

IN THE SUPREME COURT OF OHIO

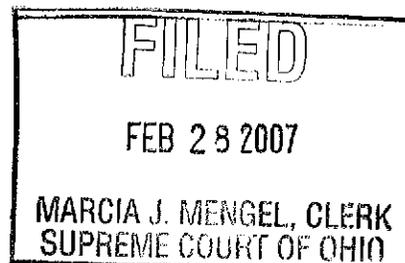
IN THE MATTER OF : Case No. 2006-1695
: :
LEE ADAMS, JR., et al. : On Appeal from the Cuyahoga County
: Court of Appeals,
: Eighth Appellate District
: :
: Court of Appeals
: Case No. 87881

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Appellee Michelle Adams respectfully urges the Court to affirm the judgment of the Cuyahoga County Court of Appeals. The judgment correctly recognized that interim denial of a motion to modify temporary custody to permanent custody is not a final order that a children services agency may appeal. Such an order maintains the status quo. It does not determine the outcome of an action for neglect and dependency or affect a substantial right of the agency. This Court should remand with: (a) instructions that the Cuyahoga County Juvenile Court proceed promptly to final disposition; and (b) to avoid further delays, an admonition that this Court would look with disfavor upon any attempt by the Cuyahoga County Department of Children and Family Services to obtain a stay of the final disposition pending any additional appeals.

STATEMENT OF THE CASE AND FACTS

Michelle and Lee Adams are the parents of three children from Garfield Heights who have now been in the temporary custody of the Cuyahoga County Department of Children and Family Services for over three and a half years. The children are Lee Adams, Jr. (now age 16), Anthony Adams (now age 14) and Starla Adams (now age 5). They lived in the family residence on Bancroft Avenue with their parents before this case arose. The Department removed the children on July 16, 2003, in response to a report that Robert Doyle, a son of Mrs. Adams by a previous marriage, had assaulted Lee, Jr. The Department filed a complaint alleging neglect and dependency, along with a motion for pre-dispositional temporary custody, in the Cuyahoga County Juvenile Court the next day. The supporting affidavit advised the court that Mr. and Mrs. Adams had “agreed to a safety plan with the children temporarily living outside of the home.”

A magistrate heard the motion for pre-dispositional temporary custody on August 7, 2003. The ensuing pretrial order made no probable cause finding as to any basis for emergency

removal of the children, and noted that the parties denied the allegations of the complaint. Nevertheless, with the children removed from the home, the order recited that a “safety plan has been created;” recorded the Department’s withdrawal of its emergency custody motion; and continued the case to September 3, 2003. (Supp. 0001)

At the hearing on September 3, 2003, the magistrate granted the oral motion of the Department for emergency temporary custody. The children were placed in a foster home. (Supp. 0005) The juvenile court appointed counsel for Mrs. Adams and Mr. Adams and the children, as well as a guardian ad litem for the children. In the meantime, the Department filed its case plan with the Court on October 31, 2003. The goal of that plan was reunification of the children with their parents.

At an adjudicatory hearing on the Department motion for temporary custody on December 4, 2003, the Court granted the oral motion of the Department to amend its complaint, and Mr. and Mrs. Adams stipulated to the allegations of the amended complaint. The juvenile court determined that the three children were dependent, terminated pre-dispositional temporary custody and formally placed the children into the temporary custody of the Department. In addition, the court approved the case plan for reunification of the Adams children with their parents. (Supp. 0011) By that time, the children had been removed from their home for almost four and a half months.

In anticipation of the July 2004 annual review of temporary custody status, Mrs. Adams filed a motion to terminate temporary custody on June 23, 2004, and asked that the court grant permanent custody to her. (Supp. 0016) The guardian ad litem for the Adams children also filed a motion to return legal custody to one or both parents. (Supp. 0013) She noted that “the parents have substantially completed their case plan and have remedied the issues that initially caused

the children to be removed.” By contrast, and in spite of its original case plan for reunification, the Department filed a motion to modify the temporary custody to permanent custody on June 30, 2004. (Supp. 0018) The next day, the Department agreed to extend temporary custody, and the guardian ad litem withdrew her motion to return the children to their parents. (Supp. 0025) At the hearing on July 1, 2004, the magistrate provided for continuation of the temporary custody, and ordered the Department to finalize the permanency plan. *Id.* By that time, the Adams children had been in the custody of the Department for almost a year.

On September 1, 2004, the juvenile court judge considered the Department motion to modify temporary custody to permanent custody. The Court decided to maintain the temporary custody status at that hearing, and set a further preliminary hearing for September 30, 2004. (Supp. 0028) At the hearing on September 30, 2004, the Department made an oral motion to withdraw its motion for permanent custody. The Court granted the withdrawal motion, extended temporary custody for an additional six months, and set the case for a semi-annual temporary custody review on February 15, 2005. (Supp. 0029)

The custody review hearing took place on February 15, 2005. The magistrate found that Mr. and Mrs. Adams had made substantial progress in reaching the goals of the case plan. Accordingly, the Court approved the plan for reunification of the Adams children with their parents. The court also extended the temporary custody order to July 16, 2005. (Supp. 0030)

The next custody review hearing took place on June 28, 2005, by which time the Adams children had been removed from their home for almost two years. Shortly before the hearing, the Department filed its second motion to modify temporary custody to permanent custody. (Supp. 0032) The court acknowledged the change from the original goal of reunification, approved a case plan for alternative permanent placement of the children, and ordered a

continuation of the temporary custody. (Supp. 0038) At a hearing before the judge on August 2, 2005, the court again considered the modification motion of the Department, but again continued the temporary custody in effect, and set the case for trial on October 6, 2005. (Supp. 0040)

On October 6, 2005, Mrs. Adams filed a motion for legal custody or, in the alternative, an award of planned permanent living arrangements to the Department. (Supp. 0042) In lieu of the trial set for that date, the guardian ad litem made an unopposed motion for a continuance. The court continued the temporary custody in effect and set a further preliminary hearing for the next month. (Supp. 0041)

On November 16, 2005, the juvenile court granted the motion of Mrs. Adams (with which Mr. Adams and the children concurred) for unsupervised holiday visitation. Overruling the objection of the Department, the court allowed visitation between the parents and the children for six hours on Thanksgiving Day and six hours on Christmas Day, and specified that Robert Doyle was not to be present during the visitation periods. The court ordered the continuation of temporary custody, and set the matter for trial on January 24, 2006. (Supp. 0044) The Adams children had been removed from their home for nearly two and a half years by that point.

The juvenile court held an evidentiary hearing on the Department motion to modify temporary custody to permanent custody on January 24, 25 and 31, 2006. (Supp. 0045-0047) Based on the witnesses and documents in evidence, and pursuant to Section 2151.414(D) of the Ohio Revised Code, the court considered the interaction and interrelationship of the children with their parents, siblings, relatives and foster parents; the wishes of the children; the custodial history of the children; the children's need for a legally secure placement and whether that type of placement can be achieved without a grant of permanent custody; the report of the guardian ad

litem; and whether Mr. and Mrs. Adams were subject to any of the adverse factors listed in Section 2151.414(E). (Supp. 0047)

The juvenile court denied the motion to modify temporary custody to permanent custody on February 2, 2006. The court ordered that the three children instead were to continue in the temporary custody of the Department with visitation; specified that Robert Doyle was not to be present at the family residence during visitation; provided that the Department was to work toward reunification; and set a review hearing for March 9, 2006. (Supp. 0047) On February 2, 2006, the Department moved for written findings of fact and conclusions of law. The court granted that motion, and required submission of proposed findings and conclusions by March 3, 2006. Pending the submission of the proposed findings and conclusions, the juvenile court filed and journalized its order from the January 2006 hearing on February 21, 2006.

