IN THE SUPREME COURT OF MISSOURI

STATE OF MISSOURI ex rel.
ROBERT COOPER, SR.,
Relator

v.

THE HONORABLE DENNIS A. ROLF,
Respondent

Case No. SC86549

RELATOR'S BRIEF

Submitted by:

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JURISDICTIONAL STATEMENT

This action is one wherein relator seeks from this court the extraordinary writ of prohibition against respondent who is the judge of the juvenile court of Saline County, Missouri. This relief is sought pursuant to the provisions of Article V, Section 4.1 of the Constitution of the State of Missouri, 1945 (Appendix, p.A-1).

In the juvenile court of Saline County, Missouri, an action had been filed in 1996 pursuant to RSMo. 211 concerning JAC, relator's minor child, a child born on April 18, 1989. (Appendix, p. A-16). Said Chapter 211 case is still pending at this time.

While said 211 action concerning JAC was pending, the foster mother of JAC filed a petition to adopt JAC in the Saline County, Missouri juvenile court on July 28, 2004, (Appendix, p. A-29) and two subsequent amended adoption petitions on August 16, 2004 and on December 21, 2004. (Appendix, p. A-32 and A-58). All the said adoption petitions concerning JAC were filed pursuant to the authority of RSMo. 453 and were filed while the chapter 211 juvenile case concerning JAC was pending. (Appendix, p. A-11).

Relator filed a motion to dismiss the adoption petition, said motion being filed on August 19, 2004 (Appendix, p. A-36) and filed a supplemental motion to dismiss on September 8, 2004 (Appendix, p. A-50). Said motions were filed pursuant to RSMo. 211.093 and were heard in respondent's court on October 26, 2004 and said motions were, after brief oral argument, denied by the respondent. (Appendix, p. A-56).

Relator petitioned the Missouri Court of Appeals, Western District, for a writ of prohibition to prohibit respondent from acting in excess of the court's jurisdiction with

respect to allowing the chapter 453 action to continue. The Western District did, on December 7, 2004, enter its stay order (Appendix, p. A-57). This order stayed respondent from taking any further action except to allow the petitioner in the adoption case below to amend her adoption petition to include a prayer for termination of parental rights, which the petitioner in the adoption case did. (Appendix, p. A-58). On December 31, 2004, the Western District entered its final order denying relator's petition for writ of prohibition. (Appendix, p. A-63).

Pursuant to Rule 84.22(a), (Appendix, p. A-3), relator must first present his petition for writ of prohibition to the Western District of the Missouri Court of Appeals. Having done so and having been denied, relator did, on January 19, 2005, (Appendix, p. A-64) file a petition for writ of prohibition with this Honorable Court and this Court entered its order granting a preliminary writ of prohibition in the above matter on March 1, 2005. (Appendix, p. A-65). The jurisdiction of this Court is properly invoked.

STATEMENT OF FACTS

On July 4, 1996, the juvenile division of the circuit court of Saline County, Missouri entered its order taking immediate physical custody of relator's daughter, JAC, a minor child under the age of twenty-one years, born on April 18, 1989, and did, at that time, place JAC in the temporary custody of the Missouri Division of Family Services, currently known as the Children's Division. (Appendix., p.A-12).

On July 8, 1996, the juvenile office for the fifteenth judicial circuit filed a petition in the Saline County juvenile court alleging that JAC was in need of care and treatment under the supervision of the Saline County juvenile court. (Appendix, p. A-16).

On August 8, 1996, the juvenile court of Saline County, Missouri entered its order in case number JU496-31J (now 15JO49600031) wherein it assumed jurisdiction over JAC. At that time, the juvenile court placed legal and physical custody of JAC with the Missouri Division of Family Services and the Missouri Department of Mental Health jointly. (Appendix, p. A-21).

On June 12, 1998, the order of custody in case number JU496-31J (now 15JO49600031) was modified by the court below such that legal custody and physical custody of JAC was placed solely with the Missouri Division of Family Services. (Appendix, p. A-23).

