

NORTH CAROLINA COURT OF APPEALS

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| In the Matter of: | ) |                   |
| J.L.H.,           | ) | MOTION TO DISMISS |
| a minor child     | ) |                   |

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NOW COMES the Department of Health and Human Services (DHHS) by and through its attorneys, Roy Cooper, Attorney General, and David Gordon, Assistant Attorney General and moves this Honorable Court, pursuant to Rule 37 of the North Carolina Rules of Appellate Procedure, to dismiss the appeal in the above-referenced case. In support of its motion, DHHS hereby respectfully shows unto the Court:

1. That a Superior Court order was entered on December 12, 2005 by the Honorable Ola M. Lewis in Brunswick County file number 04 CVS 1055 in which that court found that a conflict of interest existed between the child in question, J.L.H., and Brunswick County Department of Social Services, and that that agency was relieved of its obligation to obtain or perform any services for the child.
  
2. That in the latter part of December 2005, the Director of the Department of Health and Human Services/Division of Social Services received notice of the Brunswick County Superior Court order from the county departments of social services who were subject to said order, and after reviewing pertinent background facts and the child's current situation, made a determination that it was in the best interests of J.L.H. that his custody be changed from Brunswick County Department of Social Services to Onslow County Department of Social Services.
  
3. That DHHS notified its agents of the Director's determination and on January 19, 2006, made an appearance on in Brunswick County District Court at a hearing on a Petition for Review which had been filed by Brunswick County Department of Social Services, and stipulated through counsel that it was in agreement, in this rare instance, with an order in file

number 06-J-10A transferring custody of J.L.H. from Brunswick County Department of Social Services to Onslow County Department of Social Services.

4. That at the conclusion of the hearing on January 19, 2006, the Brunswick County District Court entered an order transferring custody of J.L.H. from Brunswick County Department of Social Services to Onslow County Department of Social Services which it subsequently modified on February 2, 2006.

5. That after the entry of the above-referenced order by the Brunswick County District Court, Onslow County Department of Social Services, on the 17th day of February, with full knowledge of, and contrary to the position and instructions of its principal, DHHS, filed a notice of appeal of the Brunswick County District Court order.

6. That the facts that have been set forth above and others are supported by the attached order of the Brunswick County Superior Court and the attached affidavit of the then Director of the Department of Health and Human Services/Division of Social Services; said Superior Court order and affidavit of Ms. Pheon Beal being hereby incorporated by reference.

WHEREFORE, DHHS prays that this Honorable Court dismiss the appeal of Onslow County Department of Social Services in the above-referenced case in that DHHS is the principal and Brunswick County Department of Social Services and Onslow County Departments of Social Services are its agents in the provision of protective services and foster care to children in this State as held by our Supreme Court in *Gammons v. N.C. Dept. of Human Resources*, 344 N.C. 51, 472 S.E.2d (1996) and *Vaughn v. N.C. Dept. of Human Resources*, 296 N.C. 683, 252 S.E.2d 792 (1979), respectively. *See also* N.C.G.S. §§ 108A-14(a)(5) and 153A-257(d). Thus, DHHS submits that the notice of appeal given by Onslow County Department of Social Services with full knowledge of, and contrary to the position and instructions of its principal, DHHS, is a nullity. *See Farm Credit Bank v. Edwards*, 121 N.C. App. 72, 464 S.E.2d 305 (1995). Respectfully submitted, this the 10th day of August, 2006.

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### CERTIFICATE OF SERVICE

I, David Gordon, hereby certify that I have served a copy of the foregoing MOTION TO DISMISS upon the parties as listed below by depositing same in the United States Mail, first class postage prepaid, and addressed as follows:

Mr. James Joyner  
Attorney for Onslow County DSS  
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Ms. Elva Jess  
Attorney for Brunswick County DSS  
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Ms. Jane Cassidy  
District Administrator Guardian ad Litem Program  
310 Government Center Drive  
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This the 10<sup>th</sup> day of August 2006.

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