

IN THE SUPREME COURT OF OHIO

Case No. 2020-1062

TAMMY SMATHERS, individually and on
behalf of the ESTATE OF HARMONY
BROOKLYN RAYNE CARSEY,

Plaintiffs-Appellants,

vs.

RICK GLASS, Executive Director of Perry
County Children's Services, et al.

Defendants-Appellees.

On Appeal from the Ohio Court
of Appeals, Fifth Appellate
District

Fifth District Case No.
19 CA 00018

**JURISDICTIONAL MEMORANDUM OF THE AMERICAN PROFESSIONAL
SOCIETY ON THE ABUSE OF CHILDREN AS AMICUS CURIAE
IN SUPPORT OF THE APPELLANTS**

Peter Traska (SC# 0079036)
Traska Law Firm, LLC
4352 Pearl Road, Suite A
Cleveland, Ohio 44109
Telephone: (216) 675-0088
Fax: (216) 342-7078
Email: ptraska@traskalawfirm.com
Counsel for Amicus APSAC

J. Stephen Teetor (SC# 0023355)
Matthew S. Teetor (SC# 0087009)
Isaac Wiles Burkholder & Teetor, LLC
Two Miranova Place, Suite 700
Columbus, Ohio 43215-5098
steetor@isaacwiles.com
meteetor@isaacwiles.com
**Attorneys for Defendants-Appellees
Rick Glass, etc., et al.**

Jeremy M. Burnside (SC# 0077980)
BURNSIDE LAW, LLC
1118 Hutchins Street, Suite A
Portsmouth, Ohio 45662
Telephone: (740) 353-2363
Fax: (740) 354-6038
Email: jeremy@burnsidelaw.com
Counsel for Plaintiffs-Appellants

Ashley Rutherford Starling (SC #084009)
WILLIS SPANGLER STARLING
4635 Trueman Blvd. #100
Hilliard, Ohio 43026
Telephone: (614) 586-7900
Fax: (614) 586-7900
astarling@willisattorneys.com
Counsel for Amicus Curiae
Ohio Association for Justice

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
I. INTRODUCTION.....	1
II. INTEREST OF AMICUS CURIAE APSAC.....	3
III. BRIEF FACTUAL AND PROCEDURAL BACKGROUND	
A. FACTS PROFFERED BY PLAINTIFFS.....	4
B. COURT OF APPEALS OPINION.....	5
IV. ARGUMENT	
A. THE COURT SHOULD ACCEPT JURISDICTION OF THIS CASE BECAUSE IT INVOLVES A QUESTION OF PUBLIC OR GREAT GENERAL INTEREST.....	6
V. CONCLUSION.....	8
SERVICE	9

TABLE OF AUTHORITIES

STATUTES, RULES, AND REGULATIONS

S.Ct.Prac.R. 5.02- Jurisdictional Appeals

R.C. §2744.02- Ohio's Political Subdivision Tort Liability Act

R.C. §5153.16- Duties of Public Children Services Agencies

Ohio Administrative Code Chapter 51.

OTHER AUTHORITIES

Browne, C. G. (2014). Tortured prosecuting: Closing the gap in Virginia's criminal code by adding a torture statute. *56 William & Mary Law Review* 269.

Knox, B. L., Starling, S. P, Feldman, K. W., Kellogg, N. D., Frasier, L. D., & Tiapula, S. L. (2014). Child torture as a form of child abuse. *Journal of Child and Adolescent Trauma*, 7, 37-49.

Macy, A. R. (2019). A precarious gap in U.S. criminal codes for cases of child torture and suggested model statute. *Children and youth services review* (96), 500-508.

Miller, P.J. (2020). Intrafamilial child torture: Training mandated reporters. *The APSAC Advisor*, 32(1), pp. 3-8.

Miller, P. J. (2019, February). *Violence intervention: Recognizing and responding to child torture*. Proceedings from the Gundersen National Child Protection Training Center, Violence Intervention and Prevention Summit; Orlando Florida.

I. INTRODUCTION

The American Professional Society on the Abuse of Children (“APSAC” or the “Society”) respectfully appear as amicus curiae so that APSAC can provide the specialized viewpoints of their members relating to the Court’s consideration of whether to accept jurisdiction of *Smathers v. Glass*, 2020 Ohio 3264 (2020).

