



**Missouri Court of Appeals**  
**Southern District**  
**Division One**

MELODY FRYE, )  
 )  
 Petitioner-Respondent, )  
 )  
 vs. ) No. SD32307  
 )  
 RONALD J. LEVY, DIRECTOR, ) Filed May 9, 2013  
 STATE OF MISSOURI, DIVISION OF )  
 SOCIAL SERVICES, CHILDREN'S )  
 DIVISION, )  
 )  
 Respondent-Appellant. )

APPEAL FROM THE CIRCUIT COURT OF HOWELL COUNTY

Honorable Michael Ligons, Associate Circuit Judge

**AFFIRMED**

The Children’s Division of the Department of Social Services of the State of Missouri (“Children’s Division”) appeals the trial court’s grant of summary judgment ordering it to remove Melody Frye’s name from the Central Registry of child abuse and neglect perpetrators (“Central Registry”) because the Children’s Division did not abide by the thirty- and ninety-day time limitations set out in sections 210.145 and 210.152, respectively.<sup>1</sup> The Children’s Division contends that the statutory language requiring it to act within those time periods are directory, not mandatory, and therefore Melody was

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<sup>1</sup> All references to section 210.145 are to RSMo Cum.Supp. 2004, and all references to section 210.152 are to RSMo Cum.Supp. 2005.

not entitled to judgment as a matter of law, and the trial court's grant of summary judgment was in error.<sup>2</sup> Finding the ninety-day time limit in section 210.152 is mandatory, we affirm.

### **Factual and Procedural Background**

J.H., Melody's biological child, died May 10, 2006. That same day, a hotline call to the Children's Division was made alleging that Joseph Frye, Melody's husband, was responsible for J.H.'s death. The following week, the Children's Division received a hotline call alleging that Melody had committed neglect because she knew her husband was physically abusive to her three children and Melody failed to supervise accordingly.

On June 8, 2006, twenty-nine days after the hotline call regarding Joseph and twenty-two days after the hotline call regarding Melody, the Children's Division notified Melody and Joseph that the investigations into their conduct would be delayed due to certain reports being unavailable, including police reports and J.H.'s medical records. On June 21, the Children's Division investigator requested a "detective assist" in interviewing Melody regarding the neglect allegation, and the interview took place on June 26, 2006, forty days after the initial hotline call regarding Melody. The following day, forty-eight days after the initial hotline call regarding Joseph, the Children's Division found Joseph caused J.H.'s death. No additional updates were made to the Children's Division's records regarding Melody from June 27 until August 25, 2006. On the latter date, 100 days after the initial hotline call on Melody, the Children's Division completed its investigation of her and found she failed to properly supervise J.H.<sup>3</sup> Three

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<sup>2</sup> Melody and Joseph Frye are referred to by their first names for clarity and not to indicate any familiarity or disrespect.

<sup>3</sup> Melody was not found to have failed to properly supervise her other two children.

days later, the Children's Division sent a letter to Melody informing her that it had substantiated the claim of neglect against her; that letter was sent to the wrong address.

Notwithstanding the incorrect address, Melody timely requested that the Child Abuse and Neglect Review Board review the Children's Division's finding. The Review Board upheld that finding on September 24, 2009, and placed Melody's name in the Central Registry. Melody then timely filed a petition for *de novo* judicial review on November 23, 2009. An amended petition was filed March 22, 2012. Shortly thereafter, on April 18, 2012, Melody filed a motion for summary judgment in which she contended that the Children's Division failed to comply with applicable statutory authority regarding the timing of agency investigations and therefore had lost "jurisdiction" to take action on its finding against her.

