

IN THE SUPREME COURT OF OHIO

In The Matter Of:

John Steele, et al.

Case No.

**07-1310**

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

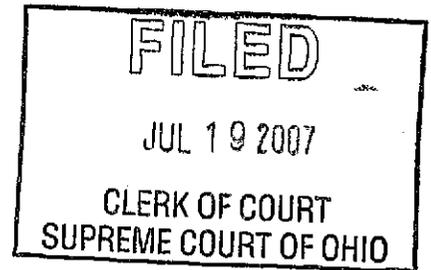
Court of Appeals  
Case No. 89494

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**MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT  
CUYAHOGA COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES**

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**EXPLANATION OF WHY THIS CASE IS A CASE OF  
PUBLIC OR GREAT GENERAL INTEREST AND  
INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION**

This cause presents a critical issue for child protection proceedings in juvenile court. The issue is whether a denial of an agency's motion for permanent custody constitutes a final appealable order, for which appellate review may be sought by the movant agency.

In this case, after the children services agency timely appealed a trial court denial of its motion for permanent custody, the court of appeals granted a motion to dismiss the pending appeal "PER R.C. 2505.02". (See Appx. 2). This dismissal precludes CCDCFS, a lawful party to the trial court proceedings and the movant in this case, from perfecting and prosecuting an appeal regarding the propriety of the trial court's orders in the underlying case. Such a preclusion has constitutional implications regarding traditional notions of due process.

The decision of the court of appeals threatens the due process rights of litigants involved in child protection proceedings by holding that an agency may not immediately appeal an adverse ruling on a motion for permanent custody. Such a holding would effectively permit the trial court to deny an agency motion whether or not it had complied with statutory requirements as to procedure and evidentiary findings, since no review could be had by an agency whose motion had been denied. The end result of this ruling is that an agency that is charged with the affirmative legal duty to pursue permanent custody in certain circumstances is left without legal recourse to challenge an adverse and erroneous ruling thereon in the court of appeals.

The implications of the decision of the court of appeals may affect every child who is involved in the child protection system, since any attempts by the agency to fulfill its legal obligations as imposed by statute could be thwarted with impunity by the trial court, regardless of the propriety of its decisions, without fear of appellate review pursuant to the holding of the

reviewing court in this case. The impact is also felt by all taxpayers in that their tax dollars contribute to the operation of the juvenile court system as well as to the support and maintenance of the children remaining in foster care. The public has, through our federal and state legislatures, expressed its desire to effectuate more expeditious permanency for children within the foster care system, in part by requiring a children services agency (with limited exceptions) to file for permanent custody after a child has been in agency custody for twelve or more months of a consecutive twenty-two month period. See, e.g., R.C. 2151.413(D). This interest in the expeditious transfer of children from the foster care system to permanent placement either with biological parents, relatives, or adoptive family, is profoundly affected by a ruling which has the effect of limiting appellate review of erroneous decisions related to these permanency requirements. Such a holding seriously undermines the efforts of the state and federal legislatures to achieve more expeditious permanency for all abused, neglected and dependent children. Similarly, the public interest is affected if the juvenile court is not held accountable for its performance in this arena.

Apart from the permanency considerations which make this case one of great public interest, the decision of the court of appeals has broad general significance. All parties to court action must be guaranteed the right of access to the court of appeals to seek redress from, and correction of, erroneous rulings of a trial court. By limiting this access, the reviewing court promotes a situation which may result in more relaxed adherence to substantive and procedural legal requirements and, ultimately, an abandonment of the rule of law as we know it. Such a result not only threatens to erode public confidence in the integrity of the judicial system, it is also contrary to legal precedent in this state. The Ohio Supreme Court has recognized that an order continuing temporary custody is a final appealable order. This precedent should not be

ignored, nor should it be limited in its application to all parties except a children services agency. To do so would frustrate the concept of *stare decisis*.

