

**IN THE SUPREME COURT OF OHIO**

<b>IN THE MATTER</b>	<b>:</b>	<b>CASE NO.: 2018- 1615</b>
<b>OF B.D. AND I.D.,</b>	<b>:</b>	
 	<b>:</b>	
<b>ADAM MAY AND</b>	<b>:</b>	<b>ON APPEAL FROM</b>
<b>HEATHER MAY,</b>	<b>:</b>	<b>DELAWARE COUNTY, OHIO,</b>
<b>APPELLANTS.</b>	<b>:</b>	<b>JUVENILE DIVISION</b>
 	<b>:</b>	<b>CASE NOS.: 15-01-0056-AB</b>
	<b>:</b>	<b>15-01-0057-AB</b>
 	<b>:</b>	
 	<b>:</b>	<b>COURT OF APPEALS</b>
	<b>:</b>	<b>DELAWARE COUNTY, OHIO,</b>
	<b>:</b>	<b>FIFTH APPELLATE DISTRICT</b>
	<b>:</b>	<b>CASE NOS.: 18-CAF-01-0003</b>
	<b>:</b>	<b>18-CAF-01-0004</b>
 	<b>:</b>	
	<b>:</b>	<b>MOTION FOR RECONSIDERATION</b>
	<b>:</b>	
	<b>:</b>	

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IN THE SUPREME COURT OF OHIO

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**MOTION FOR RECONSIDERATION**

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**ADAM MAY and HEATHER MAY hereby respectfully request that the Supreme Court of Ohio reconsider judgment entry, filed January 23, 2019, declining to accept jurisdictional appeal for case numbers: 18 CAF 01 0003 and 18 CAF 01 0004.**

The appeal arises from a judgment entered on the 6th day of December 2017, of the **COURT OF COMMON PLEAS OF DELAWARE COUNTY, OHIO, JUVENILE DIVISION** and the affirmative decision entered on the 27th day of September 2018, of the **COURT OF APPEALS, DELAWARE COUNTY, OHIO, FIFTH APPELLATE DISTRICT.**

Respectfully submitted,

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## **MEMORANDUM IN SUPPORT**

### ***I. JUVENILE COURT RELIED UPON IMPROPER REVISED CODE***

Within the Judgment Entry to which this appeal applies, Judge Hejmanowski references the enactment of the ICPC through Ohio Revised Code section 5103.20 however, the Judge has applied the incorrect Revised Code. This code is the interstate compact for placement of children *adopted*, R.C. 5103.20. The accurate code in this case is R.C. 5103.23, interstate compact on placement of children. The difference between these two codes *is monumental*. (Emphasis added.)

The Court relies upon R.C. 5103.20, "[if] the public agency in the receiving state does not approve the proposed placement then the child shall not be placed. The receiving state shall provide written documentation of any such determination in accordance with the rules promulgated by the Interstate Commission. *Such determination is not subject to judicial review in the sending state.*" (Emphasis added.)

The proper code here is R.C. 5103.23 (Art. IV), which completely conflicts with the revised code that the Court inaccurately references. R.C. 5103.23 explicitly pledges that "[t]he sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. *Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws.* In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children." (Emphasis added.)

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The Juvenile Court relying upon a revised code that does not apply to this case affects *the most important issues in this case* including jurisdiction, permanency and financial responsibility. The code that Juvenile Court depends on does not authorize judicial review in the sending state if a child's placement is not approved and the revised code that *does apply here* promotes invoking the provisions of the law by either the sending or receiving state, establishing that the Juvenile Court holds power to rectify any violations of the ICPC. (Emphasis added.)

#### **A. JURISDICTION**

The first issue here is jurisdiction, the ICPC is a contract in which the Judgment Entry clearly breaches. The entry terminates DCDJFS' custody and case of I.M. and B.M. however, ICPC *mandates* the sending state maintain jurisdiction until the ICPC has been approved by the receiving state.

R.C. 5103.23 (Art. V)(A), assures that "[t]he sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein."

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I.D. and B.D. have not been adopted, have not reached majority, have not become self-supporting and the ICPC was not discharged with the concurrence of the appropriate authority in the State of Massachusetts therefore, the order to terminate the agency's custody and case of the children should not have been granted, per the ICPC, *DCDJFS still maintains jurisdiction.* (Emphasis added.)

