**Summary of SC93471, *Melody Frye v. Ronald J. Levy, Director, State of Missouri, Department of Social Services, Children's Division***

Appeal from the Howell County circuit court, Judge Michael Ligons
Argued and submitted December 3, 2014; opinion issued July 8, 2014

**Attorneys:** The department of social services was represented by Gary L. Gardner of the attorney general's office in Jefferson City, (573) 751-3321; and Frye was represented by George C. Fisher Jr. of Ray & Fisher in West Plains, (417) 256-7142.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** The state's children's division appeals a trial court judgment that it lost jurisdiction over a complaint of neglect against a mother when it failed to comply with the 90-day statutory deadline for investigations. In a 4-3 decision written by Judge Paul C. Wilson, the Supreme Court of Missouri vacates the judgment and remands (sends back) the case. The trial court erred in imposing a sanction that barred the children's division from taking any action on the hotline complaint after the statutory deadline. The legislature did not create or approve – in that statute or anywhere else in the child abuse act – the use of such a sanction in these circumstances. Further, the division's failure to comply also did not violate the mother's due process rights.

Judge George W. Draper III dissents. He would affirm the trial court's judgment and would hold that the children's division's failure to comply with the applicable time limitations set forth in the statutes, properly construed, divested it of authority to continue to take action.

**Facts:** The day that one of Melody Frye's three biological children – J.H. – died in May 2006, the state's children's division received a hotline complaint alleging that the child died because Frye's husband physically abused him. Seven days later, the children's division received a hotline complaint alleging that Frye committed neglect because she knew her husband was abusive toward her three children but failed to supervise his conduct concerning them. The complaint against the husband was substantiated, and his name later was added to the state's child abuse and neglect central registry. The children's division notified Frye, however, that its investigation into the complaint about her would be extended beyond 30 days for "good cause" because the division had been unable to obtain certain reports it needed. It noted additional reasons for delay up to August 2006, when the division concluded its investigation, more than 90 days after it received the complaint. It substantiated the complaint that Frye failed to supervise her husband's interaction with J.H. adequately but did not substantiate the complaint with respect to the other two children. Three days later, the division sent Frye a letter detailing its decision. She timely sought a hearing before the child abuse and neglect review board, which upheld the division's determination. Frye then sought review in the circuit court, which determined that, because the division failed to comply with the 90-day statutory deadline for investigations, it "lost jurisdiction" to investigate the complaint further or make a determination substantiating the neglect complaint against Frye. On that basis, the court entered judgment in Frye's favor and ordered the division not to include her name on the central registry. The division appeals.

**VACATED AND REMANDED.**

**Court en banc holds:** (1) The trial court erred in imposing a sanction that barred the children's division from taking any action on the hotline complaint after the statutory deadline. When the legislature imposes a deadline or other mandate, courts have no authority to impose a sanction for noncompliance when the legislature has not done so. Cases distinguishing between statutes that are mandatory and those that are directory date into the mid-1800s. In deciding whether a statute is mandatory or directory, the relevant question is whether the legislature intended to make all actions that fail to comply with the obligation void or ineffective. Section 210.152.2, however, does not provide explicitly that the division only may investigate or determine hotline complaints before the 90th day, nor does it provide explicitly that the division lacks authority to investigate or determine such complaints after the 90th day. Nothing in section 210.152.2 – or any other section in chapter 210, RSMo – states that the children's division loses authority to continue an investigation or make a determination regarding a hotline complaint when the 90-day deadline passes. In the absence of such legislative intent, courts have no authority to impose such a sanction on their own. Nothing in chapter 210 purports to limit the division's authority to a 90-day window. Under section 210.145.14, RSMo – the legislature's only explicit statement about the permissible length of the division's investigations – the division explicitly is permitted to extend an investigation for "good cause," and all extended investigations should be pursued to "completion." As a remedial statute, section 210.152.2 must be construed to provide the public protection intended by the legislature. By imposing a sanction that deprives the children's division of its authority to investigate or determine hotline complaints after the 90th day, however, the trial court's decision subordinates the child abuse act's purpose of protecting victims of child abuse and neglect to the interests of alleged perpetrators. By requiring every determination the division makes to be based on the investigation, section 210.152.2 demonstrates the legislature's intention that the best way to protect victims of child abuse and neglect is to value complete investigations over arbitrary deadlines. The choices of whether to impose a sanction for failure to comply with the deadline and, if so, what sanction if any to apply, belong exclusively to the legislature. The trial court's judgment runs afoul of this rule and must be vacated, and the case is remanded for further proceedings on Frye's petition.

(2) The division's failure to comply with the 90-day deadline in section 210.152.2 did not violate Frye's constitutional rights to due process. For the purposes of the child abuse act and the central registry, giving an alleged perpetrator notice and an opportunity to be heard before his or her name can be listed in the registry satisfied due process. The United States Supreme Court has held that a person has no due process right to control the length or breadth of an administrative investigation because such an investigation adjudicates no legal rights. It is only after the division substantiates allegations that the alleged perpetrator has an interest in challenging the division's determination before he or she suffers the loss of liberty or property that may result from being listed in the central registry, but the legislature provides procedures to challenge such a determination in both administrative and judicial reviews. By imposing the sanction, the trial court's judgment destroys the separation between the distinct pre- and post-determination phases the legislature intended and the child abuse act provides.

**Dissenting opinion by Judge Draper:** The author would affirm the trial court's judgment. The children division's failure to comply with the applicable time limitations set forth in sections 210.145 and 210.152, RSMo, divested it of authority to continue to take action. While the

legislature in section 210.145 created an extension of time for an investigation beyond 30 days, it did not bestow in section 210.152 an extension of time for further investigation beyond 90 days. The language the division is required to use in its notification letter to the alleged perpetrator tracks the statutory language delineating the division's authority in these two sections. In construing the statutes governing the division's investigations, this Court presumes the legislature was aware of the existing law; intended every word, clause, sentence and provision of a statute to have effect; and did not insert superfluous language into the statute. The Court also must construe together all provisions of a legislative act regarding the same subject matter and, if reasonably possible, harmonize all the provisions. If section 210.152 were read in isolation, its use of "shall" could be construed as directory because there is no delineated consequence for the division failing to meet the 90-day deadline. But by reading section 210.152 along with other sections regarding the same subject matter, looking at the entire legislative act and harmonizing its provisions, it is clear the legislature intended the "shall" language to be mandatory. The legislature created the child abuse and neglect central registry to protect victims of child abuse and other children with whom a perpetrator of abuse or neglect might come into contact by providing access to those individuals and entities responsible for caring for and protecting children. But a lengthy investigative process does not protect children from those who seek to harm; at no time prior to the children's division substantiating an allegation of abuse and listing a perpetrator on the central registry are children protected. Had the legislature wished to allow the division an unlimited amount of time to keep investigations about alleged perpetrators open, it could have placed "good cause" language into section 210.152.2, but it did not. Amendments to provisions of chapter 210 made after Frye's investigation concluded further indicate the legislature's intent to limit the time of most children's division investigations.