



## I.

### PARTIES

1.1. Plaintiff, Patricia Allen, is a permanent resident of the State of Texas within the Northern District of Texas.

1.2. Defendant, Dallas County Child Protective Services Unit of the Texas Department of Family and Protective Services (“CPS”), is the Dallas County branch of a state agency. CPS may be served by serving its commissioner, John Specia at 701 W. 51<sup>st</sup> Street, Austin, Texas, 78751.

1.3 Defendant, Carrie Wright, may be served at her place of work, Dallas County Child Protective Services Unit of the Texas Department of Family and Protective Services, 5351 Samuell Boulevard, Dallas, Texas 75228, or wherever she may be found.

1.4 Defendant, Dawn Johnson, may be served at her place of work, Dallas County Child Protective Services Unit of the Texas Department of Family and Protective Services, 5351 Samuell Boulevard, Dallas, Texas 75228, or wherever she may be found.

1.5 Defendant, Tennille Gavin, may be served at her place of work, Dallas County Child Protective Services Unit of the Texas Department of Family and Protective Services, 5351 Samuell Boulevard, Dallas, Texas 75228, or wherever she may be found.

## **II.**

### **JURISDICTION**

2.1 This Court's jurisdiction is based upon federal questions arising under the Constitution and laws of the United States. In particular, this case involves violation of 42 U.S.C. §1983 and the due process clause of the Fourteenth Amendment of the United States Constitution.

## **III.**

### **VENUE**

3.1 Venue is proper pursuant to 28 U.S.C. §1391(b)(2) because a substantial part of the events or omissions giving rise to Ms. Allen's claims, as outlined in Sections 4 and 5 below occurred within the Northern District of Texas, and all parties reside in the Northern District of Texas.

3.2. On or about July 10, 2015, Defendant CPS via their employees arrived at Ms. Allen's residence in Irving, Dallas County, Texas. Upon arrival, employees of Defendant CPS seized Ms. Allen's six year old daughter and three year old son.

3.3. Defendant CPS filed its "Original Petition for Protection of Child(ren), For Conservatorship and For Termination In Suit Affecting the Parent-Child Relationship" (seeking to terminate Ms. Allen's parental rights) in Dallas County. Defendant CPS, by and through its employees, Defendant Wright,

Defendant Johnson, and Defendant Gavin, continued to pursue termination of Ms. Allen's parental rights in Dallas County, Texas, despite knowing that they had no basis to remove Ms. Allen's children, to retain custody of her children, and to terminate her parental rights.

#### IV.

### FACTS

#### *The Drownings*

4.1 On June 24, 2015, Ms. Allen and her five children went to the swimming pool at the MacArthur Place at 183 apartment complex. Her oldest—A.S. (eleven years old), A.S. (ten years old), and T.S. (nine years old)—were swimming in the shallow end of the pool. Her six year old daughter sat nearby on a step in the shallow end by her mother. Ms. Allen was holding her youngest son in her arms as she gently twirled with him in the water.

4.2 A.S., A.S., and T.S. could swim. Indeed, another resident at MacArthur Place at 183 stated that he saw Ms. Allen and her children swimming that day.

4.3 While the shallow end of the pool was relatively clear, the deep end of the pool was murky. As Ms. Allen and her children, swam and moved in the pool the water became murkier and murkier. Ms. Allen and her youngest son were twirling in the water. As she turned with her youngest son and faced the

deep end of the water, she did not see A.S., A.S., or T.S.. She could not see them anywhere in the murky water. She screamed for help.

4.4 Ms. Allen quickly had her six year old daughter get out of the water and placed her youngest son outside of the pool. She went underwater and opened her eyes but could not see anything in the murky water. She moved on the slippery mossy pool floor feeling and reaching for her children but could not find them. As she searched for them, Ms. Allen heard a splash. Her youngest son had fallen in the pool. She raced to find him and pulled him out of the water.

4.5 Others arrived at the pool after hearing Ms. Allen screaming. She told them that her children were in the pool and she needed to get them out.

