

**IN THE JUVENILE COURT OF _____ COUNTY,
TENNESSEE**

IN THE MATTER OF: _____)

DOB: _____) **Docket N0.** _____

)

Child/ren Under 18 Years of Age)

MOTION TO DISMISS PETITION

Comes now, _____, and moves this Honorable Court to dismiss the pending petition filed by the state alleging dependency and neglect against the parent(s) in this case. The parent(s) deny all allegations advanced by the department and assert their rights under the Fourteenth Amendment of the Constitution of the United States and request a preliminary hearing with a finding by the court consistent with the burden of proof required by law to deprive me of my superior parental rights.

A case manager, _____, made contact with me. She/he made untrue allegations regarding the quality of care I gave to my child/ren. I asserted my fourth amendment right to not permit her/him into my home, my fifth amendment right to not speak with the case manager, and demanded I receive counsel consistent with my sixth amendment right under the protections of the United States Constitution.

The case manager made false allegations that were unproven and demanded that I take a drug test which was not made by a valid court order. I refused and she/he demanded that I

Speak with her regarding the “allegations” I again refused the invitation. She/he was visibly upset and threatened to come back to take my children due to my uncooperation. I am aware of the “crisis” at the TN Department of Children Services. I am concerned that my child/ren will fall through the cracks if this petition is left unchallenged.

THEREFORE, I implore this court to dismiss this petition for lack of competent evidence or in the alternative with an informal adjustment.

NOTICE OF HEARING

This motion is set for hearing on the ____ day of _____ 2023 at ____ AM.
The location of such hearing will be held in the Juvenile Court located at address:

_____.

Respectfully submitted,

Parent/pro se

Address: _____

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of this motion, notice of hearing, and accompanying order has been delivered by certified U.S. mail service to the individuals listed below on this ____ day of _____, 2023. This motion was filed in the Juvenile Court Clerk’s office on this ____ day of _____, 2023 as denoted by the file stamp.

DCS ATTORNEY, _____

Address: _____

OTHER PARENT, _____

Address: _____

Parent Signature/pro se

Address: _____

Phone NO. _____

ORDER GRANTING MOTION TO DISMISS PETITION

The Court having reviewed the Motion and the entire record now ORDERS that the motion to dismiss be granted with no further reviews or interference from the Department of Children Services unless another petition is filed that warrants it.

FURTHER, the court finds no reasonable efforts have been made by the department to provide appropriate or timely services to prevent removal.

ENTERED this _____ day of _____, 2023.

Juvenile Court Judge/Magistrate

MEMORANDUM OF LAW IN SUPPORT OF PETITION TO DISMISS ASSERTING SUPERIOR PARENTAL RIGHTS

The doctrine of “superior parental rights” protects parents against non-parents in child custody disputes. *Blair v. Badenhope*, 77 S.W.3d 137, 141 (Tenn. 2002). In order for a nonparent to invade a parent’s right to custody, “there has to be a finding, after notice required by due process, of substantial harm to a child.” *In re Adoption of a Female Child*, 896 S.W.2d 546, 548 (Tenn. 1995). Similarly, the Supreme Court has indicated that for a non-parent to gain custody of a child from a parent there must be a finding in “the order initially removing custody from the [parent] . . . that the [parent] was unfit, that the child was a dependent and neglected child, or that a danger of substantial harm threatened the child’s welfare.” *Blair*, 77 S.W.3d at 143. Thus, an order finding a child dependent and neglected suffices to deprive a parent of “the presumption of superior parental rights.”

At the adjudicatory phase, the court is required to hear evidence and make findings as to whether the child is a dependent and neglected child. Tenn. Code Ann. § 37-1-129(a). The findings must be made on the basis of clear and convincing evidence. Tenn. R. Juv. P. 28(f)(1)(ii). Only “[if] the court finds from clear and convincing evidence that the child is dependent [and] neglected . . . the court shall proceed immediately or at a postponed hearing to make a proper disposition of the case.” Tenn. Code Ann. § 37-1-129(c). In this second, dispositional phase, the court determines, among other things, whether to leave the child with the child’s parents or to transfer custody to another entity or individual. Tenn. Code Ann. § 37-1-130.

It is in the adjudicatory phase that the juvenile court makes the finding of dependency and neglect that the Supreme Court requires in order to remove from the parent the presumption

of superior parental rights. Accordingly, the subject parent loses the presumption of superior parental rights when the adjudicatory phase of a dependency and neglect proceeding concludes with a such finding.

The presumption of superior parental rights reattach to a parent after the presumption is removed by a juvenile court's adjudicatory order finding a child to be dependent and neglected. As only a court order can remove the presumption, only a court order can restore it. The most obvious such order would be one from the juvenile court restoring custody to the parent and dismissing the dependency and neglect case. See Tenn. Code Ann. § 37-1-104(c) (providing that a juvenile court's jurisdiction over a dependent and neglected child continues until the child reaches age eighteen unless one of several events occurs, among which is dismissal of the case.

RESPECTFULLY SUBMITTED,

PARENT(S)/pro se