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Thursday, August 28, 2008

## Show-cause hearing set for pair accused of starving child

### Charge dismissed; clerk magistrate to weigh facts

By Lisa D. Welsh TELEGRAM & GAZETTE STAFF

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**LEOMINSTER**— Charges that parents nearly starved their 2-year-old son to death were dismissed yesterday morning in Leominster District Court, but that's not the end of the case.

The matter will be moved to a show-cause hearing before a clerk magistrate. That hearing, with testimony from both sides, will determine whether the case should move forward.

Joshua and Kellie Theriault of Holden were charged in February with reckless child endangerment. The couple's lawyer, Thomas G. Guiney, is requesting that a clerk magistrate determine whether they committed a criminal act. He filed a motion to dismiss the existing charge of endangerment, and to have the case heard by a magistrate.

Yesterday, Judge John J. Curran Jr. granted the motion, dismissing the charges of reckless child endangerment.

But Anthony Marrotta, the district attorney office's special prosecutor, said Holden police will re-file the charges as early as today. A show-cause hearing before the clerk magistrate has been scheduled for October.

The child, now 3, has been in foster care ever since the Department of Social Services visited the family home at 1588 Main St. after receiving an anonymous report about bruises on the boy's face.

He weighed 17 pounds at the time.

"There seems to be a real divergence of opinion of whether a crime has been committed here," Mr. Guiney said. "We're going back to determine if they should be charged with a crime or not."

That hearing will center on medical testimony.



Joshua and Kellie Theriault in court yesterday. (T&G Staff/RICK CINCLAIR)

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Dr. William J. Blake of Holden, the family's pediatrician, has said the child has been developmentally small in height and weight from birth and didn't think a crime was committed.

The state's physician has a different view.

Dr. Rebecca Moles, director of the Child Protection Program at UMass Memorial Medical Center, examined the boy after DSS removed him from the Theriaults' home, according to court records.

Dr. Moles wrote that if the boy had not been removed from the house, he would have died. She called it the worst case of malnutrition she had ever seen.

"They thought he'd get over the hump and took a wait-and-see approach, but waited too long," Mr. Guiney said.

Mr. Guiney said the couple's other three children are in DSS custody, but were not removed from the home.

Another child is also developmentally small, although not to the extent of the younger one.

DSS reported in court records that the 3-year-old has gained weight and is growing normally in foster care and has improved in all areas in which he had been delayed.

"They should have acted earlier, but they did not purposely act as they did to the detriment of the child," Mr. Guiney said.

"The mom was overwhelmed with having four small kids. She's not a criminal."



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