

IN THE SUPREME COURT OF MISSOURI

Appeal No. SC95602

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IN THE INTEREST OF J.P.B.

M.R.S.

Appellant,

v.

THE GREENE COUNTY JUVENILE OFFICE,

Respondent

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Appellant's Reply Brief

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On Appeal from the Circuit Court of Greene County

For the 31<sup>st</sup> Circuit of Missouri

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## **TABLE OF AUTHORITIES**

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### **Appellant's Reply Regarding Point 9**

Respondent argues in its brief that Appellant was afforded due process because he failed to provide notice to the Missouri Department of Corrections of his request for a Writ of Habeas Corpus Ad Testificandum and that persuasive authority from the state of Indiana indicate that Appellant received meaningful access to the courts. Appellant strongly disagrees with both arguments.

#### **Notice to Department of Corrections**

Respondent argues that RSMo 491.230.2(1) provides that 15 days notice must be given to the Department of Corrections before a Writ of Habeas Corpus may be issued for an incarcerated parent in a Chapter 211 Termination of Parental Rights proceeding. Respondent further argues that no record of this notice appears in the court file and, therefore, the trial court was justified in issuing a Writ for Appellant to appear at trial via video conference rather than in person.

The statutory provision at issue does not indicate who bears the responsibility of providing notice to the Department of Corrections, nor does it specify that the party requesting the writ must so request. Respondent's argument ignores the fact that the trial court issued its first Writ permitting Appellant's personal appearance at trial on July 17, 2015, just two days after the application was filed with the trial court on July 15, 2015 (L.F. at 89-90). The record is devoid of any objection by any party as to the lack of notice to the Department of Corrections. The trial court issued the second Writ on November 25, 2015, 12 days after Appellant filed his application. (L.F. at 91; Supp. L.F. at 1). Although argument was held on the record concerning the contents of the second

Writ, no objection on the basis of notice was ever made. Indeed, counsel for the Juvenile Office indicated that they took no position on the issue of Father's appearance at trial. (Tr. I 165:22-166:1). The issue before the trial court was not whether a Writ should be issued, but whether it would provide for personal appearance rather than appearance by video conference. There is no indication from the record that the trial court considered anything other than preservation of taxpayer dollars when reversing its prior decision to permit Appellant to appear at trial. (Tr. I 166:5-6).

The Indiana Case: In re C.G.

Respondent relies upon the Indiana case of In re C.G., 954 N.E.2d 910 (Ind. 2011) as persuasive authority that Father was justifiably excluded from being present at trial. This case is distinguishable in two critical points. First, the trial court in C.G., bifurcated the trial and permitted the parent to review transcripts of the State's witnesses prior to presenting her evidence in response. *See, In re C.G.*, 954 N.E.2d at 921. This did not occur in the case at bar. Furthermore, and perhaps more importantly, the incarcerated parent in the Indiana case was incarcerated in the state of Kentucky. *Id.* at 922. The Indiana Supreme Court noted the authority, previously cited by Father in this case in his Appellant's Brief, from the state of Kansas overturning a termination of parental rights of a parent incarcerated in-state. *Id.* In this case, Father was incarcerated in-state at the Missouri Department of Corrections.

Moreover, the 11 factors set forth by the Indiana Supreme Court weigh overwhelmingly in favor of Father being present for trial. The only factor identified by Respondent in its brief weighing against presence at trial, and the only factor articulated

by the trial court as justification for its actions, is the cost associated with transportation of Father to court. Father would respectfully suggest that the cost of transportation alone cannot outweigh the due process concerns presented by Father's absence. Furthermore, that the Missouri Legislature passed RSMo 490.231.2(1) specifically authorizing transportation and presence at trial, and that said legislative action would, ostensibly, have been accompanied at the time by due consideration of the fiscal impact to State coffers, the trial court's primary desire for taxpayer protection to the detriment of Father's due process protection evidences an abuse of discretion.

### Conclusion

For all the reasons set forth in Appellant's Brief and this Reply Brief, Father requests this Court to reverse and remand the Judgment terminating his parental rights, and for such other and further relief as the Court may deem just and proper.

Respectfully Submitted,

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**Certificate of Compliance**

I, Kristoffer R. Barefield, hereby certify as follows:

To the best knowledge and belief of the undersigned attorney, Appellant's Brief complies with the limitations contained in special rule 1(d) and specifically, pursuant to the word processing system of Appellant's counsel, there are 1,077 words contained in Appellant's brief.

/s/ Kristoffer R. Barefield  
Kristoffer R. Barefield

**Certificate of Service**

This certifies that on October 26, 2016, a true and accurate copy of Appellant's Brief was filed with the Clerk of the Court by using the Missouri Courts eFiling System, which will send a notice of electronic filing to the following:

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