IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS A JUVENILE COURT

In the Matter of:	**:**	
RYLEIGH L.-H.	**:**	**Guardianship Nos.** 06-Z-21-0014
and	**:**	06-Z-21-0015
AUSTIN L.	**:**	

JENNIFER LUBIN'S MOTION TO RECONSIDER

Ms. Lubin respectfully moves that the Court reconsider its decision to dismiss her petition to reinstate her parental rights because the law governing children in Maryland demand that her rights be reinstated. All of what the Department argued in their opposition is wrong. In support of her motion, Ms. Lubin offers the Court case precedent, legislative intent, and new evidence.

ARGUMENT

I. The Law governing children in every State across America gives this Court authority to grant Ms. Lubin's Petition

The overarching law in Maryland and in every State in the Union is "the best interest of the child" standard. Every court in the United States, including the Supreme Court, has held that it is in the best interest of children to be raised by their own fit biological parents. *See, e.g., Wells v. Wells*, 11 App. D.C. 392 (1897); *Santosky v. Kramer*, 455 U.S. 745 (1982); *Troxel v. Granville*, 530 U.S. 57 (2000).

The *Wells* case is included in this short list of federal precedent because the United States Circuit Court of Appeals has pointed out a truth and fact that applies here. The

Wells court held that "no special allegation in the pleading in relation to the children, is required, … in order to justify the court to provide for the custody and maintenance of the children…. ***All that is necessary to justify the court in acting in respect to the children is, that their situation and circumstances be brought to its attention***." *Wells*, 11 App. D.C. at 394. (emphasis added). The *Wells* court set a precedent: all that this Court needs to rule in the best interests of Ryleigh and Austin is for their situation and circumstances to be brought to the Court's attention. Even without a motion or a request, the Court of Appeals has held that this Court has the authority to act in a way that meets the best interest of the two children involved in this case:

> [N]o certain fixed rule for the government of the courts in all cases can be laid down, other than this, that the best interest of the child must be consulted as paramount.

Id. at 395.

There is no denying that Ms. Lubin is a fit parent. The Department does not dispute this fact. The Supreme Court holds that fit parents *must* be allowed to parent their children. Therefore, this Court very well has the authority to grant Ms. Lubin's petition and order the reunification of mother and children through the auspices of a certified family therapist.

II. This effort to clarify courts' authority was fundamental to the Parental Rights and Responsibilities Act of 1995.

The United States Senate, realizing that "some decisions of Federal and State courts have treated the right of parents, not as a fundamental right, but as a nonfundamental right" introduced the Parental Rights and Responsibilities Act of 1995. S. 984, 104th Cong. § 2(a)(4). It was found that "an improper standard of judicial review

[was] being applied to government conduct that adversely affects parental rights and prerogatives." *Id*. In other words, the Parental Rights Act was introduced because States were wrongfully terminating parents' rights. To address these wrongful terminations, for case where the government requests to terminate parental rights, the Act set a high bar for the government; its evidence must be "clear and convincing." *Id*. at § 3(1)(B). Even though Parental Act is yet to be passed, this Court should follow the language contained in the pending Act and scrutinize the Department's efforts by applying this more exacting standard.

III. New information reveals that Ms. Lubin's termination should not have occurred.

Since the filing of the Petition and the ensuing Opposition, two types of new evidence have surfaced that convincingly shows that Ms. Lubin's parental rights may have been wrongfully terminated.

A. The Court was given misinformation by the Department that served as a basis for terminating Ms. Lubin's rights.

In the November 12, 2021 Order terminating Ms. Lubin's parental rights, the Court noted that "Following a hearing on November 26, 2019, the court found both children CINA and placed them in kinship care. Nov. 12, 2021 Order, at 13–14. The court found both children CINA based on information the Department provided in regards to Ms. Lubins' October 21, 2019 drug test results. The Department reported that Ms. Lubin tested positive for drugs during this time. *See* Nov. 12, 2021 Order, at 14 citing Department's Exhibits 20A and 20B.