The Department appealed to the Cuyahoga County Court of Appeals on March 8, 2006. (Supp. 0049) At the previously-scheduled March 9 review hearing, at which counsel for the children had planned to seek an adjustment of the visitation orders, issues arose as to the jurisdiction of the juvenile court to enter any further order. The attorney for the children subsequently filed a brief in support of the juvenile court's authority pending appeal, and the Department filed a brief in opposition to exercise of jurisdiction. The attorney for the children filed a motion for an immediate hearing to change the placement of the children on March 22, 2006.

The court entered its findings of fact and conclusions of law on the custody-related issues in an Amended Journal Entry on April 24, 2006. The Department does not base its appeal on the Amended Journal Entry, but has omitted any mention of it from its brief. The findings and conclusions are set forth in the supplement to this brief. (Supp. 0052)

Mr. Adams filed a motion to dismiss the appeal or, in the alternative, to remand for the purpose of obtaining further custodial orders on June 1, 2006. The motion succinctly explained that there had been no final appealable order, and cited the pertinent case law. The Court of Appeals granted his motion on June 14, 2006. The journal entry stated that the “motion by appellee, Lee Adams, Jr. [sic] (father) to dismiss per Civ. R. 54(B) is granted. In the alternative, for limited remand for custodial order is denied as moot.”

The Department moved for reconsideration on June 23, 2006. Its motion and supporting memorandum set forth essentially the same arguments that the Department makes in this Court. (Supp. 0056) The appellate court denied reconsideration, and filed and journalized its entry dismissing the appeal, on August 10, 2006. The journalized entry stated that “[*s*]ua sponte, appeal is dismissed per Entry No. 384798.” By that time, the Adams children had been in the custody of the Department -- and removed from their family home -- for over three years.

The Department appealed to the Supreme Court of Ohio on September 11, 2006, as an appeal involving the termination of parental rights/adoption, and moved for an immediate stay of the appellate judgment that same day. This Court granted the stay motion on October 12, 2006. Upon consideration of the jurisdictional memorandum that the Department filed, this Court accepted the appeal on November 29, 2006.

On December 27, 2006, this Court also accepted a related case, *In re K.M.*, Cuyahoga App. Nos. 87882 and 87883, 2006-Ohio-4878, for review. The *K.M.* case appears to present, in the context of another family, the same issue as this case as to the appealability by a children services agency of an interim order that denies a motion to convert temporary custody to permanent custody. The Court has stayed briefing in that appeal pending the decision in the present case. *See* Case No. 2006-1942.

In the meantime, the counsel appointed for Mrs. Adams and for Mr. Adams by the courts below each sought leave to withdraw. This Court granted their motions on January 29, 2007, appointed *pro bono* counsel in their places, and extended the merits-brief deadline to February 28, 2007.

ARGUMENT

Proposition of Law No. 1:

In a juvenile court action for neglect and dependency, the interim denial of a motion to modify temporary custody to permanent custody is not a final order that a children services agency may appeal, because the court does not determine the outcome of the action or affect a substantial right of the agency when it issues such an order.

By “jumping the gun” with this appeal, the Department has unnecessarily prolonged the upheaval of the Adams family. This case is one of at least six cases that the Court recently has accepted for the purpose of interpreting the “final-and-appealable order statute.” *Gehm v. Timberline Post & Frame*, 112 Ohio St. 3d 514, 2007-Ohio-607 at ¶ 7. The case thus presents an opportunity not only to bring to a speedy resolution the uncertainty that besets the Adams family but also to establish that interim denial of a motion to convert temporary custody to permanent custody is not a final order that a children services agency may appeal.

The Court of Appeals correctly determined that such an order is not subject to appeal by the agency. The interim denial maintains the status quo, and does not determine the outcome of an action for neglect and dependency or affect a substantial right of the agency. This Court should not allow children services agencies to divest the juvenile courts of jurisdiction, and thus to interrupt the progress of juvenile court cases, by seeking appellate review of such orders. To spare the Adams family from further gratuitous distress, the Court should affirm and remand: (a) with instructions that the juvenile court proceed promptly to final disposition; and (b) an

admonition that this Court would look with disfavor upon any attempt by the Department to obtain a stay of the final disposition pending any further appeals.

A. The Ohio Revised Code Specifically Applies Statewide Appellate Jurisdiction Standards to Review of Cuyahoga County Juvenile Court Decisions.

The Cuyahoga County Juvenile Court is the only juvenile court in the state to which the Ohio Revised Code specifically applies the general standards for appellate jurisdiction. In 1931, almost three decades after the Cuyahoga County Juvenile Court had become the first juvenile court in Ohio (as part of the Insolvency Court), the 89th Ohio General Assembly enacted House Bill No. 175, which established it as an autonomous tribunal. The legislation, which took effect in 1935, expressly provided that the Cuyahoga County Juvenile Court was subject to the statewide standards for appeal from juvenile court decisions. *See* 114 Ohio Laws 45 (1931). (Appx. 0001) Now codified at Section 2153.17 of the Ohio Revised Code, in the chapter entitled “Cuyahoga County Juvenile Court,” the law provides that “[t]he sections of the Revised Code regulating the manner and grounds of appeal from any judgment, order, or decree rendered by the court of common pleas in the exercise of juvenile jurisdiction shall apply to the juvenile court.” *See generally* F.R. Aumann, *The Juvenile Court Movement in Ohio*, 32 J. Crim. L. & Criminology 4 (1931); Ronald J. Harpst, *Practice in Cuyahoga County Juvenile Court*, 10 Clev.-Marshall L.Rev. 507, 509 (1961); Harry L. Eastman, *Practice in the Juvenile Court*, Cleve. Bar Assn. J. (Dec. 1941-Jan. 1942).

Appeals from the Cuyahoga County Juvenile Court thus are specifically subject to the appellate jurisdictional limits that derive from Article IV, Section 3(B)(2), of the Ohio Constitution. That section provides that the appellate courts “shall have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the

courts of record inferior to the court of appeals within the district[.]” The statutory jurisdictional standards are, in turn, set forth in Title 25 of the Ohio Revised Code. Section 2501.02 not only provides the general standard, but also focuses particularly on the juvenile courts, by specifying that “[i]n addition to the original jurisdiction conferred by Section 3 of Article IV, Ohio Constitution, the court [of appeals] shall have jurisdiction upon an appeal upon questions of law to review, affirm, modify, set aside, or reverse judgments or final orders of courts of record inferior to the court of appeals within the district, including the finding, order, or judgment of a juvenile court that a child is delinquent, neglected, abused, or dependent, for prejudicial error committed by such lower court.”

The question in this appeal is whether the interim denial of the motion to modify temporary custody to permanent custody was a “final order.” *See* Department Merit Brief at 3, 7. The other jurisdictional alternatives provided by Section 2501.02 do not apply: there plainly has been no final judgment in this case, which remains pending on the merits; nor was there any appeal from the finding of the juvenile court on December 4, 2003, that the Adams children are dependent. The definition of “final order” established by Section 2505.02(B) thus is determinative.

Section 2505.02(B) provides in pertinent part that “final order” includes: (1) an order that “affects a substantial right in an action that in effect determines the action and prevents a judgment;” and (2) an order that “affects a substantial right made in a special proceeding or upon a summary application in an action after judgment.” *See generally Gehm v. Timberline Post & Frame, supra*, ¶¶ 13-15; 4 Ohio Jur. 3d *Appellate Review*, §§ 41-43 (1999 & Supp. 2005).

Section 2505.02(A)(2) defines “special proceeding” as “an action or proceeding that is especially created by statute and that prior to 1853 was not denoted as an action at law or a suit

in equity.” The action for neglect and dependency is a “special proceeding,” because Sections 2151.353, 2151.413, 2151.414 and 2151.415 authorize the juvenile courts to transfer custody of a minor child from his or her biological parents to other persons under certain conditions -- a proceeding that neither the common law nor equity recognized. *See State ex rel. Fowler* (1994), 68 Ohio St. 3d 357, 360 (“[p]roceedings in the juvenile division ... are special statutory proceedings”); *In re Fennell* (Athens County App. 2002), 2002 WL 31167942, at *1; *In re Wilkinson* (Montgomery County App. 1996), 1996 WL 132196, at *1. In a “special proceeding,” an order is a “final order” only if it “affects a substantial right.” Section 2505.02(A)(1) defines “substantial right” as 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.” Interim denial of a motion to modify temporary custody to permanent custody does not constitute a final order from which a children services agency may appeal under these standards.

