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IN THE SUPREME COURT OF MISSOURI

STATE OF MISSOURI ex rel. STATE OF KANSAS, DEPARTMENT FOR CHILDREN AND FAMILIES, and GINA MEIER-HUMMEL,	)	
Relators,	)	
vs.	)	Case No. SC97476
THE HONORABLE CHARLES H. MCKENZIE Judge, Division 13, 16th Judicial Circuit, Kansas City, Jackson County, Missouri,	)	
Respondent.	)	

BRIEF OF RELATORS
THE STATE OF KANSAS, DEPARTMENT OF CHILDREN AND FAMILIES, AND SECRETARY GINA MEIER-HUMMEL

FISHER, PATTERSON, SAYLER & SMITH, LLP
Terelle A. Mock #57232
Lauren E. Laushman #64979
Andrew D. Holder #70614
3550 S.W. 5th Street
Topeka, Kansas 66606
Tel: (785) 232-7761 | Fax: (785) 232-6604
tmock@fisherpatterson.com
llaushman@fisherpatterson.com
aholder@fisherpatterson.com
Attorneys for Defendants State of Kansas, Dept. for Children and Families, and Gina Meier-Hummel, in her official capacity as Secretary

ORAL ARGUMENT REQUESTED

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JURISDICTIONAL STATEMENT

Upon application by Relators, the State of Kansas, Department for Children and Families, and Secretary Gina Meier-Hummel, this Court issued a Preliminary Writ of Prohibition on December 4, 2018. (APPENDIX A000001). This Court has jurisdiction to adjudicate this matter pursuant to Article V, § 4 of the Missouri Constitution. Relators seek a Permanent Order of Prohibition to prevent the Honorable Charles H. McKenzie from taking any further action other than granting Relators' Motion to Dismiss.

STATEMENT OF FACTS[1]

Relators, the State of Kansas, Department for Children and Families, and Secretary Gina Meier-Hummel (collectively, "Relators" or "KsDCF") are defendants in the underlying case of *Keiona Doctor et al v. State of Missouri Employees et al*, docket number 1716-CV20855 (hereafter, the "underlying case") now pending in the Circuit Court of Jackson County, Missouri at Kansas City.

The Respondent, the Honorable Charles H. McKenzie, is the judge sitting in Division 13 of the 16th Circuit Court of Jackson County, Missouri, to whom the underlying case is assigned. Dainna Pearce and Judy Conway, as Special Administrator of the Estate of A.J., (hereafter, "Plaintiffs") are the remaining plaintiffs in the underlying

[1]For ease of the Court and Respondent, Relators refer to thier exhibits and index to the Petition for Writ of Prohibition or, Alternatively, Writ of Mandamus, filed October 11, 2018. Documents not included in that Index, but referred to herein, are included in the Index filed herewith pursuant to Rule 84.04(h).

case.[2] Plaintiffs' attorneys of record are Michaela Shelton, of Shelton Law Office, P.A., and Matt Birch, of Shamberg, Johnson & Bergman, Chtd.

Procedural Background

This is a wrongful death case stemming from the murder of seven-year-old A.J. by his father, Michael Jones, and his stepmother, Heather Jones. Plaintiffs filed two lawsuits asserting claims for wrongful death—one in the District Court of Wyandotte County, Kansas, Case No. 2017-CV-000715, along with the underlying case.

The original Petition in the underlying case was filed on August 27, 2017, and asserted negligence and wrongful death claims against KsDCF, along with similar claims against a number of Missouri Department of Social Service employees, as well as other service providers. (Petition, **Exhibit A**, INDEX 000001). On November 27, 2017, Plaintiffs filed an Amended Petition, which asserted the same general claim against KsDCF. (Amended Petition, **Exhibit B**, INDEX 000057). KsDCF timely filed a Motion to Dismiss in lieu of an answer (KsDCF's Motion to Dismiss, **Exhibit C**, INDEX 000115), along with a contemporaneously filed Memorandum in Support (Memorandum in Support of KsDCF's Motion to Dismiss, **Exhibit D,** INDEX 000117). On September 6, 2018, Respondent entered an Order denying KsDCF's Motion to Dismiss in all respects, with the exception of Plaintiff Keiona Doctor's status as a plaintiff. (APPENDIX A000002).

[2]Keiona Doctor, A.J.'s biological sister, was also initially a plaintiff in the underlying case. However, Doctor's claims against KsDCF were subsequently dismissed as part of KsDCF's motion to dismiss. (APPENDIX A000002).

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Underlying Claims[3]

a. A.J.'s first residence in Kansas

A.J.was born in 2008. (Amended Petition, ¶¶ 2, 3). From the time he was born until he was approximately 2 1/2-years-old, A.J. lived with his biological mother, Dainna Pearce, in Kansas. (Amended Petition, ¶¶ 9, 43). In August 2011, the Kansas Department for Children and Families ("KsDCF") received a hotline call, reporting that A.J. had been left home alone without adult supervision. After investigating, KsDCF removed A.J. from Pearce's custody and placed him in the custody of his biological father, Michael Jones. (Amended Petition, ¶¶ 10, 44-45).

In December 2011, KsDCF investigated two hotline calls related to potential abuse of children in the Jones home, including A.J. (Amended Petition, ¶¶ 50-56). As a result of these calls, KsDCF asked Michael Jones to sign a document promising to keep his children safe from physical abuse, not to use physical discipline, and not to allow his spouse (and A.J.'s stepmother), Heather Jones, to have contact with the children. (Amended Petition, ¶ 57). However, by January 2012, Michael Jones admitted that he and Heather Jones were back together and she was welcome to visit his home. (Amended Petition, ¶ 60). In December 2012, KsDCF investigated another hotline call regarding

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[3]The following facts are taken from the Amended Petition, **Exhibit B**, INDEX 000057. For purposes of brevity, the facts cited below pertain only to the claims against Relators. Because these "facts" are taken from the first amended petition and are taken in the light most favorable to Plaintiffs, KsDCF reserves the right to dispute the allegations.

potential abuse of children in the Jones home, but did not remove A.J. from the home. (Amended Petition, ¶¶ 62-64).

b. A.J.'s residence in Missouri

Between December 2012 and March 2013, A.J. and his family moved to Missouri. (Amended Petition, ¶ 68). On March 4, 2013, the Missouri Department of Social Service ("MoDSS") received a hotline call reporting that (1) A.J. had been forced to stand in the corner for over an hour as punishment and had been forgotten about, (2) A.J. had locks on the outside of his bedroom door; (3) A.J. starts fires; and (4) the garage at the house had dead animals in it and the house was filthy with mice and chicken bones. (Amended Petition, ¶ 69). The following day, MoDSS requested history from KsDCF on Heather Jones. (Amended Petition, ¶ 72). On April 7, 2013, KsDCF provided MoDSS with seven pages of typed reports on Heather Jones, which referenced a history of failing to supervise children in her care, children being removed from her care because of physical abuse, and an incident where she shot herself in the foot. (Amended Petition, ¶ 75).

On July 18, 2013, MoDSS determined A.J. was unsafe in the Joneses' home. As a result, MoDSS attempted to provide intensive in-home services ("IIS") and family-centered services ("FCS") to the family. (Amended Petition, ¶¶ 86, 87). On August 1, 2013, following two IIS visits, Michael and Heather Jones informed their caseworker they were moving to Kansas and would no longer meet with MoDSS. (Amended Petition, ¶ 92).

On August 9, 2013, a MoDSS caseworker made a hotline call to KsDCF to report the IIS and FCS cases opened in Missouri, the fact the Joneses were no longer

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cooperating because they now resided in Kansas, and her continued concerns for A.J. Following the call, KsDCF contacted the Joneses, and was advised they continued to live in Missouri. (Amended Petition, ¶¶ 95, 96).

On August 21, 2013, MoDSS received a hotline call reporting that (1) A.J.'s medical and mental health needs were not being provided for; (2) A.J. was locked in his room at night; and (3) A.J. was being "targeted" by Heather Jones. KsDCF was notified by a hotline call. (Amended Petition, ¶ 97). In response, a MoDSS caseworker visited the Joneses' home in Missouri, where Heather Jones denied telling MoDSS the Joneses were moving to Kansas. (Amended Petition, ¶ 100).

On February 25, 2014, MoDSS received a hotline call reporting that A.J. was being locked in his room, that Michael Jones could not provide for his mental health needs, and that A.J. was vulnerable to abuse and neglect. (Amended Petition, ¶ 104). During a subsequent investigation, Michael Jones informed a MoDSS caseworker that the Jones family was residing in Kansas. The caseworker reported the hotline call and Jones's disclosure to KsDCF. However, on March 3, 2014, the MoDSS caseworker, with the assistance of Missouri law enforcement, went to the Joneses' home in Missouri, where they observed A.J. with suspicious marks on his chin and forehead. (Amended Petition, ¶¶ 107, 108, 109).

In early 2014, MoDSS referred A.J. to the Family Guidance Center ("FGC") for placement and mental health services. FGC subsequently placed A.J. with the Spofford Residential Treatment Center ("Spofford") in Grandview, Missouri, from March 7, 2014 to September 4, 2014. (Amended Petition, ¶¶ 113, 116, 118).

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c. A.J.'s second residence in Kansas.

On August 28, 2014, MoDSS received a hotline call reporting that A.J. would soon be discharged from Spofford to Michael Jones, but that Jones was unwilling to meet A.J.'s needs, was not returning calls, and was not cooperative with A.J.'s mental health treatment. The call reported that Michael Jones's address was in Kansas City, Kansas. (Amended Petition, ¶¶ 136, 138). MoDSS records indicate other agencies may have been notified about the call. (Amended Petition, ¶ 137).

In October 2014, KsDCF filed an action to collect child support on A.J.'s behalf, in Wyandotte County, Kansas district court, based on Jones's Kansas City, Kansas address. (Amended Petition, ¶ 150). The child support case concluded in May 2015, when the court entered an order providing that KsDCF was to receive all child support monies collected from Dainna Pearce as reimbursement for the welfare KsDCF provided to Michael Jones on A.J.'s behalf. (Amended Petition, ¶ 151). KsDCF was aware of Jones's Kansas address through Jones's contact with KsDCF's child support division. (Amended Petition, ¶ 152).

