**No. SC93471**

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**IN THE MISSOURI SUPREME COURT**

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**MELODY FRYE,**

**Respondent,**

**v.**

**RONALD J. LEVY, DIRECTOR,**
**STATE OF MISSOURI DEPARTMENT OF SOCIAL SERVICES,**
**CHILDREN'S DIVISION,**

**Appellant.**

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**Appeal from the Thirty–Seventh Judicial Circuit, Howell County, Missouri, Honorable Michael Ligons, Associate Circuit Judge**

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# SUBSTITUTE BRIEF OF APPELLANT DIRECTOR OF DEPARTMENT OF SOCIAL SERVICES

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## JURISDICTIONAL STATEMENT

This is an appeal by the Director of the Department of Social Services from a judgment of the Circuit Court of Howell County removing Melody Frye's name from the Central Registry of child abuse and neglect perpetrators. § 512.020 RSMo. This appeal does not involve any of the categories reserved for the exclusive jurisdiction of the Missouri Supreme Court. Mo. Const. art. V, § 3. The Missouri Court of Appeals, Southern District, which had jurisdiction § 477.060, issued its decision and affirmed the judgment of the circuit court. This Court granted transfer. Mo. Const. art. V, § 10; Rule 83.04.

## STATEMENT OF FACTS

### Investigation

Jaycee Hardin was a minor child who died on May 10, 2006. A2.[1] Meldoy Frye was the biological mother of Jaycee Hardin. A2. Melody Frye was married to Joseph Frye and resided with him and Megan Hardin, Aubrey Hardin, and Jaycee Hardin when Jaycee Hardin died on May 10. A2.

The Children's Division received a report on May 10 that alleged Joseph Frye physically abused Jaycee Hardin, resulting in her death. A2. The Division completed its investigation of that report of abuse on June 27 and concluded that Joseph Frye caused the death of Jaycee Hardin. A3.

The Division received a report on May 17 that alleged Melody Frye committed neglect because she knew that Joseph Frye abused Megan Hardin, Aubrey Hardin, and Jaycee Hardin and that she failed to supervise Joseph Frye. A2.

Twenty–two days after receipt of the report of neglect allegedly perpetrated by Melody Frye (June 8), the Division informed Joseph Frye and Melody Frye that its investigation would be delayed and updated its information system with good cause for delay — "reports that are needed

[1] "A" refers to the Substitute Appendix to this brief. "LFI" refers to Volume I of the Legal File, and "LFII" refers to Volume II of the Legal File.

cannot be obtained at this time." LFI77. Those reports included medical records of Jaycee Hardin and police reports. LFI78. Twenty–six days after receipt of the report (June 12), Melody Frye had not yet been interviewed about the report of neglect against her. LFI77, 78. Thirty–five days after receipt of the report (June 21), the Division's investigator requested a "detective assist" with the interview of Melody Frye. LFI79. Forty days after receipt of the report (June 26), the investigator met with a detective and later that day, interviewed Frye. LFI79–80.

One hundred days after receipt of the report of neglect allegedly perpetrated by Melody Frye (August 25), the Division determined that Frye failed to properly supervise Jaycee Hardin, but not that she failed to properly supervise Megan Hardin and Aubrey Hardin. A3; LFI40, 87; LFII142. From forty–one days after receipt of the report until one hundred days after receipt of the report, the Division did not update its information system, as it had before, to establish a continuing need for investigation. A3.

**Notice**

One hundred three days after receipt of the report of neglect allegedly perpetrated by Melody Frye (August 28), the Division notified Frye of its determination. A3; LFI90; LFII148. The Division sent a letter addressed to Melody Frye at 1912 Bridges, West Plains, Missouri 65775, but at that time, Frye lived at 2912 Bridges Street, West Plains, Missouri 65775. A3.