“[T]he doctrine of *stare decisis* is of fundamental importance to the rule of law. Like the United States Supreme Court, we recognize that our precedents are not sacrosanct, for we have overruled prior decisions where the necessity and propriety of doing so has been established. But any departure from the doctrine of *stare decisis* demands special justification.’ *Wampler v. Higgins* (2001), 93 Ohio St.3d 111, 120, 752 N.E.2d 962 (Internal citations and quotations omitted). This principle is universally accepted and unquestioned.” *Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, 2003-Ohio-5849, at ¶44.

To promote the purposes and preserve the integrity of the legal system, to assure due process to all parties to juvenile court proceedings, to recognize and give proper respect to the doctrine of *stare decisis*, to promote expeditious permanency for children in the foster care system, and to discourage unnecessarily lengthy and costly foster care placements, this court must grant jurisdiction to hear this case and review the decision of the court of appeals.

## STATEMENT OF THE CASE AND FACTS

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

After a fully contested trial on CCDCFS’ motion was concluded on December 19, 2006, the trial court entered its decision denying CCDCFS’ motion for permanent custody and instead ordering the continuation of the original order of temporary custody. (See Appx. 3, 6). CCDCFS appealed to the Eighth District Court of Appeals, claiming in its two assignments of error that the trial court was without legal authority to extend a temporary custody order beyond permissible statutory time limitations and that the decision of the trial court was against the manifest weight of the evidence. During the pendency of the appeal and following the filing of CCDCFS’ Appellant’s Brief, the mother’s attorney filed a motion to dismiss said appeal. The entirety of the legal argument included in support of the father’s Motion to Dismiss, other than that language setting forth CCDCFS’ two assignments of error, is reproduced verbatim as follows:

These assignments of error are nearly identical to the assignments of error raised before this court in the cases “IN RE K.M. ET.AL.,” Eight [sic] Appellate District, Cuyahoga County Case Nos. 87882 and 87883. In that case, this Court dismissed Appellant agency’s case because the issues raised were not from a final appealable order. Thus, this Court determined that it lacked jurisdiction to hear the appeal and the case was dismissed.

The agency currently has this case on ‘stay’ status before the Ohio Supreme Court. For these reasons, Appellee, Karen Steele moves to dismiss this appeal.

CCDCFS filed a fifteen page Brief in Opposition which mirrored the argument made to the Ohio Supreme Court in the case of *In re Adams*, Ohio Supreme Court Case No. 2006-1695, which

case was argued on May 1, 2007 and is currently awaiting decision.<sup>1</sup> The reviewing court thereafter dismissed the pending appeal “PER R.C. 2505.02”. (See Appx. 1, 2).

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

In support of its position on these issues, the appellant presents the following argument.

### **ARGUMENT IN SUPPORT OF PROPOSITION OF LAW**

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

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

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

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<sup>1</sup> As noted in appellee’s Motion to Dismiss, the case of *In re K.M.*, Ohio Supreme Court Case No. 2006-1942 is also pending before this Honorable Court, and is being held for decision in the *Adams* case. The *Adams* and *K.M.* cases involve the identical issue relating to appealability as is now present in this matter.

Additionally, Juv.R. 34(I) states that “[h]earings to determine whether temporary orders regarding custody should be modified to orders for permanent custody shall be considered dispositional hearings and need not be bifurcated. The Rules of Evidence shall apply in hearings on motions for permanent custody.” Pursuant to Juv.R. 34(C), “[a]fter the conclusion of the hearing, the court shall enter an appropriate judgment within seven days.” Finally, Juv.R. 34(J) provides, in pertinent part, that “[a]t the conclusion of the hearing, the court shall \*\*\*, where any part of the proceeding was contested, advise the parties of their right to appeal.” Juv.R. 2(Y) states, in pertinent part, that “the child’s custodian, guardian, \*\*\* [and] the state” are parties to juvenile court proceedings. In this case, it cannot be disputed that CCDCFS was the children’s custodian by virtue of the fact that the trial court had previously ordered the children maintained in the temporary custody of CCDCFS. Juv.R. 2(H) states, in pertinent part, that “‘Custodian’ means \*\*\* a public children’s services agency \*\*\* that has permanent, temporary, or legal custody of a child.” Additionally, as defined in Juv.R. 2(OO), “‘Temporary custody’ means legal custody of a child who is removed from the child’s home \*\*\*.” CCDCFS, as the children’s legal custodian, is charged with their care and custody, and has a legal duty to preserve and protect the children’s well-being.