In 2014 and 2015, KsDCF received hotline calls reporting that Heather Jones's Facebook page contained pictures of A.J. being tortured and abused. (Amended Petition, ¶ 153). In November 2015, A.J.'s remains were found by law enforcement in Kansas City, Kansas. (Amended Petition, ¶ 156).

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POINT RELIED ON

I. Relators are entitled to an order prohibiting Respondent from taking any further action other than to grant Relators' Motion to Dismiss because Respondent's decision not to decline to exercise jurisdiction as a matter of comity constitutes a clear abuse of judicial discretion.

Ramsden v. State of Illinois, 695 S.W.2d 457 (Mo. 1985)

Townsend v. E. Chem. Waste Sys., 234 S.W.3d 452 (Mo. Ct. App. 2007)

ARGUMENT

Both the Full Faith and Credit Clause and Kansas's sovereign immunity require dismissal of the claims against Relators. However, this case can be simply and completely resolved without reaching the constitutional issues. *See Curtis v. Missouri Democratic Party*, 548 S.W.3d 909, 918 (Mo. 2018) ("[T]his Court will not reach constitutional issues if the case can be decided on other grounds.").

"Missouri is free to close its courts to suits against a sister state as a matter of comity rather than constitutional command." *Ramsden v. State of Illinois*, 695 S.W.2d 457, 460 (Mo. 1985). In fact, the Supreme Court has advised that it may "be wise policy, as a matter of harmonious interstate relations, for States to accord each other immunity or to respect any established limits on liability. ***They are free to do so***." *Nevada v. Hall*, 440 U.S. 410, 426 (1979) (emphasis added). When faced with dilemmas like the one at hand, Missouri courts have heeded the Supreme Court's advice. Accordingly, Respondent's decision to deny Relators' motion to dismiss on the basis of interstate comity constitutes a clear abuse of judicial discretion, for which the Court's permanent writ of prohibition or, alternatively, a writ of mandamus should issue. *See State ex rel.*

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Henley v. Bickel, 285 S.W.3d 327, 330 (Mo. 2009) ("Prohibition is a discretionary writ that may be issued to prevent an abuse of judicial discretion . . . ."); *State ex rel. Peavey Co. v. Corcoran*, 714 S.W.2d 943, 945 (Mo. Ct. App. 1986) ("[M]andamus will lie where the [Court's] discretion has been exercised arbitrarily, or capriciously or in bad faith.").

In *Ramsden*, a Missouri resident sued the State of Illinois for canceling an employment contract because of state budgetary problems. Illinois appealed the jury verdict, arguing the circuit court should have declined to exercise jurisdiction as a matter of comity. The Missouri Supreme Court agreed, explaining:

> "[B]y declining jurisdiction Missouri can encourage harmony between itself and Illinois in a case which calls for the application of Illinois law. Illinois did not enter Missouri to conduct an activity, but merely cooperated in a national program to make psychology internships available. [The plaintiff's] performance would have been in Illinois. The only interest Missouri has in the controversy is the fact that [the plaintiff] lived here when he filed suit. In determining whether or not to apply comity to defer jurisdiction to Illinois, it must be remembered that strong interests are implicated in cases involving a state as a party. One is the interest of a state in governing its own operations, and the other is its interest in preserving the integrity of its fisc. See *The Supreme Court, 1978 Term,* 93 Harv.L.Rev. 60, 196 (1979). It is relevant that Illinois was performing a service for its own citizens, as well as budding psychologists, in its operation of Chicago Read and the internship program. To subject Illinois to a suit in this state in a controversy arising out of the performance of this public service would infringe unnecessarily upon the harmonious relations which are part and parcel of the spirit of co-operative federalism. *Simmons v. State*, 670 P.2d 1371, 1385[22] (Mont.1983)."

695 S.W.2d at 459-60; *see also*, *Townsend v. E. Chem. Waste Sys.*, 234 S.W.3d 452, 469-470 (Mo. Ct. App. 2007) ("[I]n the interest of comity, Missouri courts will enforce other states' sovereign immunity statutes."); *Mejia-Cabral v. Eagleton Sch., Inc.*, 1999 WL 791957, at *2 (Mass. Super. Sept. 16, 1999 (dismissing third-party claims against the

State of Connecticut, where claims, if allowed to proceed, would "interfere with [Connecticut's] capacity to fulfill its own sovereign responsibilities"); *K.D.F. v. Rex*, 878 S.W.2d 589, 595 (Tex. 1994) (dismissing breach of contract claim against Kansas governmental entity as a matter of comity, where Kansas statute required suit to be commenced in Kansas state court).

The justifications for declining to exercise jurisdiction over Illinois in *Ramsden* require the same result in this case. "[S]trong interests are implicated in cases involving a state as a party." *Ramsden*, 695 S.W.2d at 460. This is especially true in this case, which at its core is about whether the State of Kansas administered child welfare services to its citizens in a negligent manner. Like Illinois, Kansas has a significant interest in governing its own operations. *See id.* at 459. Also like *Ramsden*, the claim against KsDCF calls for the application of Kansas law (Point IV, *infra*). *See id.* In fact, the only relevant difference between this case and *Ramsden* is that the plaintiff in *Ramsden* was a Missouri citizen, which at least gave Missouri an arguable interest in exercising jurisdiction. Here, Plaintiffs allege that A.J. lived in Kansas at the time of his death (Amended Petition, **Exhibit B**, INDEX 000082, ¶¶ 143, 150, 156), and do not allege that any KsDCF employee physically entered into Missouri or conducted any tortious act or omission while A.J. was in Missouri (Point III, *infra*). Thus, this case actually presents stronger justification for declining to exercise jurisdiction than *Ramsden*.

Although Plaintiffs argue that dismissing KsDCF would be a grave violation of the public policy of Missouri, that argument misses the mark for two key reasons. First, "[i]f Plaintiffs are referring to the policy interest of providing compensation to a victim from a

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party whose conduct has injured them, then this policy would be applicable not only in Missouri***, but also in Kansas.***" *Natalini v. Little*, 185 S.W.3d 239, 252 (Mo. Ct. App. 2006) (citing K.S.A. 60-1901) (emphasis added). Second, as set forth in Point IV, *infra*, Plaintiffs' claim calls for the application of Kansas law, and Plaintiffs have asserted an identical wrongful death claim against KsDCF in Kansas state court, Case No. 2017-CV-000715 that remains pending. Thus, dismissing Plaintiffs' duplicative claim in Missouri state court as a matter of interstate comity does not create the sort of violation of Missouri public policy that Plaintiffs assert.

For the reasons set forth in *Ramsden*, this Court should issue its permanent writ of prohibition, or alternatively, writ of mandamus, prohibiting the circuit court from taking any action except granting KsDCF's motion to dismiss on grounds of interstate comity.

POINT RELIED ON

II. Relators are entitled to an order prohibiting Respondent from taking any further action other than to grant Relator's Motion to Dismiss because Respondent lacks subject matter jurisdiction over the claim against Relators by virtue of the State of Kansas's sovereign immunity.

Nevada v. Hall, 440 U.S. 410 (1979)

Franchise Tax Bd. of Cal. v. Hyatt, 538 U.S. 488 (2003)

Franchise Tax Bd. of Cal. v. Hyatt, 136 S.Ct. 1277 (2016)

U.S. Const., Art. IV, § 1

K.S.A. 75-6103

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ARGUMENT

Sovereign immunity precludes bringing a lawsuit against the government without its consent. *Townsend v. E. Chem. Waste Sys.*, 234 S.W.3d 452, 469 (Mo. Ct. App. 2007). The State of Kansas enjoys sovereign immunity as an inherent state right, rather than as a creation of the Constitution or any statute. *See Nevada v. Hall*, 440 U.S. 410, 414-415 (1979) *Purvis v. Williams*, 73 P.3d 740, 748 (Kan. 2003) ("Sovereign immunity is . . . considered to be inherent, existing prior to the ratification of the Constitution."). KsDCF and its Secretary are entitled to the same sovereign immunity as the State of Kansas. *See Lewis v. Kansas Dep't of Revenue*, 380 F. Supp. 2d 1211, 1212-13 (D. Kan. 2005), *aff'd*, 181 F. App'x 732 (10th Cir. 2006); *Hadley v. N. Arkansas Cmty. Tech. Coll.*, 76 F.3d 1437, 1438 (8th Cir. 1996) (same).[4]

[4]Although Plaintiffs assert, in their answer, that "sovereign immunity does not protect Kansas governmental agencies, or subordinate agencies" such as the KsDCF and its Secretary, Plaintiffs cite to only a single unpublished case for support, *Sperry v. Lansing Correctional Facility*, 2017 WL 1534852 (Kan. Ct. App. April 28, 2017) (unpublished). In addition to the fact that their position has been universally rejected, Plaintiffs' citation to *Sperry* is grossly misleading. Plaintiffs assert that *Sperry* stands for the position that "[t]he Kansas Supreme Court has long recognized that the principle of sovereign immunity, from which the subordinate agency rule draws strength, does not protect government entities." (Plaintiff's Return, Answer, and Motion to Dismiss, p. 4, fn 3). This assertion is *almost* a direct quote from *Sperry*. However, Respondents selectively omitted the following from the actual quote: "The Kansas Supreme Court has long recognized that the principle of sovereign immunity, from which the subordinate agency rule draws strength, does not protect government entities **from actions for equitable or extraordinary relief."** *Id*. at *2 (emphasis added). As the bolded language makes clear, the actual holding was that sovereign immunity does not bar an action for writ of mandamus or prohibition against a state agency or officer—a holding that has nothing to do with any issue implicated in this case.

