

IN THE SUPREME COURT OF OHIO

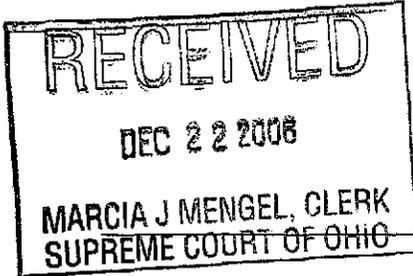
In The Matter Of:

Lee Adams, Jr., et al.

: Case No. 2006-1695

:
: On Appeal from the
: Cuyahoga County Court
: of Appeals, Eighth
: Appellate District

:
: Court of Appeals
: Case No. 87881



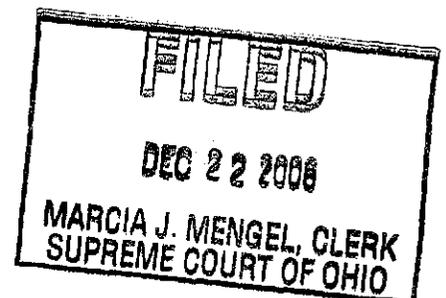
MERIT BRIEF OF APPELLANT CUYAHOGA COUNTY
DEPARTMENT OF CHILDREN AND FAMILY SERVICES

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STATEMENT OF FACTS

This cause arises from a contested trial on a *Motion to Modify Temporary Custody to Permanent Custody* which was filed in the Cuyahoga County Juvenile Court by the Cuyahoga County Department of Children and Family Services (hereinafter referred to as "CCDCFS" or "the agency").

After a fully contested trial on CCDCFS' motion was concluded on January 31, 2006, the trial court entered its decision denying CCDCFS' motion for permanent custody and instead ordering the continuation of the original order of temporary custody. (Appx. 11), (Supp. 1). CCDCFS appealed this order to the Eighth District Court of Appeals, claiming in its two assignments of error that the trial court was without legal authority to extend a temporary custody order beyond permissible statutory time limitations and that the decision of the trial court was against the manifest weight of the evidence. During the pendency of the appeal, the father's attorney filed a motion to dismiss said appeal. The entirety of the legal argument included in support of the father's *Motion to Dismiss* as it relates to the alleged lack of a final appealable order is reproduced verbatim as follows:

This matter involves child custody. The Cuyahoga County Department of Children and Family Services is appealing from the juvenile court's denial of CCDCFS' motion for permanent custody. The children remain in foster care. An order, as in issue here, that denies CCDCFS' motion for permanent custody but continues temporary care, is not a final appealable order. *In re Wilkinson* (March 8, 1996), Montgomery App. No. 15175; se also, *In the Matter of N.B.*, 2004-Ohio-859, Cuyahoga App. No. 83459.

Appellee father respectfully requests this Honorable Court to dismiss the appeal for lack of a final appealable order pursuant to the foregoing authority. ***

(Supp. 3). Aside from an additional and alternative request for remand pursuant to App.R. 7(C), the above language represents the entirety of the father's argument in favor of dismissal as made

to the Eighth District Court of Appeals. The reviewing court thereafter dismissed the pending appeal “PER CIV.R. 54(B)”. (See Appx. 10), (Supp. 5). The agency’s subsequent request for reconsideration of said dismissal was denied without comment. (See Appx. 9), (Supp. 6).

The court of appeals erred by completely disregarding the doctrine of stare decisis and by failing to acknowledge case law precedent which holds that a denial of a motion for permanent custody and/or the continuation of an original temporary custody order does in fact constitute a final appealable order, which precedent requires a contrary result to that reached by the reviewing court in this case.

CCDCFS filed its notice of appeal to the Supreme Court of Ohio on September 11, 2006. (Appx. 1). On November 29, 2006, the Supreme Court granted jurisdiction to hear the case and allowed the appeal.

ARGUMENT

Proposition of Law No. I: A juvenile court's denial of an agency's motion for permanent custody is a final appealable order such that the agency may perfect an appeal to challenge the propriety of the trial court decision.

The order being appealed from in this matter resulted from a permanent custody case originating in Cuyahoga County Juvenile Court. The Ohio Rules of Juvenile Procedure, with limited exceptions, "prescribe the procedure to be followed in all juvenile courts of this state[.]" Juv.R. 1(A). (Appx. 14). With regard to dispositional hearings in general, and the modification of dispositional orders in particular, Juv.R. 34(G) provides as follows:

The department of human services or any other public or private agency or any party, other than a parent whose parental rights have been terminated, may at any time file a motion requesting that the court modify or terminate any order of disposition. The court shall hold a hearing upon the motion as if the hearing were the original dispositional hearing and shall give all parties and the guardian ad litem notice of the hearing pursuant to these rules. The court, on its own motion and upon proper notice to all parties and any interested agency, may modify or terminate any order of disposition.

(Appx. 21). Additionally, Juv.R. 34(I) states that "[h]earings to determine whether temporary orders regarding custody should be modified to orders for permanent custody shall be considered dispositional hearings and need not be bifurcated. The Rules of Evidence shall apply in hearings on motions for permanent custody." (Appx. 21). Pursuant to Juv.R. 34(C), "[a]fter the conclusion of the hearing, the court shall enter an appropriate judgment within seven days." (Appx. 19). Finally, Juv.R. 34(J) provides, in pertinent part, that "[a]t the conclusion of the hearing, the court shall ***, where any part of the proceeding was contested, advise the parties of their right to appeal." (Appx. 21).

Juv.R. 2(Y) states, in pertinent part, that "the child's custodian, guardian, *** [and] the state" are parties to juvenile court proceedings. (Appx. 16). In this case, it cannot be disputed

that CCDCFS was the children's custodian by virtue of the fact that the trial court had previously ordered the children maintained in the temporary custody of CCDCFS. Juv.R. 2(H) states, in pertinent part, that "'Custodian' means *** a public children's services agency *** that has permanent, temporary, or legal custody of a child." (Appx. 15). Additionally, as defined in Juv.R. 2(OO), "'Temporary custody' means legal custody of a child who is removed from the child's home ***." (Appx. 17). CCDCFS, as the children's legal custodian, is charged with their care and custody, and has a legal duty to preserve and protect the children's well-being.