In the matter pending before the trial court, a further dispositional order has been issued maintaining the children in the temporary custody of CCDCFS upon the denial of CCDCFS’ motion for permanent custody. The hearing on CCDCFS’ motion was plainly a dispositional hearing as described in Juv.R. 34(G) and (I), and the court’s resulting judgment was a dispositional order as required by Juv.R. 34(C). Since the proceedings on CCDCFS’ motion were contested and since CCDCFS is a party to the matter, CCDCFS has a right to appeal, and to

notification of this right pursuant to Juv.R. 34(J). See *In re Murray* (1990), 52 Ohio St.3d 155, 556 N.E.2d 1169, which notes that “a further dispositional order continuing an original temporary custody order, issued pursuant to Juv.R. 34, constituted a final appealable order.” *Id.*, 52 Ohio St.3d at 159 (fn. 2), citing as support therefore the case of *In re Patterson* (1984), 16 Ohio App.3d 214, 16 OBR 229, 475 N.E.2d 160. “The right to file an appeal, as it is defined in the Appellate Rules, is a property interest and a litigant may not be deprived of that interest without due process of law.” *Atkinson v. Grumman Ohio Corp.* (1988), 37 Ohio St.3d 80, 523 N.E.2d 851, paragraph one of the syllabus. CCDCFS clearly had a present interest in the subject matter and, therefore, a right to appeal the trial court’s decision.

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

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

The Eighth District Court of Appeals dismissed the appeal “PER R.C. 2505.02”, thereby suggesting that the order being appealed is not a final, appealable order. This determination is

erroneous. As this Honorable Court has noted, "proceedings in the juvenile division are the least amenable to coverage by the Civil Rules." See *State ex rel. Fowler v. Smith* (1994), 68 Ohio St.3d 357, 360, 626 N.E.2d 950, citing 4 Harper, Anderson's Ohio Civil Practice (1987), 57, Section 147.04(g). "The juvenile court is a statutory court and the proceedings are governed by special statutory guidelines. R.C. Chapter 2151. The juvenile court does not settle disputes between adverse civil litigants, but is, rather, charged with a special statutory duty to look after the best interests of the child." *Mathis v. Mathis* (November 19, 1982), Lucas App. No. L-82-154, 1982 WL 6638. While Civ.R. 54 may be useful in determining the appealability of strictly civil matters, the nature of child protection proceedings in juvenile court negate the usefulness of those provisions. Juvenile Court orders relating to child protection proceedings are therefore better suited to the final order analysis as set forth in R.C. 2505.02.

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

future date for the trial court to alter the custodial arrangement in such a manner as to terminate the entire case before the court, any appeal filed at that time by CCDCFS in regard to alleged errors in the previous denial of its motion for permanent custody would be dismissed as moot by virtue of the intervening orders regarding the child's welfare. Cf. *In re Murray*, supra ("Even if the court eventually terminates the temporary custody order and returns the child to his or her parents pursuant to R.C. 2151.415, the initial determination of neglect or dependency will not then be in issue." Id., 52 Ohio St.3d at 158.). See also *Jackson v. Herron*, Lake App. No. 2004-L-045, 2005-Ohio-4039 ("The litigation over [the child]'s custody will potentially continue until [the child] reaches the age of majority. By that time, the present issue will be over eight years old and meaningful review will be precluded." Id. at ¶8.).