4.6 “Are you sure they’re in the pool? I can’t see them. Is it possible they’re somewhere else?” was the response she got from those who arrived at the pool. Eventually a maintenance man dove into the pool and searched in the deep end. He found A.S. and T.S. and pulled them out.

4.7 Ms. Allen shouted again that there was still a child in the water: her daughter A.S.. Rescue workers had since arrived and struggled to find A.S. in the murky water. They eventually found A.S. and pulled her out of the pool. Ms. Allen, a certified nurse assistant, immediately began CPR.

4.8 Her daughter A.S. died that day. Her sons A.S. and T.S. went to the hospital by ambulance. Two days later, the boys died in the Intensive Care Unit at

Children's Medical Center in Dallas.

***CPS Seeks Termination of Ms. Allen's Parental Rights and Continues to do so Despite Knowing the Allegations Against Her Are False***

4.9 On July 9, 2015, Defendant CPS filed its "Original Petition for Protection of Child(ren), For Conservatorship and For Termination In Suit Affecting the Parent-Child Relationship." Defendant CPS seized Ms. Allen's youngest children on July 10, 2015. Defendant CPS continues to retain custody of Ms. Allen's children.

4.10 Defendant CPS specifically requests in the Original Petition for Protection of Child(ren), For Conservatorship and For Termination In Suit Affecting the Parent-Child Relationship that "the Court should terminate the parent-child relationship between Patricia Allen and the children subject to this suit."

4.11 On July 21, 2015, law enforcement informed CPS employee Deborah Phillips that "the phone records showed Ms. Allen received some texts and a missed call but there were not outgoing texts or calls" during the time Ms. Allen and her children were at the pool.

4.12 Thus, as of July 21, 2015, Defendant CPS knew that Ms. Allen was not using or distracted by her phone while she was at the pool with her children. Despite this, Defendant CPS by and through its employees kept Ms. Allen's

children and continued to pursue termination of her parental rights.

4.13 On September 24, 2015, Defendant CPS employees—Defendant Wright, Defendant Johnson, and Defendant Gavin—acknowledged that their case against Ms. Allen was “shaky” to begin with; that they were only able to remove the children based on the assumption that Ms. Allen was texting while she was at the pool with her children; that Defendants knew that Ms. Allen was not using her phone while she was at the pool; and that Defendants had no concrete evidence against Ms. Allen. A CPS email dated September 24, 2015, states:

*[T]his removal was shaky to begin with...[Law Enforcement] has gone back on what they originally said which was that the mother was on her phone. This is what gave us the green light for the writ [application for removal of the children]. We now know she wasn't on her phone and actually didn't respond to texts or calls during this time...I have followed Peggy's directive each time of saying we can't make a recommendation and although we have concerns we don't have anything concrete.<sup>1</sup>*

4.14 Likewise, the assertion that Ms. Allen's children could not swim has been proven false. An independent witness confirmed that he personally observed “*all of the children swimming*” prior to the drownings.

4.15 Defendant CPS also had access to law enforcement records which included independent witness statements explaining that they personally saw the children swimming the day of the drownings. Numerous other individuals have

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<sup>1</sup> The email quoted above is attached as Exhibit 1 to this complaint. The email is redacted to delete the names of the minor children and the cell phone numbers and email addresses of the individual defendants.

now testified and/or submitted affidavits stating that they had previously seen Ms. Allen and her children swimming on other occasions.

4.16 Defendant CPS by and through its employees now argues that Ms. Allen is an unfit mother because the children should never have been in a pool with the potential to become murky while swimming. The Texas Department of Family and Protective Services' press releases on water safety—some of which were issued after the drowning of Ms. Allen's three children—make no mention of any danger of swimming in water that could become unclear. This argument has only been used in Ms. Allen's case and constitutes arbitrary and oppressive governmental interference.

4.17 In the words of Judge John Specia, Commissioner of the Texas Department of Family and Protective Services: "Drowning is not what you think—it's quick and silent and happens before you know it."