On August 31, 2017, a letter to Judge Hejmanowski was filed in the Court, the letter was from Massachusetts ICPC Coordinator, Susan Richard. It explains why the ICPC is not approved and clarifies the changes needed for approval. Mrs. Richard informs the Court that a legal custody placement with relatives does not exist in Massachusetts law because Massachusetts law refers to "permanent care with relatives" and that R.C. 2151.415 (A)(3) fails to use the word "permanent" which is insufficient to approve the children's placement. Additionally, under Ohio law, as well as the ICPC, an acceptance of a legal custody placement is required.

Clearly the children's case plan, regarding permanency requires modification, not only to approve the ICPC, *federal law demands it.* (Emphasis added). A more permanent placement is required to approve the ICPC therefore, termination of parental rights is necessary. Not only is Massachusetts requiring TPR, the children, and the Mays, wish for it. Grounds justifying the termination of parental rights have existed since the commencement of this case and is well overdue.

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***B. PERMANENCY***

The second issue here is permanency. There is only one explanation as to why children services absolutely refuses to provide permanency for this sibling group of three, money. At the time DCDJFS placed the children in Massachusetts the youngest child was only 5 years of age and because they are Title IV-E eligible deems them entitled to receive Title IV-E Adoption Assistance until they reach the age of majority, possibly even until they reach the age of 21. It would be a long, long time that DCDJFS would be required to provide this.

However, the needs of these children are more important than the county getting to save money. Time is of the essence for permanency of children in the dependency systems this is why federal law, (specifically the Adoption and Safe Families Act of 1997, ASFA<sup>1</sup>), demands that "[a] permanency hearing must be held no later than 12 months after the date the child was first considered to have entered foster care."<sup>2</sup> To clarify this date "[a] child shall be considered to have entered foster care on the date of the *first judicial finding that the child has been subjected to child abuse or neglect*."<sup>3</sup> (Emphasis added.)

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<sup>1</sup> P.L. 105-89--- 105th Congress, (Nov. 19, 1997).

<sup>2</sup> SEC. 475. [42 U.S.C. 675](5)(F)(i).

<sup>3</sup> 42 U.S.C. § 675 (F).

In this case, the first judicial finding of abuse and neglect was February 2014, and the children were placed in the custody of DCDJFS in January 2015. At that time, grounds existed to justify the termination of parental rights however, the least expensive path is to reunify the children with biological mother. Just to avoid dispensing funds DCDJFS subjected the children to additional trauma, uncertainty and instability.

There is no record on file that a permanency hearing occurred while the children were in the custody of DCDJFS, January 2015- December 2017, even though the children were entitled to a one before the end of January 2016, and another before the end of January 2017.

"The Judge must determine the permanency plan. *The court is not bound by the plan recommended by the agency.* If the permanency plan does not involve the reunification of the child with the family, then reasonable efforts inquiries focus on finding another permanent home for the child."<sup>4</sup> "After the initial permanency hearing, subsequent permanency hearings must be held every 12 months while the child is in care."<sup>5</sup> "In determining the permanency plan, the Court must review family time (if applicable), the child's current placement, the needs of the child, and child wellbeing."<sup>6</sup> Additionally, "[t]he case plan goal, or permanency plan, *must be re-evaluated and determined at a permanency hearing* to be held within 12 months of the date the child entered care."<sup>7</sup>

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<sup>4</sup> National Council of Juvenile & Family Court Judges, *Enhanced Resource Guidelines*, <https://www.ncjfcj.org.>, (pg. 299, 2016).

<sup>5</sup> 45 C.F.R. §1356.21(b)(2)(i).

<sup>6</sup> 42 U.S.C. § 675(5)(c)17.

<sup>7</sup> 42 U.S.C. § 675(5)(B).

"To meet the requirements of the permanency hearing, the Title IV-E agency must, among other requirements, comply with section 475(5)(C) of the Act."<sup>8</sup> Additionally, "[t]he order of preference for permanency plans is reunification, adoption, legal guardianship, permanent placement with a fit and willing relative, and another planned permanent living arrangement (APPLA)."<sup>9</sup>

The Judgment Entry references that "[t]he Department has repeatedly indicated that it will not file a motion for permanent custody in these matters." What the Judgment Entry does not state is that "[i]f the agency is required to file or join a termination of parental rights petition (because the child has been in foster care for 15 of the last 22 months), but has not done so or has expressed an intention not to file, the Judge should state whether the agency has documented in the case plan a compelling reason for determining that filing such a petition would not be in the best interests of the child."<sup>10</sup> Examples of a compelling reasons include; "[t]he case of an older teen who specifically requests that emancipation be established as his/her permanency plan, "[t]he case of a parent and child who have a significant bond but the parent is unable to care for the child because of an emotional or physical disability and the child's foster parents have committed to raising him/her to the age of majority and to facilitate visitation with the disabled parent."<sup>11</sup>

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<sup>8</sup> 45 C.F.R. §1356.21(h)(1).