In the matter pending before the trial court, a further dispositional order has been issued maintaining the children in the temporary custody of CCDCFS upon the denial of CCDCFS' motion for permanent custody. The hearing on CCDCFS' motion was plainly a dispositional hearing as described in Juv.R. 34(G) and (I), and the court's resulting judgment was a dispositional order as required by Juv.R. 34(C). Since the proceedings on CCDCFS' motion were contested and since CCDCFS is a party to the matter, CCDCFS has a right to appeal, and to notification of this right pursuant to Juv.R. 34(J). See *In re Murray* (1990), 52 Ohio St.3d 155, 556 N.E.2d 1169, which notes that "a further dispositional order continuing an original temporary custody order, issued pursuant to Juv.R. 34, constituted a final appealable order." *Id.*, 52 Ohio St.3d at 159 (fn. 2), citing as support therefore the case of *In re Patterson* (1984), 16 Ohio App.3d 214, 16 OBR 229, 475 N.E.2d 160. "The right to file an appeal, as it is defined in the Appellate Rules, is a property interest and a litigant may not be deprived of that interest without due process of law." *Atkinson v. Grumman Ohio Corp.* (1988), 37 Ohio St.3d 80, 523 N.E.2d 851, paragraph one of the syllabus. CCDCFS clearly had a present interest in the subject matter and, therefore, a right to appeal the trial court's decision.

A children services board exercises its powers and undertakes its duties "on

behalf of children in the county considered by the board ... to be in need of public care or protective services....” R.C. 5153.16. In exercising its powers, “[t]he county children services board ... shall have the capacity possessed by natural persons to institute proceedings in any court.” R.C. 5153.18(A), emphasis added. By empowering appellant to exercise its powers on behalf of children it deems in need of care or services, the General Assembly necessarily gave appellant a present interest in the subject matter of an action brought pursuant to, and in discharge of, its statutory powers and duties. As the judgment herein thwarted appellant in the exercise and discharge of its powers and duties, it has demonstrated prejudice as a result of that judgment. Accordingly, appellant has standing to bring this appeal.

In re Collier (February 4, 1992), Athens App. No. CA-1494, 1992 WL 21229 at *3. See also *In re Surdel* (May 12, 1999), Lorain App. No. 98CA007172, 1999 WL 312380 (In a neglect/dependency proceeding where temporary custody was ordered, “the parties, including LCCS (even under the *Blakey* standard) would have been parties to the dispositional hearing and thus would have standing to appeal the court’s decision.” Id. at *5.)

Although the motion to dismiss CCDCFS’ appeal was not predicated on Civ.R. 54(B), the Eighth District Court of Appeals dismissed the appeal “PER CIV.R. 54(B)”, thereby suggesting that the order being appealed is not a final, appealable order. Since the issuance of this dismissal, the Eighth District dismissed appeals in an identical situation, this time issuing a written decision which clarifies its position on the issue now before this Honorable Court. In the case of *In re K.M.*, Cuyahoga App. Nos. 87882 & 87883, 2006-Ohio-4878¹, the Eighth District dismissed related appeals of a trial court’s orders denying an agency motion for permanent custody and instead ordering the continuation of the original temporary custody order. In its opinion, the Eighth District stated as follows:

[CCDCFS] appeals the lower court’s denial of its motion for permanent custody of four minor children, continuing the order for the children’s temporary custody

¹ A request for Ohio Supreme Court review of the *K.M.* decision is currently pending before this Honorable Court in Case Number 2006-1942.

with CCDCFS, and ordering CCDCFS to present the lower court with an alternative plan to permanent custody for the children. Although CCDCFS asserts two assignments of error, the lower court's order is not a final appealable order and, thus, this court lacks jurisdiction to address the assertions.

In re K.M., Cuyahoga App. Nos. 87882 & 87883, 2006-Ohio-4878 at ¶1. Following the issuance of the *K.M.* decision, it is clear that the Eighth District has unambiguously concluded that trial court orders denying requests for permanent custody and continuing temporary custody orders are not final appealable orders. This conclusion cannot be permitted to stand. Within the *K.M.* decision, the Eighth District Court of Appeals relies almost exclusively on the case of *In re Wilkinson* (March 8, 1996), Montgomery App. No. 15175, 1996 WL 132196, to support its conclusion that the type of order at issue herein is not a final appealable order. This conclusion is suspect, especially considering that the *Wilkinson* decision itself states as follows:

Here, Appellant Children's Services has requested an order pursuant to R.C. 2151.415(A)(1) permanently terminating the parental rights of the Appellees. *** If that relief is denied *** the sufficiency of the evidence before the trial court is subject to challenge.

Wilkinson, supra, at *2. Therefore, the very case relied upon by the Eighth District in *K.M.* indicates that a denial of an agency's motion for permanent custody is a final appealable order. The Eighth District's clarified position on this issue is erroneous, as was its dismissal pursuant to Civ.R. 54.

As this Honorable Court has noted, "proceedings in the juvenile division are the least amenable to coverage by the Civil Rules." See *State ex rel. Fowler v. Smith* (1994), 68 Ohio St.3d 357, 360, 626 N.E.2d 950, citing 4 Harper, Anderson's Ohio Civil Practice (1987), 57, Section 147.04(g). "The juvenile court is a statutory court and the proceedings are governed by special statutory guidelines. R.C. Chapter 2151. The juvenile court does not settle disputes between adverse civil litigants, but is, rather, charged with a special statutory duty to look after

the best interests of the child.” *Mathis v. Mathis* (November 19, 1982), Lucas App. No. L-82-154, 1982 WL 6638 at *2. While Civ.R. 54 may be useful in determining the appealability of strictly civil matters, the nature of child protection proceedings in juvenile court negates the usefulness of those provisions. Juvenile Court orders relating to child protection proceedings are therefore better suited to the final order analysis as set forth in R.C. 2505.02.

