unnecessary assessment of GAL fees that have not contributed to any positive cause in this case. As a result, A.J. would have had more chances to stay compliant with all orders.

If the Court would have properly considered all relevant factors when allocating GAL fees and evaluation fees, while observing R.C. 3109.04(F)(3), which mandates that the Court doesn't give preferences to a parent because of that parent's financial status, then A.J. would have been in compliance with the court orders relating to Payment of GAL fees,

⁴² Court Transcript not yet unavailable for review

⁴³ Refer to Exhibit N, pages C.01.a.0082-C.01.a.0083

Reimbursement of Custody Evaluation Fees, and Child Support. It is important to note that Child Support stopped being an issue since February or March 2014.

Also, it has been demonstrated here that the Motion to Show Cause for Contempt was filed frivolously and with Malice by the Child's Mother and her legal counsel.

With Contempt comes the possibility of A.J.'s incarceration. The loss of liberty is a harm for which no remedies at law are available.

Holding a Final Hearing and Trial Exceeds the Court's Jurisdiction

The denial of the Court to allow Relator A.J. the appointment of Stand-By Counsel by declaring it out of its jurisdiction is wrong and denies A.J. of fundamental rights while affecting the fairness of the procedure. There is no case law or statute that precludes a party from retaining stand-by counsel to assist a Pro Se litigant at his/her own expense. The court should have the discretion to allow it or not after showing good cause.

The final hearing cannot proceed after A.J. have been denied of basic protection of his constitutional rights throughout the pendency of the case.

All Pre-requisites Met for Expedited Alternative Writ

This Court has held that an expedited alternative writ should only issue, "if after presuming the truth of all material factual allegations in the Complaint, and making all reasonable inferences in Relator's favor, it appears that Relator's claims may have merit". *State ex rel. Rodack v. Betleski* (2004), 104 Ohio St.3d 345.

In the present case, Relators' Petition for Writ of Prohibition and Alternative Writ has merit for all the reasons stated in this Motion, Memorandum in Support, the Original Petition for Writ and its Memorandum in Support.

For example, to be entitled to a Writ of Prohibition, Relators must establish the existence of three elements:

1. that Respondents exercised or are about to exercise judicial power,
2. the exercise of that power is unauthorized by law, and
3. that denying the writ will result in injury for which no other adequate remedy exists in the ordinary course of law. State ex rel. Reese v. Cuyahoga Count. Board of Elections, 115 Ohio St.3d 126, 2007-Ohio-4588, 873 N.E.2d 1251, at ¶16.

There should be little doubt that all three elements have already been met.

CONCLUSION

The Juvenile Court is about to exercise unauthorized judicial power that will cause irreparable harm to Relators. Respondent has already denied a Motion to Stay on the merits of this action. Relator also approached the Court on July 18, 2014 right after the initial filing of this case to find out if Respondent would issue a *Sua Sponte* Stay of Proceedings. Judge Jamison was on vacation, the Duty Judge was unwilling to issue a continuance, the Duty Magistrate conveyed the information to Magistrate Mathews, who stated lacks authority, and the Duty Magistrate Webber politely explained that the order has to come from a Judge.

For justice to prevail, Relators ask the Court to act expeditiously on this motion, without awaiting response, as the balance of harms for all the parties in this case and the underlying case favors the immediate issuance of this alternative writ.

Respectfully submitted,

Relator-Father Pro Se

By:


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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served via personal service on this 22nd day of July, 2014, upon the following:

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