

**IN THE SUPREME COURT OF OHIO**

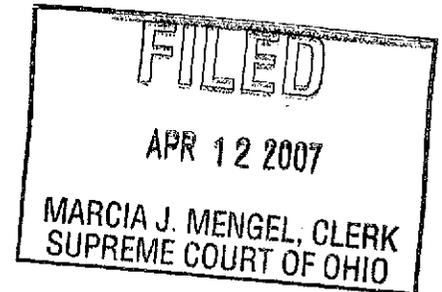
**In The Matter Of:** : **Case No. 2006-1695**  
: :  
**Lee Adams, Jr., et al.** : **On Appeal from the**  
: **Cuyahoga County Court**  
: **of Appeals, Eighth**  
: **Appellate District**  
: :  
: **Court of Appeals Case No. 87881**

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**REPLY BRIEF OF APPELLANT CUYAHOGA COUNTY  
DEPARTMENT OF CHILDREN AND FAMILY SERVICES**

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## ARGUMENT

**Proposition of Law No. 1: 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.**

As an introductory matter, it must be noted that, while some of the Appellees have devoted significant attention within their merit briefs to their perceived versions of the facts of the underlying case, such information has no bearing whatsoever on the resolution of the issue before this Honorable Court. The appeal which was dismissed by the Eighth District Court of Appeals had just reached the briefing stage at the time of dismissal, and the sole issue now before this Honorable Court is whether or not the order from which the appeal was taken constitutes a final appealable order. Appellant's Reply Brief will focus exclusively on this issue.

### **A. FINAL APPEALABLE ORDER**

As stated in Appellant's Merit Brief, an order that affects a substantial right made in a special proceeding is a final appealable order. R.C. 2505.02(B)(2). (Appx. 15). Therefore, if it can be shown that (1) the trial court order denying Appellant's motion for permanent custody affects a substantial right, and (2) that the order was made in a special proceeding, this Honorable Court must determine that such an order is a final appealable order, and must therefore reinstate the previously-dismissed appeal in this matter. As the following analysis demonstrates, both of these conditions are met in this matter.

#### **1. SUBSTANTIAL RIGHT**

The first of two conditions listed in R.C. 2505.02(B)(2) is the existence of a substantial right. R.C. 2505.02(A)(1) defines a "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.” (Emphasis added.) (Appx. 15). A careful analysis of relevant statutes reveals that Appellant CCDCFS does possess such a substantial right as so defined.

R.C. 2151.011(B)(11) states: “‘Custodian’ means a person who has legal custody of a child or a public children services agency or private child placing agency that has permanent, temporary or legal custody of a child.” (Appx. 2). Pursuant to R.C. 2151.011(B)(19), “‘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 to 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.” (Emphasis added.) (Appx. 3). Further, pursuant to R.C. 2151.011(B)(53), “‘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 who executed the agreement.” (Emphasis added.) (Appx. 7). These statutory definitions are mirrored by identical language in Juv.R. 2(H), (V) and (OO), respectively. (Appx. 22-24). Therefore, by virtue of these definitions, it becomes readily apparent that the agency in this matter does possess rights and duties similar to that of a custodial parent.

In this matter, the agency has been granted temporary custody and is therefore the child’s custodian as so defined. Said agency, as custodian, also has the statutory duty to “[p]rovide such care as the public children services agency considers to be in the best interests of any child

adjudicated to be an abused, neglected, or dependent child the agency finds to be in need of public care or service;” [R.C. 5153.16(A)(4), (Appx. 17)] and to “[m]ake reasonable efforts to place the child in a timely manner in accordance with the permanency plan approved under division (E) of section 2151.417 of the Revised Code and to complete whatever steps are necessary to finalize the permanent placement of the child[.]” R.C. 5153.16(A)(19).<sup>1</sup> (Appx. 18). In keeping with these rights and duties, “[t]he public children services agency shall have the capacity possessed by natural persons to institute proceedings in any court.” R.C. 5153.18(A). (Appx. 20).

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 Bowers* (January 2, 1992), Athens App. No. 1490, 1992 WL 2870 at \*2 (which contains nearly identical language to that cited from *Collier*, supra.). Cf. *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

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<sup>1</sup> By order journalized July 1, 2005, the trial court approved the permanency plan for the children, noting that said plan was to “pursue permanent custody”. See Supp. 0039, Supplement To Merit Brief of Appellee Michelle Adams.

appeal the court's decision.” *Id.* at \*5.).

Appellee-father (at p. 3 of his Merit Brief) and Appellees-children (at p. 4 of their Merit Brief) argue that the agency’s rights are not the equal of the parents’ rights in this matter, and that this fact is dispositive of the issue before this Honorable Court. What this argument fails to recognize is that an agency need not have an overriding or even equivalent right to that of a parent in order to satisfy the “substantial right” definition of R.C. 2505.02(A)(1), which contemplates no such balancing test between the parties’ respective rights prior to determining the availability of an appeal. A parent’s constitutional rights to a child do not trump any and all other rights so as to prohibit another party from appealing an adverse judgment. “As it has been perceptively noted elsewhere, ‘it is plain that the natural rights of a parent are not absolute, but are always subject to the ultimate welfare of the child, which is the polestar or controlling principle to be observed.’” *In re Cunningham* (1979), 59 Ohio St.2d 100, 106, 391 N.E.2d 1034, citing *In re R. J. C.* (Fla.App. 1974), 300 So.2d 54, 58. In the present matter, the parents have been deemed unsuitable to see to the children’s daily needs such that Appellant CCDCFS has been vested with that role as the children’s custodian.<sup>2</sup>

Appellees-children’s argument relating to Juv.R. 34 misses the point. Contrary to Appellees-children’s assertions, it has not been argued that Juv.R. 34 creates any rights for Appellant CCDCFS. Rather, Juv.R. 34 simply acknowledges those rights of the agency as created by statute and by its status as legal custodian of the children and a party to the action.

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<sup>2</sup> Contrary to Appellee-father’s argument (at pp. 3-4 of his Merit Brief) that the agency must show parental unfitness in order to prevail on a request for permanent custody, such proof is not required following an adjudication of abuse, neglect or dependency. *Cf. In re Cunningham* (1979), 59 Ohio St.2d 100, 103, 391 N.E.2d 1034.

## **2. SPECIAL PROCEEDING**

The second of two conditions listed in R.C. 2505.02(B)(2) is that the order was made in a special proceeding. R.C. 2505.02(A)(2) defines “special proceeding” as “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.” (Appx. 15). It cannot legitimately be argued that the proceedings in question in this matter fail to satisfy this condition, since this Honorable Court has unequivocally stated that juvenile court proceedings are special proceedings.

“Proceedings in the juvenile division, including parentage actions, are special statutory proceedings pursuant to Civ.R. 1(C)(7).” *State ex rel. Fowler v. Smith* (1994), 68 Ohio St.3d 357, 360, 626 N.E.2d 950. Cf. *State ex rel. Dispatch Printing Company v. Lias* (1994), 68 Ohio St.3d 497, 1994-Ohio-335, 628 N.E.2d 1368 (in which the Ohio Supreme Court held that “the [juvenile] court's finding of closure or nonclosure of the proceeding is a final order subject to appeal as affecting a substantial right in a special proceeding.” *Id.*, at paragraph four of syllabus.). See also 4 Ohio Jur.3d Appellate Review §47, captioned “Orders in special proceedings - - Examples of special proceedings”, which states: “Proceedings which the Ohio courts have determined are special proceedings within the meaning of RC § 2505.02 include— \* \* \* juvenile court proceedings” (citing as support the Ohio Supreme Court case of *State ex rel. Fowler v. Smith*, *supra.*); 1 Ohio Jur.3d Actions §19 (“Among the proceedings which have been declared by the legislature or courts of Ohio to be ‘special proceedings’ are \* \* \* juvenile court proceedings”).