Pursuant to R.C. 2505.02(B)(2), an order that affects a substantial right made in a special proceeding is a final appealable order. (Appx. 12). It cannot be disputed that cases involving issues of temporary or permanent custody of abused, neglected or dependent children are “special proceedings” for purposes of R.C. 2505.02(B)(2). See *In re Murray*, supra (“Clearly, complaints brought in juvenile court pursuant to *statute* to temporarily or permanently terminate parental rights are ‘special proceedings.’ Such actions were not known at common law.” *Id.*, 52 Ohio St.3d at 161 (Douglas, J. concurring)). Additionally, as this Honorable Court has noted, “[a]n order which affects a substantial right has been perceived to be one which, if not immediately appealable, would foreclose appropriate relief in the future.” *Bell v. Mt. Sinai Med Ctr.* (1993), 67 Ohio St.3d 60, 63, 616 N.E.2d 181.

In the present matter, if a denial of a motion to modify temporary custody to permanent custody were not immediately appealable, appellant could not obtain appropriate relief in the future. Were CCDCFS required to wait until some undetermined future date for the trial court to alter the custodial arrangement in such a manner as to terminate the entire case before the court, any appeal filed at that time by CCDCFS in regard to alleged errors in the previous denial of its motion for permanent custody would be dismissed as moot by virtue of the subsequent orders regarding the child’s welfare. Cf. *In re Murray*, supra (“Even if the court eventually terminates the temporary custody order and returns the child to his or her parents pursuant to R.C. 2151.415,

the initial determination of neglect or dependency will not then be in issue.” Id., 52 Ohio St.3d at 158.). See also *Jackson v. Herron*, Lake App. No. 2004-L-045, 2005-Ohio-4039 (“The litigation over [the child]’s custody will potentially continue until [the child] reaches the age of majority. By that time, the present issue will be over eight years old and meaningful review will be precluded.” Id. at ¶8.).

Without the ability to appeal erroneous judgments, CCDCFS would be forever precluded from addressing legal issues related to the erroneous judgments. Relevant legal issues would evade review because they would never be able to be raised. Essentially, all means of legal redress would be denied CCDCFS, the movant in the underlying action, who would thereby be denied due process and the right to be heard in a meaningful manner.

In reaching its decision in this matter, the reviewing court failed to recognize prior precedent from the Eighth District Court of Appeals which supports the conclusion that a denial of a request for permanent custody is a final appealable order. For example, the Eighth District Court of Appeals has ruled that prohibition was warranted to prevent a trial judge from proceeding because the trial court patently and unambiguously lacked jurisdiction to act regarding custody of children who had been determined to be neglected where CCDCFS had appealed the denial of its motion for permanent custody and the appeal was still pending. See *State ex rel. Cuyahoga County Dept. of Children and Family Services v. Honorable Alison Floyd*, Cuyahoga App. No. 81713, 2003-Ohio-184 at ¶12. The Eighth District Court of Appeals has not only recognized the Agency’s right to appeal a judgment denying its motion for permanent custody, but has also reversed the decision of the trial court and entered judgment in favor of the Agency when it determined that the trial court decision was erroneous. See *In re Mayle* (July 27, 2000), Cuyahoga App. Nos. 76739 & 77165, 2000 WL 1038189.

The one Eighth District Court of Appeals case cited within the Motion to Dismiss the appeal in this matter was *In re N.B., et al.*, Cuyahoga App. No. 83459, 2004-Ohio-859, which case does nothing to support dismissal of the appeal. The *N.B.* case addressed the situation where the children were out of state and were ordered to be returned and be placed in foster care pending outcome of the hearing on the Agency's second motion for permanent custody. *Id.*, at ¶2. The first appeal in the *N.B.* matter², which formed the basis for the writ of prohibition mentioned above in *Floyd*, involved the denial of a motion for permanent custody, and was entertained and decided by the appellate court on its merits. In entertaining each of the aforementioned appeals as well as in granting the writ of prohibition, the Eighth District Court of Appeals has previously implicitly recognized that a trial court's denial of a motion for permanent custody is a final appealable order. The words of this Honorable Court describe such recognition most aptly:

While a jurisdictional issue was not raised in these appeals by the parties, given the admonition of this court in *Whitaker-Merrell v. Geupel Co.* (1972), 29 Ohio St.2d 184, 186, 58 O.O.2d 399, 400, 280 N.E.2d 922, 924, that courts of appeals should *sua sponte* dismiss appeals which are not from appealable judgments or orders, these courts implicitly concluded that their jurisdiction had been properly invoked by appeals from final orders.

In re Murray, supra, 51 Ohio St.3d at 159 (fn. 2). To deny CCDCFS the right to review of a trial court order denying its motion for permanent custody in this matter is to deprive the agency of due process in this case.

² *In re N.B.*, Cuyahoga App. No. 81392, 2003-Ohio-3656.

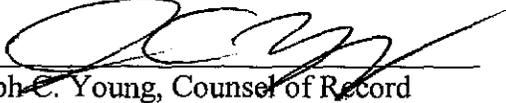
CONCLUSION

The decision below lacks legitimate support in Ohio law and contains no persuasive reasoning to support its conclusion that a denial of an agency's motion for permanent custody coupled with an order continuing the original temporary custody order is not a final appealable order. The decision ignores longstanding binding case law precedent which clearly indicates that the type of order at issue in the present appeal is a final appealable order. Such a holding, which declares that this type of order is not a final appealable order, must be rejected.

The decision below must be reversed. A reversal will promote the principle of stare decisis and will protect the due process rights of all litigants in child protection proceedings. A reversal will also preserve the existing system of checks and balances whereby a trial court ruling may be reviewed for compliance with relevant statutory requirements and for abuse of discretion rather than affording a trial court the unfettered ability to proceed without concern for meaningful appellate review and possible reversal.

