ORIGINAL

IN THE SUPREME COURT OF OHIO

MARIAN LESTER	)	CASE NO. 14-1914
	)	
Relator,	)	
	)	
vs.	)	**ORIGINAL ACTION**
	)	
JUDGE LAURA J. GALLAGHER	)	
	)	
Respondent.	)	

EMERGENCY COMPLAINT FOR WRIT OF PROHIBITION, SEEKING A FINAL AND ALTERNATIVE WRIT OR, IN THE ALTERNATIVE, EMERGENCY COMPLAINT FOR WRIT OF MANDAMUS, SEEKING A FINAL AND ALTERNATIVE WRIT

L. Bryan Carr (0066649)
1392 SOM Center Road
Mayfield Heights, Ohio 44124
(440) 473-2277 - telephone
(440) 473-0166 - facsimile
carrlawfirm@aol.com

COUNSEL FOR RELATOR, MARIAN LESTER

Judge Laura Gallagher
Cuyahoga County Court of Common Pleas
Probate Division
1 Lakeside Avenue
Cleveland, Ohio 44113
(216) 443-8785 - telephone

RESPONDENT, JUDGE LAURA J. GALLAGHER

FILED
NOV 06 2014
CLERK OF COURT
SUPREME COURT OF OHIO

RECEIVED
NOV 06 2014
CLERK OF COURT
SUPREME COURT OF OHIO

NATURE OF ACTION

1. Relator brings this Original Action pursuant to Article IV, Sections 2(B)(2) and (4) of the Ohio Constitution and Rule X of the Ohio Supreme Court. Relator seeks a Writ of Prohibition preventing Respondent from proceeding in Cuyahoga County Probate Division, Case No. 2014-GRD-199316 (In the Matter of the Guardianship of Imani Bruce, a minor). Relator also seeks a Writ of Mandamus, compelling Respondent to certify jurisdiction of 2014-GRD-199316 to the Cuyahoga County Juvenile Court, which has exclusive jurisdiction over the child. Respondent will not certify jurisdiction. The Relator is seeking an Alternative Writ, immediately staying all proceedings in the Cuyahoga County Probate Court while this Court considers this Complaint.

THE PARTIES

2. Relator, Marian Lester ("Relator") is a natural person and an applicant in a matter pending in the Court of Common Pleas, Probate Division, Case No. 2014-GRD-199316, captioned In the Matter of the Guardianship of Imani Bruce. Relator is also the Plaintiff in the Cuyahoga County Juvenile Court matter captioned In the Matter of Imani Bruce, Case No. AD14912510.

3. Respondent, Laura J. Gallagher ("Respondent") is a Cuyahoga County Common Pleas Probate Division Judge, currently presiding over the Imani Bruce Guardianship matter.

FACTUAL BACKGROUND

4. Relator is the maternal grandmother of the child at issue, Imani Bruce, a twelve (12) year old female. Relator's daughter (the child's mother) passed away on June 15, 2014. The child has never known her biological father. At the time her mother passed away, the child was

living in a residence with her mother and her mother's ex-boyfriend, Michael Fields ("Fields"). Fields is not the biological father of the child; nor was Fields ever married to the child's mother.

5. On June 26, 2014, Fields filed, *pro se*, an Application for Appointment of Guardian of the child. (Exhibit 1) On July 22, 2014 Relator filed, *pro se*, an Application for Appointment of Guardian of the child. (Exhibit 2) Respondent is the Judge assigned to hear the Applications. Respondent subsequently assigned the duties of the case to a Magistrate, who set the matter for Hearing. This prompted the Relator (and Fields) to engage counsel.

6. On Friday, September 26, 2014, a Hearing was held before a Magistrate. The following was elicited through testimony: (1) at the time of her mother's death (her mother was suffering from cancer, and on her death-bed), the child was living with Fields, her mother's ex-boyfriend. However, Fields and his current girlfriend were living upstairs with their own children, while the child (Imani Bruce) was residing downstairs with her mother; (2) Fields has been arrested and/or convicted for Domestic Violence; Felonious Assault, Attempted Drug Possession; Drug Abuse; and Driving Under Suspension (Fields chose to disclose only the assault conviction on his Application for Guardianship); (3) Fields does not have a driver's license, yet drives the child; (4) Fields current girlfriend, who was living with the child, attacked Fields in 2012 with a knife, stabbing him multiple times; (5) Fields is friends with (and allows the child to associate alone with) Raymond Bruce, the child's uncle, who is a Tier III Sex Offender; (6) Fields leaves the minor child unattended and allows her to walk the neighborhood (and to school with other minors), which resulted in a charge (in the Cleveland Municipal Court) of Allowing a Minor to Violate Curfew; and (7) Fields does not pay ordered child support for certain of his own children. Clearly, given these unfortunate and alarming facts and circumstances, the minor child is clearly a

Dependent and Neglected Child. The Hearing concluded with no decision being rendered by the Respondent (or the Magistrate).

7. On September 30, 2014 (the following Tuesday), the Relator filed with the Cuyahoga County Juvenile Court a Complaint to Establish Imani Bruce as a Neglected and/or Dependent child and for Emergency Temporary and Permanent Custody of her. (Exhibit 3)

8. On October 2, 2014, Relator filed a Motion to Certify Jurisdiction to Cuyahoga County Juvenile Court. (Exhibit 4) This Motion to Certify Jurisdiction has never been opposed.

9. On October 6, 2014, the Cuyahoga County Juvenile Court exercised jurisdiction over the child and issued temporary custody of the child to the Relator. (Exhibit 5)

10. On October 18, 2014, the Respondent issued an Order denying and dismissing the Motion to Certify Jurisdiction. (Exhibit 6)

11. On October 28, 2014 (due to the fact that the October 18, 2014 Order was not sent to counsel until October 27, 2014) Relator filed a Motion for Reconsideration. (Exhibit 7)

12. On November 4, 2014, the Respondent issued an Order, denying and dismissing the Relator's Motion for Reconsideration. (Exhibit 8)

CAUSE OF ACTION

13. Paragraphs 1 through 12 are incorporated as if fully rewritten herein.

14. With regard to the Writ of Prohibition, the Respondent is about to exercise judicial power by ruling on the Guardianship of the child, with a Juvenile Court matter (involving Neglect, Dependency and Custody issues) pending. Further, given that Respondent does not have jurisdiction, the exercise of this power by the Respondent is not authorized by law.

15. Refusal of this Writ of Prohibition will result in injury for which no adequate remedy existed in the ordinary course of law, as: (1) Respondent has denied Relator's Motion to

Certify Jurisdiction to the Juvenile Court; and (2) Respondent will continue to rule on the Guardianship of the child, notwithstanding the Juvenile Court Complaint.

16. With respect to the Writ of Mandamus, Relator has a clear legal right to the relief prayed for: certifying jurisdiction over the child to the Cuyahoga County Juvenile Court. Further, pursuant to the precedent set forth by this Court, Respondent is under a clear legal duty to act.

17. Relator has no plain and adequate remedy in the ordinary course of law, as the Respondent denied Realtor's Motion to Certify Jurisdiction and has expressed intent to move forward with the Guardianship, although the Juvenile Court has exercised jurisdiction and ruled on temporary custody (and scheduled a Trial on all issues, including permanent custody).

MEMORANDUM IN SUPPORT

Given the aforementioned facts, and as argued, Relator is entitled to a Writ of Prohibition and an Alternative Writ. To be entitled to Writ of Prohibition to prevent a court from exercising jurisdiction, one must establish that (1) the trial judge was about to exercise judicial power, (2) the exercise of that power was not authorized by law, and (3) denying the Writ would result in injury for which no adequate remedy existed in the ordinary course of law. Rosen v. Celebrezze, 117 Ohio St.3d 241 (2008); Coleman v. Ohio Supreme Court Justice, 2008 Ohio 5878.

