

IN THE SUPREME COURT OF OHIO

MARIAN LESTER )  
Relator, )  
 )  
vs. )  
 )  
JUDGE LAURA J. GALLAGHER )  
Respondent. )

CASE NO. 2014-1914

ORIGINAL ACTION

FILED  
NOV 24 2014  
CLERK OF COURT  
SUPREME COURT OF OHIO

**EMERGENCY MOTION TO STAY PROCEEDINGS IN THE CUYAHOGA COUNTY  
PROBATE COURT AND TO VACATE JUDGMENT ENTRY**

Now comes the Relator, by and through her duly authorized counsel, L. Bryan Carr, and pursuant to Rule 14.4 of the Supreme Court Practice Rules, moves this Honorable Court for an Emergency Order, staying all proceedings in the Cuyahoga County Probate Court, as the Respondent continues to act: (1) without jurisdiction; (2) inconsistent with the Cuyahoga County Juvenile Court; and (3) contrary to the interest of the minor child at issue. Further, the Relator is asking this Court to vacate the recent Judgment Entry issued by the Respondent.

As this Court may recall, this matter involves a twelve (12) year old girl, who lost her mother in June, 2014. As the result of this unfortunate event, Relator (the child's maternal grandmother) filed (on a *pro se* basis) for Guardianship of the child in the Cuyahoga County Probate Court. Additionally, Michael Fields, an ex-boyfriend of the child's mother, filed (on a *pro se* basis) for Guardianship of the child. This Guardianship matter is captioned In the Matter of the Guardianship of Imani Bruce, a minor, Case No. 2014-GRD-199316. The Respondent is the Judge assigned to the case. A Magistrate was assigned to conduct a Hearing.

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On September 26, 2014, a Hearing was held before the Magistrate, during which the following facts were elicited: (1) at the time of her mother's death, the child was living in Fields' residence. However, Fields and his girlfriend were living upstairs (with their own children), while the child at issue 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; (3) Fields does not have a driver's license, yet drives the child; (4) Fields' current live-in girlfriend attacked Fields in 2012 with a knife, stabbing him multiple times; (5) Fields is friends with (and allows the child to associate with) a Tier III Sex Offender; (6) Fields leaves the child unattended and allows her to walk the neighborhood (and to school), which resulted in a charge of Allowing a Minor to Violate Curfew; and (7) Fields does not pay ordered child support for certain of his own children. The Hearing concluded with no decision being rendered by the Respondent or the Magistrate.

On September 30, 2014, given the testimony (as the child is clearly Dependent and Neglected) Relator filed with the Cuyahoga County Juvenile Court a Complaint to Establish the child as a Neglected and/or Dependent child and for Emergency Temporary/Permanent Custody. (Case Number AD14912510) **On October 6, 2014, the Juvenile Court exercised jurisdiction over the child and issued temporary custody of the child to the Relator.**

Ignoring all of the foregoing facts, as well as the mandates of R.C. 2151.23 (giving exclusive jurisdiction to the Juvenile Court,) the Respondent denied multiple, unopposed requests to Certify Jurisdiction to the Juvenile Court. This is contrary to not only R.C. 2151.23(A), but also In re Doe Children, 93 Ohio App.3d 134 (1994); In the Matter of the

Guardianship of NP, 2011 Ohio 3846; In the Matter of the Guardianship of Brinegar, 160 N.E.2d 589 (1959) and this Court's case of Rowell v. Smith, 133 Ohio St.3d 288 (2012).

On November 6, 2014, given Respondent's refusal to Certify Jurisdiction to the Juvenile Court, Relator filed her Complaint for Writ of Mandamus; Prohibition; and Alternative Writ.