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

In reaching its decision in this matter, the reviewing court failed to recognize prior precedent from the Eighth District Court of Appeals which supports the conclusion that a denial of a request for permanent custody is a final appealable order. For example, the Eighth District Court of Appeals has ruled that the trial court is patently and unambiguously lacking jurisdiction to act regarding custody of children who had been determined to be neglected, and thus prohibition is warranted to prevent a trial judge from proceeding where CCDCFS appealed denial of its motion for permanent custody, and the appeal was still pending. See *State ex rel. Cuyahoga County Dept. of Children and Family Services v. Honorable Alison Floyd*, Cuyahoga

App. No. 81713, 2003-Ohio-184 at ¶12. The Eighth District Court of Appeals has not only recognized the Agency's right to appeal a judgment denying its motion for permanent custody, but has also reversed the decision of the trial court and entered judgment in favor of the Agency when it determined that the trial court decision was erroneous. See *In re Mayle* (July 27, 2000), Cuyahoga App. Nos. 76739 & 77165, 2000 WL 1038189. See also *In re N.B.*, Cuyahoga App. No. 81392, 2003-Ohio-3656, which matter presented the issue of a denial of a motion for permanent custody and was entertained and decided by the Eighth District on its merits. In entertaining the aforementioned appeals as well as in granting the writ of prohibition, the Eighth District Court of Appeals has previously implicitly recognized that a trial court's denial of a motion for permanent custody is a final appealable order. The words of this Honorable Court describe such recognition most aptly:

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

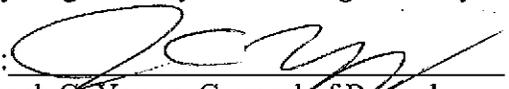
*In re Murray*, supra, 51 Ohio St.3d at 159 (fn. 2). To deny CCDCFS the right to review of a trial court order denying its motion for permanent custody in this matter is to deprive the agency of due process in this case.

CONCLUSION

For the reasons discussed above, this case raises a substantial constitutional question relating to due process, and involves matters of public and great general interest. The appellant requests that this court grant jurisdiction and allow this case so that the important issue presented in this case will be reviewed on the merits. It is further requested that this matter be accepted and held for decision in the case of *In re Adams*, Ohio Supreme Court Case Number 2006-1695.

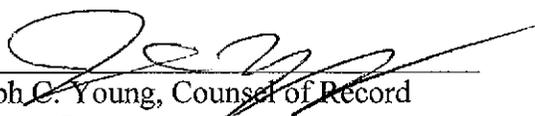
Respectfully submitted,

WILLIAM D. MASON, ESQ.  
Cuyahoga County Prosecuting Attorney

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

Proof of Service

I certify that a copy of this *Memorandum in Support of Jurisdiction* was sent by ordinary U.S. mail to Appellee Karen Steele through attorney John H. Lawson, Esq., 4403 St. Clair Avenue, Cleveland, Ohio 44103, to Appellee John Gooch through attorney Thomas Kozel, Esq., P.O. Box 534, North Olmsted, Ohio 44070, to the appellees children through attorney Michael Granito, Esq., 24400 Highland Road, Richmond Heights, Ohio 44143 and to the children's guardian ad litem Linda Julian, Esq., P.O. Box, 93523, Cleveland, Ohio 44101, on this 18<sup>th</sup> day of July, 2007.

  
Joseph C. Young, Counsel of Record  
Assistant Prosecuting Attorney

**APPENDIX**

	<u>Appx. Page</u>
Journal Entry of the Cuyahoga County Court of Appeals (July 16, 2007).....	1
Journal Entry of the Cuyahoga County Court of Appeals (July 5, 2007).....	2
Journal Entry of the Cuyahoga County Juvenile Court (February 7, 2007).....	3

JUL 16 2007

# Court of Appeals of Ohio, Eighth District

County of Cuyahoga  
Gerald E. Fuerst, Clerk of Courts

IN RE: JOHN STEELE, ET AL.