The Saline County juvenile court has retained jurisdiction over JAC since the date that the Court originally entered its judgment on August 8, 1996. This jurisdiction over JAC has been exercised pursuant to the provisions of RSMo. 211. The Saline County Juvenile Court, in case number 15JU49600031, most recently entered an order in said

case on September 29, 2003, and ordered that legal and physical custody of JAC was placed with the Missouri Division of Family Services, now known as the Children's Division. (Appendix, p. A-25).

On June 28, 2004, a petition for adoption was filed in the juvenile division of the Saline County circuit court pursuant to the provisions of RSMo. 453, case number 04SA-JU00034. (Appendix, p. A-29). At the time said adoption petition was filed with the court, the above-indicated juvenile case that had been filed concerning JAC pursuant to RSMo. 211, case number 15JO49600031, was pending and is still pending at this time.

Relator, Robert Cooper, Sr., was served with process in the adoption case, case number 04SA-JU00034, on July 27, 2004. (Appendix, p. A-55). On August 13, 2004, the juvenile court of Saline County, Missouri appointed counsel to represent Robert Cooper, Sr. (Appendix, p. A-55).

On August 16, 2004, a first amended petition for adoption was filed in case number 04SA-JU00034. (Appendix, p. A-55).

On August 19, 2004, relator filed a motion to dismiss in case number 04SA-JU00034. (Appendix, p. A-36). A reply was filed to said motion to dismiss on August 24, 2004. (Appendix, p. A-39). A supplemental reply was filed on September 7, 2004. (Appendix, p. A-42). Relator filed a supplemental motion to dismiss on September 8, 2004. (Appendix, p. A-50).

Relator's motion to dismiss and supplemental motion to dismiss, above-indicated, maintained that respondent acted in excess of the juvenile court's jurisdiction by allowing a petition concerning JAC filed pursuant to RSMo 453 to proceed while a case filed

concerning JAC pursuant to RSMo 211 was still pending. Relator maintained that the dictates of RSMo. 211.093 (Appendix, p. A-2) prohibit respondent from allowing an adoption proceeding to continue while a juvenile court case concerning the same child is pending under chapter 210 or chapter 211.

A hearing was held in the juvenile division of the Saline County Circuit Court on October 26, 2004 concerning the motion to dismiss and the supplemental motion to dismiss that relator had filed in case number 04SA-JU00034, the adoption case. After brief oral argument, the Juvenile Court denied relator's motion to dismiss and gave relator thirty days to file an answer to the petition for adoption filed concerning JAC in case number 04SA-JU00034. (Appendix, p. A-56).

The last order entered by the Saline County juvenile court in case number 15JO49600031, the RSMo 211 case concerning JAC, was entered on September 29, 2003. (Appendix, p. A-11). No further orders have been entered in case number 15JO49600031 (formerly JU496-31J) since that time.

Relator filed a petition for a writ of prohibition with the Missouri Court of Appeals, Western District, in case number WD64810. The Western District entered its stay order on December 7, 2004 staying respondent from taking any further action except to allow the adoption petitioner in the circuit court case to amend his petition within thirty (30) days to include a prayer for termination of parental rights. (Appendix, p. A-57). The petitioner in the adoption case filed in the trial court, 04SA-JU00034, filed an amended adoption petition which included a count specifically requesting termination of parental rights, on December 21, 2004. (Appendix, p. A-58).

The Western District entered its order on December 31, 2004 denying relator's petition for writ of prohibition. (Appendix, p. A-63).

The original adoption petition filed on June 28, 2004 (Appendix, p. A-29) the First Amended Petition for Adoption filed August 16, 2004 (Appendix, p. A-32) and the First Amended Petition for Termination of Parental Rights and Adoption filed on December 21, 2004 (Appendix, p. A-58) were all filed concerning JAC while a RSMo. 211 case concerning JAC was pending.