Respondent was served on November 12, 2014. **However, according to Margaret Houston of the Cuyahoga County Prosecutor's Office (the office that defends these actions), the Prosecutor's Office was never informed of this case.** Instead, and incredibly, on November 19, 2014, Respondent (and her Magistrate) issued a Magistrate's Decision/Judgment Entry actually awarding Guardianship of the child to Fields. **(See Exhibit 1)** This shocking Entry is contrary to the Juvenile Court's Custody Order; the Juvenile Court's jurisdiction; the best interests of this twelve year old girl; and all aspects of reasonableness. Given Respondent's recent action, this Court must stay all proceedings in the Cuyahoga County Probate Court with regard to the minor child, and immediately vacate the Judgment Entry awarding Guardianship. *Further, Relator should not be compelled to incur the significant expense of transcribing the Guardianship Hearing in order to file Objections to a Magistrate's Decision/Judgment Entry - which is void ab initio, given the lack of Probate Court jurisdiction over the child.*

### **CONCLUSION**

Juvenile Courts have exclusive jurisdiction over children once complaints which allege that they are dependent, neglected or abused are filed. The Cuyahoga County Probate Court has not exercised any jurisdiction over custody of the child. However, the Cuyahoga County Juvenile Court has exercised jurisdiction over custody of the minor child. Thus, the Juvenile Court has exclusive jurisdiction. (See, In the Matter of the Guardianship of NP, 2011 Ohio 3846, "Once a common pleas court has made an order affecting custody of children, that order is

continuing and court retains jurisdiction.”) The Probate Court is clearly without any jurisdiction over the child. Further, the fact that, while this case was pending (and in the face of the Juvenile Court awarding custody of the child to the Relator – with Fields not even appearing in the custody case,) Respondent would issue an Entry actually awarding Guardianship of the child to her mother’ ex-boyfriend (with such an extensive criminal past) is unreasonable and void (as the Respondent does not have jurisdiction). This Honorable Court must, unfortunately, step in immediately and protect this child.

WHEREFORE, Relator requests that this Court immediately Stay the proceedings in the Cuyahoga County Probate Court with regard to the minor child **and** vacate the Respondent’s Judgment Entry awarding Guardianship of the child to Michael Fields.

Respectfully submitted,

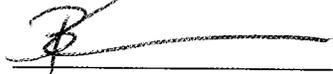


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Counsel for the Relator

**CERTIFICATE OF SERVICE**

A copy of the foregoing was delivered via Regular Mail this 21<sup>st</sup> day of November, 2014 to the Cuyahoga County Prosecutor, 1200 Ontario Street, Cleveland, Ohio 44113.



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L. BRYAN CARR (0066649)  
Counsel for the Relator

**PROBATE COURT OF CUYAHOGA COUNTY, OHIO**  
ANTHONY J. RUSSO, PRESIDING JUDGE  
LAURA J. GALLAGHER, JUDGE

IN THE MATTER OF  
THE GUARDIANSHIP OF:

Case No: 2014GRD199316

**IMANI BRUCE, A MINOR**

**MAGISTRATE'S DECISION**

This cause came on to be heard on **09/26/2014**, before **JENNIFER A. ALEXANDER**, Magistrate, serving in such capacity pursuant to Civil Rule 53, upon two competing Applications for the Appointment of Guardian of the above-referenced Ward. Service was perfected according to law. A transcript was taken, but not filed with this Court at the time this Magistrate's Decision was issued.

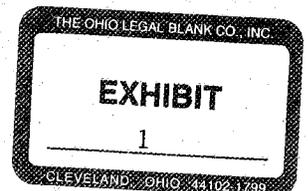
**FINDINGS OF FACT AND PROCEDURAL HISTORY**

On June 26, 2014, Michael Fields filed an Application for Appointment of Guardian. The Application provided that guardianship was necessary because the child's parent (mother) was recently deceased, and the whereabouts of her father are unknown. The Applicant included a copy of the Last Will and Testament of the child's mother, nominating him as the child's guardian, and the consent of Marian Lester, the child's maternal grandmother. A hearing was scheduled for July 22, 2014. A home study was conducted on Michael Fields' home by Court Investigator Kathy Russo.

