

**JOYCE E. FUNDA
ATTORNEY AT LAW *
20254 ELK CROSSING LANE
P.O. BOX 156
ROLLINS, MONTANA 59931**

**Fellow, American Academy of
Matrimonial Lawyers™**

**Tel 406.844.0256
Mobile 406.253.5334**

*** Admitted to Practice in
New York State Only**

JFUNDA@CENTURYTEL.NET

February 16, 2009

House Judiciary Committee
Montana House of Representatives
P.O. Box 200400
Helena, MT 59620-0400

**Re: HB 515
(A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING FOR A HEARING UPON
OBJECTION TO A DISMISSAL OF AN ABUSE AND NEGLECT PETITION; AND
AMENDING SECTION 41-3-424, MCA.")**

Dear Chairman Stoker and Members of the House Judiciary Committee:

Thank you for the opportunity for me to submit written testimony in lieu of a personal appearance at the hearing scheduled for Tuesday, February 17, 2009. I urge you to approve HB 515 in its entirety.

I am the Vice President of the Board of Directors of CASA (court appointed special advocates) of Montana, Inc. I also serve as the Chair of the Legislative Task Force. The impetus for the proposed amendment to Sec. 41-3-424, MCA was as a result of my experiences as a CASA volunteer CASA for Kids in Flathead County.

Background

As a trained CASA volunteer, I was appointed in two separate cases in 2006 by Flathead County District Court Judges. Both of those cases involved abused and/or neglected children. Due to confidentiality constraints, I cannot disclose the specific details of either case. But, in both cases, I was rendered powerless by the law as it exists because the Department of Health and Human Services, Child Protection Services, was able to singlehandedly obtain an Order of Dismissal over my objection and, in my opinion, to the detriment of the children.

In case #1, a 6 month old baby was removed from the birth mother's care due to meth addiction and domestic violence in her home by the birth father. The child was placed with a relative. Before I had the opportunity to meet with the relative, the Department made a decision to dismiss the case and authorize the birth mother to leave Montana with the baby to return to the home of the abuser located in a far southern state. The relative was the person who told me the baby was gone and that the social worker had met with the mother and relative, told them that the Department was dismissing the case and that the mother could take the baby out of state. The Motion to Dismiss was filed by the Department, submitted with an Order of Dismissal and with no notice to me as the court appointed CASA for the child.

I appeared in Court to object to what had occurred and was advised by the Judge that his hands were tied by the law and that he had no alternative but to grant the Order of Dismissal.

As the CASA, it was my responsibility to report to the Court on the best interests of the child. I was unable to fulfill my responsibility because I had (and still have) no idea what became of the child.

In case #2, four children were removed from their father's care for neglect and/or abuse. Several years before, the children were removed from the mother due to a meth addiction. The four children were placed in a foster home and I was appointed by the Flathead District Court as the CASA for all four children. The mother followed her treatment plan and was successful in having the children placed with her. The father never completed a treatment plan. During the course of the case, disclosures were made regarding sexual abuse by the father involving one of the girls. Criminal charges were filed and the father was jailed for several months before posting bail. The criminal trial was continued several times and is now scheduled for March 2009.

In April 2008, the Department moved for a continuation of temporary legal custody, citing as one reason that the criminal trial was pending and the children were possible witnesses and still in need of services. The motion was unopposed and granted by the Court. Two weeks later, the Department filed a Motion to Dismiss. The

Court granted the motion citing the current law as being dispositive of the issue. My appointment as CASA ended with the Order of Dismissal.

Two weeks ago, those children were removed from the mother's care. I have been reappointed as their CASA. If the law had permitted the Court to consider my objection to the dismissal motion, who is to say the children's situation would not have deteriorated?

Rationale for Supporting HB 515

The discussion for the proposed change centered on amending the statute to specifically authorize the Court to exercise judicial oversight and approval of any motion to dismiss in abuse/neglect cases. The issue is that the statute, as presently written, permits the Department to file a motion to dismiss without any meaningful or significant input from the court or other parties, such as CASAs. The statutory language states "...the court **shall** dismiss..." (Emphasis added)

The rationale for the amendment is as follows: the statutory scheme permits, as it should, the Department to make applications, often *ex parte*, for drastic interim relief such as the removal of children from their homes and subsequent foster care placement. Once the interim order is granted, the powerful wheels of the Department and the laws of the state start turning, hopefully to the benefit of the abused/neglected children and for their protection. Service providers become involved, visitation most often becomes supervised, or may not even be permitted, children are placed in foster homes with significant disruption to the children's lives, CASAs are appointed, attorneys are appointed for the children and the parents and the County Attorney has another case to prosecute.

When the Department, most often the moving party, files a motion to dismiss, most Courts will grant the order notwithstanding objections from the other parties, especially CASAs.

The point of the proposed amendment is simply to even the playing field when the court is faced with a motion to dismiss in an abuse/neglect case. The present statutory scheme in the child welfare arena gives broad emergency powers, often drastic in nature, but necessary at that point in time, to the Department at the front end to protect children.

The argument is that the Court, having been involved throughout the case, must have the right and obligation to make a reasoned decision as to whether a dismissal is warranted. Without this specific statutory directive, the Department becomes judge and jury, and sometimes, executioner.

More simply put, one party to child neglect/abuse litigation should not be able to suddenly and without court discretion end the case, over objection, when so much hangs in the balance for vulnerable children.

While it was determined during the Task Force's work that Montana courts did not uniformly view and interpret the statute in the same way, there was sufficient anecdotal evidence and support from members of the judiciary, certain deputy county attorneys, CASAs and GALs, attorneys for children, CASA program directors, members of Advisory Councils to CASA programs and others who supported the proposed amendment.

Conclusion

The proposed amendment does not alter the statutory criteria for a motion to dismiss. What it does accomplish is the provision of a mechanism which would permit the Court, upon objection of one of the parties (including a CASA), to take a considered look at the objection and determine if a dismissal is in order.

The lives of abused and/or neglected children must be accorded the same judicial scrutiny when the Department seeks to dismiss a case as is accorded the matter when the case is started.

Please approve HB 515 for the benefit of these vulnerable children.

Thank you for your consideration of my comments.

Respectfully submitted,

Joyce E. Funda