POINT RELIED ON

RELATOR IS ENTITLED TO AN ORDER PROHIBITING RESPONDENT FROM PROCEEDING WITH AN ADOPTION PETITION, AND ANY AMENDED ADOPTION PETITIONS, CONCERNING RELATOR'S DAUGHTER, JAC, FILED IN SALINE COUNTY, MISSOURI, CASE NUMBER 04SA-JU00034, (APPENDIX, P. A-29, A-32, AND A-58). SAID PETITION AND AMENDED PETITIONS WERE FILED PURSUANT TO CHAPTER 453 OF THE MISSOURI REVISED STATUTES. RELATOR IS ENTITLED TO THE REQUESTED RELIEF IN PROHIBITION BECAUSE RESPONDENT IS WITHOUT JURISDICTION TO PROCEED WITH THE ABOVE-DESCRIBED ADOPTION PETITION BECAUSE THERE IS A JUVENILE COURT CASE CONCERNING JAC THAT IS CURRENTLY PENDING IN SALINE COUNTY, MISSOURI, CASE NUMBER 15JO49600031, (APPENDIX, P. A-11) AND THAT JUVENILE COURT CASE IS PENDING UNDER THE JURISDICTION OF CHAPTER 211 OF THE REVISED STATUTES OF MISSOURI. RELATOR'S MOTION TO DISMISS, FILED IN CASE NUMBER 04SA-JU00034, (APPENDIX, P. A-36 AND A-50) SHOULD HAVE BEEN SUSTAINED BY THE COURT.

IN THAT RSMO. 211.093 DICTATES THAT JUDGMENTS AND ORDERS ENTERED PURSUANT TO CHAPTER 210, RSMO. OR CHAPTER 211, RSMO. TAKE PRECEDENCE OVER ORDERS AND JUDGMENTS ENTERED BY A COURT PURSUANT TO THE AUTHORITY OF CHAPTER 453, RSMO., RESPONDENT WOULD, THEREFORE, LACK JURISDICTION TO PROCEED WITH ANY CHAPTER 453 ADOPTION CASE.

AUTHORITIES CITED:

State ex rel. Holland v. Moran, 865 S.W. 2d 827 (Mo. App. W.D. 1993).

In the matter of J.F.K., 853 S.W.2d 932 (Mo. banc 1993).

Ogle v. Blankenship, 113 S.W. 3d 290 (Mo. App. E.D. 2003).

RSMo. 211.093

ARGUMENT

Relator, Robert Cooper, Sr., seeks the judgment of this Court to make the preliminary writ of prohibition entered by this Court on March 1, 2005 absolute. (Appendix, p. A-65). The standard of review is that prohibition is a discretionary writ that issues to prevent "an abuse of judicial discretion, to avoid irreparable harm to a party, or to prevent exercise of extra-jurisdictional power." State ex rel. Linthicum v. Calvin, 57 S.W. 3d 855, 857 (Mo. banc 2001).

RELATOR IS ENTITLED TO AN ORDER PROHIBITING RESPONDENT FROM PROCEEDING WITH AN ADOPTION PETITION, AND ANY AMENDED ADOPTION PETITIONS, CONCERNING RELATOR'S DAUGHTER, JAC, FILED IN SALINE COUNTY, MISSOURI, CASE NUMBER 04SA-JU00034, (APPENDIX, P. A-29, A-32, AND A-58). SAID PETITION AND AMENDED PETITIONS WERE FILED PURSUANT TO CHAPTER 453 OF THE MISSOURI REVISED STATUTES. RELATOR IS ENTITLED TO THE REQUESTED RELIEF IN PROHIBITION BECAUSE RESPONDENT IS WITHOUT JURISDICTION TO PROCEED WITH THE ABOVE-DESCRIBED ADOPTION PETITION BECAUSE THERE IS A JUVENILE COURT CASE CONCERNING JAC THAT IS CURRENTLY PENDING IN SALINE COUNTY, MISSOURI, CASE NUMBER 15JO49600031, (APPENDIX, P. A-11) AND THAT JUVENILE COURT CASE IS PENDING UNDER THE JURISDICTION OF CHAPTER 211 OF THE REVISED STATUTES OF MISSOURI. RELATOR'S MOTION TO DISMISS, FILED IN CASE NUMBER 04SA-JU00034, (APPENDIX, P. A-36 AND A-50) SHOULD HAVE BEEN SUSTAINED BY THE COURT.