Additionally, the purpose of an Alternative Writ is to preserve the existing status of a proceeding pending the determination of the application for the Writ of Prohibition upon the merits. State ex rel. Hughes v. Brown, 31 Ohio St.2d 41 (1972); State ex rel. Trotwood Madison City School Dist. Board, 1988 WL 492114. An Alternative Writ is an interlocutory order issued during the pendency of a prohibition proceeding, before the court has had a full opportunity to consider the merits, in order to preserve the status quo. Like other interlocutory orders intended to preserve the status quo, it should be issued upon a showing of irreparable harm. Id.

Alternatively, and as argued above, the Relator is entitled to a Writ of Mandamus, directing Respondent to certify jurisdiction to the Juvenile Court. To be entitled to a Writ of Mandamus, a Relator must demonstrate: (1) a clear legal right to the relief prayed for; (2) a clear legal duty on the Respondent's part to perform the act; and (3) that there exists no plain and adequate remedy in the ordinary course of law. State ex rel. Kvinta v. Konstam, 2007 Ohio 6627; State ex rel. Master v. Cleveland, 75 Ohio St.3d 23 (1996)

The foregoing facts demonstrate that Relator is entitled to a Writ of Prohibition and, alternatively, a Writ of Mandamus. The child has been alleged to be Neglected and Dependent as defined in O.R.C. 2151.03 and 2151.04. (Exhibit 3) As such, and pursuant to O.R.C 2151.23, the Juvenile Court has exclusive (and original) jurisdiction over the child. According to O.R.C. 2151.23(A), Juvenile Courts have **exclusive** original jurisdiction:

> (1) Concerning any child who on or about the date specified in the complaint...is alleged to...be a juvenile traffic offender or a delinquent, unruly, abused, ***neglected, or dependent child...***
>
> (2) Subject to divisions (G), (K), and (V) of section 2301.03 of the Revised Code, ***to determine the custody of any child not a ward of another court of this state.***

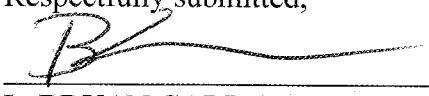
Clearly, Juvenile Courts have exclusive jurisdiction over children once complaints which alleged that they are dependent, neglected and abused children were filed. In re Doe Children, 93 Ohio App.3d 134 (1994) Also, Relator has filed for legal custody of the child. This Court has recently reiterated that exclusive original jurisdiction of juvenile courts to determine the custody of any child not a ward of another court of the state includes custodial claims brought by the

persons considered non-parents at law. Rowell v. Smith, 133 Ohio St.3d 288 (2012) The child at issue is not a ward of the Probate Court. Thus, the Juvenile Court has exclusive jurisdiction.

Further, the Respondent (Probate Court) has not exercised any jurisdiction over custody of the child. The Juvenile Court has. Thus, the Juvenile Court has exclusive jurisdiction. In the Matter of the Guardianship of NP, 2011 Ohio 3846. Finally, it has been held that: "Once a common pleas court has made an order affecting custody of children, that order is continuing and court retains jurisdiction." Id., See also, In the Matter of the Guardianship of Brinegar, 160 N.E.2d 589 (1959) As the Probate Court has no jurisdiction, the Relator is entitled to the Writs of Prohibition and Mandamus. Further, should the Probate and Juvenile Courts continue to act concurrently (and inconsistently) chaos will result, which is not in the child's interest.

WHEREFORE, Relator requests that this Court immediately issue a Writ of Mandamus compelling Respondent to certify jurisdiction to the Cuyahoga County Juvenile Court. Relator also requests that this Court immediately issue a Writ of Prohibition, preventing the Respondent from further acting on the Guardianship of the child. Finally, as the Respondent clearly intends on proceeding with the Guardianship of the child (although the Juvenile Court has already exercised jurisdiction on custody **and** has scheduled a Trial on all issues, including permanent custody) Relator is requesting this Court issue an Alternative Writ, staying all proceedings in the Cuyahoga County Probate Court while this Court has an opportunity to review this Complaint.

Respectfully submitted,



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(440) 473-2277 –tele phone
(440) 473-0166 - facsimile
carrlawfirm@aol.com
Counsel for the Relator

AFFIDAVIT

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

Now comes the Affiant, L. Bryan Carr who, being first duly sworn to testify truthfully, deposes and states that he is of sound mind and competent to testify regarding the following matters of which he has personal knowledge.

1. I am the Attorney who is representing the Relator, Marian Lester in this matter and in the matters captioned: In the Matter of the Guardianship of Imani Bruce, Cuyahoga County Probate Court, Case Number 2014-GRD-199316 and In the Matter of Imani Bruce, Cuyahoga County Juvenile Court Case No.AD14912510. I have been personally and actively involved in the recent proceedings in these matters.

2. The facts set forth in the foregoing Emergency Complaint for Writ of Prohibition or, in the Alternative, Emergency Complaint for Writ of Mandamus are true and accurate to the best of my knowledge and belief.

3. Attached hereto as Exhibit 1 and incorporated herein by reference is a true and accurate copy of the Application for Appointment of Guardian of Minor, Probate Form 16.0, filed by Michael Fields on June 26, 2014, currently pending before the Respondent in the Cuyahoga County Court of Common Pleas, Probate Division.

4. Attached hereto as Exhibit 2 and incorporated herein by reference is a true and accurate copy of the Application for Appointment of Guardian of Minor, Probate Form 16.0, filed by Relator on July 22, 2014, currently pending before the Respondent in the Cuyahoga County Court of Common Pleas, Probate Division.

5. Attached hereto as Exhibit 3 and incorporated herein by reference is a true and accurate copy of the Complaint filed by Relator on September 30, 2014, currently pending in the Cuyahoga County Court of Common Pleas, Juvenile Division.

6. Attached hereto as Exhibit 4 and incorporated herein by reference is a true and accurate copy of the Relator's Motion to Certify Jurisdiction to the Juvenile Court filed on October 2, 2014 with the Respondent.

7. Attached hereto as Exhibit 5 and incorporated herein by reference is a true and accurate copy of the Magistrate's Order issued on October 6, 2014 by the Cuyahoga County Juvenile Court, awarding temporary custody of the minor child to the Relator.

8. Attached hereto as Exhibit 6 and incorporated herein by reference is a true and accurate copy of Respondent's October 16, 2014 Judgment Entry, denying and dismissing Relator's Motion to Certify Jurisdiction to Cuyahoga County Juvenile Court.

9. Attached hereto as Exhibit 7 and incorporated herein by reference is a true and accurate copy of Relator's Motion for Reconsideration filed with the Respondent on October 26, 2014.

10. Attached hereto as Exhibit 8 and incorporated herein by reference is a true and accurate copy of Respondent's November 4, 2014 Judgment Entry, denying and dismissing Relator's Motion for Reconsideration.

FURTHER AFFIANT SAYETH NAUGHT.

L. BRYAN CARR

SWORN TO BEFORE ME and subscribed in my presence this 5th day of November, 2014.

NOTARY PUBLIC

CHRISTINE D. SCHAEFFER
NOTARY PUBLIC • STATE OF OHIO
Recorded in Cuyahoga County
My commission expires July 20, 2016

PROBATE COURT
FILED
JUN 26 2014
CUYAHOGA COUNTY, O.

PROBATE COURT OF CUYAHOGA COUNTY, OHIO

ANTHONY J. RUSSO, Presiding Judge
LAURA J. GALLAGHER, Judge

IN THE MATTER OF THE GUARDIANSHIP OF IMANI Bruce

C. IMANI BRUCE
2014GRD199316
JUDGE LAURA J. GALLAGHER

PROBATE COURT
COST PAID
JUN 26 2014
L. RICHARDS
CASHIER
6-22-2002

INTMENT OF GUARDIAN OF MINOR

[R.C. 2111.03(C)]

Applicant, a resident of Cuyahoga County, Ohio hereby applies for the appointment of (himself) (herself) or some suitable person as guardian of the following minor and represents that the applicant is not an administrator, executor, or other fiduciary of an estate wherein the minor is interested.