“Intrafamilial Child Torture,” or “ICT,” is a term used in the child maltreatment professional community.¹ It is either usually referred to as “intrafamilial child torture” or “child torture” in the context of families. ICT occurs when a parent or caregiver subjects their child to conditions of physical or psychological torture, which may include conditions of captivity, solitary confinement, and severe neglect.² In this case, the facts alleged by plaintiff-appellants, along with their supporting photos and documentary evidence, indicate that Harmony was subjected to ICT and died from ICT (See Autopsy Report of Dr. C. Jeff Lee, Chief Forensic Pathologist and Licking Co. Coroner; autopsy photos as Plaintiff’s Ex. MSJ Nos. 15, 23, 24; Cabell Huntington Hospital Records PI’s Ex. MSJ No. 11 & Cabell MR-PCCS 1084; PICU Photos PI’s Ex. MSJ No. 15; *Smathers T. Dep.* 58:8, June 22, 2018). Specifically, she died from

¹ Miller, P.J. (2020). Intrafamilial child torture. *The APSAC Advisor*, 32(1), pp. 3-8.
Miller, P. J. (2019, February). *Violence intervention: Recognizing and responding to child torture*. Proceedings from the Gundersen National Child Protection Training Center, Violence Intervention and Prevention Summit; Orlando Florida.
Macy, A. R. (2019). A precarious gap in U.S. criminal codes for cases of child torture and suggested model statute. *Children and youth services review* (96), 500-508.
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² Knox (2014); Miller (2018; 2020).

non-accidental water deprivation while tied up and locked in a cage, in a hot room, in solitary confinement. (Autopsy Report of Dr. C. Jeff Lee for cause of death; Smathers Dep. 26-27, 30-31, 58, 67 for description of conditions that lead to death, Taylor Deposition 59 and Activity Log 11/15/15 PCCS-00358-00360 for defendant-appellee awareness of conditions that lead to death.)

The plaintiff's evidence demonstrates that Perry County Children's Services (PCCS) knew that Harmony was being kept in a cage, without food or water access, in a hot room, in solitary confinement, while she was still alive (*Infra* Taylor Dep. and Activity Log of 11/15/15; also see Activity Log of 12/11/15 PCCS 000370-000371; also PI's Ex. MSJ No. 5 for photo of the cage-like structure). Plaintiffs submitted evidence that Defendant-Appellee Nick Pease actually viewed the cage used to keep the toddler while Harmony was still alive. (See evidence listed *infra*.) PCCS's documents show from their initial telephone contact with Tammy Smathers that Smathers alerted the defendant-appellees that she did not know how the mother was keeping Harmony in that room. The evidence presented to the trial court (Listed *infra*, especially PCCS activity logs; also Affidavit of Pease) demonstrates that Nick Pease and PCCS had multiple opportunities over a period of two months to intervene and protect Harmony, that they knew Harmony was in grave danger, and they failed to act, in violation of numerous administrative laws governing the practice of Public Children Services Agencies (PCSAs) in Ohio (See OAC §5153.15), and even falsifying the required safety assessment by completing it two months after the initial home visit, after Harmony was already dead. OAC 5101: 2-37-01 provides details on the safety assessment requirement and requires that safety assessment be completed within 5 working days of initiating investigation, appellee Pease submitted it 48 days later, after Harmony's death, and completed it based on conditions when Harmony was alive.

The Court should accept jurisdiction of this case, because child torture and the response of Public Children Service Agencies (PCSAs) to child torture are of public and great general interest. (*See* S.Ct.Prac.R. 5.02.).

II. INTERESTS OF AMICUS CURIAE APSAC

The American Professional Society on the Abuse of Children (APSAC) is a not-for-profit organization focused on serving children and families impacted by child maltreatment, including both abuse and neglect. Founded in 1986, APSAC brings together professionals from across disciplines who focus on combating child maltreatment. The Society's members include physicians, attorneys, social workers, child protective service workers, law enforcement officers, researchers, professors, psychologists, clergy, and administrators. APSAC's work includes conducting expert training, educational activities, and policy leadership.³ APSAC is focused on combating child maltreatment through evidence-based principles. For example, APSAC routinely issues policy reports on various issues related to child welfare through which APSAC's professionals detail current research and propose policy outcomes in order to enhance the practice of child protection.

APSAC regularly files amicus briefs in cases where child maltreatment is at issue. Specifically, the Society aims to participate in those cases where the knowledge and experience of APSAC's professional members can be of assistance to the courts in understanding how a particular discipline deals with issues of child protection. In this particular case, we hope to provide the Court with information on intrafamilial child torture and provide expertise on how

³ See APSAC, Center for Child Policy, <http://centerforchildpolicy.org>

professionals in the field of child protection normally deal with cases of child torture in families. At present, we file this jurisdictional memorandum to request that the Court review the case, in the interests of public policy.