Of the three separate Appellees’ Briefs filed in this matter, only that of Appellees-children contests the fact that juvenile court proceedings are special proceedings for purposes of R.C. 2505.02(B)(2). Appellees-children’s Brief attempts (at page 6, footnote 1) to create

separate classes of “special proceedings” depending upon the context in which the term is used, and argues that what may be a “special proceeding” for purposes of Civ.R. 1(C)(7) may not be a “special proceeding” for appellate purposes. No such differentiation is contemplated by statute. Despite Appellees-children’s characterization of the “special proceeding” issue for purposes of R.C. 2505.02(B)(2), it must be recognized that Civ.R. 1 neither defines nor limits the designation of juvenile court proceedings as “special statutory proceedings”. Civ.R. 1(C)(7) merely states that the civil rules shall not apply in special statutory proceedings “to the extent that they would by their nature be clearly inapplicable”. (Appx. 21). Additionally, the citations referenced by Appellees-children’s counsel in support of his claim that “[t]he State possessed the equitable power to terminate parental rights and custody prior to 1853” do nothing to support such a claim. “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.” *In re Murray* (1990), 52 Ohio St.3d 155, 161, 556 N.E.2d 1169 (Douglas, J. concurring). “Since juvenile courts were unknown at common law, they have no inherent, historical, or traditional power upon which to rely. The juvenile court in Ohio possesses only the jurisdiction that the General Assembly has expressly conferred upon it.” *State ex rel. Lunsford v. Buck* (1993), 88 Ohio App.3d 425, 429, 623 N.E.2d 1356. See also *In re A.B.*, 110 Ohio St.3d 230, 2006-Ohio-4359, 852 N.E.2d 1187 (“Indeed, the juvenile courts derive their jurisdiction solely by grant from the General Assembly; thus, they do not have inherent equitable jurisdiction to determine a child’s best interests.” *Id.*, 2006-Ohio-4359 at ¶32.). Cf. *State ex rel. Papp v. James* (1994), 69 Ohio St.3d 373, 379, 632 N.E.2d 889. Therefore, this Honorable Court’s acknowledgement that juvenile court proceedings are special statutory proceedings is not negated

by Appellees-children's nebulous briefing on this issue.

### 3. EIGHTH DISTRICT POSITION IS ERRONEOUS

As noted in Appellant's Merit Brief, 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, despite language within the *Wilkinson* decision which suggests the opposite conclusion. It is interesting to note that the Second District Court of Appeals, which issued the 1996 *Wilkinson* opinion, issued a decision on December 1, 2006 which completely supports Appellant CCDCFS' claim in the underlying appeal of the present matter now before this Honorable Court. In its decision of *In re D.J.*, Montgomery App. No. 21666, 2006-Ohio-6304, the Second District not only permitted a children services agency to appeal a denial of its motion for permanent custody, but ultimately ruled that the trial court committed reversible error by continuing temporary custody beyond the two-year statutorily prescribed maximum time limit. Appellant has raised this identical assignment of error in the underlying appeal of this matter, which appeal was dismissed by the Eighth District Court of Appeals, leading to the current review by this Honorable Court.

Appellee-mother's erroneous reliance on the case of *Gehm v. Timberline Post & Frame*, 112 Ohio St.3d 514, 2007-Ohio-607 does nothing to support the Eighth District's position in this matter. The *Gehm* case, which involved a denial of a motion to intervene, was based on an analysis of R.C. 2505.02(B)(1) and contained no substantive discussion of the special proceeding provisions of R.C. 2505.02(B)(2). It should be noted, however, that even pursuant to a R.C. 2505.02(B)(1) analysis, this Honorable court held in *Murray* that a temporary custody order "is an order which, in effect, determines the action." *Id.*, 52 Ohio St.3d at 159.

## **B. NATURE OF ORDER BEING APPEALED AND RIGHT TO APPEAL**

Appellees argue that the order denying Appellant CCDDFS' motion for permanent custody and instead continuing the previous order of temporary custody is an interlocutory or interim order, and further suggest that Appellant should be required to wait to appeal until an ultimate disposition is entered, at which time Appellant may fully advance any claimed errors on appeal. These assertions are erroneous.

### **1. INTERLOCUTORY, INTERIM AND FINAL ORDERS**

The term "interlocutory" is defined in Black's Law Dictionary (5th Ed. Rev. 1979) as follows: "Provisional; interim; temporary; not final. Something intervening between the commencement and the end of a suit which decides some point or matter, but is not a final decision of the whole controversy." *Id.* at 731. In matters such as that presently before this Honorable Court, a "suit" involving a neglected child commences with the filing of a complaint and ends when all issues raised in the complaint have been resolved. Unlike traditional civil cases, however, which have a typical beginning and end, juvenile court involvement does not end with the resolution of all claims raised in a complaint. This Honorable Court has recognized that "proceedings in the juvenile division are the least amenable to coverage by the Civil Rules." See *State ex rel. Fowler v. Smith*, *supra*, 68 Ohio St.3d at 360, 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.

A case such as the one under consideration before this Honorable Court is commenced with the filing of a complaint in juvenile court. Said complaint contains factual allegations, suggests an appropriate adjudication of abuse/neglect/dependency, and also contains a dispositional prayer, which oftentimes is a request for temporary custody. Following all proceedings on the merits, the trial court issues a decision in which it may adjudicate a child and issue an appropriate dispositional order pursuant to R.C. 2151.353. The fact that, upon final resolution of all issues raised in the complaint, the case remains active before the court while the agency maintains temporary custody does nothing to render that temporary custody order either interlocutory or interim in nature. Should the agency wish to modify the temporary custody order to an order of permanent custody, it must file a motion pursuant to statute, after which the trial court is required to proceed with dispositional hearing “as if the hearing were the original dispositional hearing”. R.C. 2151.353(E)(2). (Appx. 10). Following all proceedings on the merits, the trial court issues a decision either granting the motion for permanent custody or denying said motion in favor of an alternative dispositional order. *Cf. In re McDaniel* (February 11, 1993), Adams App. No. 92 CA 5. Regardless of the order issued by the court, the resulting order is also a final order, and cannot be characterized as either interlocutory or interim in nature.

As this Honorable Court noted in *Murray*, *supra*, “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.*, 52 Ohio St.3d at 157. The “pending action” at issue in permanent custody proceedings is the resolution of the permanent custody motion. In a contested case, a fully adversarial trial is held on the merits of the motion, parties present evidence, parties rest

their respective cases, argument is made, and the trial court issues a decision on the merits.

Unless the trial court continues the matter for further hearing prior to issuing its ruling, nothing about the ruling is either interlocutory or interim in nature. Rather, it is a final appealable order.

The trial court in the present matter did not continue the proceedings for further evidence in support of the motion. At the conclusion of the proceedings, “[o]n January 31, 2006, the Court denied the Motion to Modify Temporary Custody to Permanent Custody.” See Supp. 0052, Supplement To Merit Brief of Appellee Michelle Adams. This situation differs markedly from that present in the case of *State ex rel. Jewish Children’s Bureau v. Juvenile Court of Cuyahoga County* (1961), 171 Ohio St. 496, in which the trial court specifically continued its matter for further proceedings on the merits. As such, the two situations are readily distinguishable, and Appellant-mother’s reliance on *State ex rel. Jewish Children’s Bureau* is erroneous. Appellant’s motion was fully decided on its merits, and the resulting order is a final appealable order.