Imani Lashawn Bruce aged 11 DOB
Name of Minor Age Date of Birth Residence or Legal Settlement
2994 E. 128 St.
Cleve Oh 44120 (Down)

Attached is a list of the next of kin of the minor (Form 15.0)

A guardian is necessary because (R.C. 2111.06), child's parent is recently deceased and it was her wish Mr. Michael Fields become her guardian. The whereabouts of the child's father is unknown.

THE TYPE OF GUARDIANSHIP APPLIED FOR IS

☑ Non-Limited ☐ Limited ☐ Person and Estate ☐ Estate only ☑ Person only

IF THE APPLICATION IS FOR LIMITED GUARDIANSHIP,

The length (time period) of the guardianship requested is:

☑ Indefinite ☐ Definite to _____, 20 _____.

The limited powers requested are: _____

Applicant attaches affidavit pursuant to R.C. 3109.27.

Applicant represents that grounds exist for the Court to exercise its jurisdiction. (Applies to guardianship of person only. R.C. 3109.22).

The Applicant has (not) been charged with or convicted of a crime involving theft, physical violence, or sexual, alcohol or substance abuse except as follows (if applicable, state date and place of each charge or each conviction). felonious assault in approximately 2000.

2014GRD199316
661372
GD16.0PRSN

(13)

THE OHIO LEGAL BLANK CO., INC.
EXHIBIT
1
CLEVELAND, OHIO 44101-6720

The whole estate of said minor is estimated as follows:

Personal property ..... $ 100.00

Real Estate ..... $ -0-

Annual rents ..... $ -0-

Other annual income .....Total $ -0-

Applicant offers the attached bond in the amount of $ _____

I hereby certify that all the information and statements contained in this application and attached exhibits are correct to the best of my knowledge and belief.

Attorney for Applicant	X Michael Fields Applicant
Typed or printed name	Michael Fields Typed or printed name
Street	2994 E. 128 St. Street
City State Zip Code	Cleve Oh 44120 City State Zip Code
Phone number (include area code)	(216) 609-4293 Phone number (include area code)
Supreme Court Registration Number	Deceased mother's partner & father of her other 2 children.

SELECTION OF GUARDIAN BY MINOR OVER FOURTEEN YEARS OF AGE

The undersigned hereby selects _____ a resident of Cuyahoga County, Ohio, as Guardian of the (person and estate), and respectfully asks the Court to appoint _____ as Guardian.

Signature _____ Date of Birth _____

PROBATE COURT OF CUYAHOGA COUNTY, OHIO

ANTHONY J. RUSSO, Presiding Judge
LAURA J. GALLAGHER, Judge

PROBATE COURT
FILED
JUL 22 2014
CUYAHOGA COUNTY, O.

IN THE MATTER OF THE GUARDIANSHIP OF Imani Bruce

CASE NO. 2014GRD 199316

PROBATE COURT
COST PAID
JUL 22 2014
L. RICHARDS
CASHIER

2ND

APPLICATION FOR APPOINTMENT OF GUARDIAN OF MINOR
[R.C. 2111.03(C)]

Applicant, a resident of Cuyahoga County, Ohio, hereby applies for the appointment of (himself) (herself) or some suitable person as guardian of the following minor and represents that the applicant is not an administrator, executor, or other fiduciary of an estate wherein the minor is interested.

Name of Minor	Age	Date of Birth	Residence or Legal Settlement
Imani Bruce	12	6-22-2002	2994 East 128

Attached is a list of the next of kin of the minor. (Form 15.0)
A guardian is necessary because (R.C. 2111.06), _____

THE TYPE OF GUARDIANSHIP APPLIED FOR IS
✓ Non-Limited ____ Limited ____ Person and Estate ____ Estate Only ✓ Person Only
IF THE APPLICATION IS FOR LIMITED GUARDIANSHIP,
The length (time period) of the guardianship requested is:
✓ Indefinite ____ Definite to _____, 20____.
The limited powers requested are: _____

Applicant attaches affidavit pursuant to R.C. 3109.27.

Applicant represents that grounds exist for the Court to exercise its jurisdiction. (Applies to guardianship of person only. R.C. 3109.22).

The Applicant has (not) been charged with or convicted of a crime involving theft, physical violence, or sexual, alcohol or substance abuse except as follows (if applicable, state date and place of each charge or each conviction.)
None

2014GRD199316
682289
GD16.0PRSN

1

16.0 APPLICATION FOR APPOINTMENT OF GUARDIAN OF MINOR

THE OHIO LEGAL BLANK CO., INC.
EXHIBIT
2
CLEVELAND, OHIO

The whole estate of said minor is estimated as follows:

Personal property ..... $ unknown

Real Estate ..... $ _____

Annual rents ..... $ _____

Other annual income ..... Total $ _____

Applicant offers the attached bond in the amount of $ _____

I hereby certify that all the information and statements contained in this application and attached exhibits are correct to the best of my knowledge and belief.

_____	Marian Lester
Attorney for Applicant	Applicant
_____	Marian Lester
Typed or Printed Name	Typed or Printed Name
_____	3647 Mt Laurel Rd.
Street	Street
_____	Cleveland Hts. Ohio 44121
City State Zip Code	City State Zip Code
_____	(216) 691-9341
Phone Number (include area code)	Phone Number (include area code)
_____	
Supreme Court Registration Number	

SELECTION OF GUARDIAN BY MINOR OVER FOURTEEN YEARS OF AGE

The undersigned hereby selects _____

a resident of _____ County, Ohio, as Guardian of the (person and estate),

and respectfully asks the Court to appoint _____ as Guardian.

Signature	Date of Birth
_____	_____

3535

IN THE COURT OF COMMON PLEAS
JUVENILE DIVISION
CUYAHOGA COUNTY, OHIO

COURT OF COMMON PLEAS
JUVENILE COURT DIVISION
CUYAHOGA COUNTY
FILED

2014 SEP 30 P 2:57

CLERK OF COURTS

IN THE MATTER OF: I.B. (DOB: 6/22/02)	)	CASE NO.
	)	JUDGE
MARIAN LESTER	)	
3647 MOUNT LAUREL ROAD	)	1. COMPLAINT FOR LEGAL CUSTODY AND RESIDENTIAL PLACEMENT
CLEVELAND HEIGHTS, OHIO 44121	)	
Plaintiff,	)	2. COMPLAINT TO ESTABLISH IMANI BRUCE IS A NEGLECTED CHILD PURSUANT TO O.R.C. §2151.03
	)	
vs.	)	3. COMPLAINT TO ESTABLISH IMANI BRUCE AS A DEPENDENT CHILD PURSUANT TO O.R.C. §2151.04
	)	
DEPARTMENT OF JOB & FAMILY SERVICES	)	
1640 Superior Avenue	)	4. EMERGENCY *EX PARTE* MOTION TO DESIGNATE MARIAN LESTER THE RESIDENTIAL PARENT AND LEGAL CUSTODIAN OF IMANI BRUCE
Cleveland, Ohio 44101	)	
	)	
and	)	
	)	
DARNELL WARD	)	
Defendants.	)	

COUNT ONE
(RESIDENTIAL PLACEMENT AND LEGAL CUSTODY)

1. Plaintiff, Marian Lester ("Plaintiff"), resides in the City of Cleveland Heights, County of Cuyahoga, State of Ohio. Plaintiff is the maternal grandmother of the minor child, Imani Bruce, born June 22, 2002. The minor child's mother, Raeshawn Bruce (Plaintiff's daughter) passed away on June 5, 2014. Darnell Ward, the minor child's biological father, has never been involved in the child's life, does not pay support and has never visited with the child since her birth. The whereabouts of the minor child's father are unknown.