Subject matter jurisdiction encompasses the scope of a state's sovereign immunity. *See Miller v. Tony & Susan Alamo Found.*, 134 F.3d 910, 9116-17 (8th Cir. 1998). Where the underlying facts are uncontested, subject matter jurisdiction presents a question of law, subject to *de novo* review. *Missouri Soybeans Ass'n v. Missouri Clean Water Comm'n*, 102 S.W.3d 10, 22 (Mo. 2003). "A circuit court lacking subject matter jurisdiction may take no action other than to dismiss the suit." *State ex rel. FAG Bearings Corp. v. Perigo*, 8 S.W.3d 118, 120 (Mo. Ct. App. 1999). "[P]rohibition is an appropriate remedy when it appears from the fact of the pleadings that defendant is immune from the suit as a matter of law." *Id.*

In this case, Respondent lacks subject matter jurisdiction over Plaintiffs' claim against Relators based on (a) the Full Faith and Credit Clause, and (b) the State of Kansas's inherent sovereign immunity.

a. The claims against Relators must be dismissed under the Full Faith and Credit Clause.

The Full Faith and Credit Clause of the United States Constitution requires that "Full Faith and Credit . . . be given in each State to the public Acts, Records, and judicial Proceedings of every other State." U.S. Const., Art. IV, § 1. This Clause's application in this case implicates two key questions: (1) Does Kansas law bar suits against the State, except in Kansas state court; and (2) if so, does the Full Faith and Credit Clause require Missouri to apply Kansas law?

As a sovereign entity, Kansas's "default" position was that it could not be sued in either its owns courts or in federal court without its consent. *See Purvis*, 73 P.3d at 747-

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48. In 1979, the Kansas Legislature altered this status quo by enacting the Kansas Tort Claims Act ("KTCA"), K.S.A. 75-6101 through 75-6115. The KTCA is an open-ended waiver of Kansas's sovereign immunity for damages caused by negligent or wrongful acts or omissions of its employees (K.S.A. 75-6103(a)), with two notable caveats: (1) Kansas can only be liable to the same extent as a private person under Kansas state law (K.S.A. 75-6103(a)); and (2) even where a private person could be liable, the State still cannot be held liable if any of the 24 exceptions listed in K.S.A. 75-6104(a)-(x) apply.

In addition to whether a State may be sued, sovereign immunity encompasses *where* a State may be sued. *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 99 (1984). The Kansas Legislature, through the KTCA, made clear that Kansas has only waived its sovereign immunity to the same extent "a private person[] would be liable **under the laws of this state**." K.S.A. 75-6103(a) (emphasis added). Under the KTCA, actions against the State are governed by the Kansas code of civil procedure (K.S.A. 75-6103(b)) which applies to "civil actions and proceedings in the district courts of Kansas . . . ." K.S.A. 60-201 (b). Finally, the KTCA explicitly provides that "[n]othing in this section or in the Kansas tort claims act shall be construed as a waiver by the state of Kansas of immunity from suit under the 11th amendment to the constitution of the United States." K.S.A. 75-6116(g).

As the KTCA's plain language makes clear, Kansas has only consented to be sued in Kansas state court. *See*, *e.g.*, *State ex rel. Pub. Hous. Agency of City of Bethany v. Krohn*, 98 S.W.3d 911, 914 (Mo. Ct. App. 2003) (explaining that statutory provisions waiving sovereign immunity are narrowly construed in favor of the state preserving its

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rights). Any other interpretation defies common sense, as the Kansas Legislature had no possible justification to maintain the State's sovereign immunity in federal court, but to consent to suit in Missouri state court. *See*, *e.g.*, *Hall*, 440 U.S. at 431 (J. Blackmun, dissenting) ("If the Framers were indeed concerned lest the States be haled before the federal courts—as the courts of a '"higher" sovereign,' *ante*, at 1187—how much more must they have reprehended the notion of a State's being haled before the courts of a sister State[?]"). Thus, unsurprisingly, courts have repeatedly interpreted the KTCA operates only as a consent to be sued in Kansas state court. *See*, *e.g.*, *Ndefru v. Kansas State Univ.*, 814 F. Supp. 54, 56 (D. Kan. 1993) ("The [KTCA's] waiver of sovereign immunity extends only to suits in state court.").

Turning to the Full Faith and Credit Clause, there can be no question that the KTCA is a "public act" within the meaning of the Clause. *See Franchise Tax Bd. of Cal. v. Hyatt*, 136 S.Ct. 1277, 1281 (2016) ("*Hyatt* II") ("A statute is a 'public Act' within the meaning of the Full Faith and Credit Clause."). Of course, the Full Faith and Credit Clause does not require Missouri to substitute Kansas statutes for its own in all circumstances. *See id.* at 1283. But, Supreme Court precedent makes equally clear that Missouri may fail to give the KTCA full faith and credit only if granting Kansas immunity would conflict with Missouri public policy. *See Hall*, 440 U.S. at 422; *Hyatt* II, 136 S.Ct. at 1281-82.

In *Nevada v. Hall*, a California resident sued the State of Nevada in California state court for personal injuries. 440 U.S. at 411. Nevada argued the Full Faith and Credit Clause required California to apply Nevada's sovereign immunity statute, which

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only permitted suit in Nevada state court and capped damages at $25,000. *Id.* at 412, n. 2.[5] The Supreme Court disagreed, holding that the Full Faith and Credit Clause did not require California to apply Nevada's sovereign immunity statute because it conflicted with California public policy:

> California has unequivocally waived its own immunity from liability for the torts committed by its own agents and authorized full recovery even against the sovereign . . . [T]o require California either to surrender jurisdiction or to limit respondents' recovery to the $25,000 maximum of the Nevada statute would be obnoxious to [California's] statutorily based policies of jurisdiction over nonresident motorists and full recovery. The Full Faith and Credit Clause does not require this result.

Id. at 424.

In *Franchise Tax Bd. of California v. Hyatt*, 538 U.S. 488 (2003) ("*Hyatt* I"), a Nevada resident sued a California state agency in Nevada state court. The Supreme Court granted certiorari to decide whether the Full Faith and Credit Clause required Nevada to give full faith and credit to a California statute granting California immunity from suit for intentional torts. *Id.* at 490. Like in *Hall*, the Court held that Nevada was not required to apply the California statute because an identical claim could be made against the State of Nevada. *Id.* at 497-499. The claim was then tried to a jury, which awarded the plaintiff nearly $500 million. *Hyatt* II, 136 S. Ct. at 1278.

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[5]The Nevada statute at issue, Nev. Rev. Stat. § 41.031.2 read in pertinent part: "An action may be brought under this section, in a court of competent jurisdiction of this state, against the State of Nevada, any agency of the state, or any political subdivision of the state." *Hall*, 440 U.S. at 412, n. 2.

In a second appeal, *Hyatt* II, California argued that Nevada had again violated the Full Faith and Credit Clause, this time by refusing to apply a Nevada statute that capped damages at $50,000. *Id.* at 1280-81. This time, the Supreme Court agreed with California, holding that by ignoring both California law, which would have granted total immunity, and Nevada law, which capped damages, Nevada had created a special, hostile rule of law that applied only to its sister States. *Id.* at 1282-83.

Read together, *Hall* and *Hyatt* I establish that the Full Faith and Credit Clause requires Missouri to apply the KTCA unless doing so is inconsistent with Missouri public policy. *See Hall*, 440 U.S. at 422; *Hyatt* I, 538 U.S. at 489; *see also*, *Montano v. Frezza*, 393 P.3d 700, 705 (N.M. 2017) (holding that under *Hyatt*, "the Full Faith and Credit Clause . . . requires us to recognize the sovereign immunity of other states to the extent that sovereign immunity has been retained by this state under our law."). In both cases, the forum State was permitted to disregard a sister State's laws because the forum State's laws would allow an identical claim against the forum State. Hence, the dispositive question here is: Would Missouri law allow Plaintiffs to pursue their negligence claim against the State of Missouri?

The answer to this question begins with R.S. Mo. § 537.600.1, which waives Missouri's sovereign immunity in two circumstances inapplicable to this case.[6] R.S. Mo § 537.610.1 provides a third sovereign immunity waiver for torts other than those

[6]R.S. Mo. § 537.600.1 waives the State of Missouri's sovereign immunity for claims related to (1) the negligent operation of a motor vehicle by public employees; and (2) the dangerous condition of a public entity's property.

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covered by § 537.600.1, but only to the extent of and for the specific purposes covered by purchased insurance. *See Brennan By & Through Brennan v. Curators of the Univ. of Missouri*, 942 S.W.2d 432, 434 (Mo. Ct. App. 1997). Thus, Missouri law would allow a tort claim against the State of Missouri <u>if and only if</u> the State had applicable insurance coverage. The fundamental problem for Plaintiffs is that the State of Kansas has no applicable policy of insurance. Hence, under the circumstances presented here, Missouri's sovereign immunity would not be waived.

Because, unlike the laws of the states in *Hall* or *Hyatt* I, Missouri would be immune from an identical suit , both *Hall* and *Hyatt* I firmly establish that the KTCA does not violate Missouri public policy, and therefore must be applied under the Full Faith and Credit Clause. *See*, *e.g.*, *Montano*, 393 P.3d at 705 (N.M. 2017) ("[T]he Full Faith and Credit Clause . . . requires us to recognize the sovereign immunity of other states to the extent that sovereign immunity has been retained by this state under our law."). Relatedly, failing to apply either Kansas or Missouri's immunity laws results in the unconstitutional circumstance identified in *Hyatt* II: a "special and discriminatory rule[]" of liability that reflects a "policy of hostility to the public Acts of a sister State," in clear violation of the Full Faith and Credit Clause. *See* 136 S.Ct. at 1282-83. For this reason, Relators are entitled to an order prohibiting Respondent from taking any further action other than to grant Relator's motion to dismiss under the Full Faith and Credit Clause.

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b. The claims against Relators must be dismissed because of the State of Kansas's inherent sovereign immunity.