The terminology used in Revised Code Chapter 2151 may be the cause of some considerable confusion, as is evidenced by Appellees’ erroneous insistence that an order of temporary custody is interlocutory or interim in nature. While there are interlocutory or interim orders of *pre-dispositional temporary custody* pending resolution of a complaint or motion on its merits, the *dispositional order of temporary custody* issued pursuant to either R.C. 2151.353 or R.C. 2151.415 is neither interlocutory nor interim. This distinction is aptly summarized by the Seventh District Court of Appeals as follows:

As background, note that a preadjudicatory temporary custody order is not a final appealable order. *Howard v. Catholic Soc. Serv. of Cuyahoga Cty., Inc.* (1994), 70 Ohio St.3d 141, 146, 637 N.E.2d 890, 894-895. On the other hand, a postadjudicatory temporary custody order is a final appealable order. *In re Murray* (1990), 52 Ohio St.3d 155, 158, 556 N.E.2d 1169, 1172-1173. In *Murray*, the

Supreme Court held that an order of temporary custody which emanates from an adjudication of dependency, neglect or abuse is a final order under R.C. 2501.02 and 2505.02. *Id.* The court characterized a postadjudicatory temporary custody order as an order that affects a substantial right, determines the action, and prevents a judgment under the prior version of R.C. 2505.02. *Id.*

*In re Nice* (2001), 141 Ohio App.3d 445, 452, 2001-Ohio-3214, 751 N.E.2d 552. The *Nice* court immediately thereafter noted in footnote 1 that “[t]his definition of a ‘final order’ is now contained in R.C. 2505.02(A)(1) and (B)(1). Further, R.C. 2505.02(A)(2) and (B)(2) are applicable in that ***the order affects a substantial right and is made in a special proceeding.***” (Emphasis added.) See *Murray*, *supra*, 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 the case of *In re Patterson* (1984), 16 Ohio App.3d 214, 475 N.E.2d 160.

## 2. MOOTNESS

Appellees argue that the agency should be permitted to appeal error in the denial of the agency’s motion for permanent custody, if at all, only when the child is ultimately reunified and the case before the juvenile court is fully terminated. As illustrated in the final section of this Reply Brief, such a termination order may well take years to achieve. At that point, any appeal filed by the agency to address errors in the prior denial of permanent custody would be moot.

In *Mills v. Green*, 159 U. S. 651, 653, 16 Sup. Ct. 132, 133, 40 L. Ed. 293, Mr. Justice Gray says: ‘The duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it. It necessarily follows that when, pending an appeal from the judgment of a lower court and without any fault of the defendant, an event occurs which renders it impossible for this court, if it should decide the case in favor of the plaintiff, to grant him any effectual relief whatever, the court will not proceed to a formal judgment, but will

dismiss the appeal.

*Miner v. Witt* (1910), 82 Ohio St. 237, 238, 92 N.E. 21. See also *In re Nice*, supra (wherein reviewing court noted that “any issues concerning an extension of temporary custody essentially become moot after a court grants an agency’s motion for permanent or legal custody.” *Id.*, 141 Ohio App.3d at 558-559); *In re Brown*, Columbiana App. No. 04 CO 59, 2005-Ohio-4374 (“Furthermore, the right asserted here is that of the child, not that of the mother. Thus, we do not evaluate potential prejudice to the mother’s case. And, this child has since turned eighteen. Consequently, her custody is moot.” *Id.*, 2005-Ohio-4374 at ¶43.). 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.)

### C. AFFECT ON SUBSTANTIAL RIGHT

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. Appellees argue that the order denying Appellant CCDDFS’ motion for permanent custody and instead continuing the previous order of temporary custody does not affect any substantial right that the agency may have because the child remains in agency custody. While it is true that, following the order, the agency continues to maintain temporary custody of the child, it is not a right to custody that the agency seeks

to defend. Rather, at issue is the right of the agency to promote the child's best interest by preventing a child from languishing in foster care unnecessarily and by more expeditiously achieving permanency for the child, as has been more fully described in Section A(1) above. This Honorable Court has recently commented on these goals:

In response to foster care drift, legislatures\*\* at both the national and state levels enacted new laws designed to shorten the length of time children spend in foster care and find permanent homes for foster children more quickly.

The passage of the 1997 Adoption and Safe Families Act ("ASFA"), Pub.L. No. 105-89, Sections 673b, 679b, and 678, Title 42, U.S.Code, marked a shift toward focusing on a child's need for safety and permanency. 65 F.R. 4020-01. "The impetus for the ASFA was a general dissatisfaction with the performance of State[s]' child welfare systems in achieving these goals for children and families. The ASFA seeks to strengthen the child welfare system's response to a child's need for safety and permanency at every point along the continuum of care. In part, the law places safety as the paramount concern in the delivery of child welfare services and decision-making, clarifies when efforts to prevent removal or to reunify a child with his or her family are not required, and requires criminal record checks of prospective foster and adoptive parents. To promote permanency, ASFA shortens the time frames for conducting permanency hearings, creates a new requirement for States to make reasonable efforts to finalize a permanent placement, and establishes time frames for filing petitions to terminate the parental rights for certain children in foster care." *Id.*

*In re A.B.*, supra, 2006-Ohio-4359 at ¶18-19. "Ohio's own attempt to ensure that children would not stay in foster care indefinitely began in 1988 with the enactment of Am.Sub.S.B. No. 89 ("S.B. 89"). 142 Ohio Laws, Part I, 198. "These provisions were enacted in response to the problem of 'foster care drift.' They are aimed at preventing a child from foundering in foster care under a temporary custody order." *In re A.B.*, supra, 2006-Ohio-4359 at ¶22, citing *In re Watson* (May 31, 1994), Butler App. No. 93-06-114, 1994 WL 233157. Insofar as this Honorable Court recognizes the efforts of the legislature to promote more expeditious permanency for children, it would be highly illogical to approve of a legal position which serves

to frustrate the efforts of an agency in its fulfillment of said goal. Not only would this goal be frustrated, but the agency would also be foreclosed from obtaining appropriate relief in the future, since a delay in achieving permanency cannot be undone at a later date. Additionally, as explained above, mootness would prevent an appeal once the case is closed.

Imagine for the sake of argument a situation in which a neglected child is removed from its parents' care and placed in the temporary custody of a children services agency shortly after birth. Thereafter, the trial court extends temporary custody twice, which is the maximum allowable extension provided by statute. Approximately two years after the filing of the original complaint, the agency files a motion to modify the temporary custody order to one of permanent custody. Despite the presentation of clear and convincing evidence in support of said motion, the trial court inexplicably denies the prayer for permanent custody and instead orders the children to remain in temporary custody of the agency. Over the next decade, the agency, in an attempt to fulfill statutorily-mandated duty to achieve expeditious permanency for the child and based on the continuing and ongoing circumstances of the child, files successive motions for permanent custody year after year, all of which are denied by the trial court in favor of a continuation of the original temporary custody order. Eventually, the child reaches age of majority and "ages out of the system", at which time the trial court terminates its jurisdiction. In this hypothetical scenario, certainly no appellate court would then entertain an appeal by the agency which was premised on error in the denial of the original motion for permanent custody which had been filed sixteen years earlier in close proximity to the (now-adult) child's second birthday. Any such issue would be moot. This scenario, while seemingly absurd, would be made possible were this Honorable Court to accept the Appellees' argument in this matter.

Consider a perhaps more foreseeable scenario, whereby a trial court that is reluctant to terminate parental rights denies permanent custody. Rather than continuing temporary custody the trial court instead orders the child placed in a planned permanent living arrangement (“PPLA”) notwithstanding the fact that the agency has not requested such a disposition. This scenario is unfortunately all too common. See, e.g., *In re Campbell* (October 12, 2000), Cuyahoga App. Nos. 77552 & 77603, 2000 WL 1514365; *In re Nickol* (October 18, 2001), Cuyahoga App. Nos. 78701 & 78742, 2001 WL 1243929; *In re C.R.*, Cuyahoga App. No. 81485, 2004-Ohio-131, 2004 WL 63623; *In re Moody*, Athens App. Nos. 01CA11 & 01CA14, 2001-Ohio-2671, 2001 WL 772229. Such an order would be erroneous (see *In re A.B.*, supra, at syllabus), yet under the rationale offered by Appellees the agency would be unable to appeal the decision. With a PPLA order, the agency retains custody of the child, the court case remains active, and the agency can choose to file another permanent custody motion in the future [see R.C. 2151.413(C), (Appx. 13)], just as is true with a continuation of temporary custody. Because a PPLA has no set expiration, such an order would by its very nature remain in effect until the child ages out of the system, at which point any appeal would be moot.

