

IN THE SUPREME COURT OF OHIO

MERCY BREW,)	Case No: 2023-7082
)	
Appellee,)	Court of Appeals No: C-220140
)	
)	
-vs.)	Trial Court No: DR2001217
)	
BENJAMIN BREW,)	
)	
Appellant.)	

MOTION FOR LEAVE TO FILE SUPPLEMENTAL MEMORANDUM

AND NOW, comes the Appellant, Benjamin Brew (Benjamin), by and through himself, *pro se*, to file the instant motion and in support thereof avers as follows:

1. Benjamin requests leave to file a supplemental memorandum in support of jurisdiction due to extraordinary circumstances that have taken place between the original filing of the memorandum in the instant matter and the present moment.
2. In this matter involving custody designation and findings, there is a particular set of circumstances involving the shared minor child between the parties that suffers from autism and an incident in the underlying matter involving the child eloping from the home while not being supervised by the Appellee, Mercy Brew (Mercy) which resulted in her arrest and charging with regards to the same.
3. The Court refused to factor this in to the findings and custody determination in the underlying matter by designating Mercy as both the residential and legal custodian of the minor child.

4. However, just recently as evidenced herein, the minor child eloped again due to a lack of supervision by Mercy and child was found by law enforcement sometime later.

5. This directly supports the point made by Benjamin that the Court abused its discretion in refusing to consider the totality of the facts and circumstances in the instant matter and abused its discretion in determining that Mercy's prior child endangerment history was sufficiently explained, when in fact Mercy's lack of supervision of the minor child has been a constant and continuous issue.

6. The evidence included herein as well as the explanations in support thereof have a substantial impact on the outcome of the instant matter thereby warranting the instant motion for leave to file a supplemental memorandum.

7. Therefore, based on the foregoing, Benjamin is respectfully requesting leave of this Court to file a supplemental memorandum to include these facts and circumstances which could not have possibly been included in the original filings as they had not transpired yet but relate directly to the underlying proceedings and arguments raised on appeal.

WHEREFORE, based on the foregoing, it is hereby respectfully requested that this Honorable Court GRANT the instant motion for leave for the reasons set forth herein.

DATED: August 10, 2023

Respectfully Submitted:

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**SUPPLEMENTAL MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT BENJAMIN BREW**

DATED: August 10, 2023

Respectfully Submitted:

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**EXPLANATION OF WHY THIS IS A CASE OF PUBLIC OR GREAT GENERAL
INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTION QUESTION.**

In further support of the Appellant's argument that this matter involves a substantial question of constitutional importance as it applies directly to the welfare and interests of a minor child as well as a parent's ability to provide proper care for this minor child. In the instant matter where the shared minor child between the parties suffers from autism, Mercy has previously arrested and charged with neglect previously resulting from the minor child being found outside of the home without supervision due to Mercy's failure to provide proper care and supervision for the minor child in the instant matter.

Benjamin raised this important issue to the trial court during the underlying proceedings which were brushed off by the Court as 'sufficiently explained' and clearly not of significant importance as custody determinations were ultimately made in favor of the Mother. However, just recently as evidenced in the report attached herein, on June 16, 2023 the minor child once again escaped from the home and was found in public in a neglected condition due to Mercy's failure to provide adequate care and supervision as described in the attached report.

Clearly, this ongoing pattern of neglect and failure to provide proper care and supervision demonstrates that the Court entirely abused its discretion in the underlying proceedings thereby infringing on Benjamin's fundamental rights as a parent to properly provide care for their children thereby warranting the granting of the instant appeal.

SUPPLEMENTAL STATEMENT OF THE CASE AND FACTS

Plaintiff and Defendant had a previous case in the Domestic Relations Division in Hamilton County, Ohio. The case number was DR2001217. A final hearing for this matter was heard on February 2, 2022 and February 7, 2022, before Judge Susan Tolbert. This matter came on for the final hearing upon the complaint for divorce with children which was originally filed by Mercy on August 14, 2020. In the divorce court proceedings held February 2, 2022 and February 7, 2022, Mercy made statements that Benjamin caused her to be in trouble with criminal proceeding and with the restraining order. Additionally, stated that Benjamin was the cause of her endangering the child, however this statement is false in addition to being libelous and constitutes potential perjury and fraud upon the court because it is Mercy that the one that acquired criminal charges as a result of her reckless endangerment of the minor in the instant matter.