B. Continuation of Temporary Custody Does Not Determine the Outcome of an Action for Neglect and Dependency or Affect a Substantial Right of a Children Services Agency.

Because of the provisional nature of temporary custody, its continuation does not foretell the outcome of an action for neglect and dependency or encroach upon the rights of a children services agency. Temporary custody is a status created by Ohio law to provide for interim care of a child who is alleged to be, among other things, neglected or dependent. Chapter 2151 of the Ohio Revised Code authorizes the juvenile courts temporarily to transfer custody of a minor child from the biological parents to other persons upon presentation of a preponderance of evidence that certain causes exist. Those causes include neglect (including lack of adequate parental care, refusal to provide care necessary for the child’s health and well-being, parental omissions that threaten to harm the child’s health or welfare) and dependency (including lack of

adequate parental care by reason of the mental or physical condition of the child's parents). *See generally* Ohio Rev. Code §§ 2151.03(A), 2151.04(B).

There are two forms of temporary custody in an action for neglect and dependency:

(1) Section 2151.33(B)(1) and Juvenile Rule 13 provide for the entry of pre-dispositional orders for temporary custody in order to “protect the best interest of the child;” and (2) Section 2151.353(A)(2) provides that the juvenile courts may, upon determining that a child is neglected or dependent, enter a dispositional order that “[c]ommit[s] the child to the temporary custody of a public children services agency.” Temporary custody under such circumstances means the “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.” Ohio R. Juv. P. 2(OO). *See also* Ohio Rev. Code § 2151.011(A)(52).

Ohio law requires public children services agencies to move deliberately toward a timely resolution of the factors that led to the removal of a child, once they have obtained temporary custody, because of a strong public policy that all Ohio children have the right to be raised in a safe and stable home. Under Section 2151.353(F) of the Ohio Revised Code, “[a]ny temporary custody order issued pursuant to division (A) of this section shall terminate one year after the earlier of the date on which the complaint in the case was filed or the child was first placed into shelter care, except that, upon the filing of a motion pursuant to Section 2151.415 of the Revised Code [for disposition upon expiration of temporary custody], the temporary custody order shall continue and not terminate until the court issues a dispositional order under that section.” (Section 2151.415 dispositional orders include the unrestricted return of the child to his or her parents, a guardian or a custodian; protective supervision; award of legal custody to a relative or

other interested individual; permanent termination of parental rights; placement in a planned permanent living arrangement; and extension of temporary custody.) Sections 2151.415(A)(6), (D)(1) and (D)(2) authorize the agency to seek two extensions, up to six months each. *See also* Juv. R. 14(B). In addition, Section 2151.413(D)(1) provides that a children services agency “shall file a motion requesting permanent custody” when a child has been in temporary custody “for twelve or more months of a consecutive twenty-two month period ending on or after March 18, 1999.”

The sunset provision of Section 2151.353(F) does not limit the jurisdiction of the juvenile courts or -- provided that it has maintained the statutorily-required progress -- the status of a children services agency as temporary custodian. As this Court established in *In re Young Children* (1996), 76 Ohio St. 3d 632, 637 “the passing of the sunset date pursuant to R.C. 2151.353(F) does not divest juvenile courts of jurisdiction to enter dispositional orders.” Instead, “because the court retains jurisdiction over the child, it may make further dispositional orders as it deems necessary to protect the child. We believe,” the Court said, that “the General Assembly granted continuing jurisdiction to the courts for just this reason.” *Id.* at 638. *See also* Ohio R. Juv. P. 14(A) (temporary custody orders “shall extend beyond a year and until the court issues another dispositional order, where any public . . . agency with temporary custody . . . files a motion requesting . . . [a]n order terminating parental rights” [or] . . . [an] order for the extension of temporary custody”); Ohio R. Juv. P. 14(C).

Thus in *In re N.B.* (Cuyahoga County App.), 2003 WL 21545142, 2003-Ohio-3656, the court observed that, if it were to accept the county’s argument that it was error to allow temporary custody beyond the maximum allowable time, “the county, in all cases which go beyond the two-year time period, could obtain permanent custody by default, regardless of

whether it met its burden of proving that permanent custody was in the child's best interests."

Id. at ¶ 13. The court additionally noted that "a judge may enter an order of disposition pursuant to § 2151.415(A) after the sunset date when the problems that led to the original temporary custody order remain unresolved." *Id.* at ¶ 11 (quoting *In re Young Children*, 76 Ohio St. 3d at 632 (syllabus)).

1. Continuation of Temporary Custody Does Not Determine an Action for Neglect and Dependency or Prevent a Judgment.

Temporary custody does not determine the outcome of an action for neglect and dependency. The children, their parents, the children services agency, any foster parents and others remain subject to further court order during the temporary custody phase. Once the family has been given a meaningful opportunity to remedy the factors that have led to removal of a child, the ultimate dispositional options of the juvenile court include (1) the termination of parental rights and an award of permanent custody to the public children services agency; (2) an order that the agency maintain protective supervision of the child; (3) an order that the agency implement a planned permanent living arrangement for the child; or (4) return of custody to one or both parents of the child or legal custody to a relative or other interested individual. *See* Ohio Rev. Code §§ 2151.415(A) and (B); Ohio R. Juv. P. 14(A); Ohio R. Juv. P. 34(D).

Neither the vesting nor the continuance of temporary custody precludes the juvenile court from ultimately exercising any of these options. In this case, for example, although the juvenile court has expressed its views as to reunification, that disposition is not a foregone conclusion. It remains dependent on the variety of factors that the juvenile court identified at the end of its Amended Journal Entry.

Nor does temporary custody prevent a judgment. Upon presentation of appropriate proof, the children services agency may seek any of the ultimate dispositions. Those include permanent

custody pursuant to Sections 2151.353(A)(2), 2151.413(A) and 2151.414(E) -- 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.” Ohio R. Juv. P. 2(Z). *See also* Ohio Rev. Code § 2151.011(A)(31). Continuation of temporary custody does not prevent or estop a children services agency from seeking, or renewing a request for, permanent custody under applicable circumstances. *See Gehm v. Timberline Post & Frame, supra*, at ¶ 31.

The Department erroneously claims that the continuation of temporary custody, after a ruling on a motion for modification, is a “further dispositional order” that is subject to appeal. Juvenile Rule 34(I) provides that hearings on motions to convert temporary custody to permanent custody “shall be considered dispositional hearings.” That does not mean, however, that any order ensuing from such a hearing necessarily shall be final or appealable. As defined in Juvenile Rule 2(M), the term “dispositional hearing” simply means “a hearing to determine what action shall be taken concerning a child who is within the jurisdiction of the court.” Not all orders issued from a dispositional hearing are dispositive for purposes of appellate jurisdiction. Neither the fact that a motion was contested nor the Rule 34(J) obligation of the juvenile court to “advise the parties of their right to appeal” supersede the constitutional and statutory provisions of Ohio law that define appellate jurisdiction.

2. Continuation of Temporary Custody Does Not Affect a Substantial Right of a Children Services Agency.

Although the Department (like the children and parents) therefore must wait longer for the final outcome, the continuation of temporary custody does not affect a substantial right of a public children services agency. Public children services agencies have a duty to protect the

children placed in their custody and to work within statutory timeframes to resolve the factors that led to their removal. But the existence of temporary custody does not convey to a public children services agency, or any other party, any inherent right to raise a child to adulthood. In particular, no constitutional provision, statute, common law or procedural rule entitles a children services agency to obtain permanent custody of a child based upon the fact that the agency had temporary custody. The continuation of temporary custody thus does not impinge upon any right of a children services agency.