It should be clear that an agency does have a right to appeal a denial of permanent custody in such a situation. In fact, this Honorable Court’s recent *A.B.* decision resulted from an agency appeal of a denial of permanent custody. In the underlying case of *In re A.B.*, Summit App. No. 22659, 2005-Ohio-4936, a children services agency appealed a trial court decision which denied its permanent custody motion and instead ordered the children into a planned permanent living arrangement. Following the reviewing court’s affirmance and certification, this Honorable Court reversed the decision of the appellate court and remanded the matter to the trial

court for further proceedings. *In re A.B.*, 110 Ohio St.3d 230, 2006-Ohio-4359 at ¶37, 852 N.E.2d 1187. Such a result would not have been possible if the trial court’s denial of the agency’s permanent custody motion were not a final appealable order for purposes of the agency’s appeal. This is because a reviewing court has no jurisdiction over an appeal of a non-final order (See *Gehm*, supra, 2007-Ohio-607 at ¶14), nor does it have jurisdiction to certify such a matter to this Honorable Court. Any attempt to do so would be void<sup>3</sup>, as would a subsequent decision of this Honorable Court. See, e.g., *Stevens v. Ackman*, 91 Ohio St.3d 182, 2001-Ohio-249, 743 N.E.2d 901 (“Since the court of appeals was without jurisdiction to reach the merits of the appeal, we likewise may not reach the merits.” *Id.*, 91 Ohio St.3d at 195.).

The fact that the *A.B.* trial court ordered a planned permanent living arrangement rather than a continuation of temporary custody is of no import. As stated earlier, in either case the agency retains custody of the child, the trial court case remains active, and the agency can choose to file another permanent custody motion in the future. The practical effect is the same, and the child in each scenario is prevented from achieving permanency. Like temporary custody, “[a] planned permanent living arrangement places a child in limbo, which can delay placement in a permanent home.” *In re A.B.*, supra, 2006-Ohio-4359 at ¶33. It defies logic to argue that an agency is limited in its ability to appeal the denial of a substantive motion on the merits depending on which of several orders the trial court instead chooses to issue. When the parties go to trial on a motion for permanent custody, the claim for relief is a request for permanent custody. To use the words of the *Wilkinson* case, the status quo is only maintained during the

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<sup>3</sup> Cf. *State v. Taogaga*, Cuyahoga App. No. 79845, 2002-Ohio-5062 (“Where the trial court enters an order without jurisdiction, its order is void and a nullity.” *Id.*, at ¶36.).

pendency of the permanent custody proceedings “until the claim for relief can be determined.” See *Wilkinson*, supra, at \*2. Upon the denial of the permanent custody motion, the claim for relief is determined. The movant agency has a legal right to appeal such a decision.

### CONCLUSION

As argued in appellant’s Merit Brief, the wealth of case law precedent and statutory authority in Ohio contradicts the unsupported holding of the Eighth District Court of Appeals in this matter, and demands reversal of the *Adams* decision. Appellees’ arguments should be rejected in favor of those offered by appellant, and the dismissal order of the reviewing court should be reversed and the appeal reinstated.

Respectfully submitted,

WILLIAM D. MASON, ESQ.  
Cuyahoga County Prosecuting Attorney

By:   
Joseph C. Young, Counsel of Record  
Assistant Prosecuting Attorney  
COUNSEL FOR APPELLANT

### Proof of Service

I certify that a copy of this Merit Brief was sent by ordinary U.S. mail to Michelle Adams through counsel John J. Kulewicz, Esq., Vorys, Sater, Seymour & Pease LLP, 52 East Gay Street, P.O. Box 1008, Columbus, Ohio 43216-1008, to Lee Adams through counsel Christopher J. Pagan, Esq., Repper, Powers & Pagan, Ltd., 1501 First Avenue, Middletown, Ohio 45044, to the children through counsel Charles M. Miller, Esq., Keating Muething & Klekamp PLL, One East Foruth Street, Suite 1400, Cincinnati, Ohio 45202, to the children’s guardian ad litem Jodi M. Wallace, Esq., 6495 Brecksville Road, Suite 3, Independence, Ohio 44131, and to Steven E. Wolkin, Esq., 820 West Superior Avenue, Suite 510, Cleveland, Ohio 44113-1384, on this 11<sup>th</sup> day of April, 2007.

  
Joseph C. Young, Counsel of Record  
Assistant Prosecuting Attorney

R.C. § 2151.011



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BALDWIN'S OHIO REVISED CODE ANNOTATED  
TITLE XXI. COURTS--PROBATE--JUVENILE  
CHAPTER 2151. JUVENILE COURTS--GENERAL PROVISIONS  
CONSTRUCTION; DEFINITIONS

→2151.011 Definitions

(A) As used in the Revised Code:

(1) "Juvenile court" means whichever of the following is applicable that has jurisdiction under this chapter and Chapter 2152. of the Revised Code:

(a) The division of the court of common pleas specified in section 2101.022 or 2301.03 of the Revised Code as having jurisdiction under this chapter and Chapter 2152. of the Revised Code or as being the juvenile division or the juvenile division combined with one or more other divisions;

(b) The juvenile court of Cuyahoga county or Hamilton county that is separately and independently created by section 2151.08 or Chapter 2153. of the Revised Code and that has jurisdiction under this chapter and Chapter 2152. of the Revised Code;

(c) If division (A)(1)(a) or (b) of this section does not apply, the probate division of the court of common pleas.

(2) "Juvenile judge" means a judge of a court having jurisdiction under this chapter.

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

(4) "Private noncustodial agency" means any person, organization, association, or society certified by the department of job and family services that does not accept temporary or permanent legal custody of children, that is privately operated in this state, and that does one or more of the following:

(a) Receives and cares for children for two or more consecutive weeks;

(b) Participates in the placement of children in certified foster homes;

(c) Provides adoption services in conjunction with a public children services agency or private child placing agency.

(B) As used in this chapter:

(1) "Adequate parental care" means the provision by a child's parent or parents, guardian, or custodian of adequate food, clothing, and shelter to ensure the child's health and physical safety and the provision by a child's parent or parents of specialized services warranted by the child's physical or mental needs.

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- (2) "Adult" means an individual who is eighteen years of age or older.
- (3) "Agreement for temporary custody" means a voluntary agreement authorized by section 5103.15 of the Revised Code that transfers the temporary custody of a child to a public children services agency or a private child placing agency.
- (4) "Certified foster home" means a foster home, as defined in section 5103.02 of the Revised Code, certified under section 5103.03 of the Revised Code.
- (5) "Child" means a person who is under eighteen years of age, except that the juvenile court has jurisdiction over any person who is adjudicated an unruly child prior to attaining eighteen years of age until the person attains twenty-one years of age, and, for purposes of that jurisdiction related to that adjudication, a person who is so adjudicated an unruly child shall be deemed a "child" until the person attains twenty-one years of age.
- (6) "Child day camp," "child care," "child day-care center," "part-time child day-care center," "type A family day-care home," "certified type B family day-care home," "type B home," "administrator of a child day-care center," "administrator of a type A family day-care home," "in-home aide," and "authorized provider" have the same meanings as in section 5104.01 of the Revised Code.
- (7) "Child care provider" means an individual who is a child-care staff member or administrator of a child day-care center, a type A family day-care home, or a type B family day-care home, or an in-home aide or an individual who is licensed, is regulated, is approved, operates under the direction of, or otherwise is certified by the department of job and family services, department of mental retardation and developmental disabilities, or the early childhood programs of the department of education.
- (8) "Chronic truant" has the same meaning as in section 2152.02 of the Revised Code.
- (9) "Commit" means to vest custody as ordered by the court.
- (10) "Counseling" includes both of the following:
- (a) General counseling services performed by a public children services agency or shelter for victims of domestic violence to assist a child, a child's parents, and a child's siblings in alleviating identified problems that may cause or have caused the child to be an abused, neglected, or dependent child.
- (b) Psychiatric or psychological therapeutic counseling services provided to correct or alleviate any mental or emotional illness or disorder and performed by a licensed psychiatrist, licensed psychologist, or a person licensed under Chapter 4757. of the Revised Code to engage in social work or professional counseling.
- (11) "Custodian" means a person who has legal custody of a child or a public children services agency or private child placing agency that has permanent, temporary, or legal custody of a child.
- (12) "Delinquent child" has the same meaning as in section 2152.02 of the Revised Code.
- (13) "Detention" means the temporary care of children pending court adjudication or disposition, or execution of a court order, in a public or private facility designed to physically restrict the movement and activities of children.
- (14) "Developmental disability" has the same meaning as in section 5123.01 of the Revised Code.
- (15) "Foster caregiver" has the same meaning as in section 5103.02 of the Revised Code.