III. BRIEF FACTUAL AND PROCEDURAL BACKGROUND

A. FACTS PROFFERED BY PLAINTIFFS

According to the evidence submitted by plaintiffs, the defendant-appellees were aware of the dangerous circumstances Harmony was placed in for nearly two months before her death on 1/8/16 (See Activity Log 11/15/15 PCCS-00358-00360 for notes on what appellee Nick Pease observed at the initial home visit two months before Harmony died; See Taylor Dep. 59 for what appellees observed on a subsequent home visit). Even before Nick Pease's first home visit on 11/15/15, Grandmother Tammy Smathers had informed PCCS that Harmony was living in a cage, in a hot room, with no access to water or food, and was kept in there alone (Smathers Dep. cited *infra*). Nick Pease viewed Harmony's cage and the electrical cord used to tie her up during his visit on 11/16/15, but did not complete a safety assessment (per OAC cited *infra*), make a safety plan for Harmony to be kept outside the cage, or remove Harmony from her mother's custody (See Activity Log of 11/5/15 cited *infra*; Pease Affidavit cited *infra*, and legally prescribed requirements for PCSAs in Ohio at OAC Chapter 51). Pease would have also seen Harmony's malnourished body and chunks of missing hair on this date, but did not do a safety assessment regarding her nutrition or head banging, make a safety plan, or remove Harmony from mother's custody (See Cabell Huntington Hospital Records and Autopsy Report of Dr. Lee,

cited *infra*, for documentation that these would have been visible to appellees during their home visits).

Even after PCCS knew Harmony fell unconscious, was life-flighted to a pediatric intensive care unit (PICU), and was told that the medical team found “overwhelming evidence of abuse and neglect” (See Pl. Ex. No. 11 and 15, cited *infra*, for report and photos from Cabell Huntington Hospital, and Taylor Dep. 114-115 that appellees reviewed the records), including multiple injuries, being emaciated, and only weighing 15 pounds, defendant-appellees did not do a safety assessment, make a safety plan, or remove Harmony from her mother’s custody (see Activity Log of 12/11/15 cited *infra*). Even after defendant-appellees knew that Harmony had been returned to her mother’s custody in December, after the hospital, and saw her in the Mother’s home after the hospital, they did not take any action to complete a safety assessment, make a safety plan, or remove Harmony from her mother’s custody (Id). Consequently, Harmony died of non-accidental water deprivation while in her cage on January 8, 2016 (Autopsy Report, cited *infra*). That is, per usual, Mother put her in her cage, tied her into the cage using an electrical cord so she could not escape, and left her alone in the hot room without any access to water. Per plaintiff’s evidence, Harmony died in the exact manner PCCS knew her to be kept in (Id)..

B. COURT OF APPEALS OPINION

After the trial court granted summary judgment to defendants on October 15, 2019, plaintiffs timely appealed. Plaintiff-Appellants issued six assignments of error, including that the trial court made erroneous findings of fact, not consistent with the evidence and exhibits

submitted, and at times failed to address plaintiffs' evidence at all in their summary judgment analysis (See Brief of the Appellants, February 28, 2020, pp.22-27). The Fifth District ruled against the plaintiff-appellants on all six assignments of error and upheld summary judgment. The Fifth District opinion failed to address most of the evidence submitted by plaintiffs and used defendant-appellee's set of facts in their summary judgment analysis (see Fifth Appellate District Opinion, June 8, 2020).

IV. ARGUMENT

A. THE COURT SHOULD ACCEPT JURISDICTION OF THIS CASE BECAUSE IT INVOLVES A QUESTION OF PUBLIC OR GREAT GENERAL INTEREST

The Court has no greater interest than upholding the laws passed by the General Assembly (see ORC and OAC provisions cited *infra*) for the protection of children from maltreatment and homicide. In this case, Harmony was subjected to ongoing conditions of abuse and neglect from which she died. The following acts of intrafamilial child torture directly caused her death: non-accidental water deprivation (Act 1) while tied up (Act 2) in a cage-like confinement (Act 3) while being exposed to hot temperatures (Act 4) while alone in solitary confinement (Act 5)⁴ (Per footnote, see medical journal article on child torture by Knox and colleagues, 2014; also see child welfare policy paper on child torture by Miller, 2020. For information on the criminal prosecution of child torture, see Brown, 2014 and Macy, 2019, cited *infra*). Plaintiff-Appellants introduced evidence that before her death, Harmony suffered countless other acts of child torture, including starvation and beatings that caused internal organ

⁴ For scholarly descriptions and analysis of the Intrafamilial Child Torture phenomenon, see Miller, 2020 and Knox, 2014, *infra*.

damage (See Brief of Appellants, February 28, 2020 and other exhibits *infra*). The PICU at Cabell Huntington Hospital documented these injuries and stated they were “overwhelming evidence of abuse and neglect” (PICU photos as Pl. Ex. MSJ No. 15, PICU written records as Pl. Ex. MSJ No. 11).