<sup>9</sup> National Council of Juvenile & Family Court Judges, *Enhanced Resource Guidelines*, <https://www.ncjfcj.org.>, (pg. 385, 2016).

<sup>10</sup> National Council of Juvenile & Family Court Judges, *Enhanced Resource Guidelines*, <https://www.ncjfcj.org.>, (pg. 304, 2016).

<sup>11</sup> 45 CFR § 1356.21(h)(3).

In September 2015, DCDJFS requested the Juvenile Court remove biological mother from the children's case plan upon determining that the children could not be returned home and reunification efforts ceased. Instead of terminating parental rights at that time, DCDJFS decided to allow this case to linger for an additional 27 months after reunification efforts had been exhausted, because it would be less expensive than terminating parental rights.

"If continuation of reasonable efforts to preserve and reunify families is determined to be inconsistent with the permanency plan for the child, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan (including, if appropriate, through an interstate placement) and to complete whatever steps are necessary to finalize the permanent placement of the child."<sup>12</sup>

After receiving notification, on August 31, 2017, of the changes needed, from Massachusetts ICPC Coordinator, a modification of the children's permanency plan was in order however, no changes were made and no efforts were made to take whatever steps were needed to finalize the children's placement.

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<sup>12</sup> SEC. 471. [42 U.S.C. 671](a)(15)(C).

### **C. FINANCIAL RESPONSIBILITY**

The last core issue here is financial responsibility. Accordingly, R.C. 5103.231 states that "[f]inancial responsibility for any child placed pursuant to the provisions of the interstate compact on the placement of children shall be determined in accordance with the provisions of Article V of section 5103.23 of the Revised Code. However, in the event of parental or complete default of performance thereunder, the *provisions of laws fixing responsibility for the support of children also may be invoked.*" (Emphasis added.)

The Mays filed several objections during the course of the case in regards to DCDJFS maintaining financial responsibility for the care and support of the children, as required by the sending state per the Interstate Compact on the Placement of Children, (ICPC). In 2006, the Safe and Timely Interstate Placement of Foster Children Act was adopted to amend sections of the Social Security Act.<sup>13</sup>

The Juvenile Court repeatedly declared (even within the Judgment Entry regarding this appeal), that the Court is without authority to address the rules and regulations of the ICPC. How is it possible that a Court is without authority to enforce its own order? How is a Court without authority to enforce compliance of the ICPC as it has been enacted into law by all 50 states in the United States, and the District of Columbia?

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<sup>13</sup>Safe and Timely Interstate Placement of Foster Children Act, (2006), P L. No. 109-239, 120 Stat. 508.

The Mays were informed, and not by DCDJFS, that they could file a grievance complaint, which they did. Thereafter, the Mays began exhausting all administrative remedies available in Ohio, all *pro se*. They went through a State Hearing,<sup>14</sup> an Administrative Appeal,<sup>15</sup> filed for a Judicial Review<sup>16</sup> and then another Administrative Review was held ordering the agency to re-determine the children for Title IV-E FCM and administer accordingly.<sup>17</sup> The children were re-determined eligible for Title IV-E FCM however, DCDJFS still refused to be financially responsible for children's placement. Placement through an ICPC secures that the children receive the same support and services as they received in the sending state. DCDJFS claim that a "reunification" placement is not reimbursable though, the Judgment Entry undoubtedly deems this statement untrue because it certainly was not a reunification placement.

Through exhausting all administrative remedies in the State of Ohio, somehow the Mays obtained the children's Title IV-E foster care maintenance information. This information is shocking, it documents the monthly amount of money that DCDJFS provided for each of the child's cost of care during their foster care placement in Ohio.