Notably, the Department has identified no prejudice from continuation of temporary custody other than the fact that the Department cannot immediately obtain what it deems to be “appropriate relief.” Nothing entitles the Department to immediate and unconditional judicial acceptance of its plan for the Adams children. The Department has shown no impairment of any “right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles [it] . . . to enforce or protect,” *see* Ohio Rev. Code § 2505.02(A)(1), and hence no “substantial right” that interim denial of its motion has affected.

In *Bell v. Mt. Sinai Med. Ctr.* (1993), 67 Ohio St. 3d 60, 63, this Court ruled that, to establish that an order “affects a substantial right,” litigants “must demonstrate that in the absence of immediate review of the order they will be denied effective relief in the future.” Here, the juvenile court ruling does not foreclose any appropriate relief in the future. There ultimately will be a final judgment in this case. When the juvenile court enters its final appealable order, all parties whose substantial rights are affected by that order will be able to appeal. Nothing will preclude the Department at that time from “addressing legal issues” related to the judgment. Department Merit Brief at 8. Nor would relevant legal issues “evade review” or “all means of legal redress . . . be denied.” *Id.* Indeed, if the juvenile court were to enter a

final judgment that precluded permanent custody to the Department, while directing that the Adams children return home, there is no reason that the Department could not claim, upon appeal from that judgment, that it was erroneous for the juvenile court to have done so, both upon termination of the case and during its progress. However, while the children remain in the temporary custody of the Department, no substantial right of the Department is affected.

The decision in *In re Murray* (1990), 52 Ohio St. 3d 155, cited by the Department, does not recognize any “substantial right” of the Department in this context. That case was a *parental* appeal from a temporary custody award. Only upon an appeal from the award of temporary custody could parents be assured of an opportunity to challenge the finding of neglect or dependency that led to the temporary custody. *Id.* at 158. In the present case, by contrast, if the Department does not ultimately obtain permanent custody, and the Court orders one of the alternative dispositions available to it under Ohio Rev. Code §§ 2151.415(A) or (B), the Department will have ample opportunity to reverse that outcome upon appeal from the final judgment. The other case cited by the Department, *Jackson v. Herron* (Lake County App.), No. 2004-L-045, 2005-Ohio-4039, also is inapposite because it was a parentage action in which a mother sought review of an award of guardian ad litem fees at an early stage of the potentially-lengthy litigation. No party’s respective rights to the children was affected by the award.

The Department thus fails to meet the jurisdictional standards that the Ohio Revised Code applies to appeals from the Cuyahoga County Juvenile Court and other Ohio courts. While the Department retains temporary custody, interim denial of its motion to modify temporary custody to permanent custody has not determined the outcome of this case, prevented a judgment or affected a substantial right of the Department in this special proceeding.

C. Interim Denial of a Motion to Modify Temporary Custody to Permanent Custody Is Not a Final Order That a Children Services Agency May Appeal.

In applying the statutory appellate standards to the continuation of temporary custody, the Court of Appeals correctly relied on Mr. Adams' citation of the Montgomery County Court of Appeals decision in *In re Wilkinson* (Montgomery County App. 1996), 1996 WL 132196. That case, like this one, involved a departmental appeal from a juvenile court order that had denied an agency motion for permanent custody of a minor child and provided for continuation of temporary custody. Such an order, said the Second District, "is no different from any other 'temporary order' that continues the status quo until the claim for relief can be determined. Such orders necessarily decide legal issues, but they are not final, appealable orders. They are, instead, interlocutory orders entered in aid of the court's exercise of its jurisdiction, and are within the inherent power of the court to issue." *Id.* at *2.

The Montgomery County Court of Appeals further explained in *Wilkinson* that denial of a request for an order pursuant to Section 2151.415(A) that permanently would terminate parental rights is not a final order for purposes of Section 2505.02 "because it does not affect a substantial right." *Id.* As the court observed, "[i]f that relief [permanent termination] is granted, the [department] may, but is unlikely to, challenge sufficiency of the evidence before the trial court. If that relief is denied, or if Children's Services objects to the person to whom custody is otherwise awarded, the sufficiency of the evidence before the trial court is subject to challenge. Therefore, the trial court's order is properly reviewable on error prosecuted to final judgment, and the order is not a 'final order' for purposes of R.C. 2505.02 because it does not affect a substantial right." *Id.*

Commentators agree. Final orders are only "those orders which should be considered final in the sense that their decision so alters the direction of the proceedings that an immediate appeal

should be available.” Institute of Judicial Administration, American Bar Association, *Juvenile Justice Standards: Appeals and Collateral Review* § 2.1 (Cambridge: Ballinger Publishing Co. 1980). Thus, while “[m]ost states . . . permit appeals of all ‘final’ orders[,] . . . [i]nterlocutory orders are generally not appealable.” Martin R. Gardner, *Understanding Juvenile Law* § 11.05 (New York: Matthew Bender & Co., Inc. 1997). *See generally* Paul C. Gianelli & Patricia McCloud Yeomans, *Ohio Juvenile Law* § 35:4 (2006) (noting *Wilkinson* ruling that “a juvenile court order denying a children services agency’s motion for permanent custody, and continuing an order for the child’s temporary custody with the agency . . . is not a final appealable order. The court reasoned that the order did not affect a substantial right.”); 47 Am. Jur.2d, *Juvenile Courts* § 127 (2006) (“[o]rders of the juvenile court that are not final are not appealable”).

The reasoning of these courts and commentators is correct. The interim denial of a motion for permanent custody does not change the direction of an action for neglect and dependency. The Adams children who, at the request for the Department, were in temporary custody prior to the motion remain in the temporary custody of the Department afterwards. There is nothing to preclude the agency from again moving for permanent custody -- as the Department already has done several times in this case.

The subsequent decision of the Cuyahoga County Court of Appeals in *In re K.M.* (Cuyahoga County App.), Nos. 87882 and 87883, 2006-Ohio-4878, which this Court has accepted for review, confirms this position. The court ruled that “[h]ere, the lower court’s order continuing temporary custody of the four children ‘is no different from any other ‘temporary order’ that continues the status quo until the claim for relief can be determined.’ . . . [Citing *Wilkinson*] Indeed, ‘[s]uch orders necessarily decide legal issues, but they are not final, appealable orders.’ . . . The lower court’s order does not affect a substantial right because the

ultimate relief ‘is yet to be determined and the facts needed to analyze the issues presented by the order will be unchanged by the ultimate disposition of the underlying action.’ . . . Where the lower court’s order is ‘properly reviewable on error prosecuted to final judgment,’ like the case here, the order is not a final appealable order because it does not affect a substantial right for the purposes of R.C. 2505.02.” *Id.* at ¶ 2.

These decisions are consistent with the dividing line drawn by this Court in the seminal decision in *In re Murray* (1990), 52 Ohio St. 3d 155. That case involved a parental appeal of a temporary custody award. The Court concluded that “an adjudication that a child is neglected or dependent, followed by a disposition awarding temporary custody to a public children services agency pursuant to R.C. 2151.353(A)(2) constitutes a ‘final order’ for purposes of R.C. 2505.02 and is appealable to the court of appeals pursuant to R.C. 2501.02.” 52 Ohio St. 3d at 161. Citing six decisions of the United States Supreme Court and two of its own cases, the Court explained that “it is manifest that parental custody of a child is an important legal right protected by law and, thus, comes within the purview of a ‘substantial right’ for purposes of applying R.C. 2505.02.” *Id.* at 157. The Court noted “the rights of parents who have been deprived of the custody of children to appellate review to determine if such deprivation meets the requirements justifying such deprivation.” *Id.* at 159.

But, discrediting any future claim that a children services agency has a reciprocal right of appeal from an order that continues temporary custody, the Court further explained that “in order to be final and appealable the temporary custody order must also, in effect, determine the action and prevent a judgment. Initially, we note that the designation of the custody award as ‘temporary’ is not controlling. Generally, the question of whether an order is final and

appealable turns on the effect which the order has on the pending action rather than the name attached to it, or its general nature.” *Id.* at 157.

