# DOCKET NO. H12-CPxxxxxxx-A SUPERIOR COURT

# FOR JUVENILE MATTERS

IN RE: MORTIMER S. HARTFORD

APRIL 28, 2011

**MINOR CHILD’S MEMORANDUM OF LAW IN SUPPORT**

**OF MOTION FOR ORDERS**

Pursuant to the order of this Court, undersigned counsel for the minor child in the above captioned case submits this memorandum of law in support of his motion for orders that DCF place MS in the care of out of state pre-adoptive relatives, or in the alternative, to order DCF to facilitate visitation between the minor child and his pre-adoptive out of state relatives.

**FACTS AND PROCEDURAL HISTORY**

MS is a 17 month old boy who has been in the custody of the Department of Children and Families (“DCF”) since he was three days old. DCF invoked a 96 Hour Hold on MS on March 9, 2010. DCF filed a motion for an Order of Temporary Custody and a Neglect Petition on March 12, 2010, and the OTC was sustained by agreement on March 19. On July 8, 2010, this Court adjudicated MS neglected and committed him to the care and custody of DCF. Undersigned counsel was assigned this case on December 29, 2010. The Court approved a permanency plan of Termination of Parental Rights and Adoption on March 1, 2011.

MS has been in his present non-relative foster home in Bloomfield since June of 2010. He is doing well in the foster home, is developmentally on target, and is growing increasingly bonded to his caregivers. His present foster family has indicated they are not in a position to adopt MS.

In June of 2010, MS’s mother identified a maternal aunt in East Dakota, Jane J., as a potential placement resource. In September, 2010, another relative in East Dakota, Joan R., contacted DCF and indicated that Jane was no longer willing to serve as a resource, which DCF then confirmed with Jane. Mrs. R. indicated that she and her husband John were interested in providing care for MS. John R. is a maternal great uncle to MS. DCF submitted an ICPC request on Mr. and Mrs. R. to East Dakota on or about September 22, 2010.

On December 14, 2010, DCF received a completed home study on Mr. and Mrs. R. from the Westchester County, East Dakota Department of Social Services. The study recommends placement of MS with the Rs. The study also referenced DCF’s “request for the Rs. to become licensed foster parents,” and states that a class entitled “MAPP-GPS,” which is required for licensing as a foster parent in East Dakota, would begin in March.

Upon information and belief, due to a direct conflict with their work and school schedules, Mr. and Mrs. R. were unable to attend the scheduled MAPPS-GPS class. The Westchester County Department of Social Services offered a self-study option to Mr. and Mrs. R.; however, the self-study option would require a social worker to visit their home on a regular basis to assess their progress in the class. Such visits could only be made during regular business hours, which also would conflict with Mr. and Mrs. R.s’ work and school schedules. As a result, Mr. and Mrs. R. have not yet taken the MAPP-GPS class, the last significant barrier for their licensing as foster parents. Their school semester ends in early May, and Mr. and Mrs. R. have begun investigating a class scheduled for early summer. They remain very interested in caring for MS and adopting him, and are willing to complete any necessary requirements for licensing.

DCF has indicated through the Social Worker assigned to this case that it will not consider placing MS with Mr. and Mrs. R. until they are fully licensed. Undersigned counsel filed a Motion for In Court Review dated March 30, 2011, to address the delays in MS’s placement. At the hearing on the motion held on April 14, 2011, counsel for the minor child made an oral motion for the court to order MS placed with Mr. and Mrs. R. pending their completion of licensing requirements. In the alternative, counsel orally moved for an order that DCF facilitate visitation between MS and Mr. and Mrs. R. DCF objected. The Court, *Frazini, J*., ordered briefs from all parties on the issue of whether the court had the legal authority to order the requested relief.

**ARGUMENT**

1. **THIS COURT HAS AUTHORITY TO ORDER PLACEMENT OF MS WITH HIS OUT OF STATE RELATIVES.**
2. **The Court has statutory authority to act.**

Section 46b-121(b) of the Connecticut General Statutes vests the Superior Court with the authority to “make and enforce such orders directed to parents…guardians, custodians, or other adult persons owing some legal duty to a child or youth therein, as the court deems necessary or appropriate to secure the welfare, protection, proper care, and suitable support of a child or youth subject to the court’s jurisdiction or otherwise committed to or in the care of the Commissioner of Children and Families.” The commissioner of DCF is the guardian of a child who is committed to the care and custody of the department until the child ages out of the system or another guardian is appointed by the court. Conn. Gen. Stat. § 46b-129(j).