In granting Melody's motion for summary judgment, the trial court found that the Children's Division "lost jurisdiction" to further investigate the report of neglect against Melody when it failed to comply with the time limitations espoused in sections 210.145 and 210.152. Specifically, the trial court found that the Children's Division did not comply with section 210.145 when it failed to regularly update its information system with justifications for a continuing need to investigate Melody beyond the initial thirty-day time limit; it also found that the Children's Division did not comply with section 210.152.2 when it failed to complete its investigation of Melody and notify her of the outcome of that investigation within ninety days of receipt of the initial report of neglect. The trial court then ordered that Melody's name be removed from the Central Registry and that all evidence and information regarding the report of neglect made against her be removed from the Children's Division's records. This appeal timely followed.

### Standard of Review

We review the granting of a motion for summary judgment *de novo*; that is, we use the same standard the trial court should have used in reaching its decision. *Finnegan v. Old Republic Title Co. of St. Louis, Inc.*, 246 S.W.3d 928, 930 (Mo. banc 2008); *Hale v. Wait*, 364 S.W.3d 720, 722 (Mo.App. 2012). “Summary judgment is appropriate where the moving party has demonstrated, on the basis of facts as to which there is no genuine dispute, a right to judgment as a matter of law.” *Finnegan*, 246 S.W.3d at 930. In reaching our decision, “[w]e view the record in the light most favorable to the party against whom judgment was entered, and we accord that party the benefit of all inferences which may reasonably be drawn from the record.” *Neisler v. Keirsbilck*, 307 S.W.3d 193, 194-95 (Mo.App. 2010).

### Discussion

In its sole point on appeal, the Children’s Division claims that the trial court erred in granting Frye’s motion for summary judgment because the time limitations included in the applicable statutes are merely directory, not mandatory, and therefore the Children’s Division did not lose “jurisdiction” to take action on the case when it failed to abide by those time limits. We disagree.

We initially note that the parties’ and the trial court’s use of the word “jurisdiction” to describe the Children’s Division’s statutory authority to act is not a correct use of that term. “Missouri courts recognize two kinds of jurisdiction: subject matter jurisdiction and personal jurisdiction.” *J.C.W. ex rel. Webb v. Wyciskalla*, 275 S.W.3d 249, 252 (Mo. banc 2009). Neither kind of jurisdiction is at issue here. Rather, the parties dispute whether the Children’s Division had any statutory authority to take

any further action on Melody’s case after it allegedly failed to comply with the time limitations in sections 210.145 and 210.152.

“An administrative agency possesses only such . . . authority as it has been granted by the legislature.” *Jenkins v. Dir. of Revenue*, 858 S.W.2d 257, 260 (Mo.App. 1993). The Children’s Division’s authority to investigate hotline reports of abuse or neglect is derived from Chapter 210, which sets out the appropriate procedure for conducting such investigations. 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 and the parents of the child named in the report, if the alleged perpetrator is not a parent, *shall* be notified in writing of any determination made by the division based on the investigation. . . .

(Emphasis added). Neither exceptions to the ninety-day time limit nor penalties for failing to abide by it are addressed in the statute. The Children’s Division contends that the word “shall” is merely directory, not mandatory, and that it was within its authority to notify Melody of the results of the investigation 103 days after the initial allegation of neglect, thirteen days past the statutorily imposed deadline.

We approach the task of statutory interpretation mindful that it is the function of the courts to construe and apply the law and not to make it. *Renner v. Dir. of Revenue*, 288 S.W.3d 763, 765 (Mo.App. E.D.2009). The goal of statutory interpretation is to ascertain the intent of the legislature, as expressed in the words of the statute. *United Pharmacal Co. of Mo., Inc. v. Mo. Bd. of Pharmacy*, 208 S.W.3d 907, 909 (Mo. banc 2006). We achieve this goal by giving the language used its plain and ordinary meaning, *id.* at 910, and by applying any “statutory definitions” provided in the statute itself. *Gash v. Lafayette County*, 245 S.W.3d 229, 232 (Mo. banc 2008). Only when the legislative intent cannot be determined from the plain meaning of the statutory language may rules of construction be applied to resolve any ambiguity. *United Pharmacal Co.*, 208 S.W.3d at 910; *Hardt v. Vitae Found., Inc.*, 302 S.W.3d 133, 138 (Mo.App. W.D.2009) (holding that “[w]here the language of a statute is clear and unambiguous, there is no room for construction”). The construction of statutes is not to be hyper-technical, but instead is to be

reasonable and logical. *Donaldson v. Crawford*, 230 S.W.3d 340, 342 (Mo. banc 2007).

