

# In the Supreme Court of the State of Idaho

IN RE: PERMISSIVE APPEALS IN )  
CHILD PROTECTIVE ACT )  
PROCEEDINGS )  
\_\_\_\_\_ )

ORDER

In an opinion issued on March 2, 2023, this Court recognized an inconsistency between the language of Idaho Appellate Rules 11.1(b)(2) and 12.1(a)(2), governing permissive appeals in Child Protective Act proceedings, and the language of Idaho Code section 16-1625(1), which identifies the orders and decrees from which a party to a Child Protective Act proceeding may seek a direct permissive appeal to the Idaho Supreme Court. *See IDHW v. Doe*, 171 Idaho 692, 698, 525 P.3d 730, 736 (2023) (“[I]n reviewing Rules 11.1(b)(2) and 12.1(a)(2), we noted that the “final judgment” language used in those rules does not appear to be consistent with the language used in Idaho Juvenile Rule 49 and Idaho Code section 16-1625(1).”). This Court referred the matter to the Child Protection Committee “for further study.” *Id.* This Court is advised that the Committee has taken up the issue and that a recommendation will be forthcoming. In the interim, this Court finds it desirable to temporarily amend Idaho Appellate Rules 11.1(b) and 12.1(a), as well as Idaho Rule of Civil Procedure 83(a)(1), to allow a party to a Child Protective Act proceeding to seek a direct permissive appeal of those orders and decrees identified in Idaho Code section 16-1625(1).

NOW, THEREFORE, IT IS ORDERED that Idaho Appellate Rules 11.1(b) and 12.1(a) be amended as follows:

**Rule 11.1. Appealable Judgments and Orders from the Magistrate Court.**  
**The following appeals from the magistrate court are expedited pursuant to Rule 12.2.**

\* \* \*

(b) **By Permission.** When permission has been granted pursuant to Rule 12.1, an appeal from the following may be taken to the Supreme Court:

(1) a final judgment, as defined in Rule 802 of the Idaho Rules of Family Law Procedure, or an order made after final judgment, involving the custody of a minor, or

(2) a final judgment or order after judgment in a Child Protective Act proceeding-, or

(3) those orders or decrees of the court in a Child Protective Act proceeding specified in section 16-1625, Idaho Code.

\* \* \*

### **Rule 12.1 Permissive Appeal in Custody Cases.**

(a) **Motion for permission to appeal.** Whenever the best interest of a child would be served by an immediate appeal to the Supreme Court, any party may move the magistrate court for permission to seek an immediate appeal to the Supreme Court from the following:

(1) a final judgment, as defined in Rule 802 of the Idaho Rules of Family Law Procedure, or an order entered after final judgment, involving the custody of a minor, or

(2) a final judgment or an order entered after final judgment in a Child Protective Act proceeding-, or

(3) those orders or decrees of the court in a Child Protective Act proceeding specified in section 16-1625, Idaho Code.

\* \* \*

IT IS FURTHER ORDERED that Idaho Rule of Civil Procedure 83(a)(1) be amended as follows:

### **Rule 83. Appeals From Decisions of Magistrates.**

(a) **Where an appeal must be taken.**

(1) *Appeals taken from magistrate court to the Supreme Court.*

\* \* \*

(B) **By Permission.** When permission has been granted pursuant to Rule 12.1, Idaho Appellate Rules, an appeal from the following may be taken to the Supreme Court:

(i) a final judgment, as defined in Rule 802 of the Idaho Rules of Family Law Procedure, or an order made after final judgment, involving the custody of a minor, or

(ii) a final judgment in a Child Protective Act proceeding-, or

(iii) those orders or decrees of the court in a Child Protective Act proceeding specified in section 16-1625, Idaho Code.

\* \* \*

IT IS FURTHER ORDERED that this order and these amendments shall be effective *nunc pro tunc* as of March 2, 2023, and will only be applicable to cases appealed on or after that date. This order does not enlarge the time for filing an appeal or give rise to the right to an appeal where the time limit for appeal has already expired.

IT IS FURTHER ORDERED that this order shall remain in effect until further order of this Court.

IT IS FURTHER ORDERED that the above designation of the striking of words from the Rules by lining through them, and the designation of the addition of new portions of the Rules by underlining such new portion is for the purposes of information only as amended, and NO OTHER AMENDMENTS ARE INTENDED. The lining through and underlining shall not be considered a part of the permanent Idaho Appellate Rules or Idaho Rules of Civil Procedure.

IT IS FURTHER ORDERED, that notice of this Order shall be published for three consecutive weeks on the Idaho State Bar's website and in its weekly E-Bulletin, and that, as soon as practicable, a summary of the amendment(s) effected by this Order shall be published in one issue of *The Advocate*.

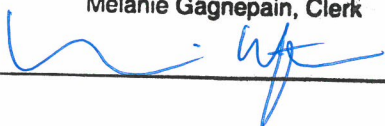
DATED this 31<sup>st</sup> day of August 2023.

By Order of the Supreme Court

  
G. Richard Bevan, Chief Justice

ATTEST:   
Clerk

I, Melanie Gagnepain, Clerk of the Supreme Court/  
Court of Appeals of the State of Idaho, do hereby  
Certify that the above is a true and correct copy of the  
Order entered in the above entitled  
cause and now on record in my office. WITNESS my  
hand and the Seal of this Court 8-21-23  
Melanie Gagnepain, Clerk

By  Deputy