As this case involves a proposed out of state placement, it is also necessary to examine the Court’s authority and responsibilities under the Interstate Compact on the Placement of Children as codified in Conn. Gen. Stat. § 17a-175. Article II of the ICPC sets forth the definition of “sending agency” to include “a court of a party state,” as well as any officer or employee of any party state or subdivision thereof that “sends, brings, or causes to be sent or brought any child to another party state.” Conn. Gen Stat. § 17a-175(II)(b). Article III of the ICPC provides that no state shall cause a child to be sent to another state without compliance with all requirements of the ICPC “and with the applicable laws of the receiving state governing the placement of children therein.” Conn. Gen Stat. § 17a-175(III)(a). The ICPC then sets forth the general procedures to be followed, which include the requirement that a sending state furnish authorities in the receiving state written notice and pertinent information about the child and the proposed placement. Conn. Gen Stat. § 17a-175(III)(a-b). Finally, the ICPC states that “[t]he child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear contrary to the interests of the child.” Conn. Gen Stat. § 17a-175(III)(d).

Based on the Court’s authority to issues orders to the guardian of a committed child under section 46b-121(b), and as a “sending agency” under the ICPC, this court has the authority to order placement if the sending and receiving states have complied with the terms of the ICPC.

1. **The statutory mandates of the ICPC have been met.**

In the case at bar, DCF submitted an ICPC request to the state of East Dakota. DCF received a home study report which, in both the body of the study and an accompanying cover letter, explicitly recommend placement of MS with Mr. and Mrs. R.

The plain language of the ICPC requires only that the “appropriate public authorities in the receiving state” provide written notice to the sending agency that the proposed placement “does not appear contrary to the interests of the child.” Conn. Gen. Stat. § 17a-175(III)(d). There is no provision in the ICPC that explicitly mandates the form of the written notice required under Article III(d). The positive recommendation of the Westchester County of Social Services is sufficient to meet this requirement.

1. **DCF’s requirement that Mr. and Mrs. R. be licensed foster parents is not consistent with the law of the receiving state as required under the ICPC.**

DCF has requested that Mr. and Mrs. R. be fully licensed as foster parents before MS is placed with them. This requirement is not consistent with East Dakota law and therefore runs counter to the plain language of the ICPC.

Article III(a) of the ICP requires compliance with each article of the ICPC and the applicable laws of the *receiving state* governing the placement of children therein. Conn. Gen. Stat. § 17a-175(III)(a).

Licensing requirements for East Dakota foster families are enumerated in Section 131D-10.3 of the General Statutes of East Dakota. (Attached as Exhibit A). The licensing requirements, however, do not apply to “[i]ndividuals who are related by blood, marriage, or adoption to the child.” N.C. Gen. Stat. § 131D-10.4. (Attached as Exhibit B.) Both the county social worker who conducted the home study on Mr. and Mrs. R., as well as with the East Dakota ICPC Administrator’s office, have confirmed in conversation with undersigned counsel that since MS is a blood relative of Mr. R., he is eligible to be placed with Mr. and Mrs. R. immediately under East Dakota law.

It is notable in this case that in its ICPC request to East Dakota, DCF did not request that Mr. and Mrs. R. be assessed as a relative placement. The ICPC 100-A form used to request an ICPC study contains several categories that apply to the proposed placement resource in the receiving state. The sending state indicates by checking a box which category the proposed placement resource falls within. Two such categories are “Foster Family Home” and “Relative.” Upon information and belief, DCF requested that Mr. and Mrs. R. be assessed by East Dakota authorities as a “Foster Family Home,” rather than as a “Relative.”[[1]](#footnote-1) Had DCF had checked the “Relative” box rather than the “Foster Family Home” box on the Form ICPC-100A, Mr. and Mrs. R. would have been assessed as a relative under East Dakota law, and no licensing requirement would have applied.