2. Throughout the minor child's life, the Plaintiff would assist her daughter in providing housing, care and support for the child, especially during the last year of the mother's life, as the minor child and her mother resided with the Plaintiff (from July, 2013 to March, 2014). Plaintiff always had a close relationship with her granddaughter, spending quality time with her, taking her to church, and assisting her with homework.

THE OHIO LEGAL BLANK CO., INC.
EXHIBIT
3
CLEVELAND, OHIO 44102-1708

3. Plaintiff states that, from approximately April, 2014 to the date she passed away, her daughter resided with the minor child at 2994 East 128th Street, Down, Cleveland, Ohio, a duplex in which her daughter's ex-boyfriend (Michael Fields, with whom she has two other children) resided in the "upstairs" with his girlfriend and one of his children. The minor child resided in the lower level with her mother and half-siblings. Fields is not the minor child's father and has no blood relation with the minor child whatsoever.

4. On June 15, 2014, Plaintiff's daughter passed away, leaving the minor child without a mother or father, and residing in a home with Fields and his girlfriend. The child must be removed from this dangerous and unhealthy environment.

5. Fields has the following known criminal history: **In 2001**, Fields was indicted for Felonious Assault (Common Pleas Case Number CR-01-404634). Fields plead guilty *and was referred to the Psychiatric Clinic.* **In 2004**, Fields was indicted for Drug Trafficking (Common Pleas Case Number CR-04-450226). Fields plead guilty to Attempted Possession. **In 2010,** Fields was charged with Drug Abuse. (Municipal Court Case Number 2010-CRB-018495) Fields was found guilty. **In 2012**, Fields was indicted on Kidnapping, Domestic Violence and Felonious Assault. (Common Pleas Case Number CR-12-561815) Fields pled guilty to Domestic Violence. ***Fields was again referred for a psychiatric evaluation and to the Court's mental health unit.*** Fields was also ordered to undergo regular drug testing.

6. Fields is also friends with Raymond Bruce, the minor child's uncle. Fields allows Bruce to spend considerable time with the child, to supervise the child, and allows Bruce to drive the child to various activities. *Bruce is a Tier III Sex Offender, convicted of Gross Sexual Imposition (amended from the original indictment for Rape) and Abduction of a 10 year old child.* (Case Number CR-96-337792)

7. Fields has never had a driver's license, yet regularly drives the minor child in various vehicles (presumably uninsured). Also, Fields was recently charged with Driving Under Suspension. (Municipal Court Case Number 2014-TRD-042411).

8. Currently residing in the "upstairs" of the home with the minor child is Fields' girlfriend Marcella Hatcher who recently attacked Fields with a knife, stabbing him twice.

9. The minor child lacks any supervision. Recently, charges have been filed as the minor child violated City curfew. (Municipal Court Case Number 2014-CRB-027335)

10. Fields allows the minor child to walk alone (or with other minor children) to and from school as well as to other locations, with no adult supervision in a high crime area.

11. The minor child has not seen a doctor, dentist, counsellor since her mother's passing. Also, the minor child may not have health insurance. The child is living with a total of four individuals (three children and one adult, Fields) in a residence with two bedrooms.

12. Fields has no substantiated employment. Fields has no high school diploma or GED. Fields cannot read or write at an appropriate level. Fields cannot assist the minor child with homework. Fields has never filed tax returns. Fields is currently receiving food stamps. Fields has at least five (5) children and is behind on his child support obligation(s).

13. Fields has failed and/or refused to permit the minor child to contact Plaintiff.

14. The Plaintiff is the only adult who can properly address the minor child's physical, emotional and medical needs.

15. Plaintiff states that the minor child (and her mother) resided with her in the past. During those times, the Plaintiff would assist in providing care for the minor child. Accordingly, this Court should award temporary and permanent custody of the minor child to Plaintiff. Plaintiff further requests this Court grant her permanent legal custody of the

minor child. Plaintiff states it is in the best interest of the minor child that she be designated the temporary and permanent residential parent and legal custodian of Imani Bruce.

16. Plaintiff is capable of providing a safe, stable and emotionally and physically positive household where the child will thrive.

COUNT TWO
(NEGLECT PRUSUANT TO O.R.C. §2151.03)

17. Plaintiff incorporates all prior allegations herein as if fully restated.

18. Plaintiff states that presently, in the City of Cleveland, County of Cuyahoga and State of Ohio, Imani Bruce is a neglected child as defined in O.R.C. §2151.03 because she lacks parental care; she has no parent who provides proper and necessary care for her well-being; and because of the child's current living situation as described aforesaid, the minor child suffers injury that harms and/or threatens to harm her health and welfare. The child's parents (one deceased and one absent) are unable to or have failed to provide the minor child with adequate care, safety, supervision. All such necessities will be provided by Plaintiff. Plaintiff states the child's father has never provided maintenance, care, supervision or support for the child. The child is neglected and this Court should award temporary (and permanent) residential placement and legal custody to Plaintiff, and designate her for long-term purposes as the permanent residential parent and legal custodian of Imani Bruce.

COUNT THREE
(DEPENDENCY PURSUANT TO O.R.C. §2151.04)

19. Plaintiff incorporates all prior allegations as if fully restated.

20. Plaintiff states that currently, in the County of Cuyahoga and State of Ohio, Imani Bruce, born June 22, 2002, is a dependent child as defined in O.R.C. §2151.04 based upon the fact that she lacks parental care due to the death of her mother and the absence of

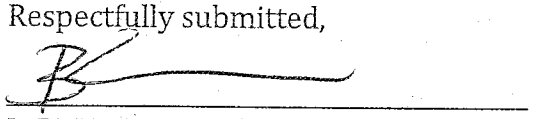
her father. Further, she is a dependent child because her condition or environment is such as to warrant Plaintiff, in the interests of the child, in assuming her custody. Further, Imani Bruce is dependent as she is not receiving any parental care.

21. Plaintiff states that Imani Bruce's parents (one deceased and one absent) are unable to provide parental care.

EMERGENCY *EX PARTE* MOTION TO IMMEDIATELY DESIGNATE PLAINTIFF, MARIAN LESTER, AS THE TEMPORARY RESIDENTIAL PARENT AND LEGAL CUSTODIAN OF IMANI BRUCE

Now comes Plaintiff, Marian Lester and, on an emergency basis, moves this Court for an immediate Order granting her temporary residential placement and legal custody of Imani Bruce, as it is in the best interest of said minor child. Plaintiff attaches her Affidavit in support of this Complaint and this Motion, both of which are incorporated herein.

Respectfully submitted,



L. BRYAN CARR (0066649)
1392 SOM Center Road
Mayfield Heights, OH 44124
(440) 473-2277
Attorney for the Plaintiff

IN THE COURT OF COMMON PLEAS
JUVENILE DIVISION
CUYAHOGA COUNTY, OHIO

COURT OF COMMON PLEAS
JUVENILE COURT DIVISION
CUYAHOGA COUNTY
FILED

2014 SEP 30 P 2:57

CLERK OF COURTS

IN THE MATTER OF: I.B. (DOB: 6/22/02)	)	CASE NO.
	)	
MARIAN LESTER	)	JUDGE
Plaintiff,	)	
	)	AFFIDAVIT OF MARIAN LESTER
vs.	)	
	)	
DEPARTMENT OF JOB & FAMILY	)	
SERVICES, et al.	)	
Defendants.	)	

MARIAN LESTER, being first duly sworn according to law, states as follows:

1. Affiant is the maternal grandmother of Imani Bruce, born June 22, 2002.

2. Affiant further states that she is the mother of the minor child's late-mother, Raeshawn Bruce (deceased).

3. Affiant further states that Darnell Ward, the biological father of the minor child, has never been involved in the child's life, has never paid support and is not in contact with the minor child. The Affiant has no means of contacting the biological father.