Nevada v. Hall implicates two separate and distinct holdings. First, as discussed above, the Court held that under the circumstances presented, the Full Faith and Credit Clause did not require California to apply Nevada's sovereign immunity statute. Separately, the Court also examined whether *any other* Constitutional provision prohibited California from exercising jurisdiction over Nevada without Nevada's consent.

Before *Hall*, "it was generally assumed that the United States Constitution would not allow one state to be sued in the Courts of another state. The assumption was based on the theory that this immunity was an attribute of state sovereignty that was preserved in the Constitution." *Struebin v. State of Iowa*, 322 N.W.2d 84, 85 (Ia. 1982); *see also*, *Kent Cnty. v. Shepherd*, 713 A.2d 290, 297 (Del. 1998) ("For almost two hundred years, it had been assumed that the United States Constitution implicitly prohibited one state from being sued in the courts of another state—just as the Eleventh Amendment explicitly prohibited states from being sued in federal courts."); *Ehrlich-Bober & Co. v. Univ. of Houston*, 404 N.E.2d 726, 729 (N.Y. 1980) (noting that it had been "long thought that a State could not be sued by the citizens of a sister State except in its own courts.").

In *Hall*, Nevada argued it was implicitly understood at the framing of the Constitution that States inherently are not amenable to suit, including in the courts of sister States, without consent. 440 U.S. at 414. In considering the scope of state sovereign immunity, the Supreme Court typically relies on the Framers' understanding of

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sovereign immunity at the time the Constitution was ratified. *See*, *e.g.*, *Alden v. Maine*, 527 U.S. 706, 727-28 (1999). In *Hall*, the Court acknowledged that during the Constitutional Convention, there was "widespread acceptance of the view that a State is never amenable to suit without its consent." 440 U.S. at 420. However, the primary debate during the convention was on whether federal courts, specifically, would have jurisdiction over the States; sovereign immunity in the courts of other states was not discussed. *Id.* at 419.

The Supreme Court initially resolved the federal jurisdiction debate in *Chisholm v. Georgia*, 2 U.S. 420 (1793), holding that Article III abrogated state sovereign immunity and granted federal courts jurisdiction over the States. This promptly led to the ratification of the Eleventh Amendment, which reversed *Chisholm* by providing that "[t]he Judicial power of the United States shall not be construed to extend to suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. Const. amd. XI.

The Eleventh Amendment is "conclusive evidence 'that the decision in *Chisholm* was contrary to the well-understood meaning of the Constitution . . . ." *Alden*, 527 U.S. at 727 (quoting *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 69 (1996)). It "stand[s] not so much for what it says, but for the presupposition of our constitutional structure which it confirms: that the States entered the federal system with their sovereignty intact . . . ." *Blatchford v. Native Vill. of Noatak & Circle Vill.*, 501 U.S. 775, 779 (1991). Yet, despite acknowledging "widespread acceptance" of the view that the States entered into the Constitution with their sovereignty intact, the majority in *Hall*

held that the Constitution did not prohibit California from exercising jurisdiction over Nevada, because (a) nothing within the text of the Constitution or the Eleventh Amendment prohibits the States from exercising jurisdiction over one another; and (b) interstate sovereign immunity was not discussed at the Constitutional Convention. 440 U.S. at 420-21.

Both Justice Blackmun and Justice Rehnquist filed dissenting opinions, joined by Chief Justice Burger. Justice Blackmun suggested that while the Constitution contains no explicit text establishing interstate sovereign immunity, such a guarantee is implied as an essential component of federalism. *Id.* at 430 (J. Blackmun, dissenting). He disputed the majority's reliance on the fact that interstate sovereign immunity was not debated at the Constitutional Convention, arguing that sovereign immunity among the States was "too obvious to deserve mention." *Id.* at 431. Finally, Justice Blackmun argued the majority decision was inconsistent with the Eleventh Amendment. "If the Framers were indeed concerned lest the States be haled before the federal courts … how much more must they have reprehended the notion of a State's being haled before the courts of a sister State[?]" *Id.*

Justice Rehnquist likewise found the majority's opinion inconsistent with passage of the Eleventh Amendment. "[T]he States that ratified the Eleventh Amendment thought that they were putting an end to the possibility of individual States as unconsenting defendants in foreign jurisdictions[.]" *Id.* at 437 (J. Rehnquist, dissenting). Otherwise, by passing the Eleventh Amendment, the States "perversely foreclosed the neutral federal forums only to be left to defend suits in the courts of other States." *Id.*

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Justice Rehnquist concluded the Eleventh Amendment was "built on the postulate that States are not, absent their consent, amenable to suit in the courts of sister States," *id.*, and that the majority's holding "destroys the logic of the Framers' careful allocation of responsibility among the state and federal judiciaries, and makes nonsense of the effort embodied in the Eleventh Amendment to preserve the doctrine of sovereign immunity." *Id.* at 441.

Since *Hall*, the Supreme Court has issued several opinions that seemingly call into question the strict textual analysis of sovereign immunity relied on in *Hall*. *See Blatchford*, 501 U.S. at 779; *Alden*, 527 U.S. at 727 (explaining that state sovereign immunity need not be decided by "' [a]dhereing to the mere letter" of the Eleventh Amendment") (citation omitted); *Tennessee Student Assistance Corp. v. Hood*, 541 U.S. 440, 446 (2004) ("For over a century . . . we have recognized that the States' sovereign immunity is not limited to the literal terms of the Eleventh Amendment.").

In *Hyatt* II, decided in 2016, California argued *Hall* should be overturned. At the time, the Supreme Court was equally divided 4-4 on the issue. *See Hyatt*, 136 S.Ct. at 1281.[7] However, after a decision by the Nevada Supreme Court on remand, 45 States, including both Missouri and Kansas, joined in a joint *amici curiae* brief in support of a petition for certiorari seeking for *Hall* to be overruled. On June 28, 2018, the Supreme Court granted certiorari. Stated simply, *Hall* was incorrect when decided and is ripe for reversal.

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[7] *Hyatt* II was decided after Justice Scalia's death but before Justice Gorsuch was appointed, while the Court was comprised of only eight total justices.

Regardless, *Hall* is distinguishable from the underlying case. The majority in *Hall* made clear that its holding was case-specific, noting that allowing California to exercise jurisdiction over Nevada did not pose a threat to the constitutional system of cooperative federalism because "[s]uits involving traffic accidents outside of Nevada could hardly interfere with Nevada's capacity to fulfill its own sovereign responsibilities." 440 U.S. at 424, n. 24. The Court made clear, however, that it had "no occasion . . . to consider whether different state policies . . . might require a different analysis or a different result." *Id.*

This case presents such an occasion. The prospect of one State determining whether a sister State has properly exercised its police powers is, presumably, the very reason the majority in *Hall* declined to hold that the States can validly exercise jurisdiction over one another in all circumstances. Unlike an auto accident, permitting Missouri to exercise jurisdiction over Kansas in a claim asserting that Kansas has negligently administered its state child welfare system absolutely poses a substantial threat to the constitutional system of cooperative federalism. This Court should find that in addition to the Full Faith and Credit Clause, the Constitutional notion of cooperative federalism prohibits Missouri from exercising jurisdiction.

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POINT RELIED ON

III. Relators are entitled to an order prohibiting Respondent from taking any further action other than to grant Relators' Motion to Dismiss because Respondent lacks personal jurisdiction over Relators.

Andra v. Left Gate Prop. Holding, Inc., 453 S.W.3d 216 (Mo. 2015)

International Shoe Co. v. Washington, 326 U.S. 310 (1945)

M & D Enterprises, Inc. v. Fournie, 600 S.W.2d 64 (Mo. Ct. App. 1980)

R.S.Mo. § 506.500

U.S. Const., Amend. XIV, § 1

ARGUMENT

When a defendant raises the lack of personal jurisdiction, the plaintiff bears the burden to establish a prima facie case of jurisdiction. *State ex rel. William Ranni Assocs., Inc. v. Hartenbach*, 742 S.W.2d 134, 137 (Mo. 1987). To meet this burden, Plaintiffs must plead facts sufficient to show (1) the suit arises out of an activity covered by R.S.Mo. § 506.500; and (2) KsDCF had sufficient minimum contacts with Missouri. *Id.*

In response to a motion to dismiss for lack of personal jurisdiction, the circuit court assumes the allegations of the petition are true and assesses whether they are sufficient to subject the defendant to jurisdiction. *Angoff v. Mario A. Allen*, 39 S.W.3d 483, 487 (Mo. 2001). Whether sufficient facts have been pled is a question of law, over which appellate courts have *de novo* review. *Bryant v. Smith Interior Design Grp., Inc.*, 310 S.W.3d 227, 231 (Mo. 2010). Where a trial court lacks personal jurisdiction, prohibition is an appropriate remedy. *State ex rel. Specialized Transp., Inc. v. Dowd*, 265 S.W.3d 858, 861 (Mo. Ct. App. 2008). Here, Relators are entitled to a permanent writ of

prohibition because even assuming the allegations of Plaintiffs' Amended Petition are true, Plaintiffs have not asserted that either (a) their claim against Relators arises out of an activity covered by Missouri's long-arm statute; or (b) that Relators had minimum contacts with Missouri sufficient to satisfy the Due Process Clause.

a. Plaintiffs cannot make a prima facie showing of the validity of their negligence claim.

A plaintiff seeking to invoke long-arm jurisdiction must make a prima facie showing of the validity of his or her claim. *Stavrides v. Zerjav*, 848 S.W.2d 523, 527 (Mo. Ct. App. 1993); *Lindley v. Midwest Pulmonary Consultants, P.C.*, 55 S.W.3d 906, 910 (Mo Ct. App. 2001). The plaintiff need not prove all the elements that form the basis of a defendant's liability; only that an act contemplated by the long-arm statute took place. *Lindley*, 55 S.W.3d at 910.