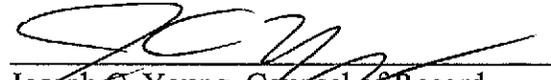
Respectfully submitted,

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Proof of Service

I certify that a copy of this Merit Brief was sent by ordinary U.S. mail to Michelle Adams through counsel Patrick Lavelle, Esq., 123 West Prospect Avenue, # 250, Cleveland, Ohio 44115, to Lee Adams through counsel Christopher Horn, Esq., 3030 Euclid Avenue, # 406, Cleveland, Ohio 44115, to the children through counsel Jean M. Brandt, Esq., 1028 Kenilworth Avenue, Cleveland, Ohio 44113, and to the children's guardian ad litem Jodi M. Wallace, Esq., 6495 Brecksville Road, Suite 3, Independence, Ohio 44131, on this 21st day of December, 2006.


Joseph C. Young, Counsel of Record
Assistant Prosecuting Attorney

IN THE SUPREME COURT OF OHIO

In The Matter Of:

Lee Adams, Jr., et al.

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06-1695

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of Appeals, Eighth
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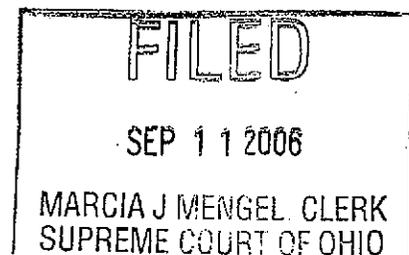
NOTICE OF APPEAL OF APPELLANT
CUYAHOGA COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES

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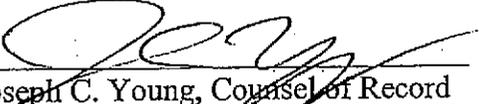
GUARDIAN AD LITEM FOR CHILDREN

Notice of Appeal of Appellant
Cuyahoga County Department of Children and Family Services

Appellant Cuyahoga County Department of Children and Family Services hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of dismissal of the Cuyahoga County Court of Appeals, Eighth Appellate District, which was announced on June 14, 2006 and entered on August 10, 2006 in Court of Appeals Case No. 87881.

This case is a claimed appeal of right in that it raises a substantial constitutional question, and is also one of public or great general interest, and involves termination of parental rights.

Respectfully submitted,
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Cuyahoga County Prosecuting Attorney

By: 
Joseph C. Young, Counsel of Record
Assistant Prosecuting Attorney
COUNSEL FOR APPELLANT
CUYAHOGA COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES

AUG 10 2006

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Gerald E. Fuerst, Clerk of Courts

IN RE: LEE ADAMS, JR., ET AL.

Appellee	COA NO. 87881	LOWER COURT NO. AD 03901846 AD 03901847 AD 03901848
	JUVENILE COURT DIVISION	

MOTION NO. 385232

Date 06/14/06

Journal Entry

SUA SPONTE, APPEAL IS DISMISSED PER ENTRY NO. 384798.

**FILED AND JOURNALIZED
PER APP. R. 22(E)**

AUG 10 2006

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY: [Signature] DEP.

**ANNOUNCEMENT OF DECISION
PER APP. R. 22(B), 22(D) AND 26(A)
RECEIVED**

JUN 14 2006

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY: [Signature] DEP.

CA06087881
39899221

Judge FRANK D. CELEBREZZE, JR., Concur.

[Signature]
Instrative Judge ANN DYKE

CA06087881 40927893
[Barcode]

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also S.Ct.Prac.R. II, Section 2(A)(1).

CA06087881 40842723
[Barcode]

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NOTICE MAILED TO COUNSEL
FOR ALL PARTIES-COSTS TAXED

COURT OF COMMON PLEAS
JUVENILE COURT DIVISION
CUYAHOGA COUNTY
FILED

Court of Appeals of Ohio, Eighth District

06 JUN 20 AM 11:33

CLERK OF COURTS

County of Cuyahoga
Gerald E. Fuerst, Clerk of Courts

IN RE: LEE ADAMS, JR., ET AL.

Appellee

COA NO.
87881

LOWER COURT NO.
AD 03901846
AD 03901847
AD 03901848

JUVENILE COURT DIVISION

MOTION NO. 384798

Date 06/14/06

Journal Entry

MOTION BY APPELLEE, LEE ADAMS, JR. (FATHER), TO DISMISS PER CIV.R. 54(B) IS GRANTED.
IN THE ALTERNATIVE, FOR LIMITED REMAND FOR CUSTODIAL ORDER IS DENIED AS MOOT.

RECEIVED FOR FILING

JUN 14 2006

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY [Signature] DER.

Judge FRANK D. CELEBREZZE, JR., Concur

[Signature]
Administrative Judge ANN DYKE

CA06087881

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0614 00685



[Appx. 5]

NOTICE MAILED TO COUNSEL
FOR ALL PARTIES - COSTS TAYLOR

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Gerald E. Fuerst, Clerk of Courts

IN RE: LEE ADAMS, JR., ET AL.

Appellee

COA NO.
87881

LOWER COURT NO.
AD 03901846
AD 03901847
AD 03901848

JUVENILE COURT DIVISION

MOTION NO. 385506

Date 08/10/2006

Journal Entry

MOTION BY APPELLANT FOR RECONSIDERATION IS DENIED.

RECEIVED FOR FILING

AUG 10 2006

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY *[Signature]* DEP.

Judge FRANK D. CELEBREZZE, JR., Concur

[Signature]
Administrative Judge ANN DYKE

CA06087881 40842697


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[Appx. 6]

NOTICE MAILED TO COUNSEL
FOR ALL PARTIES

Proof of Service

I certify that a copy of this Notice of Appeal was sent by ordinary U.S. mail to Michelle Adams through counsel Patrick Lavelle, Esq., 123 West Prospect Avenue, # 250, Cleveland, Ohio 44115, to Lee Adams through counsel Christopher Horn, Esq., 3030 Euclid Avenue, # 406, Cleveland, Ohio 44115, to the children through counsel Jean M. Brandt, Esq., 1028 Kenilworth Avenue, Cleveland, Ohio 44113, and to the children's guardian ad litem Jodi M. Wallace, Esq., P.O. Box 31126, Independence, Ohio 44131, on this 11th day of September, 2006.