4. Affiant further states that, throughout the minor child's life, Affiant would assist her daughter in providing housing, care and support for the child, especially during the last year of Affiant's daughter's life, as they resided with the Affiant from July, 2013 to March, 2014. Affiant always had a close relationship with the minor child, spending quality time with the child, taking the child to church, and assisting the child with homework.

5. Affiant further states that, from approximately April 1, 2014 to the date her daughter passed away, her daughter resided with the minor child at 2994 East 128th Street, Cleveland, a duplex in which her daughter's ex-boyfriend (Michael Fields, with whom she has two children) resided in the "upstairs" with his girlfriend and another of his children. The

minor child resided in the lower level with her mother and half-siblings. Fields is not the minor child's father and has no blood relation with the minor child.

6. Affiant further states that, on June 15, 2014, Affiant's daughter passed away, leaving the minor child without a mother or father, and residing in a home with Fields (her mother's ex-boyfriend) and his girlfriend. Affiant further states that the minor child must be removed from this dangerous, inappropriate and unhealthy environment.

7. Affiant further states that Fields has the following known criminal history: **In 2001**, Fields was indicted for Felonious Assault (Common Pleas Case Number CR-01-404634). **Fields plead guilty *and was referred to the Psychiatric Clinic.*** **In 2004**, Fields was indicted for Drug Trafficking (Common Pleas Case Number CR-04-450226). Fields plead guilty to Attempted Possession. **In 2010,** Fields was charged with Drug Abuse. (Municipal Court Case Number 2010-CRB-018495) Fields was found guilty. **In 2012**, Fields was indicted on Kidnapping, Domestic Violence and Felonious Assault. (Common Pleas Case Number CR-12-561815) Fields pled guilty to Domestic Violence. ***Fields was again referred for a psychiatric evaluation and to the Court's mental health unit.*** Fields was ordered to undergo regular drug testing.

8. Affiant further states that Fields is friends with Raymond Bruce, the minor child's uncle. Fields allows Bruce to spend considerable time with the child and allows Bruce to drive the child to various activities. **Bruce is a known Tier III Sex Offender, convicted of Gross Sexual Imposition (amended from the indicted charge of Rape) and Abduction of a 10 year old child.** (Case Number CR-96-337792)

9. Affiant further states that Fields has never had a driver's license, yet regularly drives the minor child in various vehicles (presumably uninsured). Also, Fields was recently charged with Driving Under Suspension. (Municipal Court Case Number 2014-TRD-042411).

10. Affiant further states that, residing in the "upstairs" of the home with the minor child is Fields' current girlfriend Marcella Hatcher **who recently attacked Fields with a knife, stabbing him twice.**

11. Affiant further states that the minor child lacks supervision. Recently, charges have been filed as the minor child violated the City of Cleveland's curfew law. (Municipal Case Number 2014-CRB-027335)

12. Affiant further states that Fields allows the minor child to walk alone (or with other minor children) to and from school as well as to other locations, with no adult supervision in a high crime area.

13. Affiant further states that the minor child has not seen a doctor, dentist or counselor since the child's mother passed away. The child may not have health insurance. The child is living with a total of four individuals (three children and one adult, Fields) in a residence with only two bedrooms.

14. Affiant further states that Fields has no substantiated employment. Fields has no high school diploma or GED. Fields cannot read or write at an appropriate level and cannot assist the minor child with her homework. Fields has never filed tax returns. Fields is currently receiving food stamps. Fields has at least five (5) children and has failed to pay on his child support obligation(s).

15. Affiant further states that Fields has failed and/or refused to permit the minor child to contact Affiant.

16. Affiant further states that she is the only adult who can properly address all of the minor child's physical, emotional and medical needs.

17. Affiant further states that the minor child has resided with Affiant in the past. Affiant would assist in providing care for the minor child.

18. Affiant further states that she is capable of providing a safe, stable and emotionally and physically positive household where the child will thrive.

19. Affiant further states that there is no parent who can properly care for the minor child.

20. Affiant states that it is in the best interest of the minor child that she be designated her temporary residential parent and legal custodian and designated the permanent legal custodian and residential parent of the minor child.

FURTHER AFFIANT SAYETH NAUGHT.

MARIAN LESTER

SWORN TO BEFORE ME and subscribed in my presence this 30th day of September, 2014.

NOTARY PUBLIC

L. BRYAN CARR, ATTORNEY
Notary Public - State of Ohio
My Commission has no Expiration
Section 147.03 R.C.

PROBATE COURT
RECEIVED FOR FILING
OCT 02 2014
CUYAHOGA COUNTY, O.

IN THE COURT OF COMMON PLEAS
PROBATE DIVISION
CUYAHOGA COUNTY, OHIO

IN RE: THE GUARDIANSHIP OF IMANI BRUCE	)	CASE NO. 2014-GRD-199316
	)	
	)	JUDGE LAURA J. GALLAGHER
	)	
	)	**MOTION TO CERTIFY JURISDICTION**
	)	**TO CUYAHOGA COUNTY JUVENILE**
	)	**COURT**

Now comes Marian Lester, by and through her duly authorized counsel, L. Bryan Carr and, pursuant to Section 2151.23 of the Ohio Revised Code, moves this Court for an order certifying to the Cuyahoga County Juvenile Court the jurisdiction as to the care, custody, and support of the minor child, to wit: Imani Bruce.

In support, Lester states that on September 29, 2014, she filed with the Cuyahoga County Juvenile Court a Complaint to Establish Imani Bruce a Neglected and/or Dependent child. Lester also filed a Complaint for Custody of Imani Bruce. (A copy of the Complaint is attached hereto as Exhibit A) This case was assigned to the docket of Judge Denise N. Rini.

Imani Bruce is alleged to be a Neglected and Dependent child as defined in Sections 2151.03 and 2151.04 of the Ohio Revised Code. As such, and pursuant to O.R.C 2151.23, the Juvenile Court has exclusive (and original) jurisdiction over the child. Thus, this Court must certify jurisdiction over Imani Bruce to the Cuyahoga County Juvenile Court forthwith.

According to Section 2151.23(A) of the Ohio Revised Code, the Juvenile Court has exclusive original jurisdiction as follows:

> (1) Concerning any child who on or about the date specified in the complaint...is alleged to...be a juvenile traffic offender or a delinquent, unruly, abused, ***neglected, or dependent child...***

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CLEVELAND, OHIO 44102-1799

> (2) Subject to divisions (G), (K), and (V) of section 2301.03 of the Revised Code, ***to determine the custody of any child not a ward of another court of this state.***

It has been recently, and clearly, held that **Juvenile Court had exclusive jurisdiction over children once complaints which alleged that they were dependent, neglected and abused children were filed.** In re Doe Children, 93 Ohio App.3d 134 (1994) As the Complaint has been filed in the Juvenile Court, this Court must certyify jurisdiction.

Finally, as argued, Lester has filed for custody of Imani Bruce. The Ohio Supreme Court has recently reiterated that exclusive original jurisdiction of juvenile courts to determine the custody of any child not a ward of another court of the state includes custodial claims brought by the persons considered non-parents at law. Rowell v. Smith, 133 Ohio St.3d 288 (2012) Imani Bruce is not yet a ward of the Probate Court. Thus, the Juvenile Court has exclusive jurisdiction.

Given the forgoing, Marian Lester respectfully moves this Court to certify jurisdiction over this case (and Imani Bruce) to the Cuyahoga County Juvenile Court.

Respectfully submitted,

L. BRYAN CARR (0066649)
1392 SOM Center Road
Mayfield Heights, Ohio 44124
(440) 473-2277
Attorney for Marian Lester

CERTIFICATE OF SERVICE

The foregoing was sent via Regular U.S. Mail, postage prepaid, this ~~1st~~ 2nd day of October, 2014 to: Van Lowry, 1422 Euclid Avenue, Suite 248, Cleveland, Ohio 44115.

