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ARGUMENT

I. IT IS IN THE JUVENILE'S BEST INTERESTS FOR A COUNTY DEPARTMENT OF SOCIAL SERVICES APPOINTED AS "REPRESENTATIVE PAYEE" OF THE JUVENILE'S SOCIAL SECURITY BENEFITS TO USE THOSE BENEFITS TO PAY FOR THE JUVENILE'S FOSTER CARE COSTS.

Amicus Curiae Brief of Guardian Ad Litem, p. 3-8
Amicus Curiae Brief of First Star , p. 6-15.
Amici Curiae Brief of North Carolina Justice Center, et. al.; p. 2-9

In *Washington State Dep't. of Social and Health Services, et. al. vs. Guardianship Estate of Keffeler, et. al.*, 537 U.S. 371, 123 S.Ct. 1017, 154 L. Ed 2d 972 (2003), the United States Supreme Court held that the practice of a government agency such as DSS using a juvenile's SSS benefits to reimburse itself for the costs of the juvenile's foster care was in the best interests of the juvenile. In *Keffeler*, Washington state's policy was to attempt to recover the costs of foster care from the parents of the children and to use moneys and other funds of the juvenile to offset the amount of public assistance otherwise payable. *Id.* at 378, 123 S.Ct. 1017, 1023, 154 L. Ed. 2d 972, 981(2003). In responding to the Respondent's argument that this practice was not in the best interests of the juvenile, the Court stated:

At bottom, respondents' position and the State Supreme Court's holding reflect a view that allowing a state agency to reimburse itself for the costs of foster care is antithetical to the best interest of the beneficiary foster child. . . . Under her statutory authority, the Commissioner has read the "interest" of the beneficiary in light of the basic

objectives of the Act: to provide a "minimum level of income" to children who would not "have sufficient income and resources to maintain a standard of living at the established Federal minimum income level," and to provide workers and their families the "income required for ordinary and necessary living expenses." The Commissioner, that is, has decided that a representative payee serves the beneficiary's interest by seeing that basic needs are met, not by maximizing a trust fund attributable to fortuitously overlapping state and federal grants.

This judgment is not only obviously within the bounds of the reasonable, but one confirmed by the demonstrably antithetical character of respondents' position to the best interest of many foster care children. SSI beneficiaries would be most obviously subject to threat, since eligibility for benefits of these child recipients is lost if their assets creep above a certain minimal level, currently \$ 2,000. Many foster children would lose SSI benefits altogether if respondents prevailed. But foster children beneficiaries under both SSI and OASDI would suffer from a broader disadvantage. Respondents' argument forgets the fact that public institutions like the department are last in the line of eligibility for appointment as representative payees; the Commissioner appoints them only when no one else will do. If respondents had their way, however, public offices like the department might well not be there to serve as payees even as the last resort, for there is reason to believe that if state agencies could not use Social Security benefits to reimburse the State in funding current costs of foster care, many States would be discouraged from accepting appointment as representative payees by the administrative costs of acting in that capacity. And without such agencies to identify children eligible for federal benefits and to help them qualify, many eligible children would either obtain no Social Security benefits or need some very good luck to get them. With a smaller total pool of money for their potential use, the chances of having funds for genuine needs beyond immediate support would obviously shrink, to the children's loss. Respondents' position, in sum, would tend to produce worse representative payees in these cases, with less money to spend.

Id. at 389-91, 123 S.Ct. 1017, 1028-29, 154 L. Ed. 2d 972, 988-90(2003)(citations omitted).

All of the reasons cited by the United States Supreme Court in *Keffeler, supra*, are equally applicable in this case. Like the state of Washington, Guilford County has a policy of recovering foster care costs from the juvenile's parents and from any resources or benefits that the juvenile may receive. DSS accounts for each juvenile's benefits separately so that the juvenile's benefits are spent directly on the juvenile.

Appendix (hereinafter "App."), p.2. Guilford County received \$400,340.00 in SSI and SSA benefits for approximately 86 juveniles in DSS custody from January 1, 2005 to December 31, 2005. App., p.1 DSS used approximately \$307,000.00 on the cost of care of the juvenile. App., p. 2. DSS uses the remaining funds for clothing and personal expenses of these juveniles. *Id.*

If state district courts are allowed to prevent county departments of social services from using these benefits to offset the cost of care of the juveniles, it would create a severe financial burden on counties, because most North Carolina counties do not have additional sources of revenue to offset the juvenile's foster care costs. As noted in the Brief of Amicus Curiae North Carolina Association of County Commissioners, North Carolina counties have already raised local taxes, increased

their reliance on state and federal government assistance, borrowed for their short and long-term goals and reduced budgeted expenditures. Brief of Amicus Curiae North Carolina Association of County Commissioners, p. 2. Guilford County and most other counties do not have extra money in their budgets to allow these benefits to be put into trust for the juvenile. *Id.* Guilford County currently pays out of its own budget at least 50% of the cost of foster care each month. The \$400,000.00 Guilford County received as SSI and SSS benefits go a long way toward helping the County fund other juveniles in need of protective custody. App., p.3. As the Supreme Court noted in *Keffeler*, it is quite possible that counties would not serve as the representative payees of these juveniles if they could not use these funds to offset the juvenile's foster care costs. *See, Keffeler, supra*, at 391, 123 S.Ct. 1017, 1028-29, 54 L. Ed. 2d 972, 989 (2003). The United States Supreme Court correctly stated that this result would be antithetical to the best interests of the juvenile. *Id.*

CONCLUSION

The Guilford County Department of Social Services prays this Court to reverse the 20 December 2005 Order of the district court ordering it to use the juvenile's Social Security Survivor's benefits to pay the delinquent, current and past due mortgage on the juvenile's house, and to pay an additional \$1000 of repair costs to the juvenile's house.