**Administrative review**

In spite of the misdirected letter, Melody Frye timely requested that the Child Abuse and Neglect Review Board review the Division's conclusion. A3; LFII150. On September 24, 2009, the Review Board upheld the Division's determination, and the Division placed Frye's name on the Central Registry of child abuse or neglect perpetrators. A3; LFII165. The reason for the Review Board's delay was the ultimately unsuccessful criminal prosecution of Joseph Frye, which was dropped because of "inconsistent information from the medical examiner's office." LFII151; § 210.152.4.[2]

**Judicial review**

Frye timely filed a petition for de novo judicial review of the Division's determination. A4; LFI8. Frye filed a motion for summary judgment that the Division opposed. LFI14, 93; LFII135, 152.

Without making findings of fact or conclusions of law with respect to whether Melody Frye neglected Jaycee Hardin, or whether good cause existed for delayed completion of the Division's investigation, the trial court concluded that the Division "lost jurisdiction" to investigate the report of

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[2] All statutory citations are to the current version of the Revised Statutes of Missouri, with the exception of § 210.145.14 and § 210.152.2. See footnote 4 below.

neglect allegedly perpetrated by Frye when it did not comply with the "statutory mandates" of § 210.145 and § 210.152. A5. The trial court specifically concluded:

1) the Division did not comply with the mandate set forth in § 210.145 by failing to regularly update its information system justifying a continuing need for investigation beyond 30 days after receipt of the report of neglect on May 17, 2006;
2) the Division did not comply with the mandate set forth in § 210.152.2 by failing to complete its investigation within 90 days of receipt of the report of neglect on May 17, 2006; and
3) the Division did not comply with the mandate set forth in § 210.152.2 by failing to notify Frye of its conclusion within 90 days of receipt of the report of neglect on May 17, 2006.

A5.

The trial court entered judgment in favor of Frye and ordered that her name be removed from the Central Registry of child abuse and neglect perpetrators and that all other evidence and information of the report of neglect made against her be removed and expunged from the records of the Division. A6.

## POINT RELIED ON

**The trial court erred in ordering Melody Frye's name to be removed from the Central Registry of child abuse and neglect perpetrators, because the Children's Division has authority to investigate reports of abuse and neglect beyond ninety days after receipt of a report in that when good cause for a delayed conclusion exists, the statute imposing a ninety–day limit on notification of the Division's conclusion to the alleged perpetrator is directory, and not mandatory.**

*Farmers & Merchants Bank and Trust Co. v. Director of Revenue*

896 S.W.2d 30 (Mo. banc 1995)

*Artman v. State Bd. of Registration for the Healing Arts*,

918 S.W.2d 247 (Mo. banc 1996)

*Utility Service Co., Inc. v. Department of Labor and Indus. Relations*,

331 S.W.3d 654 (Mo. banc 2011)

*Citizens for Environmental Safety, Inc. v. Missouri Dept. of Natural Resources*, 12 S.W.3d 720 (Mo. App. S.D. 1999)

§ 210.145.14 RSMo (Cum. Supp. 2005)

§ 210.152.2 RSMo (Cum. Supp. 2005)

## STANDARD OF REVIEW

Viewing the record in the light most favorable to the party against whom judgment is entered, and affording that party the benefit of all inferences that may reasonably be drawn from the record, this Court reviews the grant of a motion for summary judgment de novo. *ITT Comm'l Fin. Corp. v. Mid–Am. Marine Supply Corp.*, 854 S.W. 371, 376 (Mo. banc 1993). The key to summary judgment, however, is the undisputed right to judgment as a matter of law, not simply the absence of a fact question. *Id.* at 380.

Here, there are no questions of fact, but Melody Frye is not entitled to judgment as a matter of law. The trial court was incorrect when it concluded that the Children's Division "lost jurisdiction" to complete its investigation of a report of child neglect allegedly perpetrated by Frye when it did not comply with the "statutory mandates" of § 210.145.14 and § 210.152.2. A5.

