

**IN THE MISSOURI COURT OF APPEALS  
SOUTHERN DISTRICT**

STATE OF MISSOURI ex rel.	)	
ERIC SCHMITT,	)	
	)	
Relator,	)	SD _____
	)	
v.	)	Number below:
	)	22CD-CV00394
THE HONORABLE DAVID R. MUNTON,	)	
Cedar County Circuit Judge,	)	
	)	
Respondent.	)	

**Petition for Writ of Mandamus, or in the Alternative, Prohibition**

For years, young boys have been abused by staff at Agapé Boarding School (Agapé). Less than two weeks ago, the Department of Social Services placed one of Agapé’s staff members on the Central Registry of abuse or neglect after the time to appeal the finding of physical abuse expired. Hours later, the Attorney General filed suit for the “removal of the children [at Agapé] to safety” because Agapé’s pattern of abuse and its failure to remediate that pattern created an imminent threat to the children. Since then, Department staff have been on site at Agapé. While there, children have approached Department staff and offered new information about the abuse happening at the school. In one instance, a child, fearing reprisals from Agapé felt compelled to conceal information inside his shoe. In another instance, a child reported that a staff member removed a tattoo from the child with a Brillo pad.

In light of this new information, the Attorney General filed a first amended petition as a matter of right, and has sought permission to file a second amended petition as even more information becomes known. Respondent has refused to allow the amendment citing “due process” and “other requirements of fairness” despite the fact that Agapé is in physical control of the students. No Due Process Clause objections were made in Agapé’s written pleadings.

Nevertheless, “justice so requires” that the Attorney General be granted leave to file his second amended petition in order to protect the children still present at Agapé. Respondent’s refusal to allow the Attorney General to amend his petition was, therefore, an abuse of discretion. The writ should issue.

### **Parties and Jurisdiction**

1. Relator, Attorney General Eric Schmitt, represents the State and the Department of Social Services as petitioners in the case below.<sup>1</sup>

2. Respondent, the Honorable David R. Munton, is the circuit judge presiding over the case below.

3. Agapé Baptist Church Incorporated, which does business as Agapé Boarding School (Agapé), is a boarding school for young boys where, as set forth

---

<sup>1</sup> For simplicity, the State and the Department of Social Services are referred to as “the Attorney General” in the remainder of the petition and in the suggestions in support.

in the Attorney General’s first and second amended petitions for injunctive relief, staff have routinely abused young boys for years.

4. The Missouri Constitution gives this Court “general superintending control over all courts and tribunals in its jurisdiction” and the authority to issue “original remedial writs.” Mo. Const. art. V, § 4.

5. A writ of mandamus is an original remedial writ. *State ex rel. Hewitt v. Kerr*, 461 S.W.3d 798, 805 (Mo. 2015). So too is a writ of prohibition. *State ex rel. Dir. of Revenue v. Mobley*, 49 S.W. 3d 178, 179 (Mo. 2001).

6. Cedar County is within this Court’s territorial jurisdiction. § 477.060.<sup>2</sup>

#### **Standard for Issuing the Writ**

7. A writ of mandamus compels “the performance of a ministerial duty that one charged with the duty has refused to perform.” *Furlong Cos. v. City of Kansas City*, 189 S.W.3d 157, 165 (Mo. 2006). A writ of mandamus will lie when the petitioner has a clear, unequivocal, specific right to the requested relief. *State ex rel. Swoboda v. Missouri Comm’n on Human Rights*, --- S.W.3d ---, 2022WL 3219348 at \*4 (Mo. Aug. 9, 2022). “Mandamus is a discretionary writ that is appropriate where a court has exceeded its jurisdiction or authority and where there is no remedy through appeal.” *State ex rel. Vacation Mgmt.*

---

<sup>2</sup> All citations are to the current version of the Missouri statutes, unless otherwise stated.

*Sols., LLC v. Moriarty*, 610 S.W.3d 700, 701 (Mo. 2020) (quoting *State ex rel. Kauble v. Hartenbach*, 216 S.W.3d 158, 159 (Mo. 2007)). As this Court has explained, “if the respondent’s actions are wrong as a matter of law, then he or she has abused any discretion he or she may have had, and mandamus is appropriate.” *State ex rel. Hunt v. Seay*, 622 S.W.3d 184, 187 (Mo. App. 2021) (quoting *State ex rel. Valentine v. Orr*, 366 S.W.3d 534, 538 (Mo. 2012)).