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<sup>14</sup> ODJFS Bureau of State Hearings,

[http://www.odjfs.state.oh.us/HearingsAppeals/doc/2016/4/Decisions/3080621\\_SH\\_Decision\\_20160401.pdf](http://www.odjfs.state.oh.us/HearingsAppeals/doc/2016/4/Decisions/3080621_SH_Decision_20160401.pdf)  
[http://www.odjfs.state.oh.us/HearingsAppeals/doc/2016/4/Decisions/3080622\\_SH\\_Decision\\_20160401.pdf](http://www.odjfs.state.oh.us/HearingsAppeals/doc/2016/4/Decisions/3080622_SH_Decision_20160401.pdf)  
[http://www.odjfs.state.oh.us/HearingsAppeals/doc/2016/4/Decisions/3080623\\_SH\\_Decision\\_20160401.pdf](http://www.odjfs.state.oh.us/HearingsAppeals/doc/2016/4/Decisions/3080623_SH_Decision_20160401.pdf)

<sup>15</sup> ODJFS Bureau of State Hearings,

[http://www.odjfs.state.oh.us/HearingsAppeals/doc/2016/4/Appeals/3080621\\_AA\\_Decision\\_20160418.pdf](http://www.odjfs.state.oh.us/HearingsAppeals/doc/2016/4/Appeals/3080621_AA_Decision_20160418.pdf)  
[http://www.odjfs.state.oh.us/HearingsAppeals/doc/2016/4/Appeals/3080622\\_AA\\_Decision\\_20160418.pdf](http://www.odjfs.state.oh.us/HearingsAppeals/doc/2016/4/Appeals/3080622_AA_Decision_20160418.pdf)  
[http://www.odjfs.state.oh.us/HearingsAppeals/doc/2016/4/Appeals/3080623\\_AA\\_Decision\\_20160418.pdf](http://www.odjfs.state.oh.us/HearingsAppeals/doc/2016/4/Appeals/3080623_AA_Decision_20160418.pdf)

<sup>16</sup> Court of Common Pleas, Franklin Cty, OH, Gen. Div., Case Nos. 16CV004864, 16CV004866, 16CV004903, (Nov. 22, 2016).

<sup>17</sup> ODJFS Bureau of State Hearings,

[http://www.odjfs.state.oh.us/HearingsAppeals/doc/2017/2/Appeals/3080622\\_AA\\_Decision\\_20170215.pdf](http://www.odjfs.state.oh.us/HearingsAppeals/doc/2017/2/Appeals/3080622_AA_Decision_20170215.pdf)  
[http://www.odjfs.state.oh.us/HearingsAppeals/doc/2017/2/Appeals/3080623\\_AA\\_Decision\\_20170215.pdf](http://www.odjfs.state.oh.us/HearingsAppeals/doc/2017/2/Appeals/3080623_AA_Decision_20170215.pdf)

The stunning amount is \$2,075.45 per month, per child, totaling \$6226.35 a month which is about \$69.00 per day, per child! The last Administrative Appeal order, mailed February 15, 2017, directed DCDJFS to re-determine the children for Title I-VE FCM obviously because the agency declared them not eligible. Their ineligibility is recorded on financial documents sent to Massachusetts. In March 2017, the agency "re-assessed" the children however, the amount of money paid to the foster parents had already been agreed upon and distributed. In 2018, Delaware County reported \$17.00 as their minimum per diem and \$25.00 as their maximum per diem. Delaware County's additional per diem for special, exceptional and intensive placements were not reported. The county reported \$25.00 per diem for emergency placements, maximum of \$800.00 for clothing expenses, \$600.00 maximum for graduation expenses and \$600.00 maximum for personal incidentals.<sup>18</sup> There is absolutely no way that DCDJFS would agree to provide this amount without securing reimbursability from the federal government.

It is unknown why the Juvenile Court subjected the Mays to an extremely difficult, exhausting and never-ending process, especially after placing a sibling group of three, (ages 15, 13 and 5), in their physical when the Juvenile Court could have simply corrected compliance at anytime.

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<sup>18</sup> ODJFS, <https://emanuals.jfs.ohio.gov/>, *Reported Foster Care Maintenance Rates, (2018)*.

## **II. JUVENILE COURT CONFIRMS CASES WERE HANDLED CARELESSLY**

The Judgment Entry questions "whether the Department should have been working toward reunification with them [the Mays] and how that affects their legal standing." This question is directed toward the wrong party and indicates that Judge Hejmanowski *did not* carefully review the case plan *prior to adopting it*. (Emphasis added.) This undoubtedly explains why the children's, and the Mays', constitutional rights to due process and equal protection were violated since the very beginning when KY requested DCDJFS accept the children's case transfer to ensure they received on-going support, services and protection. This also clarifies why *so many* of the Mays' questions, concerns, motions and objections have been erroneously overlooked and disposed of. (Emphasis added.)