In this case, defendant-appellee PCCS workers were involved in Harmony’s life well before her death. Plaintiff-Appellants have produced evidence that appellees committed egregious misconduct with regard to the handling of Harmony’s case. After PCCS worker Nick Pease witnessed evidence in the home that Harmony was being tortured, and mother admitted to acts of torture in speaking with him, he failed to complete a safety assessment, and either prepare a safety plan or remove Harmony from her mother’s care, per R.C. §5153.16 and OAC Chapter 51. He took no action to protect Harmony from circumstances that clearly put her life in danger. Even after she was life-flighted to a pediatric intensive care unit, and PCCS was told by the hospital that there was “overwhelming evidence of abuse and neglect” he took no action to protect Harmony, as required of him by Ohio statute. Plaintiff-Appellants even produced evidence that Nick Pease falsified documents by completing the legally required safety assessment after Harmony had already died. Yet, supposedly viewing the facts in the light most advantageous to the plaintiffs, both the trial court and the Fifth District granted summary judgment on all claims. It appears that the Fifth District only considered the fact pattern asserted by defendant-appellees (See Fifth Appellate District Opinion, June 8, 2020).

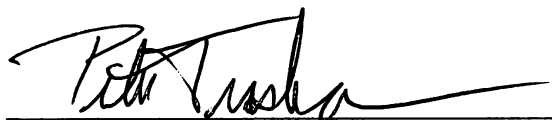
The child maltreatment and child protection experts at APSAC assert that this case is particularly important to the public interest, because if defendant-appellees are permitted to ignore highly lethal child torture without legal consequence, there will be no fact pattern that can

survive summary judgment. Public Children Service Agencies (PCSAs) in Ohio will feel no pressure to comply with their mandates and processes to protect children (again, see ORC and OAC, *infra*), because the Fifth District's opinion has set a precedent that even the most severe and egregious dereliction of duty is subject to dismissal under summary judgment. All 2.7 million children⁵ in Ohio have a stake in this case, because any one of them could become a victim of child maltreatment, and potentially lose their life or suffer permanent harm if the PCSA in their county does not take proper action. The safety of millions of Ohio children is clearly an issue in the public interest, and the Court should grant review of this case.

V. CONCLUSION

For the reasons stated, amicus curiae APSAC ask this Court to ACCEPT JURISDICTION of the case.

Respectfully submitted,



Peter Traska (SC# 0079036)
Traska Law Firm, LLC
4352 Pearl Road, Suite A
Cleveland, Ohio 44109
Telephone: (216) 675-0088
Fax: (216) 342-7078
Email: ptraska@traskalawfirm.com
Counsel for Amicus APSAC

⁵ Numbers taken from Ohio Kids Count, a publication of Children's Defense Fund Ohio, 2013. Viewed at <https://www.cdfohio.org/wp-content/uploads/sites/6/2018/07/Ohio-Kids-Count-Data-Book-2013.pdf>

SERVICE

This is to certify that the foregoing Memorandum in Support of Jurisdiction of Amicus Curiae the American Professional Society on the Abuse of Children was served by First Class U.S. Mail on this 8th Day of September, 2020, upon the following:

Jeremy M. Burnside (SC# 0077980)
BURNSIDE LAW, LLC
1118 Hutchins Street, Suite A
Portsmouth, Ohio 45662
Telephone: (740) 353-2363
Fax: (740) 354-6038
Email: jeremy@burnsidelaw.com
Counsel for Plaintiffs-Appellants

J. Stephen Teetor (SC# 0023355)
Matthew S. Teetor (SC# 0087009)
Isaac Wiles Burkholder & Teetor, LLC
Two Miranova Place, Suite 700
Columbus, Ohio 43215-5098
steetor@isaacwiles.com
meteetor@isaacwiles.com
Attorneys for Defendants-Appellees Rick Glass, etc., et al.

Ashley Rutherford Starling (SC #084009)
WILLIS SPANGLER STARLING
4635 Trueman Blvd. #100
Hilliard, Ohio 43026
Telephone: (614) 586-7900
Fax: (614) 586-7900
astarling@willisattorneys.com
**Counsel for Amicus Curiae
Ohio Association for Justice**



Peter Traska (SC# 0079036)
Traska Law Firm, LLC