By: 
Joseph C. Young, Counsel of Record
Assistant Prosecuting Attorney
COUNSEL FOR APPELLANT
CUYAHOGA COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES

AUG 10 2006

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Gerald E. Fuerst, Clerk of Courts

IN RE: LEE ADAMS, JR., ET AL.

Appellee	COA NO. 87881	LOWER COURT NO. AD 03901846 AD 03901847 AD 03901848
	JUVENILE COURT DIVISION	

MOTION NO. 385232

Date 06/14/06

Journal Entry

SUA SPONTE, APPEAL IS DISMISSED PER ENTRY NO. 384798.

**FILED AND JOURNALIZED
PER APP. R. 22(E)**

AUG 10 2006

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY [Signature] DEP.

**ANNOUNCEMENT OF DECISION
PER APP. R. 22(B), 22(D) AND 26(A)
RECEIVED**

JUN 14 2006

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY [Signature] DEP.

Judge FRANK D. CELEBREZZE, JR., Concur.

[Signature]
Administrative Judge ANN DYKE

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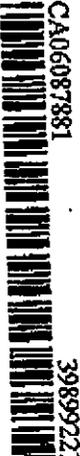

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also S.Ct.Prac.R. II, Section 2(A)(1).

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[Appx. 8]

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Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Gerald E. Fuerst, Clerk of Courts

IN RE: LEE ADAMS, JR., ET AL.

Appellee

COA NO.
87881

LOWER COURT NO.
AD 03901846
AD 03901847
AD 03901848

JUVENILE COURT DIVISION

MOTION NO. 385506

Date 08/10/2006

Journal Entry

MOTION BY APPELLANT FOR RECONSIDERATION IS DENIED.

RECEIVED FOR FILING

AUG 10 2006

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY [Signature] DEP.

Judge FRANK D. CELEBREZZE, JR., Concur

[Signature]
Administrative Judge ANN DYKE

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[Appx. 9]

NOTICE MAILED TO COUNSEL
FOR ALL PARTIES-COSTS TAXED

Court of Appeals of Ohio, Eighth District

06 JUN 20 AM 11:33

CLERK OF COURTS

County of Cuyahoga
Gerald E. Fuerst, Clerk of Courts

IN RE: LEE ADAMS, JR., ET AL.

Appellee

COA NO.
87881

LOWER COURT NO.
AD 03901846
AD 03901847
AD 03901848

JUVENILE COURT DIVISION

MOTION NO. 384798

Date 06/14/06

Journal Entry

MOTION BY APPELLEE, LEE ADAMS, JR. (FATHER), TO DISMISS PER CIV.R. 54(B) IS GRANTED.
IN THE ALTERNATIVE, FOR LIMITED REMAND FOR CUSTODIAL ORDER IS DENIED AS MOOT.

RECEIVED FOR FILING

JUN 14 2006

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY [Signature] DEP.

Judge FRANK D. CELEBREZZE, JR., Concur

[Signature]
Administrative Judge ANN DYKE

CA06087881

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NOTICE MAILED TO COUNSEL
FOR ALL PARTIES - COSTS TAXED

COURT OF COMMON PLEAS
JUVENILE COURT DIVISION
CUYAHOGA COUNTY, OHIO

06 FEB 21 AM 8:24
CLERK OF COURTS

IN THE MATTER OF:

LEE ADAMS, JR.
ANTHONY ADAMS
STARLA ADAMS

CASE NOS. AD03901846
AD03901847
AD03901848

JOURNAL ENTRY

This matter came on for hearing this 31st day of January, 2006, before the Honorable Kristin W. Sweeney, upon Motion to Modify Temporary Custody to Permanent Custody, filed by Cuyahoga County Department of Children and Family Services ("CCDCFS"). The Court finds that notice requirements have been met and that all necessary parties were present this day in court. Present: mother, Michelle Adams; Patrick Lavelle, counsel for mother; father, Lee Adams, Sr.; Christopher Horn, counsel for father; Harvey Tessler, GAL for father; Jean Brandt, counsel for the children; Jodi Wallace, GAL for children; Janna Steinruck, counsel for CCDCFS; Joshua Stanaczyk, CCDCFS social worker; and Nancy Glick, PEP.

The remainder of the evidentiary hearing was held. Trials were held in part on Jan. 24 and 25, 2006. Today, the Court heard sworn testimony and closing arguments. Upon due consideration, the Court finds that CCDCFS has not shown, by clear and convincing evidence, that it is in the best interest of the children to grant permanent custody to CCDCFS.

In considering the best interests of the children, the Court considered the following relevant factors pursuant to O.R.C. 2151.414(D): (1) the interaction and interrelationship of the children with the children's parents, siblings, relatives, and foster parents; (2) the wishes of the children; (3) the custodial history of the children, including whether the children have been in temporary custody of a public children services agency or private child placing agency under one or more separate orders of disposition for twelve or more months of a consecutive twenty-two month period; (4) the children's need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody; (5) the report of the Guardian Ad Litem; and (6) whether any of the factors in Division (E) of Section 2151.414 apply in relation to the parents and children.

IT IS ORDERED that the children are to continue in the temporary custody of CCDCFS with visitation. CCDCFS is to work toward reunification. Visitation is to start this weekend, Sat. Feb. 4, 2006, in the morning until Sunday evening, Feb. 5, 2006. The Court further orders that Robert Doyle is not to be in or around the children's home during visitation.

The support hearing set for 5-1-06 before Magistrate Thal is to be cancelled and transferred to this docket. Review hearing is set before this court on 3-9-06 at 9 a.m.