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(16) "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.

(17) "Habitual truant" means any child of compulsory school age who is absent without legitimate excuse for absence from the public school the child is supposed to attend for five or more consecutive school days, seven or more school days in one school month, or twelve or more school days in a school year.

(18) "Juvenile traffic offender" has the same meaning as in section 2152.02 of the Revised Code.

(19) "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 to 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.

(20) A "legitimate excuse for absence from the public school the child is supposed to attend" includes, but is not limited to, any of the following:

(a) The fact that the child in question has enrolled in and is attending another public or nonpublic school in this or another state;

(b) The fact that the child in question is excused from attendance at school for any of the reasons specified in section 3321.04 of the Revised Code;

(c) The fact that the child in question has received an age and schooling certificate in accordance with section 3331.01 of the Revised Code.

(21) "Mental illness" and "mentally ill person subject to hospitalization by court order" have the same meanings as in section 5122.01 of the Revised Code.

(22) "Mental injury" means any behavioral, cognitive, emotional, or mental disorder in a child caused by an act or omission that is described in section 2919.22 of the Revised Code and is committed by the parent or other person responsible for the child's care.

(23) "Mentally retarded person" has the same meaning as in section 5123.01 of the Revised Code.

(24) "Nonsecure care, supervision, or training" means care, supervision, or training of a child in a facility that does not confine or prevent movement of the child within the facility or from the facility.

(25) "Of compulsory school age" has the same meaning as in section 3321.01 of the Revised Code.

(26) "Organization" means any institution, public, semipublic, or private, and any private association, society, or agency located or operating in the state, incorporated or unincorporated, having among its functions the furnishing of protective services or care for children, or the placement of children in certified foster homes or elsewhere.

(27) "Out-of-home care" means detention facilities, shelter facilities, certified children's crisis care facilities, certified foster homes, placement in a prospective adoptive home prior to the issuance of a final decree of adoption, organizations, certified organizations, child day-care centers, type A family day-care homes, child care provided by type B family day-care home providers and by in-home aides, group home providers, group homes, institutions,

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state institutions, residential facilities, residential care facilities, residential camps, day camps, public schools, chartered nonpublic schools, educational service centers, hospitals, and medical clinics that are responsible for the care, physical custody, or control of children.

(28) "Out-of-home care child abuse" means any of the following when committed by a person responsible for the care of a child in out-of-home care:

- (a) Engaging in sexual activity with a child in the person's care;
- (b) Denial to a child, as a means of punishment, of proper or necessary subsistence, education, medical care, or other care necessary for a child's health;
- (c) Use of restraint procedures on a child that cause injury or pain;
- (d) Administration of prescription drugs or psychotropic medication to the child without the written approval and ongoing supervision of a licensed physician;
- (e) Commission of any act, other than by accidental means, that results in any injury to or death of the child in out-of-home care or commission of any act by accidental means that results in an injury to or death of a child in out-of-home care and that is at variance with the history given of the injury or death.

(29) "Out-of-home care child neglect" means any of the following when committed by a person responsible for the care of a child in out-of-home care:

- (a) Failure to provide reasonable supervision according to the standards of care appropriate to the age, mental and physical condition, or other special needs of the child;
- (b) Failure to provide reasonable supervision according to the standards of care appropriate to the age, mental and physical condition, or other special needs of the child, that results in sexual or physical abuse of the child by any person;
- (c) Failure to develop a process for all of the following:
  - (i) Administration of prescription drugs or psychotropic drugs for the child;
  - (ii) Assuring that the instructions of the licensed physician who prescribed a drug for the child are followed;
  - (iii) Reporting to the licensed physician who prescribed the drug all unfavorable or dangerous side effects from the use of the drug.
- (d) Failure to provide proper or necessary subsistence, education, medical care, or other individualized care necessary for the health or well-being of the child;
- (e) Confinement of the child to a locked room without monitoring by staff;
- (f) Failure to provide ongoing security for all prescription and nonprescription medication;
- (g) Isolation of a child for a period of time when there is substantial risk that the isolation, if continued, will impair or retard the mental health or physical well-being of the child.

(30) "Permanent custody" means a legal status that vests in a public children services agency or a private child

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placing agency, all parental rights, duties, and obligations, including the right to consent to adoption, and divests the natural parents or adoptive parents of all parental rights, privileges, and obligations, including all residual rights and obligations.

(31) "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 services agency or a private child placing agency.

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

(33) "Person responsible for a child's care in out-of-home care" means any of the following:

(a) Any foster caregiver, in-home aide, or provider;

(b) Any administrator, employee, or agent of any of the following: a public or private detention facility; shelter facility; certified children's crisis care facility; organization; certified organization; child day-care center; type A family day-care home; certified type B family day-care home; group home; institution; state institution; residential facility; residential care facility; residential camp; day camp; school district; community school; chartered nonpublic school; educational service center; hospital; or medical clinic;

(c) Any person who supervises or coaches children as part of an extracurricular activity sponsored by a school district, public school, or chartered nonpublic school;

(d) Any other person who performs a similar function with respect to, or has a similar relationship to, children.

(34) "Physically impaired" means having one or more of the following conditions that substantially limit one or more of an individual's major life activities, including self-care, receptive and expressive language, learning, mobility, and self-direction:

(a) A substantial impairment of vision, speech, or hearing;

(b) A congenital orthopedic impairment;

(c) An orthopedic impairment caused by disease, rheumatic fever or any other similar chronic or acute health problem, or amputation or another similar cause.

(35) "Placement for adoption" means the arrangement by a public children services agency or a private child placing agency with a person for the care and adoption by that person of a child of whom the agency has permanent custody.

(36) "Placement in foster care" means the arrangement by a public children services agency or a private child placing agency for the out-of-home care of a child of whom the agency has temporary custody or permanent custody.

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

(a) The court gives legal custody of a child to a public children services agency or a private child placing agency without the termination of parental rights.

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

(38) "Practice of social work" and "practice of professional counseling" have the same meanings as in section 4757.01 of the Revised Code.

(39) "Sanction, service, or condition" means a sanction, service, or condition created by court order following an adjudication that a child is an unruly child that is described in division (A)(4) of section 2152.19 of the Revised Code.

(40) "Protective supervision" means an order of disposition pursuant to which the court permits an abused, neglected, dependent, or unruly child to remain in the custody of the child's parents, guardian, or custodian and stay in the child's home, subject to any conditions and limitations upon the child, the child's parents, guardian, or custodian, or any other person that the court prescribes, including supervision as directed by the court for the protection of the child.

(41) "Psychiatrist" has the same meaning as in section 5122.01 of the Revised Code.

(42) "Psychologist" has the same meaning as in section 4732.01 of the Revised Code.

(43) "Residential camp" means a program in which the care, physical custody, or control of children is accepted overnight for recreational or recreational and educational purposes.

(44) "Residential care facility" means an institution, residence, or facility that is licensed by the department of mental health under section 5119.22 of the Revised Code and that provides care for a child.