*Gasconade Cnty. Counseling Servs., Inc. v. Missouri Dept. of Health*, 314 S.W.3d 368, 373 (Mo.App. 2010).

The dictionary definition of “shall”—i.e., the plain meaning—is “will have to” or “used in laws, regulations, or directives to express what is mandatory.” MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 1143 (11th ed. 2005). Although this should end discussion on the interpretation of “shall” as it pertains to section 210.152, decisions interpreting “shall” to mean something other than a mandatory directive in other contexts compel us to further examine the statute at issue. *See, e.g., Jenkins v. Croft*, 63 S.W.3d 710, 713 (Mo.App. 2002) (finding that “shall” in the context of a time limitation for conducting a hearing on a petition for an order of protection was directory, not mandatory).

As discussed in *Petet v. State of Mo., Dept. of Social Servs., Div. of Family Servs.*, 32 S.W.3d 818 (Mo.App. 2000), the “clear intent of the legislature in enacting” Chapter 210 “was for the [Children’s] Division to immediately investigate hotline calls and to doggedly pursue those investigations to their conclusion.” *Petet*, 32 S.W.3d at 823. As that court stated, “The statutory language simply cannot be read to allow the [Children’s] [D]ivision to place investigations on the back-burner and to revisit those investigations at its convenience.” *Id.*

“A provision in a statute must be read in harmony with the entire section.” *PDQ Tower Servs., Inc. v. Adams*, 213 S.W.3d 697, 698 (Mo.App. 2007). Similarly, “[s]tatutes relating to the same subject matter are *in pari materia* and should be construed harmoniously.” *Anderson ex rel. Anderson v. Ken Kauffman & Sons Excavating*,

*L.L.C.*, 248 S.W.3d 101, 107 (Mo.App. 2008). Thus, it is germane to our analysis to examine other provisions of Chapter 210 in determining whether “shall” as used in section 210.152 is a mandatory or directory command.

Section 210.145.12 stated, in pertinent part,

Within thirty days of an oral report of abuse or neglect, the local office shall update the information in the information system. The information system shall contain, at a minimum, the determination made by the division as a result of the investigation, identifying information on the subjects of the report, those responsible for the care of the subject child and other relevant dispositional information. 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. . . .*

(Emphasis added). Section 210.145.12 thus contained the word “shall” in articulating a time limit for completion of the investigation into alleged abuse or neglect, but immediately thereafter provided for an exception: the investigation may extend beyond thirty days if “good cause for the failure to complete the investigation” is shown and entered into the Children’s Division’s information system. The word “shall” in section 210.145 must thus be read as being mandatory, as interpreting it as merely directory would render the expressed good cause exception meaningless. *See Inter City Fire Prot. Dist. v. DePung*, 283 S.W.3d 277, 279 (Mo.App. 2009) (stating that this court “presumes that the legislature does not enact meaningless provisions.”).

Section 210.183.1<sup>4</sup> also offers some guidance as to how the word “shall” in section 210.152 should be interpreted as well as supports the interpretation of the word “shall” in section 210.145, *supra*. It requires that, at the time of the initial investigation of a report, the Children’s Division “shall provide the alleged perpetrator with a written description of the investigation process.” Section 210.183.1. That section then proceeds

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<sup>4</sup> All references to section 210.183 are to RSMo Cum.Supp. 2004.

to set forth the form for the required notice that includes the language: “The [Children’s] [D]ivision *shall make every reasonable attempt* to complete the investigation within thirty days. Within ninety days you *will* receive a letter from the [Children’s] Division which will inform you of” the outcome of the investigation. ***Id.*** (emphasis added).

According to this notice describing the investigation process, in language expressly provided by the legislature, a slight equivocation is allowed for the initial thirty-day limit stated in section 210.145, which aligns with the good-cause exception in that section, *supra*. No such equivocation, however, is stated in conjunction with the ninety-day limit provided in section 210.152; rather, the alleged perpetrator is simply informed that he or she *will* receive the written results of the investigation. This again supports interpreting the “shall” in section 210.152, related to the ninety-day notice, as being mandatory.

Finally, “[s]tatutory amendments may be used to clarify or restate legislative intent, and subsequent statutes may be considered in construing the previously enacted statutes, in order to ascertain the uniform and consistent purpose of the legislature.” ***Mo. Hosp. Ass’n v. Air Conservation Comm’n***, 874 S.W.2d 380, 398 (Mo.App. 1994) (internal citations omitted). Here, a subsequent amendment of section 210.145 during the legislative session following the inception of this case with the Children’s Division strongly indicates that the use of “shall” throughout the child abuse and neglect investigation statutes was intended to be mandatory, thereby divesting the Children’s Division of authority to act on any particular case once the time limits—absent any relevant exception—had been breached. To that end, the 2007 amendment created an exception to the time limits, allowing for an investigation into alleged abuse or neglect to remain open in any case involving the *death* of a child until the investigation surrounding

the death is completed. Section 210.145.14, RSMo Cum.Supp. 2007 (emphasis added). This statutorily expressed extension was applied to both the thirty- and ninety-day time limits. Section 210.183.1, RSMo Cum.Supp. 2007. As we presume all legislative acts to have some purpose, *see Inter City Fire Prot. Dist.*, 283 S.W.3d at 279, we must conclude that there was no such exception before the 2007 amendment and must read “shall” as used in section 210.152, related to the ninety-day notice, as being mandatory.

In light of the plain and clear language of section 210.152; the use of “shall” in section 210.145 as a mandatory directive with a good-cause exception and the absence of any exception, for good cause or otherwise, in section 210.152; the specific language expressed by the legislature in the notice providing a written description of the investigation process as required by section 210.183; and the subsequent amendment to section 210.183 providing an exception to the applicable time limits when the case involves the death of a child, we interpret “shall” as used in section 210.152 related to the ninety-day notice as being mandatory. To interpret it otherwise would require us to assign varying meanings to the word “shall” as it is used throughout the child abuse and neglect investigation statutes and would result in a failure to read the statutes in harmony with each other as required. *See Anderson ex rel. Anderson*, 248 S.W.3d at 107.

We are not persuaded otherwise by the Children’s Division’s argument that the lack of a specific expressed sanction for “tardy compliance” with section 210.152 necessarily makes the word “shall” in that statute directory, rather than mandatory. While that is one factor to consider in the analysis, it is not a *per se* rule because in considering all the relevant factors in a specific case, “[w]hether the statutory word “shall” is mandatory or directory is a function of context[.]” *Farmers & Merchants Bank & Trust*

*Co. v. Dir. of Revenue, State of Mo.*, 896 S.W.2d 30, 32 (Mo. banc 1995). Here, the context, as discussed *supra*, overwhelmingly indicates that, even in the absence of a specific expressed sanction, the use of “shall” in section 210.152, related to the ninety-day notice, is mandatory and not directory.

As “we will affirm the grant of summary judgment if it is proper under any theory supported by the record and presented on appeal[,]” *Conway v. St. Louis Cnty.*, 254 S.W.3d 159, 164 (Mo.App. 2008), no further analysis is necessary. Because the ninety-day notice requirement of section 210.152 is mandatory, we find that the Children’s Division had no statutory authority to take any further action on Melody’s case when it failed to notify her of the results of the investigation within ninety days of the initial allegation of neglect. The Children’s Division’s point is denied.

#### **Decision**

The trial court’s judgment is affirmed.

GARY W. LYNCH, P.J. - Opinion author

NANCY STEFFEN RAHMEYER, J. - concurs

WILLIAM W. FRANCIS, JR., J. - concurs