8. “A writ of prohibition is appropriate: (1) to prevent the usurpation of judicial power when a lower court lacks authority or jurisdiction; (2) to remedy an excess of authority, jurisdiction or abuse of discretion where the lower court lacks the power to act as intended; or (3) where a party may suffer irreparable harm if relief is not granted.” *State ex rel. Hawley v. Midkiff*, 543 S.W.3d 604, 606–07 (Mo. 2018) (quoting *State ex rel. Strauser v. Martinez*, 416 S.W.3d 798, 801 (Mo. 2014)).

### **Relevant Factual and Procedural History**

9. The Department of Social Services has been investigating allegations that several employees of Agapé have abused young boys at the school. E83, E87, E89.

10. During that investigation, the Department found by the preponderance of evidence that Agapé staff members had abused children. E9, E83, E85.

11. The Department of Social Services has alleged that students have suffered “physical abuse through physical restraints, extreme workouts, long days of manual labor, food and water withheld as punishment, constant berating and mind games, and sexual abuse” while at Agapé. E17, E88.

12. Each Agapé staff member was able to administratively appeal the finding of abuse against them. E14, E17, E72.

13. One Agapé staff member chose not to administratively appeal the finding of physical abuse. E72.

14. Because that Agapé staff member did not administratively appeal the finding, that staff member was placed on the Central Registry. E72.

15. No person on the Central Registry may be employed, or otherwise have access to children, at a residential care facility, like Agapé. E73 (citing § 210.493.11(4)).

16. As a result, the Attorney General, on behalf the State and the Department of Social Services, brought a suit under § 210.1271 on September 7, 2022, seeking, among other things, a preliminary injunction and the permanent closure of Agapé. E7–E62.

17. That suit was brought to secure the “removal of the children there to safety.” E8.

18. That same day, Respondent signed an order granting the Attorney General's request for preliminary injunction and set the matter for a hearing the following day. E6, E70–75.

19. However, the following day, Respondent *sua sponte* stayed his previous order closing Agapé, but left the matter set for a hearing. Later, Respondent continued the hearing at Agapé's request, to September 12 over the Attorney General's objection. E6. In connection with the continuance, Respondent directed that two Department staff members could have round-the-clock access to the children at Agapé. E5.

20. The next day, the Attorney General filed his first amended petition. E5.

21. On September 12, Respondent started the evidentiary hearing before excluding one of the Attorney General's witnesses. E4.

22. Respondent then continued the evidentiary portion of the hearing to September 21 to allow Agapé time to depose another of the Attorney General's witnesses. E4.

23. As a part of Respondent's order, Department staff are present at Agapé and have access to the current students, all of which are children. E4–E5.

24. Since Department staff arrived on September 9, current students have approached the Department staff and provided more information about the abuse that is occurring at Agapé. E144–E147.<sup>3</sup>

25. Specifically, the State has alleged that “during the past week, numerous current Agapé students have proactively approached the Children’s Division workers, often surreptitiously, and requested to speak with them. DSS staff took appropriate action for the students to be interviewed. In these interviews, the students reported physical abuse by current Agapé employees at times before the Children’s Division workers were present.” E96–97.

26. For instance, one child wrote notes to prepare for his meeting with Department staff, but was so afraid of reprisals from Agapé employees that the student hid his notes in his shoe, lest he be searched by Agapé employees before his meeting. E146. Another child reported that the Agapé medical coordinator removed a tattoo from the child with a Brillo pad. E149.

27. After obtaining this relevant, persuasive, and alarming information, and to further bolster his efforts to close Agapé and protect children, the Attorney General filed a second amended petition on September 19. E3, E126–166.

---

<sup>3</sup> The second amended petition and some of its exhibits were filed under seal in the court below. The Attorney General will, therefore, seek leave to file its second amended petition and all of its exhibits under seal in this Court.

28. The second amended petition details specific incidents of abuse by current students at Agapé, illustrative of the pattern of abuse, which the Attorney General intends to support with testimony from former students. This abuse was committed by current Agapé employees. E144–E147.

29. On September 21, Respondent refused to allow the Attorney General to amend his pleadings to include this newly-discovered information against Agapé citing “due process” and “other requirements of fairness.” E2.

30. Later that same day, Respondent granted Agapé a continuance of the hearing—over the Attorney General’s objection—so that Agapé could ask this Court to issue a writ of mandamus directing Respondent to conduct a jury trial in this equity case. E2.

31. Despite the additional time given to Agapé, Respondent declined to reconsider his ruling denying the Attorney General leave to file a second amended petition. Although those reasons were stated on the record, they were not reduced to the docket sheet entry.<sup>4</sup> E2.