(45) "Residential facility" means a home or facility that is licensed by the department of mental retardation and developmental disabilities under section 5123.19 of the Revised Code and in which a child with a developmental disability resides.

(46) "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 necessarily limited to, the privilege of reasonable visitation, consent to adoption, the privilege to determine the child's religious affiliation, and the responsibility for support.

(47) "School day" means the school day established by the state board of education pursuant to section 3313.48 of the Revised Code.

(48) "School month" and "school year" have the same meanings as in section 3313.62 of the Revised Code.

(49) "Secure correctional facility" means a facility under the direction of the department of youth services that is designed to physically restrict the movement and activities of children and used for the placement of children after adjudication and disposition.

(50) "Sexual activity" has the same meaning as in section 2907.01 of the Revised Code.

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

(52) "Shelter for victims of domestic violence" has the same meaning as in section 3113.33 of the Revised Code.

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(53) "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 who executed the agreement.

(C) For the purposes of this chapter, a child shall be presumed abandoned when the parents of the child have failed to visit or maintain contact with the child for more than ninety days, regardless of whether the parents resume contact with the child after that period of ninety days.

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BALDWIN'S OHIO REVISED CODE ANNOTATED  
TITLE XXI. COURTS--PROBATE--JUVENILE  
CHAPTER 2151. JUVENILE COURTS--GENERAL PROVISIONS  
HEARING AND DISPOSITION  
→ **2151.353 Disposition of abused, neglected, or dependent child**

(A) If 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 children services agency, a private child placing agency, either parent, a relative residing within or outside the state, or a probation officer for placement in a certified foster home, or in any other home approved by the court;

(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 of the child or is identified as a proposed legal custodian in a complaint or motion filed prior to the dispositional hearing by any party to the proceedings. A person identified in a complaint or motion filed by a party to the proceedings as a proposed legal custodian shall be awarded legal custody of the child only if the person identified signs a statement of understanding for legal custody that contains at least the following provisions:

(a) That it is the intent of the person to become the legal custodian of the child and the person is able to assume legal responsibility for the care and supervision of the child;

(b) That the person understands that legal custody of the child in question is intended to be permanent in nature and that the person will be responsible as the custodian for the child until the child reaches the age of majority. Responsibility as custodian for the child shall continue beyond the age of majority if, at the time the child reaches the age of majority, the child is pursuing a diploma granted by the board of education or other governing authority, successful completion of the curriculum of any high school, successful completion of an individualized education program developed for the student by any high school, or an age and schooling certificate. Responsibility beyond the age of majority shall terminate when the child ceases to continuously pursue such an education, completes such an education, or is excused from such an education under standards adopted by the state board of education, whichever occurs first.

(c) That the parents of the child have residual parental rights, privileges, and responsibilities, 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;

(d) That the person understands that the person must be present in court for the dispositional hearing in order to affirm the person's intention to become legal custodian, to affirm that the person understands the effect of the custodianship before the court, and to answer any questions that the court or any parties to the case may have.

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(4) Commit the child to the permanent custody of a public children services agency or private child placing agency, if the court determines in accordance with division (E) of section 2151.414 of the Revised Code 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 in accordance with division (D) of section 2151.414 of the Revised Code that the permanent commitment is in the best interest of the child. If the court grants permanent custody under this division, the court, upon the request of any party, shall file a written opinion setting forth its findings of fact and conclusions of law in relation to the proceeding.

(5) Place the child in a planned permanent living arrangement with a public children services agency or private child placing agency, if a public children services agency or private child placing agency requests the court to place the child in a planned permanent living arrangement and if the court finds, by clear and convincing evidence, that a planned permanent living arrangement is in the best interest of the child and 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 and must remain in residential or institutional care.

(b) The parents of the child have significant physical, mental, or psychological problems and are unable to care for the child because of those problems, adoption is not in the best interest of the child, as determined in accordance with division (D) of section 2151.414 of the Revised Code, 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 on the permanent placement options available to the child, is unwilling to accept or unable to adapt to a permanent placement, and is in an agency program preparing the child for independent living.

(6) Order the removal from the child's home until further order of the court of the person who committed abuse as described in section 2151.031 of the Revised Code against the child, who caused or allowed the child to suffer neglect as described in section 2151.03 of the Revised Code, or who is the parent, guardian, or custodian of a child who is adjudicated a dependent child and order any person not to have contact with the child or the child's siblings.

(B) No order for permanent custody or temporary custody of a child or the placement of a child in a planned permanent living arrangement shall be made pursuant to this section unless the complaint alleging the abuse, neglect, or dependency contains a prayer requesting permanent custody, temporary custody, or the placement of the child in a planned permanent living arrangement as desired, the summons served on the parents of the child contains as is appropriate a full explanation that the granting of an order for permanent custody permanently divests them of their parental rights, a full explanation that an adjudication that the child is an abused, neglected, or dependent child may result in an order of temporary custody that will cause the removal of the child from their legal custody until the court terminates the order of temporary custody or permanently divests the parents of their parental rights, or a full explanation that the granting of an order for a planned permanent living arrangement will result in the removal of the child from their legal custody if any of the conditions listed in divisions (A)(5)(a) to (c) of this section are found to exist, and the summons served on the parents contains a full explanation of their right to be represented by counsel and to have counsel appointed pursuant to Chapter 120. of the Revised Code if they are indigent.

If after making disposition as authorized by division (A)(2) of this section, a motion is filed that requests permanent custody of the child, the court may grant permanent custody of the child to the movant in accordance with section 2151.414 of the Revised Code.

(C) If the court issues an order for protective supervision pursuant to division (A)(1) of this section, the court may place any reasonable restrictions upon the child, the child's parents, guardian, or custodian, or any other person, including, but not limited to, any of the following:

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(1) Order a party, within forty-eight hours after the issuance of the order, to vacate the child's home indefinitely or for a specified period of time;

(2) Order a party, a parent of the child, or a physical custodian of the child to prevent any particular person from having contact with the child;

(3) Issue an order restraining or otherwise controlling the conduct of any person which conduct would not be in the best interest of the child.

(D) As part of its dispositional order, the court shall journalize a case plan for the child. The journalized case plan shall not be changed except as provided in section 2151.412 of the Revised Code.

(E)(1) The court shall retain jurisdiction over any child for whom the court issues an order of disposition pursuant to division (A) of this section or pursuant to section 2151.414 or 2151.415 of the Revised Code until the child attains the age of eighteen years if the child is not mentally retarded, developmentally disabled, or physically impaired, the child attains the age of twenty-one years if the child is mentally retarded, developmentally disabled, or physically impaired, or the child is adopted and a final decree of adoption is issued, except that the court may retain jurisdiction over the child and continue any order of disposition under division (A) of this section or under section 2151.414 or 2151.415 of the Revised Code for a specified period of time to enable the child to graduate from high school or vocational school. The court shall make an entry continuing its jurisdiction under this division in the journal.

(2) Any public children services agency, any private child placing agency, the department of job and family services, or any party, other than any parent whose parental rights with respect to the child have been terminated pursuant to an order issued under division (A)(4) of this section, by filing a motion with the court, may at any time request the court to modify or terminate any order of disposition issued pursuant to division (A) of this section or section 2151.414 or 2151.415 of the Revised Code. The court shall hold a hearing upon the motion as if the hearing were the original dispositional hearing and shall give all parties to the action and the guardian ad litem notice of the hearing pursuant to the Juvenile Rules. If applicable, the court shall comply with section 2151.42 of the Revised Code.

(F) Any 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, the temporary custody order shall continue and not terminate until the court issues a dispositional order under that section.