Filed with the Clerk and Journalized

2-21-06 mm

Joseph F. Russo Ex-Officio Clerk

Deputy Clerk Mary L. Mitchell

0039 8931

Judge Kristin W. Sweeney

Date: 2-2-06



R.C. § 2505.02

BALDWIN'S OHIO REVISED CODE ANNOTATED
 TITLE XXV. COURTS--APPELLATE
 CHAPTER 2505. PROCEDURE ON APPEAL
 FINAL ORDER
 →2505.02 Final order

(A) As used in this section:

- (1) "Substantial right" means a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect.
- (2) "Special proceeding" means an action or proceeding that is specially created by statute and that prior to 1853 was not denoted as an action at law or a suit in equity.
- (3) "Provisional remedy" means a proceeding ancillary to an action, including, but not limited to, a proceeding for a preliminary injunction, attachment, discovery of privileged matter, suppression of evidence, a prima-facie showing pursuant to section 2307.85 or 2307.86 of the Revised Code, a prima-facie showing pursuant to section 2307.92 of the Revised Code, or a finding made pursuant to division (A)(3) of section 2307.93 of the Revised Code

(B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:

- (1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;
- (2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment;
- (3) An order that vacates or sets aside a judgment or grants a new trial;
- (4) An order that grants or denies a provisional remedy and to which both of the following apply:
 - (a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.
 - (b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.
- (5) An order that determines that an action may or may not be maintained as a class action;
- (6) An order determining the constitutionality of any changes to the Revised Code made by Am. Sub. S.B. 281 of the 124th general assembly, including the amendment of sections 1751.67, 2117.06, 2305.11, 2305.15, 2305.234, 2317.02, 2317.54, 2323.56, 2711.21, 2711.22, 2711.23, 2711.24, 2743.02, 2743.43, 2919.16, 3923.63, 3923.64, 4705.15, and 5111.018, and the enactment of sections 2305.113, 2323.41, 2323.43, and 2323.55 of the Revised Code or any changes made by Sub. S.B. 80 of the 125th general assembly, including the amendment of sections 2125.02, 2305.10, 2305.131, 2315.18, 2315.19, and 2315.21 of the Revised Code.

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R.C. § 2505.02

(C) When a court issues an order that vacates or sets aside a judgment or grants a new trial, the court, upon the request of either party, shall state in the order the grounds upon which the new trial is granted or the judgment vacated or set aside.

(D) This section applies to and governs any action, including an appeal, that is pending in any court on July 22, 1998, and all claims filed or actions commenced on or after July 22, 1998, notwithstanding any provision of any prior statute or rule of law of this state.

Current through 2006 File 143 of the 126th GA (2005-2006),
apv. by 9/1/06, and filed with the Secretary of State by 9/1/2006.

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[Appx. 13]

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Page 1

Juv. R. Rule 1

**BALDWIN'S OHIO REVISED CODE ANNOTATED
RULES OF JUVENILE PROCEDURE****→ Juv R 1 Scope of rules: applicability; construction; exceptions****(A) Applicability**

These rules prescribe the procedure to be followed in all juvenile courts of this state in all proceedings coming within the jurisdiction of such courts, with the exceptions stated in subdivision (C).

(B) Construction

These rules shall be liberally interpreted and construed so as to effectuate the following purposes:

- (1) to effect the just determination of every juvenile court proceeding by ensuring the parties a fair hearing and the recognition and enforcement of their constitutional and other legal rights;
- (2) to secure simplicity and uniformity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay;
- (3) to provide for the care, protection, and mental and physical development of children subject to the jurisdiction of the juvenile court, and to protect the welfare of the community; and
- (4) to protect the public interest by treating children as persons in need of supervision, care and rehabilitation.

(C) Exceptions

These rules shall not apply to procedure (1) Upon appeal to review any judgment, order, or ruling; (2) Upon the trial of criminal actions; (3) Upon the trial of actions for divorce, annulment, legal separation, and related proceedings; (4) In proceedings to determine parent-child relationships, provided, however that appointment of counsel shall be in accordance with Rule 4(A) of the Rules of Juvenile Procedure; (5) In the commitment of the mentally ill and mentally retarded; (6) In proceedings under section 2151.85 of the Revised Code to the extent that there is a conflict between these rules and section 2151.85 of the Revised Code.

When any statute provides for procedure by general or specific reference to the statutes governing procedure in juvenile court actions, procedure shall be in accordance with these rules.

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[Appx. 14]

Juv. R. Rule 2

BALDWIN'S OHIO REVISED CODE ANNOTATED
RULES OF JUVENILE PROCEDURE
→ Juv R 2 Definitions

As used in these rules:

- (A) "Abused child" has the same meaning as in section 2151.031 of the Revised Code.
- (B) "Adjudicatory hearing" means a hearing to determine whether a child is a juvenile traffic offender, delinquent, unruly, abused, neglected, or dependent or otherwise within the jurisdiction of the court.
- (C) "Agreement for temporary custody" means a voluntary agreement that is authorized by section 5103.15 of the Revised Code and transfers the temporary custody of a child to a public children services agency or a private child placing agency.
- (D) "Child" has the same meaning as in sections 2151.011 and 2152.02 of the Revised Code.
- (E) "Chronic truant" has the same meaning as in section 2151.011 of the Revised Code.
- (F) "Complaint" means the legal document that sets forth the allegations that form the basis for juvenile court jurisdiction.
- (G) "Court proceeding" means all action taken by a court from the earlier of (1) the time a complaint is filed and (2) the time a person first appears before an officer of a juvenile court until the court relinquishes jurisdiction over such child.
- (H) "Custodian" means a person who has legal custody of a child or a public children's services agency or private child-placing agency that has permanent, temporary, or legal custody of a child.
- (I) "Delinquent child" has the same meaning as in section 2152.02 of the Revised Code.
- (J) "Dependent child" has the same meaning as in section 2151.04 of the Revised Code.
- (K) "Detention" means the temporary care of children in restricted facilities pending court adjudication or disposition.
- (L) "Detention hearing" means a hearing to determine whether a child shall be held in detention or shelter care prior to or pending execution of a final dispositional order.
- (M) "Dispositional hearing" means a hearing to determine what action shall be taken concerning a child who is within the jurisdiction of the court.
- (N) "Guardian" means a person, association, or corporation that is granted authority by a probate court pursuant to Chapter 2111 of the Revised Code to exercise parental rights over a child to the extent provided in the court's order and subject to the residual parental rights of the child's parents.