Appellee

COA NO.  
89494

LOWER COURT NO.  
AD 04901713  
AD 04901714

JUVENILE COURT DIVISION

MOTION NO. 398270

Date 07/05/07

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Journal Entry

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SUA SPONTE, APPEAL IS DISMISSED PER ENTRY NO. 397892.

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

**JUL 16 2007**

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

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

**JUL - 5 2007**

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

Adm. Judge, FRANK D. CELEBREZZE, JR.,  
Concurs

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[Signature]  
Judge JAMES J. SWEENEY

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

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# Court of Appeals of Ohio, Eighth District

County of Cuyahoga  
Gerald E. Fuerst, Clerk of Courts

IN RE: JOHN STEELE, ET AL.

Appellee

COA NO. LOWER COURT NO.  
89494 AD 04901713  
AD 04901714

JUVENILE COURT DIVISION

MOTION NO. 397892

Date 07/05/07

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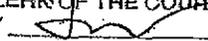
Journal Entry

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MOTION BY APPELLEE, KAREN STEELE, TO DISMISS PER R.C. 2505.02 IS GRANTED.

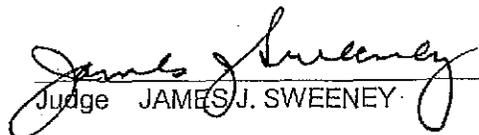
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JUL - 5 2007

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

Adm. Judge, FRANK D. CELEBREZZE, JR.,  
Concurs

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Judge JAMES J. SWEENEY

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[Appx. 2]

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FOR ALL PARTIES - COSTS TAXED

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CLERK OF COURTS

COURT OF COMMON PLEAS  
JUVENILE COURT DIVISION  
CUYAHOGA COUNTY, OHIO

IN THE MATTER OF:

JOHN STEELE  
JORDAN STEELE

CASE NOS. AD04901713  
AD04901714

PERMANENT CUSTODY  
FINDINGS OF FACT  
AND  
CONCLUSIONS OF LAW

This matter came on for hearing this 19<sup>TH</sup> day of December, 2006, before the Honorable Kristin W. Sweeney, upon the Motion to Modify Temporary Custody to Permanent Custody, filed by Cuyahoga County Department of Children and Family Services ("CCDCFS"). The Court finds that notice requirements have been met and that all necessary parties were present this day in Court. Present: mother, Karen Steele; John Lawson, counsel for mother; Michael Granito, Guardian ad Litem ("GAL") for the children; Janna Steinruck and Greg Millas, counsel for CCDCFS; and Lori Lisaula, CCDCFS social worker.

Evidentiary hearings were held on Nov. 28, 2006, Nov. 29, 2006, and Dec. 4, 2006. Exhibits were admitted. (See journal entries.) Counsel for CCDCFS made a proffer on the expected testimony of David Gray.

This matter is before the Court today for the Court's ruling/decision. Upon due consideration, it is ordered that the Motion to Modify Temporary Custody to Permanent Custody is not granted.

The Court finds that CCDCFS has not proven by clear and convincing evidence that it is in the best interest of the children to grant permanent custody of the children to the agency that filed the motion for permanent custody.

In considering the best interests of the children, the Court considered the following relevant factors pursuant to O.R.C. 2151.414(D):

- (1) The interaction and interrelationship of the children with their parents, siblings, relatives, and foster parents and any other persons who may significantly affect the children.

The testimony of the children and their current social worker, Deanna Cowan, made it very clear that these children would suffer severe harm if they were legally and permanently separated from their biological family members including but not limited to: their mother, their sister, their nephew, each other, their aunt Maida, and their cousins.