(G)(1) No later than one year after the earlier of the date the complaint in the case was filed or the child was first placed in shelter care, a party may ask the court to extend an order for protective supervision for six months or to terminate the order. A party requesting extension or termination of the order shall file a written request for the extension or termination with the court and give notice of the proposed extension or termination in writing before the end of the day after the day of filing it to all parties and the child's guardian ad litem. If a public children services agency or private child placing agency requests termination of the order, the agency shall file a written status report setting out the facts supporting termination of the order at the time it files the request with the court. If no party requests extension or termination of the order, the court shall notify the parties that the court will extend the order for six months or terminate it and that it may do so without a hearing unless one of the parties requests a hearing. All parties and the guardian ad litem shall have seven days from the date a notice is sent pursuant to this division to object to and request a hearing on the proposed extension or termination.

(a) If it receives a timely request for a hearing, the court shall schedule a hearing to be held no later than thirty days after the request is received by the court. The court shall give notice of the date, time, and location of the hearing to all parties and the guardian ad litem. At the hearing, the court shall determine whether extension or termination

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of the order is in the child's best interest. If termination is in the child's best interest, the court shall terminate the order. If extension is in the child's best interest, the court shall extend the order for six months.

(b) If it does not receive a timely request for a hearing, the court may extend the order for six months or terminate it without a hearing and shall journalize the order of extension or termination not later than fourteen days after receiving the request for extension or termination or after the date the court notifies the parties that it will extend or terminate the order. If the court does not extend or terminate the order, it shall schedule a hearing to be held no later than thirty days after the expiration of the applicable fourteen-day time period and give notice of the date, time, and location of the hearing to all parties and the child's guardian ad litem. At the hearing, the court shall determine whether extension or termination of the order is in the child's best interest. If termination is in the child's best interest, the court shall terminate the order. If extension is in the child's best interest, the court shall issue an order extending the order for protective supervision six months.

(2) If the court grants an extension of the order for protective supervision pursuant to division (G)(1) of this section, a party may, prior to termination of the extension, file with the court a request for an additional extension of six months or for termination of the order. The court and the parties shall comply with division (G)(1) of this section with respect to extending or terminating the order.

(3) If a court grants an extension pursuant to division (G)(2) of this section, the court shall terminate the order for protective supervision at the end of the extension.

(H) The court shall not issue a dispositional order pursuant to division (A) of this section that removes a child from the child's home unless the court complies with section 2151.419 of the Revised Code and includes in the dispositional order the findings of fact required by that section.

(I) If a motion or application for an order described in division (A)(6) of this section is made, the court shall not issue the order unless, prior to the issuance of the order, it provides to the person all of the following:

- (1) Notice and a copy of the motion or application;
- (2) The grounds for the motion or application;
- (3) An opportunity to present evidence and witnesses at a hearing regarding the motion or application;
- (4) An opportunity to be represented by counsel at the hearing.

(J) The jurisdiction of the court shall terminate one year after the date of the award or, if the court takes any further action in the matter subsequent to the award, the date of the latest further action subsequent to the award, if the court awards legal custody of a child to either of the following:

- (1) A legal custodian who, at the time of the award of legal custody, resides in a county of this state other than the county in which the court is located;
- (2) A legal custodian who resides in the county in which the court is located at the time of the award of legal custody, but moves to a different county of this state prior to one year after the date of the award or, if the court takes any further action in the matter subsequent to the award, one year after the date of the latest further action subsequent to the award.

The court in the county in which the legal custodian resides then shall have jurisdiction in the matter.

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BALDWIN'S OHIO REVISED CODE ANNOTATED  
TITLE XXI. COURTS--PROBATE--JUVENILE  
CHAPTER 2151. JUVENILE COURTS--GENERAL PROVISIONS  
GENERAL PROVISIONS

**→2151.413 Motion for permanent custody**

(A) A public children services agency or private child placing agency that, pursuant to an order of disposition under division (A)(2) of section 2151.353 of the Revised Code or under any version of section 2151.353 of the Revised Code that existed prior to January 1, 1989, is granted temporary custody of a child who is not abandoned or orphaned may file a motion in the court that made the disposition of the child requesting permanent custody of the child.

(B) A public children services agency or private child placing agency that, pursuant to an order of disposition under division (A)(2) of section 2151.353 of the Revised Code or under any version of section 2151.353 of the Revised Code that existed prior to January 1, 1989, is granted temporary custody of a child who is orphaned may file a motion in the court that made the disposition of the child requesting permanent custody of the child whenever it can show that no relative of the child is able to take legal custody of the child.

(C) A public children services agency or private child placing agency that, pursuant to an order of disposition under division (A)(5) of section 2151.353 of the Revised Code, places a child in a planned permanent living arrangement may file a motion in the court that made the disposition of the child requesting permanent custody of the child.

(D)(1) Except as provided in division (D)(3) of this section, if a child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two month period ending on or after March 18, 1999, the agency with custody shall file a motion requesting permanent custody of the child. The motion shall be filed in the court that issued the current order of temporary custody. For the purposes of this division, a child shall be considered to have entered the temporary custody of an agency on the earlier of the date the child is adjudicated pursuant to section 2151.28 of the Revised Code or the date that is sixty days after the removal of the child from home.

(2) Except as provided in division (D)(3) of this section, if a court makes a determination pursuant to division (A)(2) of section 2151.419 of the Revised Code, the public children services agency or private child placing agency required to develop the permanency plan for the child under division (K) of section 2151.417 of the Revised Code shall file a motion in the court that made the determination requesting permanent custody of the child.

(3) An agency shall not file a motion for permanent custody under division (D)(1) or (2) of this section if any of the following apply:

(a) The agency documents in the case plan or permanency plan a compelling reason that permanent custody is not in the best interest of the child.

(b) If reasonable efforts to return the child to the child's home are required under section 2151.419 of the Revised Code, the agency has not provided the services required by the case plan to the parents of the child or the child to

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ensure the safe return of the child to the child's home.

(c) The agency has been granted permanent custody of the child.

(d) The child has been returned home pursuant to court order in accordance with division (A)(3) of section 2151.419 of the Revised Code.

(E) Any agency that files a motion for permanent custody under this section shall include in the case plan of the child who is the subject of the motion, a specific plan of the agency's actions to seek an adoptive family for the child and to prepare the child for adoption.

(F) The department of job and family services may adopt rules pursuant to Chapter 119. of the Revised Code that set forth the time frames for case reviews and for filing a motion requesting permanent custody under division (D)(1) of this section.

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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

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2125.02, 2305.10, 2305.131, 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.

(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.

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R.C. § 5153.16

BALDWIN'S OHIO REVISED CODE ANNOTATED  
TITLE LI. PUBLIC WELFARE  
CHAPTER 5153. COUNTY CHILDREN SERVICES  
ADMINISTRATIVE PROVISIONS

→5153.16 Powers and duties of public children services agency

(A) Except as provided in section 2151.422 of the Revised Code, in accordance with rules adopted under section 5153.166 of the Revised Code, and on behalf of children in the county whom the public children services agency considers to be in need of public care or protective services, the public children services agency shall do all of the following:

- (1) Make an investigation concerning any child alleged to be an abused, neglected, or dependent child;
- (2) Enter into agreements with the parent, guardian, or other person having legal custody of any child, or with the department of job and family services, department of mental health, department of mental retardation and developmental disabilities, other department, any certified organization within or outside the county, or any agency or institution outside the state, having legal custody of any child, with respect to the custody, care, or placement of any child, or with respect to any matter, in the interests of the child, provided the permanent custody of a child shall not be transferred by a parent to the public children services agency without the consent of the juvenile court;
- (3) Accept custody of children committed to the public children services agency by a court exercising juvenile jurisdiction;
- (4) Provide such care as the public children services agency considers to be in the best interests of any child adjudicated to be an abused, neglected, or dependent child the agency finds to be in need of public care or service;
- (5) Provide social services to any unmarried girl adjudicated to be an abused, neglected, or dependent child who is pregnant with or has been delivered of a child;
- (6) Make available to the bureau for children with medical handicaps of the department of health at its request any information concerning a crippled child found to be in need of treatment under sections 3701.021 to 3701.028 of the Revised Code who is receiving services from the public children services agency;
- (7) Provide temporary emergency care for any child considered by the public children services agency to be in need of such care, without agreement or commitment;
- (8) Find certified foster homes, within or outside the county, for the care of children, including handicapped children from other counties attending special schools in the county;
- (9) Subject to the approval of the board of county commissioners and the state department of job and family services, establish and operate a training school or enter into an agreement with any municipal corporation or other political subdivision of the county respecting the operation, acquisition, or maintenance of any children's home, training school, or other institution for the care of children maintained by such municipal corporation or political subdivision;
- (10) Acquire and operate a county children's home, establish, maintain, and operate a receiving home for the