## ARGUMENT

**The trial court erred in ordering Melody Frye's name to be removed from the Central Registry of child abuse and neglect perpetrators, because the Children's Division has authority to investigate reports of abuse and neglect beyond ninety days after receipt of a report in that when good cause for a delayed conclusion exists, the statute imposing a ninety–day limit on notification of the Division's conclusion to the alleged perpetrator is directory, and not mandatory.**

### Introduction

Swift conclusions to administrative investigations of child abuse and neglect reports protect the children of this state. But when good and sufficient reasons exist to delay conclusions, the legislature did not intend to exonerate alleged perpetrators by applying a time limit on investigations without regard to the merits of reports of abuse and neglect, prejudice to alleged perpetrators, or safety of children. When the legislature created the time limit on investigations of child abuse and neglect reports, it was well settled that appellate courts interpret statutes placing time limits on administrative decision making to be directory, and not mandatory. *Farmers & Merchants Bank and Trust Co. v. Director of Revenue*, 896 S.W.2d 30, 33 (Mo. banc¶ 1995). And it was well settled that alleged wrongdoers have no

due process rights during administrative investigations. *Artman v. State Bd. of Registration for the Healing Arts*, 918 S.W.2d 247, 250–51 (Mo. banc 1996). Finally, it was well settled that remedial statutes are construed to meet the cases within the evil they are designed to remedy. *Utility Service Co., Inc. v Department of Labor and Indus. Relations*, 331 S.W.3d 654, 658 (Mo. banc 2011). The question in this case, then, is whether these principles of law will be upset to turn a statute that the legislature intended to be a sword to protect victims of child abuse and neglect into a shield to exonerate alleged perpetrators of abuse and neglect.[3]

**The statutes**

To determine the meaning of a statute, and to ascertain the intent of the legislature, the starting point is the plain language of the statue. *Utility Service Co.*, 331 S.W.3d at 658; *Bauer v. Transitional Sch. Dist. of the City of*

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[3] Two other cases involve delayed conclusions to investigations of child abuse and neglect reports. The Western District of the Court of Appeals decided case No. WD75693 adversely to the Division and overruled and denied a motion for rehearing and application for transfer. The Division has filed an application for transfer in this Court, No. SC93653. The Western District has ordered Case No. WD75673 held in abeyance pending its decision in a related case involving the alleged perpetrator.

*St. Louis*, 111 S.W.3d 405, 408 (Mo. banc 2003). One statute creates a good cause exception to completion of investigations of child abuse and neglect reports within thirty days of receipt of reports. Section 210.145.14 states in relevant part:

> Within thirty days of an oral report of abuse or neglect, the local office shall update the information in the information system. … The division shall complete all investigations within thirty days, unless good cause for the failure to complete the investigation is documented in the information system. If the investigation is not completed within thirty days, the information system shall be updated at regular intervals and upon the completion of the investigation.

§ 210.145.14; A7.[4]

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[4] Citations to § 210.145.14 and § 210.152.2 are to the 2005 Cumulative Supplement of the Revised Statutes of Missouri, the version of the statutes in effect on May 17, 2006, the date of the report of neglect allegedly perpetrated by Melody Frye. The next year, and after the investigation in this case was completed, the legislature amended § 210.145.14 by adding: "[i]f a child involved in a pending investigation dies, the investigation shall remain open until the division's investigation surrounding the death is completed." 2007

Another statue, which has no good cause exception, requires notification of alleged perpetrators of conclusions to investigations within ninety–days of receipt of reports. Section 210.152.2 states in relevant part:

> Within ninety days after receipt of a report of abuse or neglect that is investigated, the alleged perpetrator named in the report … shall be notified in writing of any determination made by the division based on the investigation.

§ 210.152.2; A8. The statute goes on to specify that the Children's Division must advise the alleged perpetrator either that it has determined abuse or neglect exists or that it has not determined abuse or neglect exists. § 210.152.2(1), (2); A8.

**The legislature's intent**

No one doubts that a thirty–day or even a ninety–day limit on completion of investigations of reported abuse and neglect protects the children of this state. But when "good and sufficient reason" for delay exists, and not just an "arbitrary whim or caprice," *Superior Gearbox Co. v. Edwards*, 869 S.W.2d 239, 244 (Mo. App. S.D. 1994) (defining good cause), construing § 210.145.14 and § 210.152.2 to allow investigations of reported

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Mo. Laws 730. All other statutory citations are to the current version of the revised statutes.

abuse and neglect to extend beyond ninety days after receipt of a report also would serve to protect the children of this state. Applying a ninety–day limit would be contrary to the child welfare policy of this state and only serve to frustrate the purposes of the Child Abuse Act, encourage arbitrary decision making, and exonerate alleged perpetrators without a foundation in fact. Moreover, alleged perpetrators would not suffer prejudice from delayed conclusions.