IN THAT RSMO. 211.093 DICTATES THAT JUDGMENTS AND ORDERS ENTERED PURSUANT TO CHAPTER 210, RSMO. OR CHAPTER 211, RSMO. TAKE PRECEDENCE OVER ORDERS AND JUDGMENTS ENTERED BY A COURT PURSUANT TO THE AUTHORITY OF CHAPTER 453, RSMO., RESPONDENT WOULD, THEREFORE, LACK JURISDICTION TO PROCEED WITH ANY CHAPTER 453 ADOPTION CASE.

The juvenile court of Saline County, Missouri erred in failing to sustain relator's motion to dismiss (Appendix, p. A-36) and relator's supplemental motion to dismiss (Appendix p. A-50) that were filed in response to the amended petition to adopt JAC that was filed in Saline County case number 04SA-JU00034 (Appendix, p. A-32). At the time the pleadings were filed, there was a juvenile court case pursuant to RSMo. 211 concerning JAC pending in Saline County case number 15JO49600031. (Appendix, p. A-11).

The juvenile court of Saline County, Missouri acted in contradiction to the dictates of RSMo. 211.093 which states:

> Any order or judgment entered by the Court under authority of this chapter or chapter 210, RSMo. shall, so long as such order or judgment remains in effect, take precedence over any order or judgment concerning the status or custody of a child under age twenty-one entered by a Court under authority of Chapter 452, 453, 454 or 455, RSMo., but only to the extent inconsistent therewith.

The Supreme Court of Missouri addressed this particular issue in 1993 in a case that continues to be the controlling authority concerning the interpretation of the provisions of RSMo. 211.093. In the Matter of J.F.K., 853 S.W. 2d 932 (Mo. banc 1993). The fact situation that the Court addressed in J.F.K. was similar to relator's case in that the Division of Family Services was awarded legal and physical custody of J.F.K., a minor child. A petition to adopt J.F.K. was filed while the juvenile court of Ray County, Missouri still had jurisdiction over J.F.K. pursuant to an order entered under RSMo. 211. The adoption case, under RSMo. 453, and the Juvenile Court case, under RSMo. 211, were pending in the Juvenile Court of Ray County, Missouri, and both cases were proceeding concurrently. Id. at 933.

A motion to dsmiss the adoption case was filed in the lower court in J.F.K., objecting to an adoption case under 453 being allowed to proceed while a 211 order was pending concerning the same child. This motion to dismiss was sustained by the lower court. Id. At 934. The prospective adoptive parents (and former foster parents) appealed the order sustaining the motion to dismiss and the case was accepted by the Missouri Supreme Court on transfer from the Court of Appeals. Id. at 933.

The Missouri Supreme Court in J.F.K., reviewed the provisions of RSMo. 211.093 and concluded that "this statute precludes the operation of any order affecting the status or custody of a minor child under Chapter 453 that is inconsistent with an order entered under Chapter 211." Id. at 935. The Court, in J.F.K., went on to hold that the award of custody to the Division of Family Services must "take precedence" over the chapter 453 case and that the juvenile court of Ray County, Missouri would have no jurisdiction to

proceed with the action for custody and adoption because that action is preempted by the underlying child neglect case. Id. at 935.

