

IN THE SUPREME COURT OF OHIO

MERCY BREW,)	Case No.: 2023-0782
)	
Appellee,)	Court of Appeals No. C-220140
)	
)	
-vs.)	Trial Court No. DR2001217
)	
BENJAMIN BREW,)	
)	
Appellant.)	

**MOTION TO RECONSIDER AND REOPEN APPEAL
AND REQUEST FOR EXPEDITED CONSIDERATION**

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

1. Benjamin hereby files the instant motion to reconsider and reopen the instant appeal on the grounds of newly discovered evidence / change in material facts and circumstances.
2. An incident occurred on June 16, 2023 around 6:00 p.m. which was documented by the Hamilton County Developmental Disabilities Services department where the shared minor child between the parties in the instant matter who is diagnosed with Autism was involved in yet another major unusual incident where the child was able to escape from the home of Mercy while unsupervised due to the neglect of Mercy and was found more than two miles from the home barefooted in the middle of the road.
3. A supplemental memorandum was duly filed with the Supreme Court of Ohio on August 10, 2023, detailing the newly discovered child neglect incident in #2 above.

4. This incident corroborates the underlying basis of Benjamin's appeal that the Trial Court abused its discretion in ruling that the minor child should be placed in the custody of Mercy who has been involved in this type of incident in the past which resulted in their arrest.

5. The Trial Court ruled in favor of Mercy by giving them the benefit of the doubt and indicating that this type of incident was isolated and not of significance to impact the decision pertaining to custody in the instant matter; however, a repeat of the incident which resulted in Mercy's arrest in the past indicates that this is no mere isolated incident; neither is this yet another attempted neglect; and instead this is a persistent and ongoing pattern of neglect that the Court has allowed the minor child to remain in under Mercy's custody in the instant matter.

6. This material development and change in facts and circumstances warrants the reconsideration of this Court with regards to the denial of the appeal in the instant matter.

7. A motion for reconsideration shall not constitute a reargument of the case and may be filed only with respect to the following Supreme Court decisions: (1) Refusal to accept a jurisdictional appeal;(2) The sua sponte dismissal of a case;(3) The granting of a motion to dismiss;(4) A decision on the merits of a case. *Rule 18.02 - Motion for Reconsideration*, Ohio R. Prac. S. Ct. 18.02.

8. The "interests of justice" involve "[t]he proper view of what is fair and right in a matter in which the decision-maker has been granted discretion." Black's Law Dictionary 971 (11th Ed.2019). It has been said that " '[j]ustice is even-handed and equally administered to all, irrespective of any and all considerations.' " (Brackets added in Clay.) *State ex rel. Clay v. Cuyahoga Cty. Med. Examiner's Office*, 152 Ohio St.3d 163, 2017-Ohio-8714, 94 N.E.3d 498, ¶ 39, quoting *Koppelman v. Commr. of Internal Revenue*, 202 F.2d 955, 956 (3d Cir.1953) (Kalodner, J., dissenting).

9. There are few opinions from this court discussing when expedited review is warranted. In *State ex rel. Shemo v. Mayfield Hts.*, we granted expedited consideration under former S.Ct.Prac.R. XIV(4)(C), the predecessor to S.Ct.Prac.R. 4.01(C). 93 Ohio St.3d 1, 4, 752 N.E.2d 854 (2001).

10. The Court in the instant matter has refused to accept the jurisdictional appeal filed by Benjamin in the instant matter; likely due to no finding of significant abuse of discretion or deviation from the legal standards applicable to the instant matter as they were applied to the facts at the time of filing.

11. However, the material developments that have taken place in the instant matter demonstrate not only that the decision entered in the instant matter was improper, but that also the impropriety of this decision has resulted in an imminent risk and threat of harm to the minor child shared between the parties in the instant matter as evidenced herein.

12. Mercy has been arrested and charged with child abuse and neglect in the past resulting from a nearly identical incident to the one described in the report issued with regards to the instant matter.

13. Mercy has a habit of caring for their own needs prior to caring for the needs of James; to the effect, Mercy has admitted in this most recent incident that she was ‘upstairs’ and knowingly / intentionally left James, a minor child with autism fully capable of leaving the home on their own, unattended with nothing more than a ‘couch’ and a ‘package’ between him and the door.

14. Mercy is fully aware of the needs of our child and their capabilities in being able to escape from the home but failed to take measures to prevent the same from happening as she admittedly left our child unsupervised in the home despite knowing his condition.

15. Second, the child was found *two miles* from the home. There is no possible way that the minor child could have possibly walked barefooted so far if they were outside of the home for only 30 minutes as described in the report because that would mean that they had to have left the home and walked directly non-stop in one direction which is not likely the case.

16. Furthermore, the child being found in the condition that they were found in, barefooted and in the middle of the street, also highlights the seriousness of the neglect and abuse in the instant matter. It was fortunate that no harm resulted from the incident, but given the fact that this incident has happened in the past and is likely to happen again in the future unless action is taken against Mercy Brew, it is only a matter of time before one of these incidents results in serious harm or fatality to James.

17. The report indicates that *numerous* drivers (certainly more than one) called and reported our son walking along the road barefooted and clearly witnessed the horror of the incident being so significant that it warranted calling police rather than simply driving along; this demonstrates the criminal nature of the neglect demonstrated by Mercy in the instant matter.

18. It is fair to say that as long as a call has been made to Law Enforcement or the Child Abuse and Neglect line (by another person other than a household member), that key driving component of criminal neglect and child endangerment has been established, i.e., the call; and therefore I, Benjamin humbly suggest that this latest incident should be coded as another Child Endangerment case against Mercy.

19. The combination of these facts and circumstances warrants reconsideration of the decision entered in the instant matter and expedited consideration due to the nature of the facts and circumstances described herein.

WHEREFORE, Benjamin hereby respectfully requests that this Honorable Court GRANT the request for reconsideration and reopening of the instant matter for further proceedings.

DATED: September 6, 2023

Respectfully Submitted,

/s/ Benjamin Brew
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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was served by electronic mail, this 6th day of September, 2023, on the following:

Mercy Brew
8747 Wales Drive
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Brewmercy99@gmail.com

DATED: September 6, 2023

Respectfully Submitted,

/s/ Benjamin Brew
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