Plaintiffs' sole claim against Relators is for negligence. Consequently, under Missouri's long-arm statute, Plaintiffs were required to make a prima facie showing that Relators committed a "tortious act," *i.e.*, that a breach of legal duty occurred, which proximately caused injury to A.J. For the reasons set forth in Point IV, *infra*, Plaintiffs did not meet their burden, and dismissal for lack of personal jurisdiction is appropriate. *See Hartenbach*, 742 S.W.2d 134, 141 (Mo. 1987) ("Because [defendant] owed no duty to plaintiffs, plaintiffs fail to make a prima facie tort case. Thus, jurisdiction cannot be founded on commission of a tortious act."); *Stavrides*, 848 S.W.2d at 528 (affirming dismissal for lack of personal jurisdiction where plaintiff failed to make a prima facie

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showing of the validity of his fraud claim); *Davis v. Baylor Univ.*, 976 S.W.2d 5, 14 (Mo. Ct. App. 1998) (same).

b. **<u>Relators' alleged conduct does not satisfy Missouri's long-arm statute.</u>**

Even setting the deficiencies inherent in Plaintiffs' claim aside, dismissal is warranted because Relators did not commit any act capable of supporting long-arm jurisdiction. R.S.Mo. § 506.500 identifies six categories of acts for which Missouri courts may exercise jurisdiction in accordance with the Due Process Clause. A plaintiff's ability to satisfy R.S.Mo. § 506.500 should be considered before addressing due process:

> "Because the long-arm statute enumerates several different circumstances under which personal jurisdiction would attach (such as conducting business or committing a tort), we find that the legislature most likely did not intend 'to confer jurisdiction in all cases that the constitution would permit, but that the specific *categories* of cases over which the legislature did extend jurisdiction should be construed to include all the cases those categories rationally could be understood to include to the extent that due process would permit." 1 Robert C. Casad & William B. Richman, Jurisdiction in Civil Actions § 4–1[1][b] (3d ed.2004) (emphasis added). A contrary interpretation would effectively ignore the language of the long-arm statute."

Noble v. Shawnee Gun Shop, Inc., 316 S.W.3d 364, 370 (Mo. Ct. App. 2010).

Because Plaintiffs' claim is for negligence, the only relevant category in R.S.Mo. § 506.500 is the third—"[t]he commission of a tortious act within this state." R.S.Mo. § 506.500.3; *see Chromalloy American Corp. v. Elyria Foundry Co.*, 955 S.W.2d 1, 4 (Mo. 1997) (explaining that "the ***<u>suit</u>*** must arise out of the activities enumerated in the long arm statute[.]") (emphasis added). This subsection covers both (a) torts committed in Missouri, and (b) extraterritorial acts that produce consequences in Missouri. *Bryant*, 310 S.W.3d at 232. Plaintiffs concede that Relators never physically entered Missouri.

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(*See* Pls.' Answer and Motion to Dismiss Writ, p. 15). Regardless, Plaintiffs take the implausible position that R.S.Mo. § 506.500 is satisfied because it was foreseeable the Joneses would move to Missouri and then subject A.J. to criminal abuse.

As a preliminary matter, Plaintiffs' citation to *Noble* for the position that "[t]he standard is foreseeability" under R.S.Mo. § 506.500 is erroneous. In *Noble*, the court held that in negligence actions where an out-of-state defendant places a product in the stream of commerce and regularly conducts business with Missouri residents, the test for determining whether the act produces consequences in Missouri is foreseeability. 316 S.W.3d at 371-373. But, in cases like the instant matter, "[w]here a non-resident defendant is engaged in providing a service, as opposed to providing a product through the stream of commerce, the contact requirements for long-arm jurisdiction are more stringent." *Hollinger v. Sifers*, 122 S.W.3d 112, 117 (Mo. Ct. App. 2003).

Regardless, Plaintiffs have no plausible explanation for their conclusion that it was foreseeable A.J. would suffer intentional criminal harm in Missouri because of Relators' allegedly negligent conduct in Kansas. In *Noble*, the Court found it foreseeable that a Kansas gun shop's negligent sale would produce consequences in Missouri because the shop advertised to Missouri residents, sold products to Missouri citizens, and encouraged Missouri residents to patronize its shooting range. 316 S.W.3d at 372. Here, on the other hand, KsDCF has no authority to provide services in Missouri, and certainly provided no such services to A.J. in Missouri. Put frankly, it is nonsensical to suggest that R.S.Mo. § 506.500 can be satisfied solely by virtue of the Joneses' unilateral decision to subsequently move to Missouri and then subject A.J. to criminal abuse. *Hollinger*, 122

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S.W.3d at 117 ("The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum state.") (quotations and citation omitted). If Plaintiffs' strained interpretation was actually the law, an Alaska resident could have surgery in Alaska, performed by an Alaskan doctor, and then move to Missouri and invoke the State's long-arm jurisdiction in a medical malpractice claim, so long as he or she felt consequences from the surgery in Missouri. Such an outcome obviously falls beyond the intent of Missouri's long-arm statute and the Due Process Clause's traditional notions of fair play and substantial justice.

Plaintiffs' Amended Petition begins with a series of allegations related to KsDCF's conduct from August 2011, while A.J. was in Kansas, until late 2012 or early 2013, when his family moved to Missouri. Amended Petition, **Exhibit B**, ¶¶ 43-67. Given that A.J. resided exclusively in Kansas during this period, and that Plaintiffs do not allege that KsDCF committed any act (tortious or otherwise) in Missouri, Plaintiffs' allegations regarding this time period do not satisfy R.S.Mo. § 506.500.

Following the allegations related to A.J.'s time in Missouri (discussed *infra*), the Amended Petition concludes with allegations related to the period from August 2014 through September-October 2015, when A.J. returned to Kansas. (Amended Petition, ¶¶ 143-157). Again, Plaintiffs do not allege that KsDCF committed any act (tortious or otherwise) in Missouri during this period or that A.J. suffered any injury in Missouri during this time. Thus, § 506.500 remains unsatisfied.

Finally, during the period from late 2012 or early 2013 through August 2014, Plaintiffs allege that A.J. and his family resided in Missouri. (Amended Petition, ¶¶ 68-

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142). Only de minimus contact (phone calls and sending documents) between KsDCF and MoDSS is alleged to have occurred during this period. The first instance of alleged contact occurred on March 5, 2013, when MoDSS requested a history on A.J.'s stepmother, which KsDCF provided on April 7, 2013. Amended Petition, ¶¶ 72, 75. Notably, Plaintiffs do not allege this conduct either (a) constituted actionable negligence, or (b) produced injurious consequences to A.J.

Plaintiffs next allege that on August 9, 2013, MoDSS reported to KsDCF that A.J.'s father and stepmother now resided in Kansas. (Amended Petition, ¶ 95). However, KsDCF employees contacted the parents, and were advised the family continued to reside in Missouri. (Amended Petition, ¶ 96). The Amended Petition then alleges that on August 21, 2013, MoDSS received a hotline call about A.J., and that KsDCF was also notified. (Amended Petition, ¶ 97). Ultimately, however, MoDSS investigated the call at the family's home in Missouri, where A.J.'s stepmother denied ever reporting the family was moving to Kansas. (Amended Petition, ¶¶ 98-100). Thus, again, KsDCF's alleged conduct in August 2013—(1) receiving a call from MoDSS; (2) contacting A.J.'s father and step-mother to determine their state of residence; and (3) receiving notice of a hotline call placed to MoDSS—neither constitutes the commission of a tortious act in Missouri, nor is alleged to have produced injurious consequences to A.J. in Missouri.

Plaintiffs next allege that in February or March 2014, MoDSS contacted KsDCF and relayed that MoDSS received a hotline call about A.J., but that A.J.'s father again reported the family now resided in Kansas. (Amended Petition, ¶¶ 107-108). As

Plaintiffs acknowledge, MoDSS conducted a subsequent in-home visit on March 3, 2014 and again found A.J. residing at his family's home in Missouri. (Amended Petition, ¶ 109). Thus, these allegations do not establish that KsDCF committed any act in Missouri, or that KsDCF's sole extraterritorial communication (receiving a call from MoDSS) produced injurious consequences in Missouri.

Finally, Plaintiffs allege that on August 28, 2014, MoDSS received a hotline call about A.J. and that "MoDSS records indicate other agencies may have been notified" about the call. (Amended Petition, ¶¶ 136-137). Even assuming this allegation plausibly alleges that KsDCF was notified, Plaintiffs do not allege that KsDCF took any action in Missouri, or that KsDCF's conduct produced injurious consequences in Missouri.

KsDCF's position is straightforward: Even assuming the allegations in the Amended Petition are true, Plaintiffs do not allege that any act or omission by KsDCF occurred in Missouri or produced injurious consequences in Missouri. In such circumstances, § 506.500 is not satisfied. *See Krug v. Abel*, 716 S.W.2d 17, 20-21 (Mo. Ct. App. 1986) (finding that § 506.500 was not satisfied where out-of-state defendant made a phone call to Missouri that produced injurious consequences out-of-state); *Garrity v. A.I. Processors*, 850 S.W.2d 413, 418 (Mo. Ct. App. 1993) (holding that where a contract was not made in Missouri and the wrong that damaged the plaintiff did not occur in Missouri, the long-arm "tort" provision was not met); *Hollinger v. Sifers*, 122 S.W.3d 112, 117 (Mo. Ct. App. 2003) (holding that plaintiffs failed to make a prima facie showing that a tortious act took place in Missouri based upon a surgery performed in Kansas). Plaintiffs have not demonstrated that their claims arose out of an

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activity covered by R.S.Mo. § 506.500, and this Court should therefore enter a permanent writ of prohibition directing the Respondent to dismiss Plaintiffs' claims against KsDCF.

c. KsDCF does not possess sufficient minimum contacts with Missouri to assert personal jurisdiction within this state.