The Missouri Court of Appeals, Eastern District, had an opportunity to address the provisions of RSMo. 211.093 in the case of Ogle v. Blankenship, 113 S.W. 3d 290 (Mo. App. E.D. 2003). In the Ogle case, Mother and Father were divorced and Mother was granted custody of their minor child. Two years after the marriage of the parents was dissolved, a petition was filed in the juvenile court of Franklin County, Missouri by the juvenile officer alleging that Mother's boyfriend had abused the minor child. A hearing was held in Franklin County juvenile court and said court entered its order taking jurisdiction of the minor child. The child was placed in the custody of the Division of Family Services under the juvenile court's supervision. Id. at 291.

After the juvenile court had taken jurisdiction of the minor child, Father filed a motion to modify with the circuit court requesting that the original judgment dissolving the parents' marriage be modified to give him legal and physical custody of his child. The same judge presided over the dissolution case and the juvenile case and the cases filed under Chapter 452 and Chapter 211 were consolidated. The trial court concluded that it had "dual jurisdiction" over the cases and did, therefore, modify the original judgment dissolving the parents' marriage by awarding physical custody and legal custody of the minor child to Father, subject to Mother's right of supervised visitation. Id. at 291.

The Court of Appeals, Eastern District, held that the juvenile court in the Ogle case validly assumed jurisdiction over Mother's and Father's child and that "the juvenile

court's jurisdiction to determine custody was paramount to and superseded the jurisdiction of any other court, including the dissolution court, and it could proceed, with continuing jurisdiction, to the exclusion of those other courts." Id. at 291-292. The Eastern District went on to hold, in accordance with the dictates of J.F.K., 853 S. W. 932, supra., that RSMo. 211.093 precludes the operation of any order affecting status or custody of a child under chapter 453 that is inconsistent with an order entered under chapter 211. Id. at 292. The Eastern District further held that the trial court's judgment entered pursuant to chapter 452 modifying the original custody judgment was patently inconsistent with the judgment that had already been entered under chapter 211 giving custody of the minor child to the Division of Family Services. The Eastern District went on to hold that "custody orders under the juvenile code trump all other inconsistent custody orders." Id. at 292. The Eastern District further held that the trial court "should have dismissed the Motion to Modify for lack of jurisdiction." Id. at 292.

The Missouri Court of Appeals, Western District, also addressed a similar issue in the case of Blackburn v. Mackey, 131 S.W. 3d 392 (Mo. App. W.D. 2004). In that case, the marriage of Mother and Father was dissolved by a judgment of the Greene County Circuit Court. Said judgment awarded Mother custody of the parties' only child and Father was awarded visitation. Subsequent to the dissolution of marriage judgment being entered, Father was granted increased visitation with the parties' child. At some point following this, Father was accused of committing acts of child abuse in Jackson County, Missouri which caused a juvenile court case to be opened in Jackson County concerning the parties' child. After the juvenile court case was opened in Jackson County, Missouri

pursuant to Chapter 211, Mother filed a motion to modify the judgment of dissolution of marriage. This modification action was transferred to Jackson County to the same division of the court that was presiding over the 211 proceedings. Id. at 394.

The circuit court in Jackson County held proceedings on Mother's motion to modify and the court then modified the judgment of dissolution of marriage and granted sole physical and sole legal custody of the parties' child to mother and denied Father any visitation or contact. Id. at 394. The court released jurisdiction over the juvenile case immediately prior to entering the judgment modifying the judgment of dissolution of marriage. Id. at 397.

Father subsequently appealed the trial court's action, arguing that the court lacked subject matter jurisdiction over the 452 action because of the pending juvenile court action pursuant to chapter 211. Id. at 395.

The Western District stated that, pursuant to RSMo. 211.031.1, (Appendix, p. A-67) the juvenile court would have exclusive jurisdiction over matters concerning custody of the parties' minor child upon the commencement of a chapter 211 juvenile case. The Western District went on to quote from J.F.K., supra., that RSMo. 211.093 "precludes the operation of any order affecting the status or custody of a minor child under [chapter 452] that is inconsistent with an order entered under chapter 211." Id. at 395.