L. BRYAN CARR (0066649)
Attorney for Marian Lester

IN THE COURT OF COMMON PLEAS
PROBATE DIVISION
CUYAHOGA COUNTY, OHIO

IN RE: THE GUARDIANSHIP OF IMANI BRUCE	)	CASE NO. 2014-GRD-199316
	)	
	)	JUDGE LAURA J. GALLAGHER
	)	
	)	**JUDGMENT ENTRY**

This cause came on to be heard this ___ day of _____, 2014, upon the Motion of Marian Lester to Certify Jurisdiction over the care, custody, and support of the minor child, to wit: Imani Bruce, to the Cuyahoga County Juvenile Court, as Marian Lester filed a Complaint to Establish Imani Bruce a Neglected and/or Dependent child as well as a Complaint for Custody of Imani Bruce.

For good cause shown, and pursuant to Section 2151.23 of the Ohio Revised Code, the Court finds the Motion to Certify Jurisdiction well taken.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Marian Lester's Motion to Certify Jurisdiction is hereby granted. Jurisdiction over Imani Bruce is hereby certified to the Cuyhaoga County Juvenile Court.

IT IS SO ORDERED.

_____
MAGISTRATE

_____
JUDGE

IN THE COURT OF COMMON PLEAS
JUVENILE DIVISION
CUYAHOGA COUNTY, OHIO

COURT OF COMMON PLEAS
JUVENILE COURT DIVISION
CUYAHOGA COUNTY
FILED

2014 SEP 30 P 2:57

CLERK OF COURTS

IN THE MATTER OF: I.B. (DOB: 6/22/02)	)	CASE NO.
	)	JUDGE
MARIAN LESTER	)	
3647 MOUNT LAUREL ROAD	)	1. COMPLAINT FOR LEGAL CUSTODY AND RESIDENTIAL PLACEMENT
CLEVELAND HEIGHTS, OHIO 44121	)	
Plaintiff,	)	2. COMPLAINT TO ESTABLISH IMANI BRUCE IS A NEGLECTED CHILD PURSUANT TO O.R.C. §2151.03
	)	
vs.	)	
	)	3. COMPLAINT TO ESTABLISH IMANI BRUCE AS A DEPENDENT CHILD PURSUANT TO O.R.C. §2151.04
DEPARTMENT OF JOB & FAMILY SERVICES	)	
1640 Superior Avenue	)	4. EMERGENCY *EX PARTE* MOTION TO DESIGNATE MARIAN LESTER THE RESIDENTIAL PARENT AND LEGAL CUSTODIAN OF IMANI BRUCE
Cleveland, Ohio 44101	)	
	)	
and	)	
	)	
DARNELL WARD	)	
Defendants.	)	

COUNT ONE
(RESIDENTIAL PLACEMENT AND LEGAL CUSTODY)

1. Plaintiff, Marian Lester ("Plaintiff"), resides in the City of Cleveland Heights, County of Cuyahoga, State of Ohio. Plaintiff is the maternal grandmother of the minor child, Imani Bruce, born June 22, 2002. The minor child's mother, Raeshawn Bruce (Plaintiff's daughter) passed away on June 5, 2014. Darnell Ward, the minor child's biological father, has never been involved in the child's life, does not pay support and has never visited with the child since her birth. The whereabouts of the minor child's father are unknown.

2. Throughout the minor child's life, the Plaintiff would assist her daughter in providing housing, care and support for the child, especially during the last year of the mother's life, as the minor child and her mother resided with the Plaintiff (from July, 2013 to March, 2014). Plaintiff always had a close relationship with her granddaughter, spending quality time with her, taking her to church, and assisting her with homework.

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A
CLEVELAND, OHIO 44102-1798

3. Plaintiff states that, from approximately April, 2014 to the date she passed away, her daughter resided with the minor child at 2994 East 128th Street, Down, Cleveland, Ohio, a duplex in which her daughter's ex-boyfriend (Michael Fields, with whom she has two other children) resided in the "upstairs" with his girlfriend and one of his children. The minor child resided in the lower level with her mother and half-siblings. Fields is not the minor child's father and has no blood relation with the minor child whatsoever.

4. On June 15, 2014, Plaintiff's daughter passed away, leaving the minor child without a mother or father, and residing in a home with Fields and his girlfriend. The child must be removed from this dangerous and unhealthy environment.

5. Fields has the following known criminal history: **In 2001**, Fields was indicted for Felonious Assault (Common Pleas Case Number CR-01-404634). Fields plead guilty *and was referred to the Psychiatric Clinic.* **In 2004**, Fields was indicted for Drug Trafficking (Common Pleas Case Number CR-04-450226). Fields plead guilty to Attempted Possession. **In 2010,** Fields was charged with Drug Abuse. (Municipal Court Case Number 2010-CRB-018495) Fields was found guilty. **In 2012**, Fields was indicted on Kidnapping, Domestic Violence and Felonious Assault. (Common Pleas Case Number CR-12-561815) Fields pled guilty to Domestic Violence. ***Fields was again referred for a psychiatric evaluation and to the Court's mental health unit.*** Fields was also ordered to undergo regular drug testing.

6. Fields is also friends with Raymond Bruce, the minor child's uncle. Fields allows Bruce to spend considerable time with the child, to supervise the child, and allows Bruce to drive the child to various activities. *Bruce is a Tier III Sex Offender, convicted of Gross Sexual Imposition (amended from the original indictment for Rape) and Abduction of a 10 year old child.* (Case Number CR-96-337792)

7. Fields has never had a driver's license, yet regularly drives the minor child in various vehicles (presumably uninsured). Also, Fields was recently charged with Driving Under Suspension. (Municipal Court Case Number 2014-TRD-042411).

8. Currently residing in the "upstairs" of the home with the minor child is Fields' girlfriend Marcella Hatcher who recently attacked Fields with a knife, stabbing him twice.

9. The minor child lacks any supervision. Recently, charges have been filed as the minor child violated City curfew. (Municipal Court Case Number 2014-CRB-027335)

10. Fields allows the minor child to walk alone (or with other minor children) to and from school as well as to other locations, with no adult supervision in a high crime area.

11. The minor child has not seen a doctor, dentist, counsellor since her mother's passing. Also, the minor child may not have health insurance. The child is living with a total of four individuals (three children and one adult, Fields) in a residence with two bedrooms.

12. Fields has no substantiated employment. Fields has no high school diploma or GED. Fields cannot read or write at an appropriate level. Fields cannot assist the minor child with homework. Fields has never filed tax returns. Fields is currently receiving food stamps. Fields has at least five (5) children and is behind on his child support obligation(s).

13. Fields has failed and/or refused to permit the minor child to contact Plaintiff.

14. The Plaintiff is the only adult who can properly address the minor child's physical, emotional and medical needs.

15. Plaintiff states that the minor child (and her mother) resided with her in the past. During those times, the Plaintiff would assist in providing care for the minor child. Accordingly, this Court should award temporary and permanent custody of the minor child to Plaintiff. Plaintiff further requests this Court grant her permanent legal custody of the

minor child. Plaintiff states it is in the best interest of the minor child that she be designated the temporary and permanent residential parent and legal custodian of Imani Bruce.

16. Plaintiff is capable of providing a safe, stable and emotionally and physically positive household where the child will thrive.

COUNT TWO
(NEGLECT PRUSUANT TO O.R.C. §2151.03)

17. Plaintiff incorporates all prior allegations herein as if fully restated.

18. Plaintiff states that presently, in the City of Cleveland, County of Cuyahoga and State of Ohio, Imani Bruce is a neglected child as defined in O.R.C. §2151.03 because she lacks parental care; she has no parent who provides proper and necessary care for her well-being; and because of the child's current living situation as described aforesaid, the minor child suffers injury that harms and/or threatens to harm her health and welfare. The child's parents (one deceased and one absent) are unable to or have failed to provide the minor child with adequate care, safety, supervision. All such necessities will be provided by Plaintiff. Plaintiff states the child's father has never provided maintenance, care, supervision or support for the child. The child is neglected and this Court should award temporary (and permanent) residential placement and legal custody to Plaintiff, and designate her for long-term purposes as the permanent residential parent and legal custodian of Imani Bruce.