The Court also was concerned that “[e]ven 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. . . . In effect, a parent would be denied the opportunity of appellate review of the trial court’s finding of neglect or dependency until such time, if ever, as an award of permanent custody is made to the agency. In that event, it is likely that the situation of the child would be markedly different from that time when temporary custody was initially awarded to the agency.” *Id.* at 158. Here, by contrast, the agency plainly will have an opportunity to seek appellate review.

This distinction between interlocutory and final custody orders was apparent in *State ex rel. Jewish Children's Bureau v. Juvenile Court of Cuyahoga County* (1961), 171 Ohio St. 496, and serves as a guidepost for decision in this case. This Court deemed as interlocutory and not appealable an order, which was to become effective on a specified date “unless” the mother in the meantime showed good cause why it should be set aside, committing a child to permanent custody of a children services agency for purposes of adoption. The Court explained that an order to the effect that, having heard all the evidence on a custody motion, the motion is submitted and the “matter is continued” to a specified date, is an interlocutory order and not appealable. “It is obvious from a reading of these two entries that they are interlocutory in nature,” said the Court. “Clearly they were not intended to be final because of the allowance for further proceedings and the continuance on December 8 to January 8, 1960, on which latter date the matter was continued indefinitely pending the outcome of the instant action in prohibition.” *Id.* at 497.

Other Ohio cases reflect this distinction between appealable and non-appealable judicial orders in juvenile litigation, and compel the conclusion that interim denial of a motion to modify temporary custody to permanent custody, with the agency maintaining temporary custody, is not a final order that a children services agency may appeal. In *In re Boehmke* (Cuyahoga County 1988), 44 Ohio App. 3d 125, for example, the court ruled that the grant of overnight visitation rights to a child's mother as part of a proposed reunification plan was not a final order that the paternal grandparents could appeal, because "the issue of whether permanent custody will be transferred from the mother remains unresolved." *Id.* at 127. "The stated purpose of the proposal adopted by the juvenile court is the eventual reunification of the mother and her son," as the court explained. "Were the visitation provision considered a final order, there would be nothing to prevent the piecemeal litigation of each aspect of the proposal at issue, as well as any other steps the court might take prior to a final disposition of the custody issue." *Id.* The court observed that "[t]he resulting delay and disruption of the judicial process would benefit no one. Thus, we conclude there is a compelling need to deny appellate review at this stage of the proceedings." *Id.* at 128.

In *In re Kinstle* (Logan County App. 1998), 1998 WL 148075, at *3, the court dismissed a father's appeal from denial of his motion to terminate temporary custody. No "substantial right" was affected, said the court, because the denial order "does not extend the period of time the children are scheduled to remain in temporary custody[,] . . . does not modify the temporary custody order . . . [and] does not foreclose his opportunity for appropriate relief in the future." In *In re Austin* (Seneca County App.), 2005 WL 2129285, 2005-Ohio-4623, the court ruled that an order denying a guardian ad litem's objection and ordering the Department of Jobs and Family Services to implement a case plan with the goal of obtaining a permanent adoptive home for the

child was not a final appealable order. Finding “no case law, statute, or rule of procedure that recognizes a minor’s right *not* to be adopted after her parents have voluntarily surrendered her to the custody of the state,” the court explained that denial of a minor child’s objection to the case plan “is not a final appealable order since it did not affect her substantial legal rights.” *Id.* at ¶¶ 8, 13 (emphasis in original). In *In re Dowers* (Brown County App. 2001), 2001 WL 370088, at *2, the court ruled that “[a]n award of temporary custody to a children services agency is a final appealable order” for the parent, but noted that departmental arguments that the trial court erred by failing to grant permanent custody to the Brown County Department of Human Services “are not ripe for our review.”

In *In re Patterson* (Madison County 1984), 16 Ohio App. 3d 214, 475 N.E.2d 160 (syllabus), of course, the court ruled that a “further dispositional order continuing an original temporary custody order, issued pursuant to Juv. R. 34, constitutes a final appealable order.” The court ruled that such an order is “‘as inextricably a part of, incidental to, and in implementation of the [original] judgment . . .’ and as such constitutes a final appealable order.” *Id.* at 162 (quoting *In re Rule* (1963), 1 Ohio App. 2d 57, 61). But the order at issue in that case, however, was an order in which the trial court had “replaced the welfare department with an attorney as guardian ad litem.” *Id.* at 161.

Likewise in *In re Venters* (Butler County App. 1999), 1999 WL 1270983, the court ruled that an “adjudication by a trial court that a child is neglected or dependent followed by a disposition awarding temporary custody to a public children services agency pursuant to R.C. 2151.353(A)(2) constitutes a final, appealable order [for a parent] within the meaning of R.C. 2505.02 and is appealable to the court of appeals. . . . Moreover, a further dispositional order continuing an original temporary custody order constitutes a final appealable order.” *Id.* at *2

(citing *Patterson*) The appellant in that case, however, was the father, and the trial court order had not extended temporary custody but had ordered his son into “long-term foster care” with the Butler County Children Services Board -- a distinct dispositional alternative that diminished a parent’s legal rights with respect to a child.

Heedless of the line that Ohio courts have drawn, the Department misplaces its reliance on *State ex rel. Cuyahoga County Dept. of Children and Family Services v. Honorable Alison Floyd* (Cuyahoga County App.), No. 81713, 2003-Ohio-184. That case was a prohibition action, not an appeal. The issue was whether the juvenile court had any jurisdiction after the Department had appealed, not whether the appeal was legitimate. Equally unavailing is the underlying appeal, *In re Mayle* (Cuyahoga County App. 2000), Nos. 76739 and 77165, 2000 WL 1038189, because, in denying the Department’s motion for permanent custody in that case, the juvenile court instead had awarded legal custody to a foster parent -- an outcome that precluded the relief sought by the Department and, hence, a materially different scenario than the present case brings before this Court.

Numerous practical reasons confirm the wisdom of barring appeals from interim denials of motions to convert temporary custody to permanent custody. Most importantly, the allowance of an appeal by the Department during the continuation of temporary custody would leave the children in a litigation limbo. This Court has ruled that, pending appeal, any adjudication of a child made by a juvenile court is void. *See In re S.J.*, 106 Ohio St. 3d 11, 2005-Ohio-3215. “A juvenile court lacks jurisdiction to proceed with an adjudication of a child after a notice of appeal has been filed from an order of that court,” as the Court ruled. *Id.* at Syllabus ¶ 1. “Once a case has been appealed,” as the Court explained, “the trial court loses jurisdiction except to take action in aid of the appeal.” *Id.* at ¶ 9. Pending an interlocutory appeal, the structure of the

temporary custody thus would be frozen, and the juvenile courts (which have first-hand familiarity with the facts and circumstances) arguably would lack the ability to make necessary adjustments -- a burden that the children and their families would have to bear, and an acute waste of judicial resources in view of the fact that Ohio appellate courts defer to juvenile courts except upon abuse of discretion. *See In re Collier* (Athens County App. 1992), 1992 WL 21229. Other Ohio families ought not be forced to experience extended delay such as the present appeal has caused for the Adams family.

Piecemeal review of juvenile court orders would have a detrimental effect on administration of the juvenile justice system. The stop-and-start approach advocated by the Department would frustrate the ability of juvenile court judges and magistrates throughout the state to move child protection actions forward. Applied to all pending juvenile custody cases, the dysfunction of this approach would quickly bog down appellate dockets. Recognition of a right to appeal the interim denial of a permanent custody motion not only would add many more cases to the dockets of the Ohio courts of appeals, but also displace other cases that otherwise are there. Appellate Rule 11(D) provides that “[a]ppeals concerning a dependent, abused, neglected, unruly, or delinquent child shall be expedited and given calendar priority over all other cases other than those governed by App. R. 11.2(B) and (C).”