All of the criminal charges and restraining orders against Mercy were due to her own acts and not the acts of Benjamin. Benjamin did not cause Mercy to do anything against their child.

Mercy was arrested for child endangerment in the past.

The Trial Court abused its discretion in considering the totality of the facts and circumstances pertaining to the instant matter. An abuse of discretion is described as a decision that was arbitrary, unconscionable, or the product of an unsound reasoning process. State v. Darmond, 135 Ohio St.3d 343, 2013-Ohio-966, 986 N.E.2d 971, ¶ 34. The Supreme Court of Ohio, however, has recently clarified this standard of review noting that all "courts lack the discretion

to make errors of law, particularly when the trial court's decision goes against the plain language of a statute or rule." Johnson v. Abdullah, 166 Ohio St.3d 427, 2021-Ohio-3304, ¶ 39.

In issuing the child custody designation to Mercy in the instant matter, the Trial Court's decision was entirely arbitrary, unconscionable, and a product of an unsound reasoning process thereby constituting an abuse of discretion.

Benjamin raised this important issue to the trial court during the underlying proceedings which were brushed off by the Court as an 'sufficiently explained' and clearly not of significant importance as custody determinations were ultimately made in favor of the Mother. However, just recently as evidenced in the report attached herein, on June 16, 2023 the minor child once again escaped from Mercy's home and was found in public in a neglected condition due to Mercy's failure to provide adequate care and supervision as described in the attached report.

Clearly, this ongoing pattern of neglect and failure to provide proper care and supervision demonstrates that the Court entirely abused its discretion in the underlying proceedings thereby infringing on Benjamin's fundamental human and civil rights as a parent to properly provide care for their children thereby warranting the granting of the instant appeal. Similarly, the minor child is entitled to live free of the fear of being neglected again by Mercy.

SUPPLEMENTAL ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

A. THE TRIAL COURT ABUSED ITS DISCRETION IN ALLOWING MERCY TO BE GRANTED SUPERVISION AND CUSTODY OF THE MINOR CHILD

An abuse of discretion is described as a decision that was arbitrary, unconscionable, or the product of an unsound reasoning process. *State v. Darmond*, 135 Ohio St.3d 343, 2013-Ohio-966, 986 N.E.2d 971, ¶ 34. The Supreme Court of Ohio, however, has recently clarified this standard of review noting that all "courts lack the discretion to make errors of law, particularly when the trial court's decision goes against the plain language of a statute or rule." *Johnson v. Abdullah*, 166 Ohio St.3d 427, 2021-Ohio-3304, ¶ 39.

The Fourteenth Amendment's Due Process clause provides two types of protection: (1) substantive due process (relating to outcomes); and (2) procedural due process (relating to procedure). *McKinney v. Pate*, 20 F.3d 1550, 1555 (11th Cir. 1994) (en banc). The substantive component of the clause protects those rights that are "fundamental," that is, rights that are "implicit in the concept of ordered liberty." *Palko v. Connecticut*, 302 U.S. 319, 325 (1937). Procedural due process is a guarantee of fair procedures whereby the state may not deprive a person of life, liberty or property without providing "appropriate procedural safeguards." *Daniels v. Williams*, 474 U.S. 327 (1986). The fundamental requirement of [procedural] due process is the opportunity to be heard and provided the proper application of process whereas the

substantive requirement of due process refers to the overall substantive outcome of the matter.

See: Parratt v. Taylor, 451 U.S. 527, 540 (1981).