The Fourteenth Amendment's Due Process Clause prohibits Missouri courts from exercising personal jurisdiction over a defendant where doing so offends "traditional notions of fair play and substantial justice." *Andra v. Left Gate Property Holding, Inc.*, 453 S.W.3d 216, 226 (Mo. 2015) (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). Where, as in this case, the traditional territorial bases of personal jurisdiction—presence, domicile, or consent—are clearly lacking, a court may only assert personal jurisdiction if minimum contacts between Missouri and the defendant are established. *Andra*, 453 S.W.3d at 226-27.

When evaluating minimum contacts, the focus is on whether there is "some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Hanson v. Denckla*, 357 U.S. 235, 253 (1958). The inquiry "cannot be simply mechanical or quantitative." *Int'l Shoe*, 326 U.S. at 319. Jurisdiction is proper "where the contacts proximately result from actions by the defendant himself that create a 'substantial connection' with the forum State." *Burger King. Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985) (internal citations omitted). A defendant's contact with the forum state must be such that the defendant "should reasonably anticipate being haled into court there." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). Further, the contacts must

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be with "the forum State itself," not only "with the persons who reside there." *Andra*, 453 S.W.3d at 226 (quoting *Walden v. Fiore*, 134 S.Ct. 1115, 1122 (2014)). Conversely, random, fortuitous, or attenuated contacts are insufficient to support jurisdiction. *Andra*, 453 S.W.3d at 226. "[T]he contact should be something more than the nonresident's response to an unsolicited request for a service or information, wherein the nonresident receives only a de minimus benefit." *Breen v. Jarvis*, 761 S.W.2d 638, 640 (Mo. Ct. App. 1988); *see also*, *Andra*, 453 SW.3d at 226 ("The contacts must 'proximately result from actions by the defendant himself that create a 'substantial connection' with the forum State.").

Plaintiffs attempt to characterize KsDCF's relationship with Missouri as "significant" and "spann[ing] several years." However, Plaintiffs' allegations are contained in the Amended Petition and cannot be the subject of any legitimate dispute. The following is the sum total of KsDCF's alleged contact with Missouri:

- KsDCF sent one 7-page fax to MoDSS, at MoDSS's request (First Amended Petition, ¶¶ 72, 75);

- MoDSS initiated two calls to KsDCF to notify KsDCF that MoDSS (erroneously) believed A.J. had moved back to Kansas (First Amended Petition, ¶¶ 95, 107-108);

- KsDCF contacted Michael and/or Heather Jones in Missouri once, after being erroneously informed they had moved back to Kansas, only to be corrected (First Amended Petition, ¶ 96);

- KsDCF was notified of two hotline calls placed to MoDSS. (First Amended Petition, ¶¶ 97, 136-37).

Unsurprisingly, Plaintiffs do not identify a single Missouri case in which an out-of-state defendant's phone calls and faxes, which do not serve or support an underlying

negligence claim, have been held to constitute minimum contacts sufficient to comport with due process. Myriad cases make clear such contacts are insufficient. *See M & D Enterprises, Inc. v. Fournie*, 600 S.W.2d 64, 68 (Mo. Ct. App. 1980) ("Placing a telephone order from one state and agreeing to send payment to a sister state hardly amounts to an act by which a nonresident defendant 'purposefully avails itself of the privilege of conducting activities within the forum State.'"); *State ex rel. Barnes v. Gerhard*, 834 S.W.2d 902, 904 (Mo. Ct. App. 1992) (holding that an Illinois attorney who traveled to Missouri on behalf of an Illinois client, and made phone calls to Missouri lacked sufficient minimum contacts); *Mead v. Conn*, 845 S.W.2d 109, 112-13 (Mo. Ct. App. 1993) (holding that a Kansas doctor's transmission of more than fifty EKGS to Missouri for review over a period of years established "at best, a tenuous relation with Missouri," insufficient to satisfy due process); *Farris v. Boyke*, 936 S.W.2d 197, 201 (Mo. Ct. App. 1996) (holding that despite physical presence in Missouri on four occasions and dozens of communications through phone, fax, and letter to Missouri residents, defendants lacked "those affiliating connections with the forum state such that they should reasonably anticipate being hauled into court in Missouri."); *Johnson Heater Corp. v. Deppe*, 86 S.W.3d 114, 120 (Mo. Ct. App. 2002) (holding that a Wisconsin resident who made phone calls, faxes, and mailings to Missouri in relation to HVAC system purchase had insufficient contacts with Missouri to satisfy due process).

The law is clear: A nonresident defendant's contact with Missouri "should be something more than [a] response to an unsolicited request for a service or information, wherein the nonresident receives only a de minimus benefit." *Breen*, 761 S.W.2d at 640.

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Even assuming Plaintiffs' allegations are true, KsDCF's alleged contact with Missouri was limited to responding to MoDSS's request for information related to A.J.'s stepmother and series of phone calls initiated by MoDSS to report that the family was believed to be in Kansas. As the above-cited cases establish, this contact, initiated by MoDSS, falls grossly short of putting KsDCF on notice that it should reasonably anticipate being haled to Missouri state court. Consequently, exercising personal jurisdiction over KsDCF would unequivocally offend traditional notions of fair play and substantial justice, in violation of the Fourteen Amendment, and this Court should enter its writ of prohibition directing Respondent to dismiss the claims against Relators.

POINT RELIED ON

IV. Relators are entitled to an order prohibiting Respondent from taking any further action other than to grant Relators' Motion to Dismiss because Relators owed Plaintiffs no legal duty as a matter of law.

Natalini v. Little, 185 S.W.3d 239 (Mo. Ct. App. 2006)

P.W. v. Kan. Dep't of Soc. & Rehab. Servs., 877 P.2d 430 (Kan. 1994)

Roe ex rel. v. Kan. Dept. of SRS, 102 P.3d 396 (Kan. 2004)

Jamierson v. Dale, 670 SW.2d 195 (Mo. Ct. App. 1984)

ARGUMENT

Plaintiffs' claim must also be dismissed because Plaintiffs fail to state a negligence claim against KsDCF upon which relief could be granted. In any negligence action, the plaintiff must establish the existence of a duty by the defendant to protect the plaintiff from injury. *Strickland v. Taco Bell Corp.*, 849 S.W.2d 127, 131 (Mo. Ct. App. 1993);

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Fountain v. Se-Kan Asphalt Servs., Inc., 837 P.2d 835, 838 (Kan. Ct. App. 1992) ("If no duty exists, there can be no negligence."). Whether a duty exists is a question of law, subject to *de novo* review. *Edwards v. Gerstein*, 363 S.W.3d 155, 162 (Mo. Ct. App. 2012); *Fountain*, 837 P.2d at 838. "Prohibition is particularly appropriate when the trial court, in a case where the facts are uncontested, wrongly decides a matter of law thereby depriving a party of an absolute defense." *State ex rel. Div. of Motor Carrier & R.R. Safety v. Russell*, 91 S.W.3d 612, 616 (Mo. 2002). "Forcing upon a defendant the expense and burdens of trial when the claim is *clearly* barred is unjust and should be prevented." *State ex rel. O'Blennis v. Adolf*, 691 S.W.2d 498, 500 (Mo. Ct. App. 1985).

Evaluating Plaintiffs' negligence claim requires a two-part analysis. First, the Court must determine which State's law applies to the claim. Second, the Court must assess whether Plaintiffs have stated a viable claim. Both steps are addressed below.

a. Kansas law applies to Plaintiffs' claim against KsDCF.

In Missouri, the determination of the applicable substantive law is guided by the *Restatement (Second) of Conflicts of Laws. See Natalini v. Little*, 185 S.W.3d 239, 247 (Mo. Ct. App. 2006); *Livingston v. Baxter Health Care Corp.*, 313 S.W.3d 717, 721 (Mo. Ct. App. 2010). The question of which state's law applies is a question of law. *Parrott v. Severs Trucking, LLC*, 422 S.W.3d 478, 482 (Mo. Ct. App. 2014).

In wrongful death claims, Missouri courts typically rely on three *Restatement* sections. First, *Restatement* § 175, which specifically applies to wrongful death actions, provides:

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> In an action for wrongful death, the local law of the state where the injury occurred determines the rights and liabilities of the parties unless, with respect to the particular issue, some other state has a more significant relationship under the principles stated in § 6 to the occurrence and the parties, in which event the local law of the other state will be applied.

Restatement (Second) of Conflicts of Laws 2d, § 175 (1979); *Natalini*, 185 S.W.3d at 248, n. 4.

Comment "b" to § 175 clarifies "that the 'place where the injury occurs' is considered to be 'the place where the force set in motion by the actor first takes effect on the person.'" *Natalini*, 185 S.W.3d at 248 (quoting *Restatement* § 175, cmt. "b."). Here, Plaintiffs allege that in August 2011, while in Kansas, KsDCF removed A.J. from his mother's custody and placed him in his father's custody without providing him with necessary transition services. (Amended Petition, ¶¶ 43-48). From there, Plaintiffs allege that KsDCF received two hotline calls about A.J. and/or his siblings in December 2011 (Amended Petition, ¶¶ 50, 51), prompting KsDCF to require A.J.'s father to sign a document promising to (a) keep the children safe from physical abuse; and (b) not allow Heather Jones to have contact with any of the children, but allowed A.J. to remain in his father's custody. (Amended Petition, ¶¶ 57-59). These allegations unquestionably serve as the bedrock for Plaintiffs' claims against KsDCF. Because these actions took place in Kansas, § 175 supports the application of Kansas law.

In addition to § 175, Missouri courts frequently rely on *Restatement* § 145. *See Natalini*, 185 S.W.3d at 248.[8] Section 145 implicates four factors: (1) the place the injury

[8]As noted in *Natalini*, although § 175 is directly applicable to wrongful death actions, the Missouri Supreme Court has relied on § 145, even in wrongful death claims. *See* 185

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occurred; (2) the place where the conduct causing the injury occurred; (3) the domicile, residence, nationality, place of incorporation and place of business of the parties; and (4) the place where the relationship, if any, between the parties is centered. *See id.* at 250-51.