Cost considerations likewise underscore the need for a cautious approach to recognition of new appellate rights. The new occasion for appellate review would complicate juvenile court proceedings; as one commentator has noted, “Juvenile Rule 34, which governs the procedural aspects of the dispositional hearing, must be followed scrupulously before an appeal may be pursued.” Gianelli & Yeomans, *Ohio Juvenile Law* § 35:4. In addition, the United States Supreme Court has established certain due process rights relating to appeals from juvenile court

orders. *See Application of Gault* (1967), 387 U.S. 1. These include the right to a transcript and the opportunity for appointed counsel. Moreover, the trial court must make a record. *See also Lassiter v. Dep't of Social Services of Durham County* (1981), 452 U.S. 18. The gratuitous nature of an appeal from interim denial of a motion to convert temporary custody to permanent custody would not alleviate the need for these measures. Moreover, depending on the ultimate outcome of the case (for example, if the agency were ultimately awarded permanent custody on other grounds or eventually chose not to pursue permanent custody), all of these costs may prove to be unnecessary.

Finally, the Court should note that appellate rights are not limited to would-be appellants alone. In *Atkinson v. Grumman Ohio Corp.* (1988), 37 Ohio St. 3d 80, 85, which the Department cites, this Court recognized that “[b]y developing a process of appellate review, states provide litigants with a property interest in the right to appeal.” By definition, however, this means that appellate law also gives litigants who are beneficiaries of interlocutory orders a corresponding right to maintenance of the status quo without intervening appellate process.

The other cases cited by the Department have no bearing on this case. In *In re Surdel* (Lorain County App. 1999), No. 98CA007172, 1999 WL 312380, the court addressed standing issues that do not pertain to this case. *Mathis v. Mathis* (Lucas County App. 1982), No. L-82-154, 1982 WL 6638, stands only for the undisputed proposition that the mission of juvenile courts is to protect the best interests of the child. Nor is there any dispute that, as this Court noted in *State ex rel. Fowler v. Smith* (1994), 68 Ohio St. 3d 357, the juvenile courts are established by statute and subject to statutory jurisdictions.

Hence there is no constitutional or statutory right of appeal by a children services agency from an interim order that denies its motion to convert temporary custody to permanent custody,

while maintaining the status quo. The Department does not claim any constitutional right to such an appeal. Nor is there any statutory provision or, contrary to the claim of the Department, any authoritative case law precedent that would characterize the order at issue in this case as a final order from which the Department may appeal.

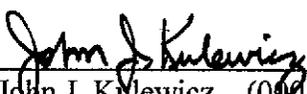
CONCLUSION

The Adams children now have been removed from their home for over three and a half years, and this ongoing saga has not yet reached the stage of final judgment. If the final judgment is adverse to the Department, the Department will have the right to file another appeal -- a process that could add months, if not years, to this already drawn-out proceeding.

Mrs. Adams thus respectfully urges the Court to affirm the judgment of the Cuyahoga County Court of Appeals, and to remand with: (a) instructions that the juvenile court proceed promptly to final disposition; and (b) an admonition that this Court would look with disfavor upon any attempt by the Department to obtain a stay of the final disposition pending any further appeals.

Respectfully submitted,

VORYS, SATER, SEYMOUR AND PEASE LLP

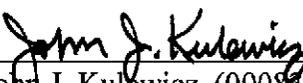
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CERTIFICATE OF SERVICE

I served a copy of this brief on Joseph C. Young, Assistant Cuyahoga County Prosecuting Attorney, 3955 Euclid Avenue, Cleveland, Ohio 44115, counsel for appellant Cuyahoga County Department of Children and Family Services; Christopher J. Pagan, Repper, Powers & Pagan, Ltd., 1501 First Avenue, Middletown, Ohio 45044, attorney for appellee Lee Adams, Sr.; Charles M. Miller, Keating Muething & Klekamp PLL, One East Fourth Street, Suite 1400, Cincinnati, Ohio 45202, attorney for appellees Lee Adams, Jr., Anthony Adams and Starla Adams; Jean M. Brandt, 1028 Kenilworth Avenue, Cleveland, Ohio 44113; Jodi M. Wallace, 6495 Brecksville Road, Suite 3, Independence, Ohio 44131, guardian ad litem for appellees Lee Adams, Jr., Anthony Adams and Starla Adams; Harvey E. Tessler, Suite 801, 850 Euclid Avenue, Cleveland, Ohio 44114, guardian ad litem for appellee Lee Adams, Sr.; and Steven E. Wolkin, Suite 510, 820 West Superior Avenue, Cleveland, Ohio 44113-1384, counsel for amicus curiae Guardian ad Litem Project, a Project of the Cuyahoga County Bar Association; by first-class U.S. mail on February 28, 2007.



John J. Kulawicz (0008376)

APPENDIX

the General Code be, and the same are hereby repealed, to take effect at midnight December 31, 1934.

ARTHUR HAMILTON,
Speaker of the House of Representatives.

WILLIAM G. PICKREL,
President of the Senate.

Passed April 7, 1931.

Approved April 17, 1931.

GEORGE WHITE,
Governor.

The sectional numbers on the margin hereof are designated as provided by law.

GILBERT BETTMAN,
Attorney General.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 18th day of April, A. D. 1931.

CLARENCE J. BROWN,
Secretary of State.

File No. 21.

(House Bill No. 175)

AN ACT

To create a juvenile court for the county of Cuyahoga to be known as the juvenile court of Cuyahoga county.

Be it enacted by the General Assembly of the State of Ohio:

Sec. 1683-12. "The juvenile court of Cuyahoga county" established.

SECTION 1. Effective January 1, 1935, there shall be and hereby is established and created in and for the county of Cuyahoga a county court, which shall be a court of record and shall be styled "The juvenile court of Cuyahoga county," hereinafter referred to as the "juvenile court."

Sec. 1683-13. Judge of juvenile court; qualifications.

SECTION 2. The juvenile court shall consist of one judge, who, at the time of his election or appointment, shall be a qualified elector and resident of the county of Cuyahoga and shall have the same qualifications as a common pleas judge.

Sec. 1683-14. Nomination and election of judge; first election; term of office.

SECTION 3. The judge of the juvenile court shall be nominated by petition. Such petition shall be signed by at least three thousand electors

of the county of Cuyahoga. It shall be in the general form and shall be signed, verified and filed in the manner and within the time required by law for nominating petitions of judges of the court of common pleas. The term of office of said judge shall be six years, commencing January 1, 1935, and every six years thereafter said judge shall be elected by the electors of the county of Cuyahoga in the manner provided by law for the election of judges of the court of common pleas at the regular county election next preceding January 1, 1935, and thereafter at the regular county election next preceding the expiration of the term of office of the judge so elected, and he shall continue in office until his successor is elected and qualified.

Sec. 1683-15. Compensation of judge.

SECTION 4. The salary of the judge of the juvenile court shall be the same as that provided by law for a judge of the court of common pleas of Cuyahoga county. All of said salary shall be payable in monthly installments from the treasury of Cuyahoga county.

Sec. 1683-16. Substitute in case of absence or disability, how provided.

SECTION 5. In case of the temporary absence or disability of the judge of the juvenile court, the chief justice or, in his absence, the presiding judge of the court of common pleas of Cuyahoga county shall designate a judge of the court of common pleas of Cuyahoga county to act as such judge of the juvenile court during such absence or disability. In the event that no such common pleas judge is available for such purpose, the chief justice of Ohio shall designate a judge to act in the place of such judge of the juvenile court, in the manner provided by section 1592 of the General Code.

Sec. 1683-17. Removal from office.

SECTION 6. The judge of the juvenile court shall be subject to the same disabilities and may be removed from office for the same causes and in the same manner as a judge of the court of common pleas.

Sec. 1683-18. County commissioners to provide accommodations.

SECTION 7. The commissioners of Cuyahoga county shall provide suitable accommodations, facilities and equipment for the juvenile court, its officers and employes, as provided by law. The expense of maintaining and operating the court shall be paid out of the treasury of Cuyahoga county.