COUNT THREE
(DEPENDENCY PURSUANT TO O.R.C. §2151.04)

19. Plaintiff incorporates all prior allegations as if fully restated.

20. Plaintiff states that currently, in the County of Cuyahoga and State of Ohio, Imani Bruce, born June 22, 2002, is a dependent child as defined in O.R.C. §2151.04 based upon the fact that she lacks parental care due to the death of her mother and the absence of

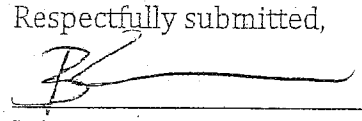
her father. Further, she is a dependent child because her condition or environment is such as to warrant Plaintiff, in the interests of the child, in assuming her custody. Further, Imani Bruce is dependent as she is not receiving any parental care.

21. Plaintiff states that Imani Bruce's parents (one deceased and one absent) are unable to provide parental care.

EMERGENCY *EX PARTE* MOTION TO IMMEDIATELY DESIGNATE PLAINTIFF, MARIAN LESTER, AS THE TEMPORARY RESIDENTIAL PARENT AND LEGAL CUSTODIAN OF IMANI BRUCE

Now comes Plaintiff, Marian Lester and, on an emergency basis, moves this Court for an immediate Order granting her temporary residential placement and legal custody of Imani Bruce, as it is in the best interest of said minor child. Plaintiff attaches her Affidavit in support of this Complaint and this Motion, both of which are incorporated herein.

Respectfully submitted,



L. BRYAN CARR (0066649)
1392 SOM Center Road
Mayfield Heights, OH 44124
(440) 473-2277
Attorney for the Plaintiff

IN THE COURT OF COMMON PLEAS
JUVENILE DIVISION
CUYAHOGA COUNTY, OHIO

COURT OF COMMON PLEAS
JUVENILE COURT DIVISION
CUYAHOGA COUNTY
FILED

2014 SEP 30 P 2:57

CLERK OF COURTS

IN THE MATTER OF: I.B. (DOB: 6/22/02)	)	CASE NO.
	)	
MARIAN LESTER	)	JUDGE
Plaintiff,	)	
	)	AFFIDAVIT OF MARIAN LESTER
vs.	)	
	)	
DEPARTMENT OF JOB & FAMILY SERVICES, et al.	)	
Defendants.	)	

MARIAN LESTER, being first duly sworn according to law, states as follows:

1. Affiant is the maternal grandmother of Imani Bruce, born June 22, 2002.

2. Affiant further states that she is the mother of the minor child's late-mother, Raeshawn Bruce (deceased).

3. Affiant further states that Darnell Ward, the biological father of the minor child, has never been involved in the child's life, has never paid support and is not in contact with the minor child. The Affiant has no means of contacting the biological father.

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FURTHER AFFIANT SAYETH NAUGHT.

MARIAN LESTER

SWORN TO BEFORE ME and subscribed in my presence this 30th day of September, 2014.

NOTARY PUBLIC

L. BRYAN CARR, ATTORNEY
Notary Public - State of Ohio
My Commission has no Expiration
Section 147.03 R.C.

COURT OF COMMON PLEAS, JUVENILE DIVISION
CUYAHOGA COUNTY, OHIO

IN THE MATTER OF: IMANI L. BRUCE

CASE NO: AD14912510
JUDGE: DENISE N. RINI

MAGISTRATE'S ORDER
ABUSE NEGLECT DEPENDENCY

This matter came on for consideration this 6th day of October, 2014, before Magistrate Richard T. Graham.

The Emergency Ex Parte Motion to Designate Marian Lester the Residential Parent and Legal Custodian of the Imani Bruce filed by Attorney Carr is granted in part.

The Imani L. Bruice is committed to the emergency temporary custody of Marian Lester pending further hearing pursuant to Juvenile Rule 13.

Matter is continued to a later date.

It is further ordered that Attorney Carr is to file a Statement of Understanding forthwith.

Magistrate Richard T. Graham
October 06, 2014
Received for filing, October 06, 2014, Kristin W. Sweeney, ex-officio Clerk,
Court of Common Pleas, Juvenile Division

Notice to Parties and Counsel: Pursuant to Juv. R. 40(D)(2)(b) and Civ. R. 53(D)(2)(b), the parties were informed of their right to file with the Court, a Motion to Set Aside the Magistrate's Order not later than ten (10) days after the Magistrate's Order is filed.

Filed with the clerk and journalized by Cuyahoga County Juvenile Court Clerks Office, Volume 98, Page 7530, October 06, 2014, DSpearman

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FILED
OCT 1 6 2014
CUYAHOGA COUNTY, O.

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO
PROBATE DIVISION

IN RE:THE GUARDIANSHIP OF
IMANI BRUCE

CASE NO. 2014GRD199316

JUDGMENT ENTRY

This matter came is before the Court upon the Motion to Certify Jurisdiction to Cuyahoga County Juvenile Court filed by Marian Lester, Guardianship Applicant, on October 2, 2014.

The Court finds that the movant filed an Application for Appointment of Guardian of Minor on July 22, 2014. A previous Application for Appointment of Guardian of Minor was filed by Michael Fields on June 26, 2014.

The Court finds that both Applications were scheduled to be heard on July 29, 2014 and that the hearing was continued at the request of counsel for movant. The hearing scheduled for September 9, 2014 was then continued at the request of counsel for Michael Fields.

A full hearing on both Applications was held on September 26, 2014 by Magistrate Alexander. Following the hearing but before the filing of the Magistrate's decision the movant filed an action in Cuyahoga County Juvenile Court and also filed the Motion to Certify in this case.

The Court finds that the filing of a complaint in juvenile court alleging a child to be neglected or dependent does not divest this Court of jurisdiction to issue letters of guardianship over the child. *In re Guardianship of Pierce,*2003-Ohio-3997, 2003 WL 21715997.

The Court further finds that there were no matters pending regarding the minor child in this case prior to the filing of the Application for Guardianship. The Court further finds that

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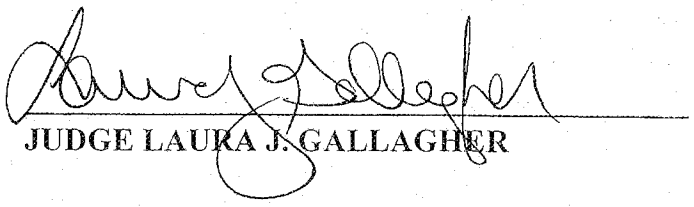
CLEVELAND, OHIO 43102-1793

there were no matters pending regarding the minor child in this case at the time the Application for Guardianship was heard by the Magistrate.

The Court finds that the Probate Court does not lose jurisdiction simply because the movant attempts to avoid a possibly adverse ruling by filing a new action in another court between the hearing of the case and the ruling on the case.

The Court finds and **Orders** that the Motion to Certify Jurisdiction to Cuyahoga County Juvenile Court filed October 2, 2014 are hereby **Denied** and **Dismissed.**

IT IS SO ORDERED.



JUDGE LAURA J. GALLAGHER

IN THE COURT OF COMMON PLEAS
PROBATE DIVISION
CUYAHOGA COUNTY, OHIO

PROBATE COURT
RECEIVED FOR FILING
OCT 28 2014
CUYAHOGA COUNTY, O.

IN RE: THE GUARDIANSHIP OF IMANI BRUCE	)	CASE NO. 2014-GRD-199316
	)	
	)	JUDGE LAURA J. GALLAGHER
	)	
	)	**MOTION FOR RECONSIDERATION**

Now comes Movant, Marian Lester, through counsel, and moves this Court to Reconsider its Order dated October 16, 2014 (which was not served upon counsel until October 23, 2014), denying Movant's Motion to Certify Jurisdiction to the Cuyahoga County Juvenile Court.

