

Published October 14, 2006 12:08 pm - A Rogers County judge's deprived children ruling that removed five children from the custody of their father more than one year ago was reversed by the Oklahoma Court of Civil Appeals late last week.

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## Appeals court reverses deprived children ruling

**Krystal J. Carman**

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Not happy with the ruling, Hall appealed the case to the Oklahoma Court of Civil Appeals. On Thursday, the appellate court reversed the Rogers County ruling declaring the children deprived, and remanded it back to trial court.

Local attorney Gregory Laird was appointed to the appeal case. According to Laird, there is a possibility of a new trial.

"The state could decide to drop it," he said. "They are back to pre-adjudication. A new petition will need to be filed and there will need to be a new adjudication hearing."

The reversal came because, according to the opinion from the appeals court, "the trial court admitted prejudicial hearsay evidence." In laymen's terms, that means a DHS investigator testified as to what Hall's children had told her during the investigation. In some instances, those statements would have been admissible.

"There is a way to get the testimony in," Laird said. "According to the statute, the state has to give at least 10 days advance notice of the testimony, which they did not do."

In addition to the 10-day notification, the state also must prove that any child under 13 years of age will be "unavailable."

According to the statute, "A statement made by a children who has not attained thirteen (13) years of age ... which describes any act of physical abuse against the child ... is admissible in criminal and juvenile proceedings in the courts in this state if: 1. The court finds, in a hearing conducted outside the presence of the jury, that the time, content and totality of circumstances surrounding the taking of the statement provide sufficient indicia of reliability so as to render it inherently trustworthy ... and 2. The child either: a. testifies or is available to testify at the proceedings in open court or through an alternative method ... or b. is unavailable as defined in Title 12 Section 2804 as a witness. When the child ... is unavailable, such statement may be admitted only if there is corroborative evidence of the act."

According to several court records concerning Hall, his children and their mother, there have been no charges filed concerning any kind of physical abuse.

The children are currently in state custody under an emergency custody status, according to Laird.

In conjunction with the custody findings, the appellate court also found Hall indigent and ruled he was entitled to a court-appointed attorney. The trial court had previously ruled he was not indigent.

In a separate, but related case, Hall has also been charged with two misdemeanors — threatening a judicial officer and disturbance by threatening language.

Hall allegedly made threats in February to Special District Judge Erin L. Oquin, the judge who made the deprived children ruling, and Assistant District Attorney Jenny Sanbrano on the DHS hotline.

Hall told Rogers County Undersheriff Barry Lamb in a telephone interview that he had no intention of doing bodily harm or violence but would use every legal means necessary to “have the persons involved in this case removed from their positions.”

That case was moved to Mayes County by Judge Dynda Post in September. In her order, she states, “To avoid even the appearance of impropriety, this judge sustains the defendant’s motion to disqualify and/or motion to transfer the case.”

Post requested the sitting administrative district judge appoint a judge to hear the case.

Hall was ordered to have a mental evaluation. The results state: “There is no documented evidence that Mr. Hall has ever been physically or emotionally abusive to the children.”

Hall’s attorney has filed a petition for dismissal of the charges.

The deadline for a state response is Dec. 1.

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