Sec. 1683-19. Transfer of civil service employees from court of insolvency.

SECTION 8. All officers and employes under civil service regulations attached to or serving as officers or employes in juvenile court and all

branches thereof, of which the insolvency court of Cuyahoga county now has jurisdiction, at the time of the abolition of said insolvency court on December 31, 1934, shall be transferred to the juvenile court herein created and the compensation of such officers and employes shall continue to be paid as compensation of officers and employes of the said juvenile court until such time as they may be changed by the judge, and no additional civil service examination shall be required in the case of any of such officers or employes.

Sec. 1683-20. Judge shall be clerk of court; may appoint deputies; bonds.

SECTION 9. The judge of juvenile court shall have the care and custody of the files, papers, books, records and monies pertaining to said court, and shall be the clerk of said court, with all the powers and duties of a clerk of the court of common pleas in connection with the business of said juvenile court of which the court of common pleas now has concurrent jurisdiction by virtue of section 1639 of the General Code. He may appoint and employ such deputies, clerks, stenographers and other assistants and attaches as may be reasonably necessary and proper in connection with the work of said court, and shall file with the county auditor certificates of such appointments. Any appointee under this act may be dismissed or discharged by the judge. Each of said deputies and other appointees and attaches shall qualify by taking the oath of office required of the clerk of the court of common pleas. When so qualified, each deputy clerk may perform the duties of the clerk and shall have the same powers as a deputy clerk of the court of common pleas in matters of which the court of common pleas now has concurrent jurisdiction by virtue of section 1639 of the General Code as hereinabove provided. The judge may require any of his deputies or other appointees to give bond in the sum of not less than \$1,000.00, conditioned for the honest and faithful performance of his or her duties. The sureties on said bonds shall be approved in the manner hereinafter provided for the approval and filing of the bond of the clerk, and the terms and conditions of such bonds shall be the same as in the case of the bond of said clerk, and shall be filed in like manner and shall provide for the same beneficiaries. The clerk shall not be personally liable for the default, misfeasance or nonfeasance of any deputy or other appointee from whom a bond has been required, approved and filed in the manner herein provided.

Sec. 1683-21. Compensation of deputies, assistants, etc.

SECTION 10. The compensation of such deputies, assistants, clerks, stenographers and other employes of the juvenile court shall be fixed by the judge, which compensation shall not exceed in the aggregate the amount fixed by the county commissioners for such purpose. The compensation so fixed shall be paid from the county treasury in semi-monthly installments on the warrant of the county auditor.

Sec. 1683-22. Bond of clerk; amount of bond.

SECTION 11. Before entering upon the duties of his office, the judge of the juvenile court, as such clerk, shall execute and file with the treasurer

of Cuyahoga county a bond in the sum of not less than \$5,000.00, to be determined by the commissioners of Cuyahoga county, with sufficient surety, to be approved by said commissioners, conditioned for the faithful performance of such duties as clerk. Said bond shall be given for the benefit of the county of Cuyahoga, the state of Ohio and/or any person who may suffer loss by reason of a default in any of the conditions of said bond.

Sec. 1683-23. Appointment of bailiffs; compensation.

SECTION 12. The judge of the juvenile court may appoint one or more bailiffs to preserve order and perform such other duties as the judge may require, as provided for constables in section 1692 of the General Code. The compensation of any such appointee shall be fixed and paid on the same basis as provided by law for the compensation of constables in the court of common pleas of Cuyahoga county.

Sec. 1683-24. Calendar of court.

SECTION 13. The calendar of the juvenile court shall be divided into four terms of three months each commencing on the first days of January, April, July and October of each year. All actions and other business of the court pending at the expiration of any term of court shall be continued to the following term of court without any special or general entry or order to that effect. The judge may adjourn the court from day to day or to any other day in the same term whenever, in his opinion, the business of the court so permits.

Sec. 1683-25. Jurisdiction in contempt of court proceedings.

SECTION 14. The juvenile court shall have the same jurisdiction in contempt of court proceedings as now or hereafter provided for the common pleas court and under general laws covering courts of record.

Sec. 1683-26. Seal of court.

SECTION 15. The juvenile court shall have a seal, which shall be 1 $\frac{3}{4}$ inches in diameter, which shall have engraved thereon the coat of arms of the state of Ohio and shall be surrounded by the words, "the juvenile court of Cuyahoga county, Ohio," and it shall have no other words or device engraved thereon. Such seal shall be affixed to the processes of the court, which shall be attested and be in the general form and served as provided for process of the common pleas court.

Sec. 1683-27. May vacate and modify judgments, when.

SECTION 16. The juvenile court shall have the same power to vacate and modify its own judgments or orders during or after term as is or may be vested by law in the probate court, and may adopt, publish and revise rules and regulations for practice in said court not inconsistent with the provisions of this act.

Sec. 1683-28. Jurisdiction.

SECTION 17. The juvenile court shall have all the jurisdiction, powers, and authority in juvenile cases now or hereafter conferred upon courts exercising juvenile jurisdiction as provided by law, and all laws now in force or which may be hereafter enacted conferring such powers, authority and juvenile jurisdiction and granting power to hear and determine cases, to preserve order and punish for contempt, to regulate practice and procedure and to prescribe the force and effect of judgments, orders and decrees and authorizing or directing the execution thereof, and all other powers, authority and jurisdiction conferred or granted by such laws, shall apply and extend to the juvenile court unless inconsistent with this act or plainly inapplicable.

Sec. 1683-29. Laws now in force to apply.

SECTION 18. All laws now in force or hereafter enacted regulating the mode, manner and grounds of appeal and error proceedings from any judgment, order or decree rendered by the common pleas court in the exercise of juvenile jurisdiction shall apply to the juvenile court.

Sec. 1683-30. Independent sections.

SECTION 19. The sections of this act, and every part of such sections, are hereby declared to be independent sections and parts of sections, and the holding of any section or part thereof to be void or ineffective for any reason shall not affect any other section or part thereof.

Sec. 1683-31. Effective date.

SECTION 20. This act shall become operative from and after midnight of the thirty-first day of December, nineteen hundred and thirty-four.

ARTHUR HAMILTON,
Speaker of the House of Representatives.

WILLIAM G. PICKREL,
President of the Senate.

Passed April 7, 1931.

Approved April 17, 1931.

GEORGE WHITE,
Governor.

The sectional numbers on the margin hereof are designated as provided by law.

GILBERT BETTMAN,
Attorney General.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 18th day of April, A. D. 1931.

CLARENCE J. BROWN,
Secretary of State.

File No. 22.

4 G. L.

§ 3. Court of appeals.

(A) The state shall be divided by law into compact appellate districts in each of which there shall be a court of appeals consisting of three judges. Laws may be passed increasing the number of judges in any district wherein the volume of business may require such additional judge or judges. In districts having additional judges, three judges shall participate in the hearing and disposition of each case. The court shall hold sessions in each county of the district as the necessity arises. The county commissioners of each county shall provide a proper and convenient place for the court of appeals to hold court.

(B) (1) The courts of appeals shall have original jurisdiction in the following:

(a) Quo warranto;

(b) Mandamus;

(c) Habeas corpus;

(d) Prohibition;

(e) Procedendo;

(f) In any cause on review as may be necessary to its complete determination.

(2) Courts of appeals shall have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district, except that courts of appeals shall not have jurisdiction to review on direct appeal a judgment that imposes a sentence of death. Courts of appeals shall have such appellate jurisdiction as may be provided by law to review and affirm, modify, or reverse final orders or actions of administrative officers or agencies.

(3) A majority of the judges hearing the cause shall be necessary to render a judgment. Judgments of the courts of appeals are final except as provided in section 2(B) (2) of this article. No judgment resulting from a trial by jury shall be reversed on the weight of the evidence except by the concurrence of all three judges hearing the cause.