These same lab results have been uncovered since the filing of Ms. Lubin's petition to reinstate her parental rights and the Department's Opposition. The October 2019 lab results were unavailable to Ms. Lubin until last week, March 2023. The results show that Ms. Lubin ***tested negative for the drugs she was accused of abusing***. *See* Ex. 1–3 October 2021 Lab Test Reults. Ms. Lubin was drug-free during the exact time the Department reported that she tested positive for drugs which resulted in her children being labelled CINA. Had the Department not falsified records, Ms. Lubin's children would not and could not have been found CINA and her parental rights would have never been terminated.

The Court also found that "from March 10 to March 22, 2021…Ms. Lubin detoxed from benzodiazepine and heroin." Nov. 12, 2021 Order, at 20. The Court made this finding based on information given by the Department in the September 24, 2021 Report, Department's Exhibit 8 at 6. This information was also flat out false.

Ms. Lubin never tested for positive for heroin while at Suburban Hospital during March 10 to March, 2021. *See* Ex. 4, March 2021 SH Lab Results.

Her entire parental termination was based on inaccurate information promulgated by the Department and as a result, Ms. Lubin should at the very least be afforded an opportunity to present this new evidence, evidence that was not available at the time her rights were terminated.

B. The fact that Dr. Weeks and her husband claimed Ms. Lubin's children as their own before her rights were terminated points to the Department not seriously working to reunite the Lubin family.

The "fictive kin" does not fit the definition of fictive kin because they did not even know the children, much less have a bond with them before being named as potential adoptive parents. Moreover, these same individuals who are now adopting Ms. Lubin's children knew they would have Ms. Lubin's children *before Ms. Lubin's parental rights were even terminated.* After a 5-day trial in October 2021, the juvenile court granted the Department's petition and terminated the parental right of Ms. Lubin. The final findings and Order were issued on November 12, 2021.

A search on social media of Dr. Weeks, the woman who now has custody of Ms. Lubin's children, reveals that on October 2, 2021, before the 5-day trial and before the November 12, 2021 Order terminating Ms. Lubin's parental rights, posted a long post stating that she now has two new children—Ms. Lubin's children. *See* Ex. 5a-5c, snapshot of Dr. Week's Facebook page. This gives rise to suspicion. Upon investigation, it is believed that Ms. Lubin's parental rights were terminated, not because she was an unfit parent, but because the Department had long decided that Dr. Weeks should be the children's mother.

CONCLUSION

In its opinion regarding Ryleigh and Austin from August of 2022, the Court of Special Appeals quoted the juvenile court's view of Ms. Lubin:

> Overall[,] what stands out is the depth and complexity of both parents' substance abuse and mental health issues. For the future, the Court cannot see a reasonable time when this will change and when the Children can have a safe and healthy home with either parent.

In Re: R.L.-H. & A.L., Nos. 356, 1465, & 1763 at 9 (Md. Ct. Spc. App. Aug. 12, 2022) (insert in original. This pessimistic perspective showed little faith in Ms. Lubin. And it turned

out to be premature. In 2021, Ms. Lubin using the supports she had been given rose above her addictions and pulled her life together. She has been and is currently clean for several years now. She has been and is currently working. She has been and is currently maintaining her own home. She has been and is currently making a positive contribution to society. If this Court had just seen her through the programs that she was in at the time the juvenile court ruled, this family would be together today. Instead, a family has been judicially sundered. We respectfully ask the Court to reconsider.

At the very least, a hearing should be held in order to flesh out and prove that Ms. Lubin, being drug-free for over three years, is fit and proper to parent her child and that through the proper therapy, the children can benefit not only from the family with whom they have a current bond, but also from her biological family.

Therefore, Ms. Lubin requests that a hearing be held, and her Petition be considered after the hearing when all of the facts have been presented.

Submitted March 23, 2023

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CERTIFICATE OF SERVICE

I certify that on March 23, 2023, a copy of the foregoing Motion to Reconsider was electronically served and/or mailed upon all counsel and/or parties of record.

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