"The child welfare policy of this state is what is in the best interest of the child." § 1.092. The purpose of the Child Abuse Act, §§ 210.108–210.188, and the Central Registry, § 210.110(3), is to protect both the child who is the victim of abuse or neglect and other children with whom a perpetrator may come into contact. *Jamison v. Department of Soc. Servs.*, 218 S.W.3d 399, 402, 410 (Mo. banc 2007) (the State has a "strong" and "significant" interest in both). Another purpose is to "provid[e] services in response to reports of child abuse or neglect."[5] *T.J. v. Department of Soc. Servs.*, 305 S.W.3d 469, 472 n. 3 (Mo. App. E.D. 2010); § 210.109.3(5).

[5] For example, in this case, the Division protected Jaycee Hardin's siblings and Frye's new–born child by providing, with Frye's consent, a safety plan, written services agreement, home visits, supervised visitation,

Because these are the purposes of the Child Abuse Act, § 210.145.14 and § 210.152.2 are remedial statutes. Remedial statutes "should be construed so as to meet the cases which are clearly within [their] spirit or reason … or within the evil which [they] are designed to remedy, provided such interpretation is not inconsistent with the language used." *Utility Service Co.*, 331 S.W.3d at 658. When good cause for delay exists, construing § 210.152.2 to allow investigations of reported abuse and neglect to extend beyond ninety days after receipt of a report would protect children.[6]

Child care and service providers and child protection officials, who are authorized to obtain information in the Central Registry, become aware that a person has committed abuse or neglect when they request the Division for information in the Central Registry about the person. § 210.150.1–.2. If the person is in fact a perpetrator, but has not been determined to be so by the Division and therefore her name is not in the registry, child care and service providers and child protection officials' ability to protect children is impaired. An automatic decision at the ninety–day mark exonerating an alleged

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parenting classes, and counseling for the siblings and Frye. LFI55, 62, 64–66, 70, 80; LFII193, 195, 197–198, 200–202.

[6] All the evidence in this case supports the existence of good cause. LFI77–80.

perpetrator stops an investigation that if allowed to proceed, could ultimately lead to the protection of children. That result is not what the legislature intended.

Automatic decisions at the ninety–day mark encourage arbitrary decision making without foundation in fact. This Court may "look to the effect of ruling one way or the other," that is, whether "[m]ore would be gained by a declaration that the requirement … is mandatory." *Hedges v. Department of Soc. Servs.*, 585 S.W.2d 170, 172 (Mo. App. K.C. 1979). To require exoneration of alleged perpetrators at the ninety–day mark, regardless of what the facts may or may not be and whether investigations are complete, would be the antithesis of good decision making. In fact, it would not be decision making at all. If the Division were to automatically cease investigation at the ninety–day mark, many investigations would never reach a conclusion. Instead of doggedly pursuing investigations, the Division would abandon them once it became apparent that investigations could not be completed in time to issue notice on the ninetieth day. That result is not what the legislature intended.

Except possibly in the case of extreme delay (which does not exist here because the conclusion was only ten days late), the alleged perpetrator is not prejudiced by delayed conclusions. No liberty or property interest of an alleged perpetrator, or even of a person the Division has determined to have

committed abuse or neglect, is affected until her name is placed on the Central Registry. A name is placed in the Registry only after review of a Division determination by the Review Board or else after the perpetrator does not seek review of the determination. *Jamison*, 218 S.W.3d at 408–10. Only then do child care and service providers, child protection officials, and state regulators have access to the names of persons who were subjects of child abuse and neglect investigations. § 210.150.1–.2.

The mere stigma of being the subject of a child abuse or neglect investigation, even one that comes to the attention of an employer before it is concluded, does not rise to the level of a constitutionally protected liberty or property interest.[7] *Jamison*, 218 S.W.3d at 406. The stigma of being the subject of a child abuse or neglect investigation is nothing compared to the stigma plus of being an adjudicated perpetrator whose professional licensure and employability is effectively ended. *Jamison*, 218 S.W.3d at 406–07.