By adding a licensing requirement as a condition of ICPC approval, DCF has gone beyond the clear provisions of the ICPC by adding a condition to placement that is inconsistent with the laws of the receiving state. In doing so, DCF has itself created the only significant barrier to MS’s placement. This Court should not countenance such artificial barriers to the placement of a child with suitable relative caregivers.

1. **Connecticut statutes, regulations, and DCF policy allow placement with relatives pending foster care licensing.**

Although East Dakota law does not require foster parents to be licensed, Mr. and Mrs. R. are willing to complete these requirements. DCF has declined the request of child’s counsel to place MS with Mr. and Mrs. R. while they complete the necessary licensing coursework.

While Section 17a-114 of the Connecticut General Statutes requires relative foster homes to be licensed, it also explicitly states that temporary placements with relatives are permitted while those relatives complete licensing requirements. DCF may place a child in the home of a relative caregiver for up to 90 days provided a satisfactory home visit, basic family assessment, and criminal background check is conducted. Conn. Gen. Stat. § 17a-114(c). Any relative caregiver must complete licensing requirements within 90 days. *Id*. DCF, however, may grant a waiver of any non-safety standard set out in the statute. *Id*. This statute makes no distinction between in-state and out of state relatives.

Furthermore, Connecticut’s Administrative Code allows for DCF to grant “Certification” to a relative caregiver in lieu of a foster care license. Conn. Admin. Code § 17a-114-14, *et seq*. A relative may be “certified” by DCF to provide foster care in lieu of a foster care license. Conn. Admin. Code § 17a-114-15. Requirements for placement are similar to those outlined in C.G.S. § 17a-114, and a child may be placed in the home of a relative for up to 45 days pending the caregiver’s certification. Conn. Admin. Code § 17a-114-16. The regulations also provide provisions for waivers of certain standards. Conn. Admin. Code § 17a-114-18. These regulations make no distinction between in state and out of state caregivers.

Finally, DCF policy 41-17-15.2 explicitly states that a child may be placed with a relative for up to 90 days without the relative being licensed. Once again, no distinction is made between in state and out of state relatives.

The statutory, regulatory, and policy provisions clearly evince a policy in favor of placing children with suitable relatives whenever possible and without undue delay. DCF routinely places children with relative caregivers in Connecticut after conducting a preliminary assessment. There is no distinction in any of the statutory or regulatory provisions for applying different standards to citizens of one state than those of another. The home study conducted under the ICPC is at least as thorough as a preliminary assessment performed by DCF on an in state relative. In sum, there is no basis in law or policy for DCF to refuse to place a child out of state with a suitable and appropriate relative caregiver while that caregiver completes licensing requirements. For this reason, MS should be placed with Mr. and Mrs. R. while they complete the licensing requirements.

1. ***In re Yashira F*. is not dispositive of the case at bar.**

The recent case of *In re Yarisha F*., 121 Conn. App. 150 (2010) is factually distinguishable from the case at bar. In *Yashira F*., the Appellate Court overturned the trial court’s placement of a minor with her maternal great grandmother in Florida on the grounds that the trial court did not comply with the ICPC. *Id*. at 152. In that case, however, the trial court ordered placement while an ICPC home study was pending, and indicated it would order placement of the child even if the study contained a negative evaluation of the great grandmother. *Id*. at 153. The study indeed recommended against placement, but the trial court placed the child with the great grandmother based on its own evaluation of the child’s best interests. *Id*. at 154-44.

The Appellate Court rejected the assertion that the court could make an independent determination of the child’s best interests and order placement without regard to the conclusion of the ICPC study. *Id*. at 161-62. Instead, the Appellate Court affirmed that a sending agency must comply with the written notice requirement of Article III(d) of the ICPC. *Id*. at 164-65. Notably, the court was silent as to the specific requirements or form of such notice.

Here, there is no claim that this Court should make its own determination of Mortimer’s best interests independently or in contravention of the opinion of East Dakota authorities and the provisions of the ICPC. On the contrary, the appropriate authorities have already assessed the proposed placement and provided written notice consistent with Article III(d) that placement is recommended. No further placement assessments by East Dakota authorities are pending. This court would not act in violation of the ICPC or contrary to the holding in *Yarisha F*. by placing Mortimer with Mr. and Mrs. R.