At the time of hearing, Marian Lester appeared before the Court to orally withdraw her consent and file her own Application for Appointment of Guardian. A hearing was set for August 14, 2014. A home study was conducted on Marian Lester's home by Court Investigator Kathy Russo. On July 29, 2014, by and through her newly engaged counsel L. Bryan Carr, Marian Lester filed a Motion for Continuance which was granted by this Court. On September 8, 2014, a Notice of Appearance of Counsel and Motion for Continuance was filed by Van M. Lowry, attorney for Michael Fields. This Motion was granted, and the hearing was ultimately held on 9/26/14.

ISSUED 11/19/2014 12:31:05 BY: MXB

MDMINORUNDER (11/08/2011)



At the conclusion of the full-day hearing, both parties requested and were granted until October 27, 2014 to submit closing arguments and brief additional legal issues: no decision would be issued until after the date provided for submission of closing arguments. On October 27, a Closing Argument and Brief in Support of Michael Fields' Guardianship Application was filed by Van M. Lowry, Attorney for Michael Fields. Marian Lester did not submit a closing argument.

The Court Investigator, Kathy Russo, completed a home study on both applicants. The home study is part of the court record and was filed in this case. The home study completed on Michael Fields' residence completed on 7/16/14 indicates that the minor child's mother, Raeshawn Bruce, is deceased (DOD 6/15/14). The child's father's whereabouts are unknown and he has never been involved. Imani lives with Michael Fields, and he would like to obtain a legally recognized relationship with the minor in order to offer her stability, a sense of permanency and to allow him to make medical decisions for her and continue her school enrollment. The applicant reported that although he and the minor's father were no longer involved in a romantic relationship, when Raeshawn Bruce became terminally ill with cancer, she and Imani came to live with him so that the family could care for Raeshawn and transition to the next phase of their life that would manifest upon Raeshawn's death.

Ms. Russo reported that Michael Fields is the father of the minor's two half-siblings who live with him and who he has custody of through Juvenile Court. Ms. Russo reported that Mr. Fields works rehabbing homes. She provided that three of the applicant's children and Imani were present during her visit and they all appeared to be comfortable with the applicant and he interacted easily with them. Ms. Russo reported that the home appeared safe and appropriate and no guns were kept in the home. The kitchen was organized and food was present. Imani has a room that she shares with her half-sister. The room was reportedly appropriately furnished with two twin beds, personal belongings and clothing. Mr. Fields reported to the Investigator that he is able to meet his financial obligations. Mr. Fields has three incidents of criminal arrests that were reported to Ms. Russo and detailed in her home study. Despite his criminal history, Ms. Russo recommended that Michael Fields be appointed as Guardian, calling him

“capable and sincere in his efforts to provide a stable and nurturing home for the minor.” Ms. Russo noted the supports from other family members, and reported that during her visit, she was present for a phone call where one of Imani’s aunts called for her clothing sizes for back-to-school shopping. In her report, Ms. Russo noted that the applicant and Raeshawn Bruce’s three children participate in grief counseling through the Hospice of the Western Reserve. In a conversation with Charlene Zimmerman Miller, LPCC-S who has been providing intensive counseling sessions to Michael Fields, Jr. in the family home at least twice per week, Ms. Zimmerman Miller indicated that she has spent much time in the applicant’s home and has consistently found him to be very attentive to the children’s needs, is responsible about keeping appointment and has exceptional follow-through with services. Ms. Russo reported that Imani calls Michael Fields “Dad”, she considers him her father, and Imani considers his home to be her home and wants to remain there. During the visit, Imani appeared very content and well-cared for.

On July 28, 2014, Ms. Russo completed a home study on Marian Lester’s home. Ms. Russo reported that Mrs. Lester is a full-time homemaker with no employment history. Mrs. Lester’s husband works and is prepared to be financially responsible for the minor if guardianship is granted. She has no criminal history. Ms. Russo reported that her home is suitable, with an organized kitchen and supply of food. The upstairs of the home was reported to have two bedrooms that were designated for Imani and her two siblings when they have overnight visits. No safety concerns were observed. In her report, Ms. Russo noted that Raeshawn Bruce prepared a will prior to her death selecting Michael Fields as Guardian for Imani or in the alternative, her friend Salimah Hunter if Michael Fields was unwilling or unable to serve. Ms. Russo reported that Marian Lester has withdrawn her consent and filed her own application due to concerns that Michael Fields will not allow her to have future visitation with the child, and that she does not receive adequate supervision. While finding that the home was safe and appropriate, Ms. Russo does not recommend Mrs. Lester’s Application for the reasons that it would separate Imani from her siblings and dismiss Raeshawn Bruce’s Last Will and Testament where she selected a guardian.

At the hearing, Ms. Russo testified that she found Mr. Fields to be very sincere

and felt he had Imani's best interests in mind. In her opinion as an Investigator, she testified that she believed that Mr. Field's criminal record, including the arrest for domestic violence should be considered, but that it should not disqualify him from appointment. As a Court Investigator, it is her opinion that criminal convictions are situational and are a factor in appointment, but not the only factor. Ms. Russo noted that Mr. Fields disclosed his convictions. She further testified that even though Imani and Mr. Fields were not blood related, she had no concerns with placing Imani with him because they have a father-daughter relationship. Ms. Russo testified that she found both homes to be suitable, but recommended the appointment of Mr. Fields due to Imani's stated preference, the nomination in Raeshawn Bruce's Last Will and Testament, and family unity among Imani and her half-siblings.

In pretrial proceedings, Attorney Carr raised an objection to testimony by the minor child, who Attorney Lowry was planning to call on to testify in support of his client's Application, arguing that the child had been unduly influenced and that her testimony would be inappropriate. Although this concern could have been mitigated by an in camera voir dire of the child and/or the appointment of a GAL, and her testimony would not be precluded by the Rules of Evidence, Mr. Carr's objection was granted and Imani Bruce did not testify. During the home study, Imani stated to the Court Investigator that she considered Mr. Fields' home to be her home and wanted to live there. Her stated desire is part of the record. The stress surrounding these Court proceedings, coupled with grief over losing her mother have been difficult on the minor child, and it did not seem necessary to subject her to testifying and cross-examination.

Michael Fields testified that he has been in Imani's life since Raeshawn was three to four months pregnant with her. He views Imani as his daughter. Imani and Raeshawn came to live with him in March 2014 after Raeshawn allegedly got into a fight with her mother, Marian Lester. He testified that he applied for guardianship because Raeshawn wanted him to. He testified that Imani is doing well in school, and that he is involved with the children's school. Mr. Fields's girlfriend and her children live in the unit above and Mr. Fields testified that she helps with the children, including Imani. Mr. Fields was very honest and forthright in detailing his criminal convictions. He testified

that he can provide a home for Imani and be a father. He testified that he has been there for her the past 12 years and gets her to school, gets her clean clothes, new shoes, and takes her to the park for ice cream. He testified that if appointed, he would not stand in the way of Imani and the other children having a relationship with their grandmother, and further that he has encouraged the relationship. He further testified that she spends time with her maternal family. Mr. Fields further testified that he tried to take Imani to see a doctor and a dentist, but was unable to do so without guardianship letters. On cross examination, Mr. Carr established that Mr. Fields did not have a driver's license and repeatedly stressed his previously disclosed criminal convictions and lack of education.

In support of his application, Mr. Fields attached a copy of the Last Will and Testament of Raeshawn Bruce. In Article V of her Will, Raeshawn specifically nominated Michael Fields, Sr. to be the guardian of her minor children. If Michael is unwilling or unable to serve, the decedent nominated her friend, Salimah Hunter to serve as guardian. This Will was admitted to probate on 10/02/14. Mr. Carr raised several continuing objections to the submission of the Will and to testimony surrounding the Will's execution as it had not been admitted for probate at the time of the hearing. The Will has since been probated.

Marian Lester testified that she has been involved with Imani since her birth, and that Imani and Raeshawn lived with her for various periods over the years. She testified that she would foster a relationship between Imani and her half-siblings. She further testified that she signed the initial waiver because she was grief-stricken but now believes it is best for Imani to live with her.

Both Applicants called witnesses in support of their Applications. Joseph Anderson, Raeshawn's father, testified that he saw his daughter around the time the Will was executed, he had prior discussions with her regarding the Will and she was not suffering from confusion. Maurgerite Bradford, Marian Lester's mother, testified in support of Michael Fields's application, and not the application of her own daughter, testifying that she believes Mr. Fields would provide a good home to Imani and that he has been a good father. It is her belief that separating Imani from her siblings would be

devastating. Imani's maternal great-aunt also testified for in support of Mr. Fields, testifying that Michael is very good with the children and that he is the only father Imani has ever known. Salimah Hunter, Raeshawn's longtime friend and durable POA for healthcare testified in support of Mr. Field's application. Marian Lester's son, Michael Lester, Jr., was called as a witness in support of his mother's application, but testified that both Michael Fields and his mother are good people. He further testified that he believed his mother would nurture a relationship between Imani and her siblings.

Conflicting testimony was offered regarding Raymond Bruce, Marian Lester's son. Raymond Bruce is an alleged sexual offender and did not have a relationship with many of his family members following his 2004 conviction. Marian Lester and Michael Lester, Jr., testified that Raeshawn did not want him around Imani. Mrs. Lester was upset that he handled Raeshawn's funeral arrangements. Mrs. Lester argues that Mr. Fields is an unsuitable candidate for guardianship because he allows Raymond Bruce around Imani. Mr. Fields testified that he was not really aware of this conviction, and that Raymond Bruce is around Imani only at church choir practice with other members of the Bruce family. Testimony by members of the Bruce family seemed to support this assertion. There was no evidence presented that Raymond Bruce has molested or otherwise harmed Imani.

#### **CONCLUSIONS OF LAW**

Ohio Revised Code 2111.02 provides: that the probate court has authority to appoint a guardian "on its own motion or on application by any interested party." The statute further provides that "an interested party includes, but is not limited to, a person nominated in a writing as described in division (A) of section 2111.121 of the Revised Code." Ohio Revised Code Section 2111.121(A) provides in pertinent part:

A person may nominate in a writing...another person to be the guardian of the nominator's minor or incompetent adult children...subject to notice and a hearing pursuant to section 2111.02 of the Revised Code.

To be effective as a nomination, the writing shall be signed by the person

making the nomination in the presence of two witnesses; signed by the witnesses; and contain, immediately prior to their signatures, an attestation of the witnesses that the person making the nomination signed the writing in their presence; or be acknowledged by the person making the nomination before a notary public.

The law provides not only that a person nominated in a writing may apply for guardianship, but gives that nominee great deference in appointment. "...Except for good cause shown or disqualification, the court shall make its appointment in accordance with the person's most recent nomination." R.C. 2111.121(B). In the case at bar, Raeshawn Bruce, the child's mother, nominated Michael Fields, Sr. to serve as guardian of her minor children in Article V of her Will, a copy of which was attached to his Application; original Will admitted to probate on 10/02/2014.

The Ohio Revised Code provides the following grounds where guardianship is necessary:

A guardian of the person of a minor shall be appointed as to a minor having no father or mother, whose parents are unsuitable persons to have the custody of the minor and to provide for the education of the minor as required by section 3321.01 of the Revised Code, or whose interests, in the opinion of the court, will be promoted by the appointment of a guardian.

Ohio Revised Code Section 2111.06. In appointment proceedings for guardianship of a minor, the court may appoint a probate court investigator and file a report that shall contain all of the following: "(1) A brief description, as observed by the investigator, of the physical and mental condition of the minor;(2) If a guardian already has been appointed, a brief description, as observed by the investigator, of the circumstances and functioning of the guardianship;(3) If no guardian has been appointed, a brief recommendation regarding the necessity for a guardianship." O.R.C. 2111.042(A).

The report that is required pursuant to division (A) of this section shall be made part of the record in the case and shall be considered by the court prior to establishing any guardianship for the minor, if no guardianship has been established, and prior to making any change in the guardianship or the functioning of the guardianship, if a guardian already has been appointed.

O.R.C. 2111.042(B).

### **RECOMMENDATIONS**

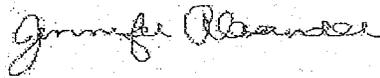
Imani Bruce is a twelve-year-old child residing in this county who has recently lost her mother. Her father's whereabouts are unknown. She is clearly in need of a guardian to offer her stability and provide for her care, education and medical needs. The Court Investigator found both Applicants to have a suitable environment to raise Imani, but based on the facts in the case including the nomination of Michael Fields in the Will, family unity among Imani and her half-siblings and Imani's stated preference, recommends the appointment of Michael Fields, Sr.

While not related by blood, Michael Fields is the only father Imani has ever known. He presented as a very loving and involved parent with Imani's best interests in mind. Mr. Fields is clearly not a perfect person, but has done his best with Imani and desires to keep her with her half-siblings. After suffering the tragedy of losing her mother, it would be devastating to tear her away from the place she considers her home and from her half-siblings and to require her to start over again in a new school. Michael Fields has made every effort to keep Imani involved with her maternal family. Many of Marian Lester's own family members testified in support of Michael Fields' Application.

Based on the nomination in the Last Will and Testament of Raeshawn Bruce, considering the Court Investigator's report and recommendation as required by law,

including the reported preference of the minor child and the testimony presented in this case, it is the recommendation of this Magistrate that the Application for Appointment of Guardian of the Person of Imani Bruce filed by Michael Fields, Sr. be granted without bond. Ohio law requires that the nomination of the decedent should be followed if it is in the child's best interests. Michael Fields is a suitable applicant with an appropriate care plan. It is further recommended that the Application for Appointment of Guardian of the Person of Imani Bruce filed by Marian Lester be denied.

Respectfully submitted,



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**Magistrate**

**Counsel and parties will take notice that under the provisions of Rules 73 and 53(D)(4)(e)(ii) of the Ohio Rules of Civil Procedure, immediate relief is justified and Letters of Guardianship will be issued forthwith. Objections to this decision may be filed with 14 days commencing from the date on which this decision is filed, but the relief ordered herein is subject to the automatic stay caused by the filing of timely objections.**

**A PARTY SHALL NOT ASSIGN AS ERROR ON APPEAL THE COURT'S ADOPTION OF ANY FINDING OF FACT OR CONCLUSION OF LAW IN THIS MAGISTRATE'S DECISION UNLESS THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THE FINDING OR CONCLUSION AS REQUIRED BY CIVIL RULE.**

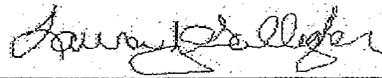
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#### **JUDGMENT ENTRY GRANTING GUARDIANSHIP**

Upon review, the Court finds that pursuant RC 2111.02(B), there exists a preponderance of evidence that the appointment of applicant as guardian would serve the best interests of the minor child. The Court further finds that good cause exists for the establishment of a guardian as provided above.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Application for Guardianship of Person Only of **IMANI BRUCE**, filed by **MICHAEL FIELDS** is hereby **GRANTED WITHOUT BOND** and Letters of Authority shall issue immediately.

IT IS FURTHER ORDERED that the Application for Guardianship of Person Only of **IMANI BRUCE** filed by **MARIAN LESTER** is hereby DENIED.



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**JUDGE LAURA J. GALLAGHER**