There does not appear to be any precedent in case history where a Defendant, who has been charged and convicted in criminal court for child endangerment charges was made the residential and legal custodian of the same child she neglected; and unless this learned Appellate Court can point to any case where this has taken place, it is clear that the Trial Court erred. In fact, criminal conviction is one of the legitimate grounds for termination of parental rights pursuant to O.R.C. Section 3109.04 “Allocating Parental Rights and Responsibilities For Care of Children - Shared Parenting” which states “If the court determines that either parent previously has been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being a neglected child, that either parent previously has been determined to be the perpetrator of the neglectful act that is the basis of an adjudication that a child is a neglected child, or that there is reason to believe that either parent has acted in a manner resulting in a child being a neglected child, the court shall consider that fact against naming that parent the residential parent and against granting a shared parenting decree.” which means that the Court committed legal error by not following the above referenced statute.

In the instant matter where the shared minor child between the parties suffers from autism, Mercy has been arrested and charged with abuse and neglect previously resulting from the minor child being found outside of the home without supervision due to Mercy’s failure to provide proper care and supervision for the minor child in the instant matter.

Benjamin raised this important issue to the trial court during the underlying proceedings which were brushed off by the Court as an ‘sufficiently explained’ and clearly not of significant importance as custody determinations were ultimately made in favor of the Mother. However,

just recently as evidenced in the report attached herein, on June 16, 2023 the minor child once again escaped from Mercy's home and was found in public in a neglected condition due to Mercy's failure to provide adequate care and supervision as described in the attached report.

The Report states that the minor child left home without supervision; Mercy was in the home and unaware that the minor child had left the home due to her being upstairs and the child being downstairs. Mercy did not have a provider in the home at the time of the incident and was missing for approximately 30 minutes.

Other drivers on the road reported to law enforcement (police) that they had spotted a barefoot young man in the middle of the street at the corner of Wilkens Boulevard and Irwin Simpson Road which is approximately two miles from the home and across Highway 71. The minor child was found standing in the middle of the street.

Clearly based on the facts and circumstances in the instant matter, including but not limited to the fact that this incident has taken place in the past, demonstrates that the trial court abused its discretion in awarding care and custody of the minor child to the mother and affirms Benjamin's allegations of bias made in the instant matter.

The Court's disregard of Mercy's prior history of endangerment of the minor child in the instant matter was clearly an abuse of discretion; if not from the incidents raised in the underlying proceedings, then clearly this additional incident supports the fact that the incidents raised in the underlying proceedings were not merely 'coincidence' but in fact evidence of a pattern of continuous and ongoing neglect as well as a lack of fitness and capability of Mercy's ability to provide adequate care and supervision based on the minor's needs.

What kind of parent, knowing their minor child has special needs and has escaped from the home before, merely places a couch in front of a door and goes upstairs for hours at a time

without any supervision of the minor child. It is clear that Mercy has a substantial recklessness and disregard for the health and well-being of the minor child in the instant matter and instead merely utilized the minor as a pretext for being granted child support payments rather than any genuine concern for the minor's well-being. To Mercy, the minor child is merely a 'paycheck' more than an actual child. Mercy knew or should have known of the minor child's capabilities in being able to escape from the home but failed to take proper measures to ensure that the minor child did not escape from the home as he did and travel as far as 2 miles away from the home. With the minor child being found in the middle of the street barefoot, it is merely fortunate that the child was not harmed, knocked down or instantly killed by a reckless driver, but only a matter of time before an incident such as this takes place again and does not end so fortunately given Mercy's repeated acts of recklessness and neglect described herein.

Therefore, based on the foregoing, Benjamin argues that there is ample evidence to support Benjamin's claims that the lower court abused its discretion in allowing Mercy to retain custody of the minor child despite these repeated offenses and acts of neglect thereby warranting reversal of the Court's underlying decision.

CONCLUSION

For these reasons included in this Supplemental Memorandum, as well as the others included in Benjamin's original brief, it is hereby respectfully requested that judgment be entered in favor of Benjamin for the reasons stated therein and herein.

WHEREFORE, Benjamin hereby respectfully requests that this Honorable Court REVERSE the final order of the trial court and REMAND the instant matter for further proceedings.

DATED: August 10, 2023

Respectfully Submitted,

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was served by electronic mail, this 10th day of August, 2023, on the following:

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DATED: August 10, 2023

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