In sum, there exist no barriers to this Court ordering MS to be placed with his pre-adoptive relatives in East Dakota pending their licensing as foster parents. This Court has authority to issue orders to DCF as MS’s guardian, and the recommendation from Westchester County Social Services strictly complies with ICPC Article III’s statutory predicate for placement. East Dakota’s failure to thus far issue a signed Form 100-A is solely attributable to DCF’s request that Mr. and Mrs. R. be licensed first. This Court will retain jurisdiction over Mortimer pursuant to Article V of the ICPC and can order his prompt return to Connecticut should Mr. and Mrs. R. fail to diligently complete the licensing coursework.

MS is growing increasingly attached to his present foster family, who have made clear repeatedly they are not in a position to adopt him. With each passing week, his inevitable separation from them is likely to be more difficult and traumatic. It is in MS’s best interest to be placed with his relatives at the earliest possible opportunity, consistent with all applicable law.

As counsel for the minor child submits this court has the necessary authority to do so, he respectfully requests the court order that Mortimer be placed with Mr. and Mrs. R.

1. **THIS COURT HAS AUTHORITY TO ORDER DCF TO FACILITATE VISITATION BETWEEN MORTIMER AND HIS PROPOSED FOSTER PARENTS.**

As set forth in Section I, *supra*, this court has the authority under Section 46b-121(b) to issue orders to DCF as MS’s guardian in order to promote his welfare, protection, proper care, and suitable support.

It is eminently reasonable and proper for DCF to assist proposed foster families in becoming acquainted with the children they may have in their care. DCF routinely provides pre-placement visits between children and possible in-state foster families. This practice can and does extend to potential out of state placements. For example, undersigned counsel represents a child in the case of in re Tony D., Docket No. H12 CPxxxxxxxx-A. The proposed disposition in that case is a transfer of guardianship to paternal relatives in East Dakota. Those relatives are presently completing the licensing requirements for foster parents. While they are doing so, DCF is making arrangements with the proposed guardians for them to travel to Connecticut, with DCF assistance, in order to visit with the child.

In contrast, undersigned counsel knows of no efforts in this case to assist Mr. and Mrs. R. in forming a connection with MS. To counsel’s knowledge, DCF has not arranged contact of any type between Mr. and Mrs. R. and his current foster family, to say nothing of helping to arrange a face to face meeting with MS. If a proactive social worker in one case can help arrange a trip to Connecticut for a proposed guardian in one case, similar efforts could certainly be brought to bear on behalf of MS and Mr. and Mrs. R.

Finally, the ICPC does not prohibit this Court from ordering MS to visit Mr. and Mrs. R. in East Dakota should the Court wish to pursue that option. In fact, the ICPC Regulations offer guidance by including a detailed definition of a “visit.” ICPC Regulations, Reg. No. 9. A visit is defined as a stay of less than thirty days duration with a purpose to provide the child with a social or cultural experience. *Id*. Although a visit would be presumed to be a placement or proposed placement if a home study were pending at the time of that visit, the home study in this case has already been completed and returned to DCF. *Id*. A visit is not subject to the requirements of the ICPC. The ICPC would therefore not be implicated in a short visit by MS to Mr. and Mrs. R. in East Dakota. This Court, therefore, would not be in violation of the ICPC should it order such a visit.

**CONCLUSION**

For the foregoing reasons, the Court has proper authority to order placement of MS, or in the alternative, to order DCF to facilitate visitation between MS and Mr. and Mrs. R., either in Connecticut or East Dakota.

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|  | RESPECTFULLY SUBMITTED,  THE MINOR CHILD | |
| BY: | |  | |
|  | | Steven M. Lesko  Attorney for the Minor Child | |

CERTIFICATION

I hereby certify that a copy of the foregoing was delivered by electronic mail, this 28th day of April, 2011 to the following counsel of record:

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|  | Steven M. Lesko  Commissioner of the Superior Court |

1. The instructions to Form 100A define “Foster Family Home” as: “a facility providing care and guidance for a child or children not related to the caretaker for regular 24 hour care, or a certified kinship care home. A family foster home may not operate without a license or a certificate as required by the laws of the receiving State.” “Certified kinship care home” is not defined in the form or instructions. The reference to “Relative (not parent)” in the form instructions does not define the term, but simply indicates to state the relationship between caregiver and child. [↑](#footnote-ref-1)