4.18 The deaths of A.S., A.S., and T.S. are a horrific loss and tragedy for their mother. CPS knows that Ms. Allen was not on her phone at the time of their death. CPS knows that Ms. Allen and the children could swim. CPS knows that it has no basis to deprive Ms. Allen of her children and to deprive her children of their mother. CPS has and continues to exploit a mother's tragedy so that they may take her young children from her.



## V.

### CAUSE OF ACTION AGAINST DEFENDANTS

5.1 This case is brought pursuant to 42 U.S.C. § 1983. Paragraphs 1.1. to 4.18 are incorporated as though restated verbatim.

5.2 CPS is a state government agency subject to a suit for damages pursuant to 42 U.S.C. §1983. Dallas County Child Protective Services Unit of the Texas Department of Family and Protective Services functions through those individuals empowered by it with authority as investigator and supervising investigators, including Defendant Wright, Defendant Johnson, and Defendant Gavin. Defendant Wright, Defendant Johnson, and Defendant Gavin were acting within the course and scope of their employment as investigators and supervising investigators employed by the Dallas County Child Protective Services Unit of the Texas Department of Family and Protective Services.

5.3. Each of the Defendants exercised power possessed by virtue of state law and made possible only because each Defendant is clothed with the authority of state law, which permits the establishment of child protective services agencies, such as the CPS, and allows child protective services agencies to clothe employees such as Defendant Wright, Defendant Johnson, and Defendant Gavin with the authority of state law by designating them as investigators, supervising

investigators, conservatorship caseworkers, and conservatorship supervisors.

5.4. Defendant CPS, Defendant Wright, Defendant Johnson, and Defendant Gavin, individually and in combination violated the due process rights of Ms. Allen, as guaranteed by the Fourteenth Amendment to the United States Constitution. In particular, Defendant CPS, Defendant Wright, Defendant Johnson, and Defendant Gavin violated Ms. Allen's right to family integrity. As a result of the violation of her constitutional rights, Ms. Allen's children were taken from her and are still withheld from her. Furthermore, Ms. Allen still faces termination of her parental rights.

5.5 Defendant CPS' interference acting by and through its employees, Defendant Wright, Defendant Johnson, and Defendant Gavin with Ms. Allen's right to family integrity is actionable under 42 U.S.C. §1983. Defendant CPS, Defendant Wright, Defendant Johnson, and Defendant Gavin's conspiracy to retain Ms. Allen's children in state custody and attempt to terminate her parental rights despite their admission that Defendant CPS, Defendant Wright, Defendant Johnson, and Defendant Gavin, had no basis to do so violates Ms. Allen's rights under the due process clause of the Fourteenth Amendment.

5.6 Defendants' continued efforts to deprive Ms. Allen of her children and her right to family integrity despite admittedly having no basis to do so constitutes arbitrary and oppressive government action. Defendants continued

efforts to permanently terminate Ms. Allen's parental rights constitute arbitrary and oppressive government action in that:

1. Defendants conceded that that they were only permitted to take Ms. Allen's children based on the assumption she was on her phone at the time of the drownings.
2. Defendants stated that "[w]e no know she wasn't on her phone and actually didn't respond to texts or calls during this time."
3. Defendants admitted that they "don't have anything concrete" to support" their claims.
4. Defendants know that Ms. Allen and the children knew how to swim.

5.7 Defendants interference with Ms. Allen's right to family integrity constitutes arbitrary and oppressive governmental action and violates the Fourteenth Amendment of the United States Constitution. Defendants admitted that they had no reasonable basis to deprive Ms. Allen of her children. Defendants acted with malice and/or excessive zeal. Defendants were not objectively reasonable because they continue to deprive Ms. Allen of her children despite knowing that their justification for removing the children has since been proven false and that they have no concrete evidence to support removal of Ms. Allen's children and the termination of her parental rights. Their past and on-going actions are the cause of Ms. Allen's mental anguish resulting from the deprivation of her right to family integrity.

## VI.

### REQUEST FOR PRELIMINARY INJUNCTION

6.1 Ms. Allen will likely suffer irreparable injury if Defendant CPS is not enjoined from retaining custody of Ms. Allen's children while this suit is pending.