Due process protections do not apply to child abuse and neglect investigations because they are investigatory only and do not adjudicate or

[7] There is no evidence in this case that the Division's investigation of Frye came to the attention of any employer before her name was placed in the Central Registry.

determine any legal rights.[8] *Artman*, 918 S.W.2d at 250–51. The legislature directed the Division in § 210.145.1(3) to "develop protocols which give priority to …[p]roviding due process for those accused of child abuse and neglect." The Division implemented the legislature's directive in a manner consistent with *Artman* and *Jamison* by promulgating a regulation, 13 CSR 35–32.025, that specifies the procedures due to alleged perpetrators before the Child Abuse and Neglect Review Board.

No presumption of prejudice arises from delayed conclusions. Though the Division's investigators are not quasi–judicial officials, they are entitled to the presumption of regularity in their investigations. "Administrative agencies by their nature perform a combination of investigatory and adjudicatory functions. To permit them to do so does not violate the strictures of the due process clause absent an actual showing of bias." *State of Missouri ex rel. Martin–Erb v. Missouri Comm'n on Human Rights*, 77 S.W.3d 600, 609 (Mo. banc 2002) (internal quotation marks and citations omitted).[9]

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[8] Unless, as explained below in discussing the *Petet* decision, investigations exonerate alleged perpetrators.

[9] There is no evidence of bias in this case.

Finally, a report of abuse or neglect is not admissible in any child custody proceeding. § 210.145.18. A court on its own motion, or at the request of a party, may make an off–the–record inquiry to determine whether a report has been made, but only for the purpose of staying the proceeding until the investigation is complete. § 210.145.18(2). A mere report of child abuse or neglect or a pending investigation of a report, even a delayed one, is not prejudicial to the alleged perpetrator.

The trial court's judgment means that a ninety–day conclusion, made regardless of the merits of the report of abuse or neglect and prejudice to the alleged perpetrator and the safety of the child, is good enough. But a hundred–day conclusion after full consideration of the facts and safety of the child is not good enough. That would be an absurd result. That result is not what the legislature intended.

**Time limits are directory**

Whether a statute is mandatory or directory usually arises in the context, as it does here, of whether the failure to do a certain act results in the "invalidity of the government measure." *State ex rel. Hunter v. Lippold*, 142 S.W.3d 241, 244 (Mo. App. W.D. 2004). Here, when the trial court ordered the Division to remove Melody Frye's name from the Central Registry of child abuse and neglect perpetrators, it essentially declared

invalid the Division's conclusion that Frye neglected Jaycee Hardin because its conclusion was made after the ninety–day mark.

But the trial court's order was mistaken. "If the statute fails to prescribe a result in the event the act is not performed within the time period, the act is usually directory. In other words, the failure to timely perform the act does not invalidate the governmental action in question." *Id.* (internal citation omitted). Usually, "statutes directing the performance of an act by a public official within a specified time period are directory, not mandatory." *Farmers & Merchants Bank*, 896 S.W.2d at 33.

The presence or absence of a penalty provision is one method for determining whether a time limit is directory or mandatory. *Bauer*, 111 S.W.3d at 408 Here, § 210.145.14 does not impose a sanction upon the Division for delayed conclusion of an investigation or for failure to update the information system at regular intervals. And § 210.152.2 does not impose a sanction upon the Division for delayed notification of the alleged perpetrator of its conclusion.

Section 210.165.1 makes "any person" who violates "any provision" of sections 210.110 to 210.165 "guilty of a class A misdemeanor." § 210.165.1. But that penalty does not apply to the Division, and it does not directly flow from or relate to non–compliance. A sanction that makes a time limit mandatory would be, for example, to prohibit the Division, if it made a

delayed determination or notice, from placing the name of the perpetrator in the Central Registry. No such sanction exists here.