The court, in Mackey, went on to hold that the chapter 452 proceeding that had been filed in the lower court was not inconsistent with the pending 211 action. The court reasoned that, by the time the trial court entered its order in the 452 proceeding, the trial court had terminated its jurisdiction over the parties' child in the juvenile court case. The

Western District determined that the timing of the dismissal of the chapter 211 case and the entry of judgment in the chapter 452 case addressed and resolved any problem of entering an order in the 452 case that was inconsistent with the orders entered in the chapter 211 case and that such action did not violate RSMo. 211.093. Id. at 395.

The court, in the Mackey case, went on to hold that "we see no problem with the simultaneous pendency of the two proceedings" and held that RSMo. 211.093 "clearly contemplates the possibility of two proceedings involving the child." Id. at 395.

The court, in the Mackey case, also discussed the Eastern District's holdings in the case of Ogle v. Blankenship, supra., 113 S.W. 3d, supra. The Western District concluded that the Eastern District erred in holding that any modification action must be dismissed whenever a juvenile case concerning the same child is pending. Id. at 396.

The Western District in the Mackey case, supra., attempted to distinguish the Missouri Supreme Court's holding in J.F.K., supra., holding that in the Mackey case "the decision to grant custody to Mother was not fundamentally inconsistent with the juvenile court disposition, which placed the child with Mother." Id. at 396. The court in the Mackey case further pointed out that a juvenile court has the authority to release jurisdiction sua sponte pursuant to Rule 119.09(a). (Appendix, p. A-66) Id. at 396.

In summary, the Western District held in the Mackey case that a trial court is not precluded from subject matter jurisdiction in a chapter 452 case just because a chapter 211 case is pending. The Court indicated that the trial court must be careful to coordinate closely the release of jurisdiction in a chapter 211 case with the entry of an order in a chapter 452 case. Id. at 397.

The Missouri Supreme Court, in J.F.K., supra., noted that in the lower court proceedings in said case that a chapter 453 case and a chapter 211 case were proceeding concurrently. Id. at 933. The trial court, in J.F.K., had dismissed the chapter 453 case that had been filed by sustaining a motion to dismiss. The trial court held that it would be "inappropriate" to entertain the adoption petition that had been filed under chapter 453 while the chapter 211 case concerning the same child was still pending. Id. at 934.

The Missouri Supreme Court acknowledged, in J.F.K., that there are two separate means for involuntary termination of parental rights. One available method is for the juvenile officer to file a termination proceeding against the natural parents. The second method is for prospective adoptive parents to file for termination of parental rights incident to filing a petition for adoption. The Court, in J.F.K., further pointed out that "there is, however, a qualification of the right of prospective adoptive parents to proceed independently." The Supreme Court then quoted the provisions of RSMo. 211.093. Id. at 934-935.

Contrary to what the Western District Court of Appeals indicates in Blackburn v. Mackey 113 S. W. 3d, supra., the Supreme Court's holding in J.F.K., supra., did not confine itself to entry of orders in cases filed under chapter 453. The Court, in J.F.K., held that "under 211.093, the award of custody to the Division of Family Services must 'take precedence.' The juvenile division has no jurisdiction to proceed on the Randles' action for custody and adoption because the action is preempted by the underlying child neglect case." Id. at 935. (Emphasis added). The Court's interpretation of RSMo. 211.093 in the J.F.K. case dictates that this statutory provision not only limits the orders

that can be entered in a 453 case but also limits actions that can be filed and which can proceed while a chapter 211 case is pending.