32. The matter is next set for hearing on Monday, September 26, 2022. E2.

---

<sup>4</sup> The Attorney General has requested a copy of the hearing transcript, but no copy was available at the time the Attorney General instituted this writ proceeding. Time is of the essence for the children at Agapé, as set forth more fully below and in the suggestions. Accordingly, the Attorney General has concluded that prompt resolution is necessary to the safety of the children.



## **Error for Review**

33. Respondent refused to allow the Attorney General to amend his pleadings to include the newly-discovered evidence of abuse inflicted on current Agapé students by current Agapé employees. This powerful evidence—which the Attorney General was prohibited from discovering sooner by Agapé—further proves that Agapé constitutes an immediate health or safety concern for the children present at Agapé. As a result, justice requires that Respondent grant the Attorney General leave to amend his pleadings.

## **Reasons for Granting the Writ**

### *Count One—Writ of Mandamus*

34. Rule 55.33(a) provides that a party may amend a pleading, as relevant to this case, “only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.” Rule 55.33(a); *see also State ex rel. Hale v. Hendrickson*, 553 S.W.3d 432, 436 (Mo. App. 2018).

35. In *Hale*, this Court reaffirmed that mandamus will lie in order to “rectify a clear abuse of discretion by an inferior tribunal where that discretionary power is exercised with manifest injustice.” *Hale*, 553 S.W.3d at 435 (citing *State ex rel. Diners’ Financial Corporation v. Swink*, 434 S.W.2d 593, 597 (Mo. App. 1968)).

36. The purpose of Rule 55.33(a) is to allow a party “to assert a matter previously unknown or neglected from inadvertence at the time of the original

pleading.” *Id.* (quoting *Hoover v. Brundage-Bone Concrete Pumping, Inc.*, 193 S.W.3d 867, 870 (Mo. App. 2006)).

37. In other words, “[t]rial courts are not to be stingy in granting leave to amend.” *Id.* (quoting *Ferrellgas, Inc., v. Edward A. Smith, P.C.*, 190 S.W.3d 867, 870 (Mo. App. 2006)).

38. In this case, Agapé has had care, custody, and control of the children—despite the Attorney General’s efforts—at all times relevant to this writ petition.

39. The Attorney General was unaware, and in fact prevented from knowing, the additional factual information until Respondent ordered Agapé to allow Department staff to be present at Agapé as part of the three continuances granted to Agapé.

#### *Count Two—Writ of Prohibition*

40. The Attorney General hereby reincorporates paragraphs 1 through 39.

41. Respondent’s actions were in excess of his authority and an abuse of his discretion.

42. This Court has discretion to treat a relator’s petition for writ of mandamus as one for a writ of prohibition. *See State ex rel. Chassaing v. Mummert*, 887 S.W.2d 573, 577 (Mo. 1994). Indeed, “[t]he distinction between mandamus and prohibition is at best blurred, at worst nonexistent, and the

subject matter to which the two writs apply overlap to a great extent.” *St. Louis Little Rock Hosp., Inc. v. Gaertner*, 682 S.W.2d 146, 148 (Mo. App. 1984).

43. If the Court determines that the Attorney General has requested relief that sounds in prohibition and not mandamus, then the Attorney General asks this Court to consider the application for writ of mandamus as one of prohibition because, as the court noted in *Gaertner*, this Court should “refuse to revert to the hypertechnical niceties of Common Law Pleading where the title of a pleading was of more importance than its content.” *Id.* Even under prohibition, a writ would be necessary to address the abuse of discretion discussed above.

## Conclusion

The Attorney General asks this Court for a writ of mandamus or prohibition directing Respondent to permit the Attorney General from filing the second amended petition and for any further adjudications and orders therein as right and just.

Respectfully submitted,

**ERIC S. SCHMITT**  
Attorney General

/s/ Gregory M. Goodwin  
Gregory M. Goodwin  
Assistant Attorney General  
Missouri Bar #65929  
P.O. Box 899  
Jefferson City, MO 65102  
(573) 751-7017  
(573) 751-2096 Fax  
gregory.goodwin@ago.mo.gov  
Attorneys for Relator

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was emailed to the following individuals on September 22, 2022:

**Honorable David R. Munton**  
David.Munton@courts.mo.gov

**John Schultz**  
jschultz@fsmlawfirm.com

/s/ Gregory M. Goodwin  
Assistant Attorney General