Another method for determining whether a time limitation is directory or mandatory is the presence or absence of the statutory word "shall," but whether "shall" is directory or mandatory is a function of "context and legislative intent." *Bauer*, 111 S.W.3d at 408. Both subsection 14 of § 210.145 and subsection 2 of § 210.152 use the word "shall," other subsections of both statutes use the words "shall" and "may," and subsection 1 of § 210.183 uses the words "shall" and "will." But the mere use of these words — without more, without context — does not tell us, however, whether the legislature intended for "shall" in §§ 210.145.14 and 210.152.2 to be directory or mandatory.

Perhaps the words "and no more" after a time limit in a statute that does not contain a sanction, but does use the word "shall," could provide sufficient context to make the statute mandatory. Those words do not exist here. And perhaps the words "and the Division shall not have authority to investigate thereafter" or "and the Division must dismiss reports of abuse or neglect thereafter" after the time limit in § 210.145.14 could provide sufficient context to make that statute mandatory. Those words do not exist here, either.

Referring to language in the mandatory disposition of detainers statute, this Court said:

> These sections amply demonstrate the legislature's ability to specify that dismissal is required if a time limit is not met. The absence of similar language in sections [of the sexually violent predator statutes] negates any similar legislative intent to require dismissal if the 90–day time limit in these statutes is not met.

*In re Donaldson*, 214 S.W.3d 331, 332–33 (Mo. banc 2007). Neither § 210.145.14 or § 210.152.2 contains language that the Division shall no longer investigate or must dismiss reports of abuse or neglect after 30 days or after 90 days, or after not updating its information system during an investigation, or that the Division's investigative conclusions must be rescinded if notice of them is not given after ninety days. The statutes are directory, not mandatory

**Agencies retain authority to decide**

Granted an administrative agency possesses only that authority expressly conferred or reasonably implied by statute. *State ex rel. Riverside Joint Venture v. Missouri Gaming Comm'n*, 969 S.W.2d 218, 220 (Mo. banc 1998). But every judicial decision that has examined the question has held that once the legislature authorizes a state agency to make a decision, the

agency's failure to decide within a prescribed time limit does not result in the loss of authority to decide.

For example, the Director of Revenue does not lose authority to deny a tax refund when he does not rule on the refund claim within the statutorily required 120 days. *Farmers & Merchants Bank*, 896 S.W.2d at 33. Otherwise, automatic resolution of refund claims in favor of the taxpayer would frustrate "well–considered, though tardy" resolution of claims, which could be decided in the taxpayer's favor and, therefore, avoid the necessity and expense of further litigation. *Id*. Automatic resolution of refund claims in favor of the taxpayer might even force "blanket denials" of all claims, which would lead to further litigation and expense. *Id*.

The Department of Natural Resources does not lose authority to grant a sanitary landfill permit when it does not rule on the permit application within the statutorily required 24 four months and the regulatory required 120 days. *Citizens for Environmental Safety, Inc. v. Missouri Dept. of Natural Resources*, 12 S.W.3d 720, 724–26 (Mo. App. S.D. 1999). There, this Court pointed out that lack of authority of a court to review a state agency's decision, when the party seeking judicial review filed its petition out of time, is not the same question as a state agency's authority to decide in the first place. *Id*. at 725. Neither is the lack of authority of an agency to reopen a final decision the same question as the agency's authority to decide initially.

*Id*. at 726. The question is not the same in both instances because the agency's and the citizen's interest in finality of the decision has arisen. Here, because no decision on the merits of the report of abuse was made by the 30th or even the 90th day after receipt, no finality interest has arisen.

For that reason, the *Petet* decision is distinguishable from this case. Frye was the subject of an investigation and, as such, has no interest in the finality of an administrative determination. Petet, on the other hand, was an exonerated alleged perpetrator, who had an interest in the finality of that determination. In *Petet*, the Division concluded its investigation, and concluded it within 90 days of receipt of the report of abuse or neglect, and determined that the alleged perpetrator had not committed abuse or neglect. *Petet v. Department of Soc. Servs.*, 32 S.W.3d 818, 820 (Mo. App. W.D. 2000). Two years later, without documenting in its information system any reason for doing so, the Division took up its investigation again and reversed itself and found that the allege perpetrator had committed abuse or neglect. *Petet*, 32 S.W.3d at 820, 823.