The Judge's role in child abuse and neglect cases was conferred on them by federal legislation. "Congress's main purpose in involving Judges in the oversight of child protection cases was to ensure that the social service agency was doing its job: that children were not removed from their family unless they were endangered, that the

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agency provided reasonable efforts to prevent removal, reasonable efforts to help parents reunify with their children, and reasonable efforts to achieve permanency for the child."<sup>19</sup>

"The Juvenile Court oversees the case-related activities of the parties and participants and *must ensure that the requirements imposed by federal and state laws are met.*"<sup>20</sup> "Where charged with this responsibility under state law and based upon evidence before the court, approve, disapprove, or modify the agency's proposed case plan."<sup>21</sup>

Among the amendments of ASFA, child welfare programs changed the primary focus from family preservation and reunification *to safety of the child and, in order to provide stability and permanency for children.* The amendments require that *a child's safety must be the paramount consideration when family preservation or family reunification is the goal* and less stringent conditions for seeking termination of parental rights.

"If the Judge makes a determination that reasonable efforts to reunify the family are not required due to aggravated circumstances, as defined by state law – e.g., the parent has committed a felony assault to the child or another child of the parent – the Judge must set a *permanency hearing within 30 days.*"<sup>22</sup> Where there is a determination that the parent has been convicted a felony assault regarding a child the agency must file a petition to terminate parental rights within 60 days of that judicial determination, *absent compelling reasons not to file.*"<sup>23</sup>

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<sup>19</sup> National Council of Juvenile and Family Court Judges, *Enhanced Resource Guidelines*, <https://www.ncjfcj.org.>, (pg. 25, 2016)

<sup>20</sup> National Council of Juvenile & Family Court Judges, *Enhanced Resource Guidelines*, <https://www.ncjfcj.org.>, (pg. 41, 2016).

<sup>21</sup> National Council of Juvenile & Family Court Judges, *Enhanced Resource Guidelines*, <https://www.ncjfcj.org.>, pg. 232, 2016).

<sup>22</sup> 45 C.F.R. § 1356.21(h)(1) and (2).

<sup>23</sup> 45 C.F.R. § 1356.21(i)(iii).

On February 29, 2014, in Oldham County, KY, biological mother accused and charged with Wanton Endangerment, (1st Degree and 2nd Degree), Assault, (4th Degree), and Endangering the Welfare of a Minor.<sup>24</sup> I.M. was the victim of these crimes and all three children resided in the home when the assaults occurred. The Juvenile Court adopted a case plan focusing on the reunification with biological mother although, reunification efforts were not needed due to the on-going safety risk the biological mother poses upon the children.

The Mays informed the Juvenile Court, as well as DCDJFS, of the felonious assault charges that biological mother was charged with however, no changes were made to the children's case plan nor were there any petitions filed to terminate parental rights.

In January 2016, the Mays filed, *pro se*, timely objections to the agency's semi-annual review. The objections addressed the following issues: the children's permanency plan, the federal laws of ASFA and inquired as to why reunification efforts were made with biological mother even though the children had been out of her care and custody for 12 months. The objections questioned why the agency did not explain to them that they could obtain a foster care license and how to obtain one. In their objections the Mays informed the Court, (with documentation), of biological mother overdosing on September 25, 2014 and informed the Court, (again with documentation), that on December 8, 2015, biological mother was sentenced to 30 months in prison. The Mays thought that this change in circumstance would cause the agency to begin the process to terminate parental rights.

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<sup>24</sup> Oldham Co., KY, Case No.:14-F-00057.

Federal law allows states a great deal of flexibility in creating *family foster home licensing standards*. Title IV-E agencies to provide "[a] waiver of any standards established pursuant to subparagraph (A) may be made only on a case-by-case basis for nonsafety standards (as determined by the State) in relative foster family homes for specific children in care."<sup>25</sup> (Emphasis added.)

The Office of Inspector General reports that "[t]he Department of Human Services certifies foster family homes or receiving children in the custody of the PCSAs. Relative foster homes can be certified based upon the same criteria as non-relatives' homes." OIG adds that "[r]elatives who provide foster care receive foster-care maintenance payments if the home is certified."<sup>26</sup>

Accordingly, in 1979, United States Supreme Court case Youakim v. Miller,<sup>27</sup> directs local child welfare agencies to pay kinship caregivers the same rate foster parents are given, provided they meet foster home licensing requirements. This completely contradicts DCDJFS declaring that foster parents are strangers and relatives in Ohio are not paid to care for nieces, nephews or grandchildren. This statement was recorded within a motion filed with the Juvenile Court, which the Court obviously agrees with because no correction was made..