Beginning with the most obvious factor—location of the parties—KsDCF is a Kansas agency. Likewise, Plaintiffs allege that A.J. was a Kansas resident at the time he died, and his remains were found in Kansas. Amended Petition, ¶¶ 143, 156. Turning next to the State where the parties' relationship was "centered," KsDCF lacks authority to provide child welfare services outside of Kansas, and Plaintiffs have not alleged that KsDCF provided such services to A.J. in Missouri. Consequently, this factor weighs in favor of applying Kansas law. Because Plaintiffs do not allege that any KsDCF employee ever entered Missouri, the second factor— the place where the conduct causing the injury occurred—also necessarily favors Kansas law. Turning finally to the place where the alleged injury occurred, as discussed in Point III, *supra*, Plaintiffs allege that all tortious conduct by KsDCF occurred in Kansas. Read together, §§ 145 and 175 "impress the general rule, *subject only to rare exceptions*, the local law of the state where conduct and injury occur will apply to determine 'whether the actor satisfied minimum standards of acceptable conduct and whether the interest affected by the actor's conduct was entitled to legal protection.'" *Nelson v. Hall*, 684 S.W.2d 350, 356 (Mo. Ct. App.

S.W.3d at 248 (citing *Thompson by Thompson v. Crawford*, 833 S.W.2d 868, 872 (Mo. banc. 1992).

1984) (quoting § 145, cmt. "d."). Under this framework, both §§ 145 and 175 support the application of Kansas law.

Finally, in addition to §§ 145 and 175, Missouri courts sometimes consider *Restatement* § 6, under which the following seven factors are analyzed:

a. The needs of the interstate and international systems;

b. The relevant policies of the forum;

c. The relevant policies of other interested states and the relative interests of those states in the determination of the particular issue;

d. The protection of justified expectations;

e. The basic policies underlying the particular field of law;

f. Certainty, predictability, and uniformity of result; and

g. Ease in the determination and application of the law to be applied.

Restatement (Second) of Conflicts of Laws 2d, § 6(2) (1979); *see also*, *Natalini*, 185 S.W.3d at 251, n. 8. Factors (a), (d), and (f) generally are not applied in personal injury cases, and therefore are not addressed herein. *See Dorman v. Emerson Elec. Co.*, 23 F.3d 1354, 1359 (8th Cir. 1994).

Turning to factors (b) and (c)—the relevant policies of Missouri and Kansas—Plaintiffs are expected to argue that Missouri has a policy interest in compensating tort victims injured in its state. This precise argument was rejected in *Natalini* because both Missouri and Kansas have the same interest, as evidenced by the fact that both states have created a statutory cause of action for wrongful death. *See* 185 S.W.3d at 252, n. 12 (citing *Parker v. Mid-Century Ins. Co.*, 962 P.2d 1114 (Kan. Ct. App. 1998)).

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In weighing the competing policies of Kansas and Missouri in *Natalini*, the Court of Appeals explained:

> "In this case, the Kansas policy interest would carry greater weight than Missouri's corresponding interest because the injury occurred in Kansas and arose from a relationship centered in Kansas; the first injured person, Natalini, was a resident of Kansas; the Plaintiffs are Kansas residents; all of Plaintiffs' damages occurred in Kansas; and part of Defendant's wrongful conduct, during the period of his acts of omission, occurred in Kansas. Plaintiffs have failed to offer any explanation or authority as to why Missouri would have a greater interest and concern than Kansas for the protection of Kansas residents who were injured in Kansas as a result of wrongful conduct that occurred, in part, in Kansas arising out of a relationship that was centered in Kansas. *See Nelson v. Hall*, 684 S.W.2d 350, 360 (Mo.App.1984). This policy and these facts ***significantly favor the application of Kansas law in this case.***"

185 S.W.3d at 252 (emphasis added). As set forth in the § 145 analysis above, factors (b) and (c) significantly favor the application of Kansas law here.

For these same reasons, factor (e)—the basic policies underlying the particular field of law—favors the application of Kansas law because Kansas is the only state in which KsDCF is alleged to have conducted any tortious act. *See Natalini*, 185 S.W.3d at 253. Finally, factor (g)—ease in the determination and application of the law to be applied—supports Kansas law because it is readily ascertainable that to the extent a Kansas child welfare agency engaged in tortious conduct, that conduct occurred in Kansas, the only state in which KsDCF has jurisdiction. *See id.* at 253-54. Consequently, whether viewed under § 175, § 145, or § 6 of the *Restatement (Second) of Conflicts of Law*, the result is the same: Kansas law applies.

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b. Plaintiffs have not stated a viable negligence claim under either Kansas or Missouri law.

For the reasons set forth above, Plaintiffs' claim is controlled by Kansas law. Regardless, KsDCF addresses the claim under both Kansas and Missouri law herein. Under both states' laws, as a general rule, a party has no duty to protect another from a deliberate criminal attack by a third person. *Faheen v. City Parking Corp.*, 734 S.W.2d 270, 272 (Mo. Ct. App. 1987); *Gragg v. Wichita State Univ.*, 934 P.2d 121, 128 (Kan. 1997) ("It is our generally recognized rule in Kansas that in the absence of a 'special relationship' there is not duty on a person to control the conduct of a third person to prevent harm to others.").

Both Kansas and Missouri recognize (at least) two exceptions to this general rule. First, both states have adopted *Restatement (Second) of Torts* § 323, which recognizes a duty created by those who voluntarily or for consideration render services to another, which they should recognize as necessary for the protection of the other's person. *See Strickland v. Taco Bell Corp.*, 849 S.W.2d 127, 132 (Mo. Ct. App. 1993); *South ex rel. South v. McCarter*, 119 P.3d 1, 15 (2005). Second, both states have adopted *Restatement (Second) of Torts* § 324A, which recognizes a similar duty created by those who voluntarily or for consideration render services which they should recognize as necessary for the protection *of a third party's* person or things. *See Brown v. Michigan Millers Mut. Ins. Co., Inc.*, 665 S.W.2d 630, 633 (Mo. Ct. App. 1983); *South*, 119 P.3d at 17.

The Kansas Department for Children and Families is a state agency. K.S.A. 75-5301(a). KsDCF's duties are set forth in K.S.A. 38-2230, which provides that

"[w]henever any person furnishes information to the secretary that a child appears to be a child in need of care, [KsDCF] shall make a preliminary inquiry to determine whether the interests of the child require further action be taken." Further, "[w]henever practicable, the inquiry shall include a preliminary investigation of the circumstances which were the subject of the information, including the home and environmental situation and the previous history of the child." *Id.* "If reasonable grounds to believe abuse or neglect exist, immediate steps shall be taken to protect the health and welfare of the abused or neglected child as well as that of any other child under the same care who may be harmed by abuse or neglect." *Id.* Finally, the statute provides that a child in need of care petition will only be filed "if the secretary determines it is not otherwise possible to provide those services necessary to protect the interests of the child . . . ." *Id.*

The fundamental problem with Plaintiffs' claim is that neither Kansas nor Missouri recognize a duty under §§ 323 and/or 324A where a state child welfare agency acts pursuant to its statutory duties.[9] To the contrary, controlling Kansas authority holds that KsDCF's statutory duties do not create a duty to any specific parent or child. For

[9]In fact, "in most cases [Kansas courts] have not found an undertaking sufficient to give rise to a duty" under §§ 323 or 324A. *South*, 119 P.3d at 16. The two primary Kansas cases in which § 323 has been held to create a special duty are *Circle Land & Cattle Corp. v. Amoco Oil Co.*, 657 P.2d 532 (Kan. 1983) and *Burgess v. Perdue*, 721 P.3d 239 (Kan. 1986). In *Circle Land*, the Kansas Supreme Court applied § 323, where a manufacturer offered to conduct a surveillance program on the plaintiff's engine oil and erroneously informed the plaintiff that the oil being used was appropriate, causing damage to his irrigation engines. 657 P.2d at 538. In *Burgess*, the Court found a duty arose under § 323 when a doctor voluntarily assumed the responsibility to relay a mother's request for a partial autopsy of her son to the coroner, but he failed to do so and a full autopsy was performed. 721 P.3d at 246-46.

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example, in *P.W. v. Kan. Dep't of Soc. & Rehab. Servs.*, 877 P.2d 430 (Kan. 1994), the parents of children who were abused at a daycare center sued the Kansas SRS (KsDCF's predecessor) for negligently exercising its duties under a prior version of K.S.A. 38-2230. The Kansas Supreme Court held that the statute created a duty to the public at large, but not any specific child. *Id.* at 436. Although the Court recognized "[a] duty owed to the public may be narrowed into a special duty owed to an individual where the governmental entity has performed some affirmative act that causes injury or where it had made a specific promise or representation that under the circumstances creates a justifiable reliance on the part of the person injured," it found none in its case. *Id.* "SRS neither acted affirmatively caused the injury, or made any specific promise or representation to the plaintiffs which created any justifiable reliance." *Id.*

In an attempt to circumvent cases such as *P.W.* and the public duty doctrine, Plaintiffs generically claim that KsDCF engaged in "affirmative acts" outside of its statutory obligations. Several Kansas cases make clear this is not the case. For example, in *Roe ex rel. v. Kan. Dept. of SRS*, 102 P.3d 396 (Kan. 2004), an infant's adopted parents argued that an SRS employee's promise that SRS would monitor the services provided for the infant by the Bureau of Indian Affairs and a county mental health center triggered a special duty under § 324A. The Kansas Supreme Court disagreed, holding that any promise by SRS to monitor the infant's services was merely a promise by SRS to comply with its statutory obligations. *Id.* at 404. "[The] language [K.S.A. 38-1524, the predecessor to K.S.A. 38-2230] is sufficiently broad to cover the nature of the actions

undertaken in this case. Monitoring the delivery of services by BIA and the mental health center was a step taken to protect the health and welfare of [the infant]." *Id.*

Similarly, in *Beebe v. Fraktman*, 921 P.2d 216 (Kan. Ct. App. 1996), a murdered child's grandmother argued that SRS owed her a special duty because an SRS employee had promised her SRS would investigate her child abuse complaint. The Court of Appeals disagreed, holding that any "promise" by SRS was simply to comply with its statutory investigation requirements under K.S.A. 38-1524 *Id.* at 218. "As discussed previously, the *P.W.* court held that [K.S.A. 38-1524] creates only a public duty and not a special duty to an individual." *Id.*

Similarly, Missouri courts have, on many occasions, held that the public duty doctrine bars negligence claims against Missouri Department of Social Services ("MoDSS") employees. For example, in *Jamierson v. Dale*, 670 SW.2d 195 (Mo. Ct. App. 1984), plaintiffs sued Jeanne Halcheck, a Missouri Division of Family Services employee ("DFS") for negligently failing to enforce a DFS regulation regarding daycare playground equipment. The Court of Appeals affirmed summary judgment for Halcheck, explaining: "Defendant Halcheck's duty . . . was not to that discrete class of children attending day care centers . . . *Her* duty was not to the children; it was to her employer the State of Missouri. It was a public duty, a duty to the public at large." *Id.* at 197. (emphasis in original).