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## R.C. § 5153.16

temporary care of children, or procure certified foster homes for this purpose;

(11) Enter into an agreement with the trustees of any district children's home, respecting the operation of the district children's home in cooperation with the other county boards in the district;

(12) Cooperate with, make its services available to, and act as the agent of persons, courts, the department of job and family services, the department of health, and other organizations within and outside the state, in matters relating to the welfare of children, except that the public children services agency shall not be required to provide supervision of or other services related to the exercise of parenting time rights granted pursuant to section 3109.051 or 3109.12 of the Revised Code or companionship or visitation rights granted pursuant to section 3109.051, 3109.11, or 3109.12 of the Revised Code unless a juvenile court, pursuant to Chapter 2151. of the Revised Code, or a common pleas court, pursuant to division (E)(6) of section 3113.31 of the Revised Code, requires the provision of supervision or other services related to the exercise of the parenting time rights or companionship or visitation rights;

(13) Make investigations at the request of any superintendent of schools in the county or the principal of any school concerning the application of any child adjudicated to be an abused, neglected, or dependent child for release from school, where such service is not provided through a school attendance department;

(14) Administer funds provided under Title IV-E of the "Social Security Act," 94 Stat. 501 (1980), 42 U.S.C.A. 671, as amended, in accordance with rules adopted under section 5101.141 of the Revised Code;

(15) In addition to administering Title IV-E adoption assistance funds, enter into agreements to make adoption assistance payments under section 5153.163 of the Revised Code;

(16) Implement a system of safety and risk assessment, in accordance with rules adopted by the director of job and family services, to assist the public children services agency in determining the risk of abuse or neglect to a child;

(17) Enter into a plan of cooperation with the board of county commissioners under section 307.983 of the Revised Code and comply with each fiscal agreement the board enters into under section 307.98 of the Revised Code that include family services duties of public children services agencies and contracts the board enters into under sections 307.981 and 307.982 of the Revised Code that affect the public children services agency;

(18) Make reasonable efforts to prevent the removal of an alleged or adjudicated abused, neglected, or dependent child from the child's home, eliminate the continued removal of the child from the child's home, or make it possible for the child to return home safely, except that reasonable efforts of that nature are not required when a court has made a determination under division (A)(2) of section 2151.419 of the Revised Code;

(19) Make reasonable efforts to place the child in a timely manner in accordance with the permanency plan approved under division (E) of section 2151.417 of the Revised Code and to complete whatever steps are necessary to finalize the permanent placement of the child;

(20) Administer a Title IV-A program identified under division (A)(4)(c) or (f) of section 5101.80 of the Revised Code that the department of job and family services provides for the public children services agency to administer under the department's supervision pursuant to section 5101.801 of the Revised Code;

(21) Administer the kinship permanency incentive program created under section 5101.802 of the Revised Code under the supervision of the director of job and family services;

(22) Provide independent living services pursuant to sections 2151.81 to 2151.84 of the Revised Code.

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(B) The public children services agency shall use the system implemented pursuant to division (A)(16) of this section in connection with an investigation undertaken pursuant to division (F)(1) of section 2151.421 of the Revised Code to assess both of the following:

- (1) The ongoing safety of the child;
- (2) The appropriateness of the intensity and duration of the services provided to meet child and family needs throughout the duration of a case.

(C) Except as provided in section 2151.422 of the Revised Code, in accordance with rules of the director of job and family services, and on behalf of children in the county whom the public children services agency considers to be in need of public care or protective services, the public children services agency may do the following:

(1) Provide or find, with other child serving systems, specialized foster care for the care of children in a specialized foster home, as defined in section 5103.02 of the Revised Code, certified under section 5103.03 of the Revised Code;

(2)(a) Except as limited by divisions (C)(2)(b) and (c) of this section, contract with the following for the purpose of assisting the agency with its duties:

- (i) County departments of job and family services;
- (ii) Boards of alcohol, drug addiction, and mental health services;
- (iii) County boards of mental retardation and developmental disabilities;
- (iv) Regional councils of political subdivisions established under Chapter 167. of the Revised Code;
- (v) Private and government providers of services;
- (vi) Managed care organizations and prepaid health plans.

(b) A public children services agency contract under division (C)(2)(a) of this section regarding the agency's duties under section 2151.421 of the Revised Code may not provide for the entity under contract with the agency to perform any service not authorized by the department's rules.

(c) Only a county children services board appointed under section 5153.03 of the Revised Code that is a public children services agency may contract under division (C)(2)(a) of this section. If an entity specified in division (B) or (C) of section 5153.02 of the Revised Code is the public children services agency for a county, the board of county commissioners may enter into contracts pursuant to section 307.982 of the Revised Code regarding the agency's duties.

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R.C. § 5153.18

BALDWIN'S OHIO REVISED CODE ANNOTATED  
TITLE LI. PUBLIC WELFARE  
CHAPTER 5153. COUNTY CHILDREN SERVICES  
ADMINISTRATIVE PROVISIONS

→ 5153.18 Powers and duties relative to-court proceedings

(A) The public children services agency shall have the capacity possessed by natural persons to institute proceedings in any court.

(B) When appointed by the probate court exercising jurisdiction in adoption proceedings, the executive director may act as next friend of any child and perform the duties of such next friend.

(C) When appointed by the probate court, in lieu of a guardian, in accordance with section 2111.05 of the Revised Code:

(1) The executive director may act as trustee of the estate of any ward, provided such an estate does not exceed one thousand dollars in value.

(2) The executive director may also act as trustee, on behalf of any ward, of periodic payments of not more than twenty-five dollars per week of which such ward is entitled as a claimant pursuant to the terms of any insurance policy, annuity, pension, benefit, or allowance, governmental or private.

(3) Such director shall administer all trusteeships in accordance with the laws relating to fiduciaries.

The funds of any such trusteeship shall not be mingled with other moneys of the agency or of the county. The cost of any such trusteeship shall be paid out of the funds of the trust, but no fee shall be allowed to the executive director as such trustee. At least once a year, or more often if required by the probate court, the executive director shall make a complete report and accounting to the agency as to the disposition of all trust funds administered by the executive director during the year.

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Civ. R. Rule 1

**C**

BALDWIN'S OHIO REVISED CODE ANNOTATED  
RULES OF CIVIL PROCEDURE  
TITLE I. SCOPE OF RULES--ONE FORM OF ACTION

→ Civ R 1 Scope of rules: applicability; construction; exceptions

**(A) Applicability**

These rules prescribe the procedure to be followed in all courts of this state in the exercise of civil jurisdiction at law or in equity, with the exceptions stated in subdivision (C) of this rule.

**(B) Construction**

These rules shall be construed and applied to effect just results by eliminating delay, unnecessary expense and all other impediments to the expeditious administration of justice.

**(C) Exceptions**

These rules, to the extent that they would by their nature be clearly inapplicable, shall not apply to procedure (1) upon appeal to review any judgment, order or ruling, (2) in the appropriation of property, (3) in forcible entry and detainer, (4) in small claims matters under Chapter 1925, Revised Code, (5) in uniform reciprocal support actions, (6) in the commitment of the mentally ill, (7) in all other special statutory proceedings; provided, that where any statute provides for procedure by a general or specific reference to the statutes governing procedure in civil actions such procedure shall be in accordance with these rules.

Current with amendments received through 7/1/06

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Juv. R. Rule 2

**C**

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.

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- (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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(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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