On a *pro se* basis, without the benefit of counsel, Michael Fields and the Movant filed competing Applications for Appointment of Guardian. The Magistrate set these Applications for Hearing, ultimately causing the Movant to engage legal counsel.

The July 29, 2014 Hearing was continued to allow Movant's counsel to investigate the underlying facts, issues and law. The Hearing was re-scheduled to August 28, 2014.

The August 28, 2014 Hearing was then continued to allow Fields to engage counsel. Significantly, at that time, Lester's counsel advised the Magistrate that, due to the child's living situation (*infra*), he was also investigating and considering a Juvenile Court action.

The Hearing was held on September 26, 2014. However, no decision has been rendered and no Guardian was appointed. Thus, the child is currently not a ward of this Probate Court.

On September 29, 2014, Lester filed a Complaint for Custody and to Establish the child as a Neglected and/or Dependent child. Quite simply, the law is clear that Juvenile Courts have exclusive jurisdiction over children once complaints which allege that they are dependent, neglected and abused children are filed. In re Doe Children, 93 Ohio App.3d 134 (1994)

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EXHIBIT
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CLEVELAND, OHIO 44102-1799

With all due respect, this Court's reliance upon In re Guardianship of Pierce, 2003 Ohio 3997 is misplaced. ***First***, In re Guardianship of Pierce involves a matter in which a Probate Court established Guardianship over a minor. That did not occur in this case. ***Second***, this Court never exercised any jurisdiction over the custody of the child; the Juvenile Court did. ***(Exhibit A)***; Also, In the Matter of he Guardianship of NP, 2011 Ohio 3846. ***Third***, it has been clearly held that: "Once a common pleas court has made an order affecting custody of children, that order is continuing and court retains jurisdiction." Id., Also, In the Matter of the Guardianship of Brinegar, 160 N.E.2d 589 (1959) ***Fourth***, the fact that there were "no matters pending regarding the minor child in this case prior to the filing of the Application for Guardianship" is irrelevant and does not change the fact that the child is/was a Dependent and Neglected child.

The Movant did not file in the Juvenile Court to avoid a "possibly adverse ruling. Such an accusation is simply unfounded. Given the testimony and admissions elicited during the September 26, 2014 Hearing it became absolutely clear that the child was Neglected and Dependent. Furthermore, it is inconceivable that any "adverse ruling" would ever be issued by a Court faced with the following troubling facts: (1) a 12 year old girl is living with her mother's ex-boyfriend, who is not her father; (2) a 12 year old girl is living with her mother's ex-boyfriend, who has been arrested and/or convicted for Domestic Violence; Felonious Assault, Attempted Drug Possession; Drug Abuse; Driving Under Suspension (as an aside, Fields chose to disclose only one of these convictions, the assault conviction); (3) a 12 year old girl is living with her mother's ex-boyfriend who does not have a driver's license, yet who drives the child around; (4) a 12 year old girl is living with her mother's ex-boyfriend and his current girlfriend, who attacked the ex-boyfriend in 2012 with a knife, stabbing him multiple times; (5) a 12 year old girl is living with her mother's ex-boyfriend who is friends with (and allows the child to

associate with) Raymond Bruce, the child's uncle and, significantly, a Tier III Sex Offender (see Cuyahoga County Case Number CR-337792); (6) a 12 year old girl is living with her mother's ex-boyfriend, who leaves the child unattended and allows the child to walk the neighborhood alone, which resulted in a charge of Allowing a Minor to Violate Curfew. These issues of Neglect and Dependency are more appropriately dealt with in the Juvenile Court.

Significantly, at the conclusion of the September 26, 2014 Hearing, counsel for Lester again advised the Magistrate and opposing counsel that a Juvenile Court action may have to be initiated. Thus, the filing of same should come as no surprise.

Finally, as argued, Lester filed for custody of the child. The Supreme Court reiterated that exclusive original jurisdiction of juvenile courts to determine the custody of any child not a ward of another court of the state includes custodial claims brought by the persons considered non-parents at law. Rowell v. Smith, 133 Ohio St.3d 288 (2012) The child is not a ward of this Court. Thus, the Juvenile Court has exclusive jurisdiction.

Given the forgoing, Marian Lester respectfully moves this Court to reconsider and certify jurisdiction over this case (and the child) to the Cuyahoga County Juvenile Court.

Respectfully submitted,

L. BRYAN CARR (0066649)
1392 SOM Center Road
Mayfield Heights, Ohio 44124
(440) 473-2277
Attorney for Marian Lester

CERTIFICATE OF SERVICE

The foregoing was sent via Regular U.S. Mail, postage prepaid, this 28th day of October, 2014 to: Van Lowry, 1422 Euclid Avenue, Suite 248, Cleveland, Ohio 44115.

L. BRYAN CARR (0066649)
Attorney for Marian Lester

COURT OF COMMON PLEAS, JUVENILE DIVISION
CUYAHOGA COUNTY, OHIO

IN THE MATTER OF: IMANI L. BRUCE

CASE NO: AD14912510
JUDGE: DENISE N. RINI

MAGISTRATE'S ORDER
ABUSE NEGLECT DEPENDENCY

This matter came on for consideration this 6th day of October, 2014, before Magistrate Richard T. Graham.

The Emergency Ex Parte Motion to Designate Marian Lester the Residential Parent and Legal Custodian of the Imani Bruce filed by Attorney Carr is granted in part.

The Imani L. Bruice is committed to the emergency temporary custody of Marian Lester pending further hearing pursuant to Juvenile Rule 13.

Matter is continued to a later date.

It is further ordered that Attorney Carr is to file a Statement of Understanding forthwith.

Magistrate Richard T. Graham
October 06, 2014
Received for filing, October 06, 2014, Kristin W. Sweeney, ex-officio Clerk,
Court of Common Pleas, Juvenile Division

Notice to Parties and Counsel: Pursuant to Juv. R. 40(D)(2)(b) and Civ. R. 53(D)(2)(b), the parties were informed of their right to file with the Court, a Motion to Set Aside the Magistrate's Order not later than ten (10) days after the Magistrate's Order is filed.

Filed with the clerk and journalized by Cuyahoga County Juvenile Court Clerks Office, Volume 98, Page 7530, October 06, 2014, DSpearman

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EXHIBIT
A
CLEVELAND, OHIO 44102-3799

PROBATE COURT
FILED
NOV - 4 2014
CUYAHOGA COUNTY, O.

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO
PROBATE DIVISION

IN RE:THE GUARDIANSHIP OF IMANI BRUCE

CASE NO. 2014GRD199316

JUDGMENT ENTRY

This matter came is before the Court upon the Motion for Reconsideration filed by Marian Lester on October 28, 2014.

The Court finds that although the movant argues that the Court's reliance on *In Re Guardianship of Pierce*, 2003 Ohio 3997 is misplaced, the facts of that case are on point with the present case. The Court further finds that the movant has cited no case that contradicts the holding in *Pierce* and further that movant cites cases that are irrelevant to the present case.

The Court finds Applications for Guardianship of the minor child were filed in the Probate Court and were heard on September 26, 2014 by Magistrate Alexander. Following the hearing but before the filing of the Magistrate's decision the movant filed an action in Cuyahoga County Juvenile Court and also filed the Motion to Certify in this case.

The Court finds that in the *Pierce* case a dependency /neglect case was filed in the juvenile court prior to the probate court's issuance of guardianship. The Court held that :

"Because we conclude that each court had concurrent jurisdiction,the mere filing of the neglect/dependency complaint in juvenile court prior to the probate court's entry of guardianship does not divest the probate court of jurisdiction."

The Court finds and **Orders** that the Motion For Reconsideration is hereby **Denied** and **Dismissed.**

IT IS SO ORDERED.

JUDGE LAURA J. GALLAGHER

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