Juv. R. Rule 2

(O) "Guardian ad litem" means a person appointed to protect the interests of a party in a juvenile court proceeding.

(P) "Habitual truant" has the same meaning as in section 2151.011 of the Revised Code.

(Q) "Hearing" means any portion of a juvenile court proceeding before the court, whether summary in nature or by examination of witnesses.

(R) "Indigent person" means a person who, at the time need is determined, is unable by reason of lack of property or income to provide for full payment of legal counsel and all other necessary expenses of representation.

(S) "Juvenile court" means a division of the court of common pleas, or a juvenile court separately and independently created, that has jurisdiction under Chapters 2151 and 2152 of the Revised Code.

(T) "Juvenile judge" means a judge of a court having jurisdiction under Chapters 2151 and 2152 of the Revised Code.

(U) "Juvenile traffic offender" has the same meaning as in section 2151.021 of the Revised Code.

(V) "Legal custody" means a legal status that vests in the custodian the right to have physical care and control of the child and to determine where and with whom the child shall live, and the right and duty to protect, train, and discipline the child and provide the child with food, shelter, education, and medical care, all subject to any residual parental rights, privileges, and responsibilities. An individual granted legal custody shall exercise the rights and responsibilities personally unless otherwise authorized by any section of the Revised Code or by the court.

(W) "Mental examination" means an examination by a psychiatrist or psychologist.

(X) "Neglected child" has the same meaning as in section 2151.03 of the Revised Code.

(Y) "Party" means a child who is the subject of a juvenile court proceeding, the child's spouse, if any, the child's parent or parents, or if the parent of a child is a child, the parent of that parent, in appropriate cases, the child's custodian, guardian, or guardian ad litem, the state, and any other person specifically designated by the court.

(Z) "Permanent custody" means a legal status that vests in a public children's services agency or a private child-placing agency, all parental rights, duties, and obligations, including the right to consent to adoption, and divests the natural parents or adoptive parents of any and all parental rights, privileges, and obligations, including all residual rights and obligations.

(AA) "Permanent surrender" means the act of the parents or, if a child has only one parent, of the parent of a child, by a voluntary agreement authorized by section 5103.15 of the Revised Code, to transfer the permanent custody of the child to a public children's services agency or a private child-placing agency.

(BB) "Person" includes an individual, association, corporation, or partnership and the state or any of its political subdivisions, departments, or agencies.

(CC) "Physical examination" means an examination by a physician.

(DD) "Planned permanent living arrangement" means an order of a juvenile court pursuant to which both of the following apply:

(1) The court gives legal custody of a child to a public children's services agency or a private child-placing agency without the termination of parental rights;

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Juv. R. Rule 2

(2) The order permits the agency to make an appropriate placement of the child and to enter into a written planned permanent living arrangement agreement with a foster care provider or with another person or agency with whom the child is placed.

(EE) "Private child-placing agency" means any association, as defined in section 5103.02 of the Revised Code that is certified pursuant to sections 5103.03 to 5103.05 of the Revised Code to accept temporary, permanent, or legal custody of children and place the children for either foster care or adoption.

(FF) "Public children's services agency" means a children's services board or a county department of human services that has assumed the administration of the children's services function prescribed by Chapter 5153 of the Revised Code.

(GG) "Removal action" means a statutory action filed by the superintendent of a school district for the removal of a child in an out-of-county foster home placement.

(HH) "Residence or legal settlement" means a location as defined by section 2151.06 of the Revised Code.

(II) "Residual parental rights, privileges, and responsibilities" means those rights, privileges, and responsibilities remaining with the natural parent after the transfer of legal custody of the child, including but not limited to the privilege of reasonable visitation, consent to adoption, the privilege to determine the child's religious affiliation, and the responsibility for support.

(JJ) "Rule of court" means a rule promulgated by the Supreme Court or a rule concerning local practice adopted by another court that is not inconsistent with the rules promulgated by the Supreme Court and that is filed with the Supreme Court.

(KK) "Serious youthful offender" means a child eligible for sentencing as described in sections 2152.11 and 2152.13 of the Revised Code.

(LL) "Serious youthful offender proceedings" means proceedings after a probable cause determination that a child is eligible for sentencing as described in sections 2152.11 and 2152.13 of the Revised Code. Serious youthful offender proceedings cease to be serious youthful offender proceedings once a child has been determined by the trier of fact not to be a serious youthful offender or the juvenile judge has determined not to impose a serious youthful offender disposition on a child eligible for discretionary serious youthful offender sentencing.

(MM) "Shelter care" means the temporary care of children in physically unrestricted facilities, pending court adjudication or disposition.

(NN) "Social history" means the personal and family history of a child or any other party to a juvenile proceeding and may include the prior record of the person with the juvenile court or any other court.

(OO) "Temporary custody" means legal custody of a child who is removed from the child's home, which custody may be terminated at any time at the discretion of the court or, if the legal custody is granted in an agreement for temporary custody, by the person or persons who executed the agreement.

(PP) "Unruly child" has the same meaning as in section 2151.022 of the Revised Code.

(QQ) "Ward of court" means a child over whom the court assumes continuing jurisdiction.