In *Nelson v. Freeman*, 537 F.Supp. 602, 610-11 (W.D. Mo. 1982), *aff'd sub nom. Nelson v. Mo. Div. of Fam. Servs.*, 706 F.2d 276 (8th Cir. 1983), plaintiffs sued assorted DFS employees, alleging that R.S.Mo. § 210.145 created a special duty to adequately

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investigate hotline calls, which had allegedly been breached, resulting in a child's death. On appeal from an order granting summary judgment, the district court held that no such duty exists, explaining:

> Plaintiffs concede that the Missouri Child Abuse statute creates a public duty, but argue that a specific duty to these plaintiffs may be found to exist under the allegations stated in the complaint. The "specific duty to investigate" is said to arise "once a hot line phone call or report is transmitted to the Division of Family Services," and "is triggered for the benefit of the named victims, who in this case were the Nelson children." Clearly, plaintiffs are correct in asserting that once a report has been made, a duty arises to investigate. But the public duty to investigate imposed by the statute does not suffice to establish a specific duty to these plaintiffs as individuals, the breach of which would, under applicable Missouri law, entitle plaintiffs to a private cause of action against the defendant officials and employees of the State of Missouri.

Id. at 610-11. Myriad cases are in accord. *See Doe "A" Spec. Sch. Dist. of St. Louis Cnty.*, 637 F.Supp. 1138, 1148 (E.D.Mo. 1986) (holding that child abuse reporting statute creates a duty to the public, not to specific individuals); *Thelma D. v. Bd. of Educ. of City of St. Louis*, 669 F. Supp. 947, 950 (E.D. Mo. 1987) (holding that public school teacher had no specific duty to report suspected abuse by another teacher).

Plaintiffs generically claim that KsDCF engaged in "affirmative acts" outside of its statutory obligations under K.S.A. 38-2230, and they have therefore adequately pled a viable negligence claim. However, Plaintiffs' answer identifies only one case in support their position, an unpublished opinion by the Kansas Court of Appeals, *Watters v. Kan. Dept. of Children and Families*, 2015 WL 9456744 (Kan. Ct. App. 2015) (unpublished). Notably, in accordance with *P.W.*, *Roe*, and *Beebe*, the Court of Appeals in *Watters* explicitly recognized that "[a]ny actions taken by the [KsDCF] that are part of its

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statutory responsibility ***cannot, by definition, form the basis for finding an individualized and special duty owed to a particular person***." *Id.* at *4 (emphasis added). The actual holding in *Watters* was that the plaintiffs had pled facts sufficient to state a claim under Kansas's notice pleading standard, from which it was plausible KsDCF had undertaken action *beyond* its statutory duty and thus created a special duty. *See id.* at *5.

Unlike *Watters*, Missouri's "fact pleading" standard governs Plaintiffs' claims. *See Charron v. Holden*, 111 S.W.3d 553, 555 (Mo. Ct. App. 2003). Consequently, to state a valid negligence claim, Plaintiffs' first amended petition must contain specific allegations that KsDCF performed acts that exceeded the broadly construed scope of its duties under K.S.A. 38-2230. *See Berkowski v. St. Louis Cty. Bd. of Election Comm'rs*, 854 S.W.2d 819, 823 (Mo. Ct. App. 1993) ("A petition must contain allegations of fact in support of each essential element of the cause sought to be pleaded."); *see also*, *Agnello v. Walker*, 306 S.W.3d 666, 678 (Mo. Ct. App. 2010), *as modified* (Apr. 27, 2010) (explaining that unlike the federal notice pleading standard also following in Kansas, Missouri's fact pleading standard "demands a relatively rigorous level of factual detail."). Plaintiffs' amended petition contains no such allegations.

Although Plaintiffs suggest that KsDCF acted outside of its statutory duties by removing A.J. from Dainna Pearce's custody and placing him in the custody of his father, Michael Jones, that allegation falls squarely within KsDCF's statutory charge to take "immediate steps … to protect the health and welfare of the abused or neglected child …." K.S.A. 38-2230. Of the same ilk is Plaintiffs' allegation that, during the course of an

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investigation, KsDCF required Michael Jones to "sign a document promising to keep the children safe from physical abuse, not to use physical discipline, and not allow [Heather Jones] to have any conduct with any of the children during the investigation" as a condition of retaining custody. Petition, ¶ 53. *See Roe*, 102 P.3d at 404 (rejecting the argument that a promise by SRS employees to monitor services fell outside its statutory obligations. "[The] language [of K.S.A. 38-1524, predecessor to K.S.A. 38-2230] is sufficiently broad to cover the nature of the actions undertaken in this case. Monitoring the delivery of services by BIA and the mental health center was a step taken to protect the health and welfare of [the infant]."); *Beebe*, 921 P.2d at 218 (rejecting the argument that SRS employee's promise to investigate child abuse complaint created a special duty outside of SRS's statutory obligations).

Plaintiffs have not and cannot identify any binding or controlling caselaw from which this Court could find that KsDCF owed Plaintiffs a legal duty. The binding precedent, discussed *supra*, plainly dictates KsDCF had only a public duty and no special duty to A.J. "If no duty exists, there can be no negligence." *Fountain*, 837 P.3d at 838 (Kan. Ct. App. 1992). Plaintiffs' claims against Relators should be dismissed.

CONCLUSION

For the above-stated reasons, Relators respectfully move the Court for a permanent writ of prohibition or, in the alternative, a writ of mandamus, requiring Respondent to dismiss the claims against Relators.

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Respectfully submitted,

FISHER, PATTERSON, SAYLER & SMITH, LLP

/s/Terelle A. Mock
Terelle A. Mock #57232
3550 S.W. 5th Street
Topeka, Kansas 66606
Tel: (785) 232-7761 | Fax: (785) 232-6604
tmock@fisherpatterson.com

and

/s/Andrew D. Holder
Andrew D. Holder #70614
3550 S.W. 5th Street
Topeka, Kansas 66606
Tel: (785) 232-7761 | Fax: (785) 232-6604
aholder@fisherpatterson.com
Attorneys for Defendants State of Kansas, Dept. for Children and Families, and Gina Meier-Hummel, in her official capacity as Secretary

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Brief includes the information required by rule 55.3 and complies with the limitations contained in Rule 84.06(6); and was prepared in Microsoft Word in Times New Roman with 13-point font, and there are approximately 12,694 words in the brief.

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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of January, 2019, I electronically filed the foregoing with the Clerk of the Court and that a true and correct copy of the foregoing was sent via electronic mail to the following recipients:

Michaela Shelton
SHELTON LAW OFFICE, P.A.
10100 W. 87th Street, Suite 303
Overland Park, Kansas 66212
Off: (913) 341-3001 | Fax: (913) 341-4289
attorney@sheltonlawoffice.com
Attorneys for Plaintiff

Joshua Hawley, Attorney General
Whitney Fay, Assistant Attorney General
Caleb Wagner, Assistant Attorney General
615 E. 13th Street, Suite 401
Kansas City, Missouri 64106
Off: (816) 889-5012 | Fax: (816) 889-5006
caleb.wagner@ago.mo.gov
whitney.fay@ago.mo.gov
Attorneys for Defendants State of Missouri Employees: Caldwell, Pinney, Fewins, King, Wheeler, Beetsma, Bruce, Bird, Burleson, and Forthofer

Stephen M. Strum | David Z. Hoffman
SANDBERG PHOENIX & von GONTARD P.C.
600 Washington Avenue – 15th Floor
St. Louis, Missouri 63101-1313
Off: (314) 231-3332 | Fax: (314) 241-7604
sstrum@sandbergphoenix.com
dhoffman@sandbergphoenix.com

Kathryn A. Regier
SANDBERG PHOENIX & von GONTARD P.C.
4600 Madison Avenue, Suite 1000
Kansas City, Missouri 64112
(816) 425-9683 | Fax: (816) 627-5532
kregier@sandbergphoenix.com

Ross A. Boden
SANDBERG PHOENIX & von GONTARD P.C.
3600 Madison Avenue, Suite 1250
Kansas City, Missouri 64112
Off: (816) 627-5332 | Fax: (816) 627-5532

Attorneys for Defendants Spofford n/k/a Cornerstones of Care and Kiara Ohle

John G. Schultz | Niki T. Long
FRANK SHULTZ & MULLEN, P.C.
8900 Ward Parkway
Kansas City, Missouri 64114
Off: (816) 421-7100 | Fax: (816) 421-7915
jschultz@fsmlawfirm.com
nlong@fsmlawfirm.com
Attorneys for Separate Defendants Family Guidance Center and Chave May

Honorable Charles H. McKenzie
Jackson County Courthouse – Div. 13
415 E. 12th Street – 5th Floor
Kansas City, Missouri 64106
Off: (816) 881-3613 | Fax: (816) 881-3378
Div13.cir16@courts.mo.gov
Respondent

/s/Andrew D. Holder
Terelle A. Mock
Lauren E. Laushman
Andrew D. Holder

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