/s/ Electronically submitted
James A. Dickens
Deputy County Attorney
Attorney for Appellant
NCSB# 19910

OF COUNSEL:

OFFICE OF THE GUILFORD COUNTY ATTORNEY
Post Office Box 3427
Greensboro, North Carolina 27402
(336) 641-3852 • (336) 641-3872 (facsimile)
jdicken@co.guilford.nc.us

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served the Reply Brief of the Appellant Guilford County Department of Social Services upon all other parties in this cause by depositing a copy hereof, postage prepaid, in the United States mail, addressed as follows:

Lewis Pitts
P.O. Box 2101
Durham, NC 27702

Margaret S. Rowlett
Smith James Rowlett & Cohen
Post Office Box 990
Greensboro, NC 27402

Alexandra S. Gruber
North Carolina
Guardian Ad Litem Program
Post Office Box 2448
Raleigh, NC 27602

M. Travis Payne
Edelstein & Payne
Post Office Box 28186
Raleigh, NC 27611-8186

Amy L. Keegan
Nelson Mullins Riley Scarborough LLP
4140 Parklake Avenue
GlenLake One/ Second Floor
Post Office Box 30519
Raleigh, North Carolina 27622-0519

This the 11th day of September, 2006.

/s/Electronically submitted

James A. Dickens
Deputy County Attorney
Attorney for Petitioner

OF COUNSEL:

OFFICE OF THE GUILFORD COUNTY ATTORNEY
Post Office Box 3427
Greensboro, North Carolina 27402
(336)641-3852 • (336)641-3872 (facsimile)

APPENDIX

Affidavit of Brian Baker..... 1
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NORTH CAROLINA COURT OF APPEALS

IN THE MATTER OF:) From Guilford County
) 97 J 697
J. G.)

AFFIDAVIT OF BRIAN BAKER

I, Brian Baker, being first duly sworn, depose and say the following:

1. I, Brian Baker, am currently the Accounting Supervisor of the Guilford County Department of Social Services located at 1203 Maple Street, Greensboro, Guilford County, North Carolina, 27405.
2. I have reviewed the files of the juveniles in the legal custody of the Guilford County Department of Social Services, and the following information is taken from my examination of these files.
3. For the calendar year January 1, 2005 through December 31, 2005, the Guilford County Department of Social Services received \$400,340.00 in Supplemental Security Income ("SSI) and Social Security Survivor's Benefits ("SSS") for 86 juveniles in the legal custody of the Guilford County Department of Social Services.

4. The Guilford County Department of Social Services used approximately \$307,000.00 of those benefits on the juveniles' cost of foster care. The remaining funds are used for the juveniles' clothing and personal expenses.

5. The Guilford County Department of Social Services accounts for each juvenile's benefits separately, so that the benefits are used for the exclusive benefit of that particular juvenile.

FURTHER THE AFFIANT SAYETH NAUGHT.

This the 11th day of September.

E. Brian Baker

Brian Baker

Sworn and subscribed to before me,

this the 11th day of September, 2006.

Rita J. Summers
Notary Public

My Commission Expires: March 17, 2007

FURTHER THE AFFIANT SAYETH NAUGHT.

This the 11 day of September 2006.

Steve Hayes
Steve Hayes

Sworn and subscribed to before me,

this the 11 day of September, 2006.

Gayle Hatley
Notary Public

My Commission Expires: 4/20/2008

Period	Total Payment	County Share	St/Fed Share	Percentage County Funds
Jan, 2004	298487.82	210051.14	88436.68	0.70
Feb, 2004	237239.01	150874.36	86364.65	0.64
March, 2004	237465.62	149507.28	87958.34	0.63
April, 2004	232153.7	144602.49	87551.21	0.62
May, 2004	259591.8	168056.31	91535.49	0.65
June, 2004	257896.01	166761.25	91134.76	0.65
July, 2004	311004.56	211693.21	99311.35	0.68
August, 2004	245216.66	150496.48	94720.18	0.61
Sept, 2004	241549.57	144406.3	97143.27	0.60
Oct, 2004	231133.48	134496.03	96637.45	0.58
Nov, 2004	275963.48	174850.91	101112.57	0.63
Dec, 2004	279451.86	179956.54	99495.32	0.64
Jan, 2005	349167.45	248855.59	100311.86	0.71
Feb, 2005	249631.00	155955.13	93675.87	0.62
March, 2005	244846.78	150857.32	92989.46	0.62
April, 2005	239112.14	146557.12	92555.02	0.61
May, 2005	246880.9	154076.14	92804.76	0.62
June, 2005	225085.39	112845.43	112239.96	0.50
July, 2005	299442.48	185911.03	113531.45	0.62
August, 2005	225919.37	115594.52	110324.85	0.51
Sept, 2005	223957.1	116131.06	107826.04	0.52
Oct, 2005	230575.38	122165.04	108410.34	0.53
Nov, 2005	224935.29	116677.89	108257.40	0.52
Dec, 2005	219159.73	114223.72	104936.01	0.52
Jan, 2006	310634.44	199893.54	110740.90	0.64
Feb, 2006	215589.91	111982.44	101607.47	0.52
March, 2006	201723.46	102762.29	98961.17	0.51
April, 2006	211831.03	110147.34	101683.69	0.52
May, 2006	219833.06	119682.06	100151.00	0.54
June, 2006	205313.99	109942.72	95371.27	0.54
July, 2006	302511.87	198977.54	103534.33	0.66