In July 2016, once again the Mays filed, *pro se*, timely objections to the agency's semi-annual review. The objections inquired as to why DCDJFS would not terminate parental rights and what their compelling reason was not to. Through the objections they asked why their "Application for Adoption of a Foster Child or Sibling Group," (JFS 01692), was not acknowledged and why the agency did provide them with information as described in Ohio State Law.

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<sup>25</sup> Sec. 471. [42 U.S.C. 671] (a)(10)(D).

<sup>26</sup> OIG, *State Practices In Using Relatives For Foster Care*, <http://www.oig.hhs.gov.>, (pg. 46, acc. May 2016.)

<sup>27</sup> Youakim v. Miller, 425 U.S. 231 (1976).

Pursuant R.C. 3107.012, "[a] foster caregiver may use the application prescribed under division (B) of this section to obtain the services of an agency to arrange an adoption for the foster caregiver if the foster caregiver seeks to adopt the foster caregiver's foster child who has resided in the foster caregiver's home for at least six months prior to the date the foster caregiver submits the application to the agency. The department of job and family services shall prescribe an application for a foster caregiver to use under division (A) of this section. The application shall not require that the foster caregiver provide any information the foster caregiver already provided the department, or undergo an inspection the foster caregiver already underwent, to obtain a foster home certificate under section 5103.03 of the Revised Code. An agency that receives an application prescribed under division (B) of this section from a foster caregiver authorized to use the application shall not require, as a condition of the agency accepting or approving the application, that the foster caregiver undergo a criminal records check under section 2151.86 of the Revised Code as a prospective adoptive parent. The agency shall inform the foster caregiver, in accordance with division (G) of section 2151.86 of the Revised Code, that the foster caregiver must undergo the criminal records check before a court may issue a final decree of adoption or interlocutory order of adoption under section 3107.14 of the Revised Code."

The Court continually refuses to recognize that the agency violated *several* of the statutory and regulatory requirements of the Federal foster care program. Pursuant 45 CFR § 1356.21, "[t]o implement the foster care maintenance payments program provisions of the title IV-E plan and to be eligible to receive Federal financial participation (FFP)

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for foster care maintenance payments under this part, a title IV-E agency must meet the requirements of this section, 45 CFR 1356.22, 45 CFR 1356.30, and sections 472, 475(1), 475(4), 475(5) and 475(6)." (Emphasis added.)

The Court could not determine that DCDJFS made reasonable efforts to prevent the children's removal from the Mays and placement into foster care, as required.<sup>28</sup> This could not be determined because DCDJFS *made no efforts to prevent the children's removal and placement into foster care.* (Emphasis added.)

DCDJFS did not obtain a judicial determination that the agency made reasonable efforts to finalize the children's permanency plan, as required.<sup>29</sup> A judicial determination could not be obtained because *the agency made absolutely no efforts to finalize the permanency plan.* (Emphasis added.)

### ***III. JUVENILE COURT DISREGARDS CERTAIN MOTIONS***

R.C. 2151.412 (F)(2)(a), requires that "[i]f it receives a timely request for a hearing, the court shall schedule a hearing pursuant to section 2151.417 of the Revised Code to be held no later than thirty days after the request is received by the court. The court shall give notice of the date, time, and location of the hearing to all parties and the guardian ad litem. The agency. . . approved by the court." The Mays' motion to review and modify was filed in August 2017, the Judgment Entry was filed *four months afterward*, in December 2017, supplying the Court ample time to schedule a hearing accordingly. (Emphasis added.)

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<sup>28</sup> 45 CFR § 1356.21(b)(1)(i).

<sup>29</sup> 45 CFR § 1356.21(b)(2)(i),

R.C. 2151.412 (F)(2)(b), explains that "[i]f it does not receive a timely request for a hearing, the court may approve the proposed change without a hearing. If the court approves the proposed change without a hearing, it shall journalize the case plan with the change not later than fourteen days after the change is filed with the court. If the court does not approve the proposed change to the case plan, it shall schedule a hearing to be held pursuant to section 2151.417 of the Revised Code no later than thirty days after the expiration of the fourteen-day time period and give notice of the date, time, and location of the hearing to all parties and the guardian ad litem of the child. If, despite the requirements of division (F)(2) of this section, the court neither approves and journalizes the proposed change nor conducts a hearing, the agency may implement the proposed change not earlier than fifteen days after it is submitted to the court." The Court did not approve the Mays' motion to modify nor did the Court schedule a hearing, *which was to be held pursuant to section 2151.417 of the Revised Code* no later than thirty days after the expiration of the fourteen-day time period. (Emphasis added.)

Ohio, Juvenile Division. Pursuant R.C. 2151.412 (F)(2), "[a]ny party may propose a change to a substantive part of the case plan, including, but not limited to, the child's placement and the visitation rights of any party. A party proposing a change to the case plan shall file the proposed change with the court and give notice of the proposed change in writing before the end of the day after the day of filing it to all parties and the child's guardian ad litem. All parties and the guardian ad litem shall have seven days from the date the notice is sent to object to and request a hearing on the proposed change." *No objections were filed by any of the parties, including DCDJFS, as well as the GAL.* (Emphasis added.)

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***IV. JUVENILE COURT DENIES MOTION FILED BY PRO SE LITIGANT,  
ACCEPTS EXACT SAME MOTION FILED BY AN ATTORNEY***

The Judgment Entry states that "[o]n August 7, 2017, Damian Day turned 18 years of age. The Department of Job and Family Services filed a motion to terminate his case based upon his attaining the age of majority. Damian filed a response, *pro se*, in opposition. The Court granted the Department's motion and terminated his case. The Department has now filed their second Motion to Terminate and sufficient time has been allowed for all parties to respond." This information is misleading. Sixteen days subsequent to Damian reaching the age of 18, he filed a motion, *pro se*, in the Court of the Common Pleas, Delaware County, Ohio, Juvenile Division. The motion requested that the court retain jurisdiction, pursuant R.C. 2151.353 (F)(1), alongside the motion was a voluntary participation agreement, pursuant R.C. 5101.1411 (A)(1). The agency's motion to terminate their case and custody of Damian was filed *six days later*. (Emphasis added.)

On August 2, 2018, Ashley Watson, Attorney for ODJFS' Bridges Program, filed a motion in the Common Pleas Court of Delaware County, Ohio, Juvenile Division. The motion requested the Court extend care and placement of Damian Day, alongside the motion was a Voluntary Participation Agreement. Judge Hejmanowski accept and signed the motion on September 2, 2018, ironically, almost exactly a year prior Judge Hejmanowski dismissed this exact motion and voluntary participation agreement filed by Damian, *pro se*, which terminated Damian's custody and case. Mrs. Watson filed the motion under Case No.: 15-01-0058-AB, the exact case that the Court terminated 12 months prior.

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#### ***V. CONCLUSION***

This Court declined to accept the above-mentioned cases due to a determination that these appeals do not involve a substantial constitutional question and/ or the appeals do not involve a question of great general or public interest. Respectfully, we disagree. What is of greater importance than correcting a child custody case that has been mishandled? Reality is that anybody, at any time, can suddenly become a party to a case regarding abused/ neglected/ dependent children. In September 2016, Los Angeles County Department of Children and Family Services performed an eight week investigation of 52 year old actor, Brad Pitt. Once children's services were satisfied with the safeguards put in place the investigation closed. Even Brad Pitt had to answer to and comply with children's services. It is a great public interest that the Juvenile Court adopted a case plan without properly assessing it, especially a plan that involves a child's safety. Certainly there would be public interest that a Juvenile Court orders a motion yet fails to hold only certain parties accountable for their responsibilities, while allowing other parties to evade their responsibilities. There is certainly a great public interest that an agency of child welfare services continues to receive federal funds even though they continue to disregard the federal laws required to receive these funds.

This Court, as well as the Juvenile Court, sustain immense knowledge of both state and federal laws, far beyond my scope, and both Courts can probably immediately detect an injustice. This Court is well informed that the sending state cannot terminate its jurisdiction subsequent to placing a foster child in another state. If every Juvenile Court disregarded the rules and regulations of the ICPC then nobody would utilize it which would only limit a child's opportunities.

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Counties in Ohio have evaded proper distribution of federal funds and with the advancements in communication and information, as well as the recent proceedings, it is only a matter of time that the full compliance will be demanded. On October 10, 2017, the Supreme Court denied a petition to hear a child welfare case about kinship placements decided in January 2017, in the Sixth Circuit Court of Appeals. The Circuit Court ruled on January 27, 2017, that kinship foster families are entitled to the same foster care maintenance payments as unrelated foster parents.<sup>30</sup> The court's ruling primarily rests on provisions of the Civil Rights Act of 1871 (42 U.S.C. § 1983), the Adoption and Child Welfare Act of 1980 (also known as the Child Welfare Act, CWA or Title IV-E of the Social Security Act codified in 42 U.S.C. § 672), and Supreme Court cases that have collectively interpreted these two statutes to confer a private right to foster care maintenance payments that is enforceable by foster parents regardless of whether the foster parents are related or unrelated to the child(ren).

The case originated in Kentucky with two children that were placed with their great aunt following a finding of neglect. The state conducted a standard home evaluation and criminal background check on the aunt prior to the court ordered placement. Based on its review of federal statutes and Supreme Court decisions, the Sixth Circuit's ruling holds that the enforceable right to foster care maintenance payments also applies to *temporary* kinship placements (specifically, foster care kinship placements). Therefore, if an agency places a child in an out-of-home setting with a licensed foster home or approved relative home and does a home evaluation and criminal background check, then the home will have to be paid irrespective of the foster parent's relative status to the child(ren).

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<sup>30</sup> *D.O., et al. v. Glisson*, Case No.: 16-5461 (6th Cir. Jan. 27, 2017).

In short, this case treats relative and non-relative foster care placements the same by requiring that foster care maintenance payments cover the costs enumerated in Title IV-E of the Social Security Act for *all* licensed and/or approved placements, including temporary kinship placements. The Sixth Circuit states of Kentucky, Michigan, Ohio, and Tennessee must now treat approved relative foster placements the same as non-relative placements by awarding foster care maintenance payments on behalf of children in state custody. (Emphasis added.)

A class action lawsuit, filed March 14, 2018, against Warren County, Ohio and its board of commissioners is currently pending in the U.S. District Court, Southern Ohio, Western Division.<sup>31</sup> The lawsuit is regarding a lack of statutorily required subsidies available to families who adopt special needs children and are suffering irreparable harm. Families of adopted special needs children won their first round in court and seek full access to adoption subsidies under federal law. United States Magistrate Judge, Karen Litkovitz, recently recommended that Warren County's motion for judgment on the pleadings be denied in part. Specifically, she ruled that the families "had an individually enforceable right."

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<sup>31</sup> U.S., 6th Cir., S.D. Ohio, Case No.: 1:18-cv-00179-SJD

We understand that oversight and errors occur, either intentional or not, however, we do not, nor did not, deserve to be treated with such disrespect. As we merely intervened 5 years ago to prevent a sibling group of three, ages 14, 12 and 3, from being placed into foster care risking the real possibility of them being placed apart. A situation we thought would be temporary has transformed our lives and every single aspect of it has been affected as well as, the function of our family. This journey has been the hardest I have ever encountered and knowing that DCDJFS held the power to alleviate some of the struggle is tragic because the agency really has no idea what our family has lost. All I have ever wished for was to be a good mom and make sure that my children never experience what I did and I will have to live with such guilt for missing out on so much of their childhood because I sought justice. We have completed everything asked of us and we give our 110% in everything we do and all we wanted was for this case to be done right.

I pray, with all my heart, that this Court reconsider accepting our judicial appeal. I have to think that all my efforts weren't for nothing, that there is a reason why I had a nagging feeling that the agency was hiding something and that there is a reason why I am able to read law and understand it and that this is much bigger than my family and I. Sometimes I wish I did not know the federal and state laws because I could have just walked away but that is teaching the kids that giving up is okay and our motto is "if you are going to do something do it right."

Thank you.

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IN THE SUPREME COURT OF OHIO

IN THE MATTER	:	CASE NO.: 2018- 1615
OF B.D. AND I.D.,	:	
	:	ON APPEAL FROM
	:	DELAWARE COUNTY, OHIO,
ADAM MAY AND	:	JUVENILE DIVISION
HEATHER MAY,	:	CASE NOS.: 15-01-0056-AB
APPELLANTS.	:	15-01-0057-AB
	:	
	:	COURT OF APPEALS
	:	DELAWARE COUNTY, OHIO,
	:	FIFTH APPELLATE DISTRICT
	:	CASE NOS.: 18-CAF-01-0003
	:	18-CAF-01-0004
	:	

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CERTIFICATE OF SERVICE

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I hereby certify that a copy of the foregoing has been mailed by ordinary U.S. mail on the 4th day of February 2019, to Attorney O. Ross Long, (Counsel for D.M., I.M., & B.M.), at 125 North Sandusky Street, Delaware, Ohio 43015, Attorney Pamella Lammon, (*Guardian ad Litem*), at 103 North Union Street, Delaware, Ohio 43015 and Attorney Katheryn Munger, (Counsel for Delaware County Department of Job and Family Services), at 140 North Sandusky Street, Delaware, Ohio 43015.

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