In the J.F.K. case as in the lower court case in this matter, a petition for adoption was filed in the trial court. (Appendix, p. A-32). In the trial court below and in the trial court in J.F.K., the petitioners filed amended petitions to request termination of parental rights. Id. at 933. (Appendix, p. A-58). In J.F.K. the addition of language requesting termination of parental rights did not cure the problem of lack of jurisdiction and such language in the adoption case below that was filed against relator does not cure the problem of lack of jurisdiction in that case either.

When the courts construe a statute, "the words used in the statute are to be given their plain and ordinary meanings." State ex rel. Holland v. Moran, 865 S.W. 2d 827, 831 (Mo. App. W.D. 1993). Much of the argument concerning the construction of RSMo. 211.093 centers on the meaning of the word "inconsistent". Webster's Unabridged Twentieth Century Dictionary of the English Language, Second Edition, p. 925, defines the word "inconsistent" as follows: "lacking agreement in kind, nature, form, etc." The orders of the Saline county Juvenile Court from August 8, 1996 (Appendix, p. A-5) through September 29, 2003 (Appendix, p. A-11) consistently order that legal custody and physical custody of JAC be placed with the Missouri Division of Family Services, and in earlier orders, jointly with the Department of Mental Health and the Missouri Division of Family Services. The first amended petition for adoption in case number 04SA-JU00034 (Appendix, p. A-32) specifically petitions the juvenile court to give legal and physical custody of JAC to the petitioner in said case. The subsequent

first amended petition for termination of parental rights and adoption filed in said case (Appendix, p. A-58) petitions the court to allow the petitioner to adopt JAC which would effectively give legal custody and physical custody of JAC to the petitioner in said case and would be inconsistent with court orders previously entered in case number JU496-31J (now 15JO49600031) (Appendix, p. A-25) in violation of RSMo. 211.093.

When a child is adopted pursuant to the provisions of chapter 453, all legal relationships between the child and the natural parents, other than a parent who is co-petitioner in a step parent adoption, "shall cease and determine." RSMo. 453.090.1 (Appendix, p. A-4). The Missouri Supreme Court has held that a parent's right to raise children is "a fundamental liberty interest protected by the constitutional guarantee of due process" and that this liberty interest is "one of the oldest fundamental liberty interests recognized by the United States Supreme Court." In re K.A.W., 133 S. W. 3d 1, 12 (Mo. banc 2004). The Missouri Supreme Court went on to hold, in K.A.W., that when parental rights are being terminated that "strict and literal compliance with the statutory requirements is necessary." Id., at 16.

CONCLUSION

Respondent exceeded the jurisdiction of the trial court when respondent failed to sustain relator's motion to dismiss and allowed the above-described adoption petition concerning JAC, case number 04SA-JU00034, to proceed pursuant to chapter 453 while a juvenile court case concerning the said JAC, case number 15JO49600031, was pending pursuant to chapter 211. Accordingly, relator prays this Honorable Court to make the preliminary writ of prohibition issued on March 1, 2005, absolute and order the respondent to take no further action concerning 04SA-JU00034, the petition for adoption, other than to sustain relator's motion to dismiss.

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IN THE SUPREME COURT OF MISSOURI

State ex rel. Robert Cooper, Sr.

Relator,

v. No. SC86549

The Honorable Dennis A. Rolf,

Respondent.

CERTIFICATE

George L. Stafford, attorney for relator, does hereby certify that the foregoing brief complies with the limitations set forth in Rule 84.06(b), that said brief contains 4,124 words, and further certifies that the floppy disk filed with this brief has been scanned for viruses and is virus free.

The undersigned further certifies that one copy of relator's brief in this cause and one copy of the floppy disk of said brief were forwarded by U.S. mail, postage prepaid, on this _____ day of April, 2005, to: Robert Lin Alexander, guardian ad litem, P.O. Box 446, Marshall, MO 65340; Mr. James A. Waits, Attorney at Law, 401 W. 89th Street, Kansas City, MO 64114-35801; and to the Honorable Dennis A. Rolf, 548 Main Street, P.O. Box 751 Concordia, MO 64020-0751.

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