6.2 There is no adequate remedy at law because if Defendant Dallas County Child Protective Services Unit of the Texas Department of Family and Protective Services continues to pursue termination of Ms. Allen's parental rights and refuses to return Ms. Allen's children to her despite its own admission that they have no concrete evidence to support their continuous custody of Ms. Allen's children let alone termination of Ms. Allen's parental rights the family relationship will be irreparably damaged. Any relief is illusory because Defendants have known for months that they do not have any basis for withholding Ms. Allen's children from her, yet falsely claimed that they simply do not have enough information to make a recommendation. There is no adequate remedy at law that can replace the time lost by continued destruction of the parent-child relationship.

6.3 There is a substantial likelihood that Ms. Allen will prevail on the merits because Defendants' continued interference with Ms. Allen's right to family integrity when Defendants admit they have no basis to do so constitutes

arbitrary and oppressive governmental action in violation of the due process clause of the Fourteenth Amendment. On the facts of this case, Defendants' interest in promoting health and safety of children is outweighed by Ms. Allen's interest in the return of her children.

6.4 The harm faced by Ms. Allen outweighs the harm that would be sustained by Defendants if the preliminary injunction were granted. Defendants have conceded that they have no basis at this time for depriving Ms. Allen of her children and seeking to terminate her parental rights. Defendants would face no harm should they respect Ms. Allen's right to family integrity and return her children. In contrast, Ms. Allen suffers irreparable harm every day that Defendants keep her children from her. Ms. Allen's children are young and in formative years; every day without their mother does irreparable harm to Ms. Allen and her children.

6.5 Issuance of a preliminary injunction would not adversely affect the public interest. Defendants have conceded that they have no basis at this time for depriving Ms. Allen of her children or seeking to terminate her parental rights. Defendants would face no harm should they respect Ms. Allen's right to family integrity and return her children.

6.6 Ms. Allen asks the Court to set her application for preliminary injunction for hearing at the earliest possible time and, after hearing the request,

to issue a preliminary injunction against the Defendants.

## VII.

### DAMAGES

7.1 As a result of the incident described, Ms. Allen has experienced mental anguish and emotional distress in the past and in all reasonable probability such mental anguish and emotional distress will continue in the future. Ms. Allen is a dutiful mother who loves and cares for her children.

7.2 Ms. Allen's mental anguish and emotional distress is beyond dispute. In June 2015, three of Ms. Allen's children died. Ms. Allen grappled with the fact that she would never see A.S., A.S., and T.S. grow up. In her nightmares Ms. Allen sees A.S., A.S., and T.S. lying in bed as though asleep only to discover she cannot wake them.

7.3 In the midst of the tremendous grief of the loss of three children, Defendant CPS, Defendant Wright, Defendant Johnson, and Defendant Gavin removed Ms. Allen's surviving children and seek to terminate her parental rights and any access to her surviving children. She continues to agonize over having her children taken from her, and the prospect that they may never live with her again.

**VIII.**

**PRESERVATION**

8.1 Defendants are hereby given notice that any document or other material, including electronically stored information, that may be evidence or relevant to any issue in this case is to be preserved in its present form until this litigation is concluded.

**IX.**

**ATTORNEY FEES**

9.1 Plaintiff is entitled to an award of attorney fees and costs under 42 U.S.C. §1988(b), and seeks her attorney fees and cost.

**X.**

**CLAIM FOR PRE-JUDGMENT AND POST-JUDGMENT INTEREST**

10.1. Plaintiff claims pretrial judgment and post judgment interest in accordance with applicable law.

**XI.**

**JURY DEMAND**

11.1. Plaintiff respectfully requests a jury trial.

## **XII.**

### **CONCLUSION**

CPS knows—and has known for months—that Ms. Allen and her children could swim and that Ms. Allen was not using her cell phone while she was with her children at the pool. CPS' attempt to terminate a mother's right to care for her children while admitting they have no basis to do so is arbitrary and oppressive. Ms. Allen will never get the time stolen from her and her children. Nothing can replace it. Each day without her children in her home does irreparable harm to Ms. Allen and her children. The time has come to bring Ms. Allen's children home to their mother.



WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendants be cited to appear and answer herein, and that upon final trial, Plaintiff recover all her damages as specified above from Defendants, jointly and severally, plus costs of Court, pre-judgment and post-judgment interest at the legal rate, and have such other and further relief, general and special, at law and in equity, to which Plaintiff may be justly entitled under the facts and circumstances.

Respectfully submitted,

TURLEY LAW FIRM



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ATTORNEYS FOR PLAINTIFF

S JPP 11/20/15

**Johnson, Dawn M (DFPS)**

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**From:** Gavin, Tennille B (DFPS)  
**Sent:** Thursday, September 24, 2015 5:50 PM  
**To:** Johnson, Dawn M (DFPS)  
**Subject:** Fwd: [REDACTED] Hearing

Tennille Gavin, LMSW  
CPS Supervisor II-Unit D0  
Dallas Children's Advocacy Center  
5351 Samuell Blvd  
Dallas, Tx 75228  
(214) 319-1735 office  
(214) 912-3103 cell  
(512) 276-3572 fax

Begin forwarded message:

**From:** "Wright, Carrie (DFPS)" <[REDACTED]>  
**Date:** September 24, 2015 at 5:41:31 PM CDT  
**To:** "Gavin, Tennille B (DFPS)" <[REDACTED]>  
**Subject:** RE: [REDACTED] Hearing

Hey there

I sent you some email chains as I didn't realize you weren't on there, only Dawn. So I have discussed this with Michael after staffing with Peggy before or at the previous hearings. Michael has asked for specific evidence that would prevent [REDACTED] (and I'm not spelling that correctly but the case is sensitive so I can't access it) from returning to her father as [REDACTED] needed specifics. I have discussed with him concerns at each hearing which include a criminal charge against the mother regarding violence from several years ago, the fact that his sister told Dawn she felt the children should go to the mother over him and would testify to this and that we have not been able to see where he is residing. Peggy's response to all this was simply to say that we did not have enough information to make a recommendation and that's what I have stuck with. It looks like Dawn recently provided the same information. I know that we were unable to get a courtesy after several attempts Chicago was getting nowhere with him. [REDACTED] felt this was miscommunication and discussed with her client who indicated we had the wrong address. I asked Deborah to follow up with another courtesy request as I felt it was an investigative task despite the case being transferred. She stated she had already spoken to Dawn and Dawn was working on it.

So as of 8/14 the last time I staffed with Peggy before my leave was that since we didn't have enough concrete evidence we would support our statement of not having enough information to make a recommendation. I haven't waivered from this. Peggy indicated that if any of the attorneys were in agreement with a monitored return to support this as this removal was shaky to begin with despite the gravity of three children dying. LE has gone back on what they originally said which was that the mother was on her phone. This is what gave us the green light for the writ. We now know she wasn't on her phone and actually didn't respond to texts or calls during this time. There is a gap of approximately 2



minutes when she may have gotten up from the pool to let others in and that's all we have. Yes the dad is a jerk and uncooperative. With LE still not filling anything it isn't helping.

If Dawn has found more information maybe you and I can discuss with Michael or we might want to do this anyway but I have followed Peggy's directive each time of saying we can't make a recommendation and although we have concerns we don't have anything concrete.

I'll be in the office all day tomorrow or you can reach me anytime on my cell if you want to discuss more or I'm not making sense. Thanks!

**From:** Gavin, Tennille B (DFPS)  
**Sent:** Thursday, September 24, 2015 4:39 PM  
**To:** Wright, Carrie (DFPS)  
**Subject:** Fwd: [REDACTED] Hearing

Carrie-

Are you aware of info on the case below? This is the Irving drowning of the 3 kiddos.

Tennille Gavin, LMSW  
CPS Supervisor II-Unit D0  
Dallas Children's Advocacy Center  
5351 Samueli Blvd  
Dallas, Tx 75228  
(214) 319-1735 office  
[REDACTED]  
(512) 276-3572 fax

Begin forwarded message:

