STATE OF VERMONT

SUPERIOR COURT
WASHINGTON UNIT

CIVIL DIVISION
DOCKET NO: 446-8-19 Wncv

In re: Estate of Al[redacted] Ja[redacted])
)
)

KRISTOPHER HENRY'S STATEMENT OF UNDISPUTED MATERIAL FACTS SUPPORTING MOTION FOR SUMMARY JUDGMENT

1. A[redacted] (hereinafter "AJ") (DOB: 2/6/15) is the minor child who is the subject of the wrongful death action.

2. AJ died while in DCF custody at his foster parents' home in East Montpelier, Vermont on July 5, 2017.

3. [redacted] (DOB: 1/4/93)("Mother") is AJ's biological mother.

4. [redacted] (DOB: 7/3/89)("Father") is AJ's biological father.

5. Mother and Father stipulated to a parentage order whereby both acknowledged they were AJ's biological parents. [1]

6. At the time of AJ's birth, Mother resided at 95 Granite Street, Barre, Vermont with a number of housemates.

7. At that time, she had shared custody of her daughter, A[redacted] whose father is B[redacted]

8. DCF's involvement with Mother is extensive. DCF first became involved with Mother regarding her care for her daughter, A[redacted] (DOB: [redacted]. [2]

[1] Parentage of AJ was established in Docket No. 304-8-16 Wnj ([redacted] requests that the Court take judicial notice of all Washington Dockets referenced herein.)
[2] Docket Nos. 169-9-15 Wnjv and 170-9-15 Wnjv

9. On April 30, 2013, Dr. Deborah Jerard called Family Services to report that on April 25, 2013, she had been treating A for a follow-up urinary tract infection, and A presented with a "greenish blue bruise on her cheekbone." [3] A told the doctor that Mother had struck her causing the bruise. Id., Par. 1.

10. On August 7, 2013, A 's grandmother and father, and B C wrote a letter to Family Services Central Intake Office detailing concerns regarding Mother's treatment of A According to and B C A frequently had bruises on her face and body after spending time with Mother. Id., Par. 2.

11. On September 30, 2013, Mother's friend, reported that A had a bruise on her hip as well as facial bruising. When asked A how she got the bruises, A told her, "Mommy did, when Mommy gets mad at me." Id., Par. 3.

12. On July 12, 2014, A 's grandmother, reported to Family Services her concerns about, among other things, lack of dental care. Id., Par. 4.

13. On July 18, 2014, called to report that she had observed bruises on A 's back. Id., Par. 5.

14. On September 14, 2015, daycare provider called Family Services to report that she had observed multiple bruises on AJ's upper thigh and buttocks when changing his diaper earlier that day. said she had asked Mother about the bruising and Mother said she had not noticed anything. This report was accepted as a Chapter 49 Investigation for Physical Abuse and assigned to SW Id., Par. 8.

15. On September 14, 2015, police officers arrived at Mother's house and took photographs of the bruising on AJ. When questioned by the police about how the bruising occurred, Mother

[3] Exhibit A – Affidavit of DCF Social Worker Dated 9/17/15, Par. 1.

said she did not know. She further speculated that perhaps a new babysitter, her [redacted], had bounced AJ too high on her knee. Thereafter, a safety plan was put in place to not allow Mother to have unsupervised contact with either child. Id., Par. 9.

16. Police spoke with [redacted] who denied ever causing the bruising. She stated that she had bounced AJ softly on her knee. Id., Par. 10.

17. On September 16, 2015, the photos were forwarded to Dr. Karyn Patno who stated that it was "highly unlikely that the bruising was accidental." Id., Par. 14.

18. On September 17, 2015, Dr. Joe Hagan, Child Abuse Expert, reviewed the photos. Dr. Hagan also confirmed that the bruising was not accidental. Id., Par. 15.

19. Per Dockets 169-9-15 and 170-9-15, AJ was placed in a community foster home with [redacted] A[redacted] was placed in the Conditional Custody of her maternal grandmother, [redacted] and maternal great grandmother, [redacted] (DOB unknown). Judge Griffin ordered liberal visitation between Mother and her children, with much of the visitation taking place at [redacted]'s house and being supervised by [redacted][4]

20. On November 23, 2015, both [redacted] reported at a DCF team meeting that Mother spent most of the visitation texting instead of interacting with the children. Further, that she had anger issues and often screamed at A[redacted] using foul language. Both [redacted] stated that Mother "was not fit to be a parent." Id., Par. 1.

21. [redacted] stated that during court-ordered visits, Mother strikes A[redacted] "by pulling her hand back so she can use a lot of force." She stated that Mother hit A[redacted] repeatedly anytime Mother is annoyed or feels that A[redacted] "has to get ready to do something." Id., Par. 4.

[4] Exhibit B - Affidavit of [redacted] Dated 12/28/15

22. On January 20, 2016, [redacted] met with A[redacted] at [redacted] School. There, A[redacted] confided to [redacted] that Mother strikes her repeatedly ("A[redacted] said [redacted] pushes and hits her during visits. She said she hits her often at visits and this makes her scared. She said the hitting looks like a slap. A[redacted] said [redacted] hits her all over her body and sometimes leaves bruises. She said the hitting hurts. She said she cries when [redacted] hits her."). [5]

23. On January 21, 2016, a contested merits hearing through Dockets 169/170-9-15 was held regarding the bruising discovered on AJ. The Court found that the State was unable to prove that Mother caused the injury to her son and the case was dismissed. [6]

24. On February 15, 2016, A[redacted]'s [redacted] teacher, Matt [redacted] called Family Services to report that A[redacted] had come to school with a "two-inch long, vertical and fairly deep scratch on her cheek." Id., Par. 18.

25. Later that morning, A[redacted] told para-educators, [redacted] that her mother had scratched her because she was angry. Id., Par. 19.

26. She further reported that Mother had told her not to tell anyone and that it was not accidental. Id.

27. On February 17, 2016, foster parent [redacted] was baby-sitting AJ and A[redacted] She saw the scratch on A[redacted]'s face and A[redacted] told [redacted] "Don't tell anyone but my mom did it." Id.

28. [redacted] took photos and forwarded them to [redacted] said she was also concerned that AJ "had a scratch behind his testicles." Id.

29 [redacted] and [redacted] met with Mother, who told her that A[redacted] had told multiple people that Mother had caused the scratch. Mother denied that she had caused the scratch.

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[5] Exhibit C - Affidavit of [redacted] Dated 1/20/16, Par. 3
[6] Exhibit D – Affidavit of [redacted] Dated 2/23/16, Par. 17

However, she admitted that she was present with A[redacted] when she noticed the scratch. Id., Par. 26.

30. During the meeting, Mother agreed to not talk about the scratch with A[redacted] and to not challenge A[redacted] as to what had happened. However, that same day, Mother went to pick up A[redacted] from [redacted] School. There, she berated A[redacted] in a loud voice for "lying." According to the school nurse, [redacted] Mother came into school to pick A[redacted] up on the afternoon of February 18, 2016. Mother went to A[redacted]'s classroom and loudly demanded to know who A[redacted] talked to about the scratch. She then started "loudly berating" A[redacted] for lying and demanded that A[redacted] admit that she had lied. Id., Par. 30.

31. On February 19, 2016, A[redacted] met with the school nurse, [redacted] and A[redacted] said she did not lie but told the truth when she said [Mother] scratched her when she was angry with her. Id., 31.

32. On October 15, 2016, foster parent [redacted] called Family Services with concerns about AJ. She advised that she had custody of AJ earlier in the year, but still takes care of him most weekends. [7] [redacted] stated that two weeks prior [AJ] came to her with a swollen eye which turned black. [redacted] stated that [Mother] had told her that [AJ] "stepped on a crutch which hit him in the eye causing the injury." Id., Par. 1.

33. [redacted] expressed further concerns that AJ's home with Mother at 95 Granite Street is "very dirty and has an intolerable smell." [redacted] said she does not fully enter the home when she drops off AJ "due to the smell and garbage." On one occasion, [redacted] and her husband [redacted] observed "sketchy" people at the home, that a number of them were "clearly under the influence." [redacted] observed beer cans on the floor. Id.

[7] Exhibit E – Affidavit of [redacted] Dated 11/7/16.

34. [redacted] further stated that she is friends with [redacted] whose son, [redacted], resided at 95 Granite Street with Mother. According to [redacted] her son, [redacted] had just moved into the house two weeks prior. After moving in, he overdosed on heroin and was hospitalized. Id., Par. 2 [redacted] told [redacted] hat her son [redacted] s a drug addict and that the house is being used to sell drugs. Id.

35. [redacted] further reported that AJ had "a blistering rash that covers his bottom, testicles, and upper legs" and that the rash had been present for a long time. However, Mother did not seem concerned about it. Id., Par. 3.

36. [redacted] said AJ "seems to be in pain as he is walking with his legs spread apart." Id.

37. On October 20, 2016, the police and [redacted] went to 95 Granite Street to meet with Mother. Id., Par. 5. There were no lights on, as the house did not have electricity. Id. Upon opening the door, there was "a strong odor of marijuana." Id.

38. They met with residents of the home, [redacted] and boyfriend, [redacted], along with [redacted] confirmed that Mother resided at the 95 Granite Street with AJ. Id., Par. 7.

39. On November 2, 2016, the photos of AJ's swollen eye were sent to Dr. Hagan for consult. Dr. Hagan said he could not determine how the injury occurred. Id., Par. 9.

40. On November 3, 2016, [redacted] spoke with [redacted], who is a well-known drug dealer. [redacted] said she has sold crack to [Mother]. She said recently, [Mother] came over to her house with her son, [AJ], to buy crack. [Mother] gave [AJ] to [redacted] to hold while [Mother] used crack. Id., Par. 10.

41. On November 3, 2016, [redacted] spoke with [redacted] and [redacted] Both [redacted] and [redacted] confirmed that A[redacted] now resided with them. Id., Par. 11.

42. On November 4, 2016, [redacted] brought AJ to see his local pediatrician who confirmed that there was no way to tell what caused AJ's swollen eye. [redacted] reported that AJ was behind on his well-child check-ups and she had scheduled two appointments to bring him up to date. Id., Par. 12.

43. On November 8, 2016, a CHINS petition was filed with the Washington Family Division.[8] The Petition alleged that AJ was a child without proper parental care and requested that the State take custody. Id.

44. Mother was substantiated by DCF for physical abuse of AJ in 2016. [9]

45. Mother never appealed or challenged the substantiation. The substantiation remains on her DCF record today.

46. The DCF case was originally opened on September 14, 2015 when AJ was 7 months old.[10]

47. AJ went into DCF custody for a brief period of time following the September 2015 incident when unexplained bruising was discovered. He then went into DCF custody again on November 23, 2016 when he was 21 months old. [11] He remained in DCF custody until his death.

48. DCF took custody of AJ in November 2016 because Mother was negligent.

49. DCF took custody of AJ in November 2016 because Mother was abusive.

50. Beginning on October 20, 2016, AJ lived with foster family [redacted] in East Montpelier, Vermont. [12]

51. On December 12, 2016, a Temporary Care Order – CHINS was ordered and

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[8] Exhibit F – CHINS Petition, Docket No. 209-11-16 Wnjv
[9] Exhibit G, Initial Case Plan, Dated 2/10/17, Page 4

[10] Id.
[11] Id.
[12] Exhibit E, [redacted] Affidavit, dated 11/7/16, page 1

custody of AJ was transferred to DCF. [13]

52. On February 17, 2017, Mother admitted that AJ was a child in need of care and supervision at the time the case started. The parties signed a Merits and Stipulation Order. [14] In the Stipulation, Mother admitted that AJ was a "Child in Need of Care and Supervision Pursuant to 33 VSA § 5102(3)(B)." She further admitted that she was negligent in her care of AJ as "inappropriate housing and lack of resources placed the children at risk of harm." Id. The Court found that AJ was a Child in Need of Care or Supervision pursuant to 33 VSA §5102(3), in that the child is "without proper parental care or subsistence, education, medical or other care necessary for his or her well-being." Id.

53. Thereafter, the Court issued a Juvenile Disposition Order – CHINS.[15]

54. On February 17, 2017, Mother was granted CCO of her daughter, A[redacted] (Id.) A[redacted] had been with paternal grandmother, [redacted] under CCO.[16]

55. On April 13, 2017, a Post Disposition Review Hearing took place. At that review hearing, the Court noted that AJ was still in foster care with the [redacted] and in DCF custody but had contact with Mother. That same day the Court issued a Post Disposition Review Order. [17] Pursuant to the Order, AJ was to remain in DCF custody. Id.

56. On July 5, 2017, AJ drowned while in DCF custody at the [redacted] residence.

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[13] Exhibit H – Temporary Care Order – Dated 12/2/16
[14] Exhibit I – Merits Stipulation and Order, Dated 2/17/17

[15] Exhibit J – Juvenile Disposition Order – CHINS, Dated 2/17/17
[16] Exhibit K – Conditional Custody Order of A[redacted] to Mother (Docket No. 227-11-16 Wnjv)
[17] Exhibit L – Post Disposition Review Order, Dated 4/13/17.

Dated at St. Johnsbury, Vermont this 10th day of January, 2020.

Law Offices of William W. Cobb, PLC

By: _____
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