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Juv. R. Rule 2

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[Appx. 18]

Juv. R. Rule 34

BALDWIN'S OHIO REVISED CODE ANNOTATED
RULES OF JUVENILE PROCEDURE
→ Juv R 34 Dispositional hearing

(A) Scheduling the hearing

Where a child has been adjudicated as an abused, neglected, or dependent child, the court shall not issue a dispositional order until after it holds a separate dispositional hearing. The dispositional hearing for an adjudicated abused, neglected, or dependent child shall be held at least one day but not more than thirty days after the adjudicatory hearing is held. The dispositional hearing may be held immediately after the adjudicatory hearing if all parties were served prior to the adjudicatory hearing with all documents required for the dispositional hearing and all parties consent to the dispositional hearing being held immediately after the adjudicatory hearing. Upon the request of any party or the guardian ad litem of the child, the court may continue a dispositional hearing for a reasonable time not to exceed the time limit set forth in this division to enable a party to obtain or consult counsel. The dispositional hearing shall not be held more than ninety days after the date on which the complaint in the case was filed. If the dispositional hearing is not held within this ninety day period of time, the court, on its own motion or the motion of any party or the guardian ad litem of the child, shall dismiss the complaint without prejudice.

In all other juvenile proceedings, the dispositional hearing shall be held pursuant to Juv. R. 29(F)(2)(a) through (d) and the ninety day requirement shall not apply. Where the dispositional hearing is to be held immediately following the adjudicatory hearing, the court, upon the request of any party, shall continue the hearing for a reasonable time to enable the party to obtain or consult counsel.

(B) Hearing procedure

The hearing shall be conducted in the following manner:

- (1) The judge or magistrate who presided at the adjudicatory hearing shall, if possible, preside;
- (2) Except as provided in division (1) of this rule, the court may admit evidence that is material and relevant, including, but not limited to, hearsay, opinion, and documentary evidence;
- (3) Medical examiners and each investigator who prepared a social history shall not be cross-examined, except upon consent of all parties, for good cause shown, or as the court in its discretion may direct. Any party may offer evidence supplementing, explaining, or disputing any information contained in the social history or other reports that may be used by the court in determining disposition.

(C) Judgment

After the conclusion of the hearing, the court shall enter an appropriate judgment within seven days. A copy of the judgment shall be given to any party requesting a copy. In all cases where a child is placed on probation, the child shall receive a written statement of the conditions of probation. If the judgment is conditional, the order shall state the conditions. If the child is not returned to the child's home, the court shall determine the school district that shall bear the cost of the child's education and may fix an amount of support to be paid by the responsible parent or from public funds.

Juv. R. Rule 34

(D) Dispositional Orders

Where a child is adjudicated an abused, neglected, or dependent child, the court may make any of the following orders of disposition:

- (1) Place the child in protective supervision;
- (2) Commit the child to the temporary custody of a public or private agency, either parent, a relative residing within or outside the state, or a probation officer for placement in a certified foster home or approved foster care;
- (3) Award legal custody of the child to either parent or to any other person who, prior to the dispositional hearing, files a motion requesting legal custody;
- (4) Commit the child to the permanent custody of a public or private agency, if the court determines that the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent and determines that the permanent commitment is in the best interest of the child;
- (5) Place the child in a planned permanent living arrangement with a public or private agency if the agency requests the court for placement, if the court finds that a planned permanent living arrangement is in the best interest of the child, and if the court finds that one of the following exists:
 - (a) The child because of physical, mental, or psychological problems or needs is unable to function in a family-like setting;
 - (b) The parents of the child have significant physical, mental or psychological problems and are unable to care for the child, adoption is not in the best interest of the child and the child retains a significant and positive relationship with a parent or relative;
 - (c) The child is sixteen years of age or older, has been counseled, is unwilling to accept or unable to adapt to a permanent placement and is in an agency program preparing the child for independent living.

(E) Protective supervision

If the court issues an order for protective supervision, the court may place any reasonable restrictions upon the child, the child's parents, guardian, or any other person including, but not limited to, any of the following:

- (1) Ordering a party within forty-eight hours to vacate the child's home indefinitely or for a fixed period of time;
- (2) Ordering a party, parent, or custodian to prevent any particular person from having contact with the child;
- (3) Issuing a restraining order to control the conduct of any party.

(F) Case plan

As part of its dispositional order, the court shall journalize a case plan for the child. The agency required to maintain a case plan shall file the case plan with the court prior to the child's adjudicatory hearing but not later than thirty days after the earlier of the date on which the complaint in the case was filed or the child was first placed in shelter care. The plan shall specify what additional information, if any, is necessary to complete the plan and how the information will be obtained. All parts of the case plan shall be completed by the earlier of thirty days after the adjudicatory hearing or the date of the dispositional hearing for the child. If all parties agree to the content of the case plan and the court approves it, the court shall journalize the plan as part of its dispositional order. If no

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Juv. R. Rule 34

agreement is reached, the court, based upon the evidence presented at the dispositional hearing and the best interest of the child, shall determine the contents of the case plan and journalize it as part of the dispositional order for the child.

(G) Modification of temporary order

The department of human services or any other public or private agency or any party, other than a parent whose parental rights have been terminated, may at any time file a motion requesting that the court modify or terminate any order of disposition. The court shall hold a hearing upon the motion as if the hearing were the original dispositional hearing and shall give all parties and the guardian ad litem notice of the hearing pursuant to these rules. The court, on its own motion and upon proper notice to all parties and any interested agency, may modify or terminate any order of disposition.

(H) Restraining orders

In any proceeding where a child is made a ward of the court, the court may grant a restraining order controlling the conduct of any party if the court finds that the order is necessary to control any conduct or relationship that may be detrimental or harmful to the child and tend to defeat the execution of a dispositional order.

(I) Bifurcation; Rules of Evidence

Hearings to determine whether temporary orders regarding custody should be modified to orders for permanent custody shall be considered dispositional hearings and need not be bifurcated. The Rules of Evidence shall apply in hearings on motions for permanent custody.

(J) Advisement of rights after hearing

At the conclusion of the hearing, the court shall advise the child of the child's right to record expungement and, where any part of the proceeding was contested, advise the parties of their right to appeal.

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