(4) Whenever the judges of a court of appeals find that a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by any other court of appeals of the state, the judges shall certify the record of the case to the supreme court for review and final determination.

(C) Laws may be passed providing for the reporting of cases in the courts of appeals.

(Amended November 8, 1994)

Analogous to former Art. IV, § 6.

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§ 2153.17. Laws now in force to apply.

The sections of the Revised Code regulating the manner and grounds of appeal from any judgment, order, or decree rendered by the court of common pleas in the exercise of juvenile jurisdiction shall apply to the juvenile court.

HISTORY: GC § 1683-29; 114 v 45, § 18; Bureau of Code Revision. Eff 10-1-53.

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§ 2501.02. Qualifications and term of judge; jurisdiction.

Each judge of a court of appeals shall have been admitted to practice as an attorney at law in this state and have, for a total of six years preceding the judge's appointment or commencement of the judge's term, engaged in the practice of law in this state or served as a judge of a court of record in any jurisdiction in the United States, or both. One judge shall be chosen in each court of appeals district every two years, and shall hold office for six years, beginning on the ninth day of February next after the judge's election.

In addition to the original jurisdiction conferred by Section 3 of Article IV, Ohio Constitution, the court shall have jurisdiction upon an appeal upon questions of law to review, affirm, modify, set aside, or reverse judgments or final orders of courts of record inferior to the court of appeals within the district, including the finding, order, or judgment of a juvenile court that a child is delinquent, neglected, abused, or dependent, for prejudicial error committed by such lower court.

The court, on good cause shown, may issue writs of supersedeas in any case, and all other writs, not specially provided for or prohibited by statute, necessary to enforce the administration of justice.

HISTORY: RS §§ 444, 447; 82 v 16, 19, 20; GC § 1514; 103 v 405; 107 v 144; Bureau of Code Revision, 10-1-53; 126 v 56 (Eff 10-4-55); 129 v 582(742) (Eff 1-10-61); 134 v H 1 (Eff 3-26-71); 134 v H 18 (Eff 7-1-72); 136 v H 85 (Eff 11-28-75); 141 v H 412 (Eff 3-17-87); 146 v H 350 (Eff 1-27-97); 149 v S 108, § 2.01. Eff 7-6-2001.

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§ 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 [2305.23.4], 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 [5111.01.8], and the enactment of sections 2305.113 [2305.11.3], 2323.41, 2323.43, and 2323.55 of the Revised Code or 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 [2305.13.1], 2315.18, 2315.19, and 2315.21 of the Revised Code.

(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.

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(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.

HISTORY: GC § 12223-2; 116 v 104; 117 v 615; 122 v 754; Bureau of Code Revision, 10-1-53; 141 v H 412 (Eff 3-17-87); 147 v H 394. Eff 7-22-98; 150 v H 342, § 1, eff. 9-1-04; 150 v H 292, § 1, eff. 9-2-04; 150 v S 187, § 1, eff. 9-13-04; 150 v H 516, § 1, eff. 12-30-04; 150 v S 80, § 1, eff. 4-7-05.

The provisions of § 6 of 151 v S 124 read as follows:

SECTION 6. It is the intent of the General Assembly in amending sections 101.23, 101.83, 101.84, 101.85, 101.86, 122.011, 122.40, 123.151, 149.56, 307.674, 340.02, 1501.04, 1502.04, 1502.05, 1502.11, 1502.12, 1506.30, 1506.34, 1506.35, 1517.02, 1517.23, 1518.01, 1518.03, 1551.35, 3358.10, 3375.61, 3375.62, 3383.01, 3383.02, 3383.03, 3383.04, 3383.05, 3383.06, 3383.07, 3383.08, 3383.09, 3746.09, 3746.35, 3747.02, 3748.01, 3748.02, 3748.04, 3748.05, 3748.16, 3929.482, 3929.85, 3931.01, 3955.05, 3960.06, 4117.01, 4121.442, 4167.09, 4167.25, 4167.27, 4731.143, 4741.03, 4755.481, 4981.03, 5123.35, and 5123.352 of the Revised Code in this act to confirm the amendments to those sections and the resulting versions of those sections that took effect on December 30, 2004, in accordance with Section 10 of Am. Sub. H.B. 516 of the 125th General Assembly. It also is the intent of the General Assembly, in part, in amending Section 4 of Am. Sub. H.B. 516 of the 125th General Assembly in this act to confirm the text of that uncodified section of law as it took effect on December 30, 2004, in accordance with Section 10 of Am. Sub. H.B. 516 of the 125th General Assembly. This act does not affect, and shall not be construed as affecting, the other amendments, enactments, or repeals of codified or uncodified law made by Am. Sub. H.B. 516 of the 125th General Assembly which took effect on December 30, 2004, in accordance with Section 10 of that legislation, all of which it is the intent of the General Assembly to confirm in this act, including, but not limited to, the following amendments, enactments, or repeals pertaining to the implementation of the report of the Sunset Review Committee and related purposes set forth in Am. Sub. H.B. 516's title: the amendments to sections 122.133, 164.07, 1517.05, 2505.02, 3746.04, 3929.682, and 4582.12 of the Revised Code, the repeals of sections 122.09, 125.24, 149.32, 149.321, 149.322, 1502.10, 1506.37, 1517.03, 1517.04, 3354.161, 3355.121, 3357.161, 3375.47, 3746.08, 3747.04, 3747.05, 3747.06, 3747.061, 3747.07, 3747.08, 3747.09, 3747.10, 3747.11, 3747.12, 3747.13, 3747.14, 3747.15, 3747.16, 3747.17, 3747.18, 3747.19, 3747.20, 3747.21, 3747.22, 3748.09, 3929.71, 3929.72, 3929.721, 3929.73, 3929.75, 3929.76, 3929.77, 3929.78, 3929.79, 3929.80, 3929.81, 3929.82, 3929.83, 3929.84, 4121.443, 4167.26, 5101.93, 5119.81, 5119.82, and 5123.353 of the Revised Code, the enactments of uncodified law in its Sections 3, 6, 9, 10, 11, and 12, and the repeals of Section 6 of Am. Sub. S.B. 163 of the 124th General Assembly, Section 6 of Sub. S.B. 27 of the 124th General Assembly, Section 10 of Sub. H.B. 548 of the 123rd General Assembly, Section 3 of Am. H.B. 280 of the 121st General Assembly, Section 27 of Sub. H.B. 670 of the 121st General Assembly, Section 3 of Am. S.B. 208 of the 120th General Assembly, and Section 3 of Sub. H.B. 508 of the 119th General Assembly. The General Assembly, thus, further declares this section and the related provisions of Sections 1 and 3 of this act to be remedial legislation solely intended to confirm the operation on and after December 30, 2004, of the amendments, enactments, and repeals of codified and uncodified law made by Am. Sub. H.B. 516 of the 125th General Assembly.

The effective date is set by section 10 of H.B. 516 (150 v -).

The provisions of § 11 of H.B. 516 (150 v -) and § 7 of S.B. 80 (150 v -) both read as follows:

SECTION 11 [7]. Section 2505.02 of the Revised Code is presented in this act as a composite of the section as amended by Am. Sub. H.B. 292, Am. Sub. H.B. 342, and Sub. S.B. 187 of the 125th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

Effect of Amendments

150 v S 80, effective April 7, 2005, added "or any changes ... of the Revised Code" to the end of (B)(6); and made

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minor stylistic changes.

150 v H 516, effective December 30, 2004, corrected internal references.

150 v S 187, effective September 13, 2004, added (B)(6) and made related changes; and, in (D), specified the effective date twice.

150 v H 292, effective September 2, 2004, added "or prima-facie 2307.92 ... of the Revised Code" to the end of (A)(3); specified the effective date twice in (D); and made minor stylistic changes.

150 v H 342, effective September 1, 2004, added "or prima-facie 2307.85 ... of the Revised Code" to the end of (A)(3); specified the effective date twice in (D); and made minor stylistic changes.

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