Here the Division did not timely conclude an investigation, determine that the alleged perpetrator did or did not commit abuse or neglect, and take up the investigation again years later. Rather, the Division documented good cause for delay and concluded its investigation late. Here, whether the

Division can decide Frye's case in the first place cannot be decided by application of a finality interest she does not possess.

More cases illustrate that once authority is acquired by a state agency, the agency's failure to comply with time limits does not result in the loss of authority to make a decision. The Labor and Industrial Relations Commission does not lose authority to render a final award of compensation when it does not make the award within the statutorily required 90 days. *Seeley v. Anchor Fence Co.*, 96 S.W.3d 809, 815–17 (Mo. App. S.D. 2002). Otherwise, procedure would overcome substance, the employer would prevail when it suffers no prejudice from a delayed decision, and the remedial purpose of the Workers' Compensation Law would be frustrated. *Id.*

A circuit court does not lose authority to grant a full order of protection when it does not schedule the hearing on the application for protection within the statutorily required 15 days or continue the hearing for good cause when it sets the hearing outside the 15–day period. *Jenkins v. Croft*, 63 S.W.3d 710, 713 (Mo. App. S.D. 2002). There, once the court acquired authority by the filing of a petition, it did not thereafter lose authority because it did not abide by time limits for hearing the petition. Responding to the alleged abuser's argument that the word "shall" meant the statute's time limits are mandatory, the Court said:

> As applied to time limitations, however, Missouri courts have applied a somewhat different rule of construction. When a statute provides what results shall follow a failure to comply with its terms it is mandatory and must be obeyed, if it merely requires certain things to be done without prescribing the results that follow, the statute is merely discretionary.

*Jenkins v. Croft*, 63 S.W.3d at 713.

A juvenile court does not lose authority over a child because of failures by the Division to comply with timelines to file status reports and develop case and service plans and because of failures by the court to comply with timelines to hold dispositional review, status review, and permanency hearings and to provide written notice to the parent. *In re P.L.O.*, 131 S.W.3d 782, 787 n. 2, 787–88 (Mo. banc 2004). [10]

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[10] One judicial decision does hold a time–limit statute to be mandatory. But in that case, the time limit was not on agency decision making. And the statute imposed a date–specific deadline, March 15, 1999, an "absolute deadline of extreme significance." *Bauer*, 111 S.W.3d at 408. On that date, Missouri's long–standing desegregation cases in federal court were settled, and federal court–ordered financial obligations of the state took effect. *Id.* No similar litigation or financial obligation is involved here.

And a probationary employee who has had his probation extended, but has not been notified of the extension as required by regulation, remains on probation unless he can demonstrate prejudice. *Hedges,* 585 S.W.2d at 172.

Finally, the 2007 amendment to § 210.145.14, permitting investigations involving a child's death to remain open "until … completed," does not reveal retrospectively the legislature's intent in 2006, when Jaycee Hardin died. The amendment only serves to clarify, for the future, the legislature's intent in death cases. And even then, the amendment may not apply to a case such as this one, where the child died *before* the investigation commenced. The amendment reads: "[i]f a child involved in a *pending* investigation dies." 2007 Mo. Laws 730 (emphasis added).

The Division's delayed decision making and notice does not result in the loss of the Division's authority to make a decision.

## CONCLUSION

For the reasons stated above, the judgment should be reversed and this case remanded to the circuit court.

Respectfully submitted,

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## CERTIFICATES OF SERVICE AND COMPLIANCE

I hereby certify that the Substitute Brief of Appellant Director of Department of Social Services and Appendix to Substitute Brief of Appellant Director of Department of Social Services was filed electronically and served via Missouri CaseNet this 3rd day of September, 2013, upon George (Chrys) Fisher, Jr.

I hereby certify that I signed the original of this brief and that it contains the information required by Rule 55.03, complies with the limitations contained in Rule 84.06 (b), and contains 5,717 words exclusive of cover, signature block, and certificates.

/s/ Gary L. Gardner