0052 4490

John Steele, in particular, is thriving in his placement with his foster mother. He maintains a 3.3 GPA, plays football, basketball, and track, and desires to go to college. The Court finds that his relationship with his coaches qualifies as "any other person who may significantly affect the child." John testified how important his football coach is to him. John said his relationship with the coach is "on and off the field." Not only does his coach buy his basketball shoes, John is able to call the coach at any time for help. Because of the coach's influence, John has shown significant improvement in his grades.

Additionally, both John and Jordan testified about the friendships they have formed at their current schools. This network of support that John has created for himself would disappear if the motion for permanent custody was granted. This Court cannot find this to be in his best interest.

Both children testified that they speak to their mother and adult sister every day on the phone. Both testified that they seek their mother's parental advice and Jordan stated his mother would be the first person he would turn to if he got into trouble.

Everyone agreed that these boys need to be placed together and that they would be very much harmed if they were separated. There was agreement that the boys would be harmed if they were no longer able to have relationships with their family members. If the Court was to grant the Agency's motion for permanent custody, these boys would become legal strangers to one another, to their mother, sister, aunt and the entire extended family with no legal remedy if the adoption with Aunt Maida did not work out and their current placement was disrupted.

CCDCFS's case rested on three points. First, the only way John and Jordan could continue their familial relationships is by letting Aunt Maida adopt them. Second, the label of being in foster care was so stigmatizing that it was in the boys' best interest that permanent custody be granted. Third, the needed subsidies for the boy's care would only be available if permanent custody was granted. CCDCFS's case did not rest upon any harm caused by the boys' continued relationship with their family.

The Court finds that the boys do not wish to be adopted, and they are of an age where their consent would be required for the adoption to proceed. Not only did they testify they didn't want to be adopted at the trial, evidence was presented that they did not want to be adopted by Aunt Maida (or live with her) in August of 2005. In the last six months, there has been no regular visitation between the boys and their Aunt Maida - in fact, there has been no visitation since her brother passed away on October 15, 2006. Social Worker Sheila Thomas testified that this was the only home identified as an adoptive placement, and that the boys must live in a home six months before they could be adopted. Aunt Maida would have to move into a larger apartment for the boys to live with her; she testified in early December that the earliest that could happen is sometime in February, 2007. This proposed adoption could not realistically occur for at least eight more months - when John will be approximately six months

away from turning 18 years of age. Additionally, Jordan testified that he likes going to his Aunt's house to see his other family members - not Aunt Maida herself. If CCDCFS's proposed plan for this case was merely a matter of changing the labels on an already existing stable, living arrangement, this Court might be willing to take the risk of severing the family ties in Juvenile Court so that they could be reformed in Probate Court. Unfortunately, that is not the situation, and this Court is left with much uncertainty about whether the adoption with Aunt Maida would really occur. The boys are thriving with their current foster mother and have no wish to leave her home.

The other reasons for seeking permanent custody were that social worker, Ms Cowan, testified that she believed that the stigma of carrying the label of "foster child" was so bad that permanent custody and adoption must be accomplished so that the boys would not have to carry that label. Also, evidence was presented that the in order for Aunt Maida to take the children or the Foster Mother to keep the children, they would need monetary subsidies in an amount that legal custody would not provide. The Court finds neither of these reasons sufficiently compelling to sever all legal ties between these boys and every member of their family.

**(2) The wishes of the child.**

Both boys testified under oath that they have no wish to leave their foster mother's home. Both testified that they would like to go home and live with their mother if that were possible. Both made it clear that they would not consent to adoption. Living with and/or being adopted by their Aunt Maida was something both of them would consider only as a last resort to being placed with strangers.

**(3) The custodial history of the child, including whether the child has been in temporary custody of a public children services agency or private child placing agency under one or more separate orders of disposition for twelve or more months of a consecutive twenty-two month period.**

The motion for PC was filed on November 4, 2005. The boys were removed on December 7, 2004. Temporary Custody was granted on December 20, 2004. The boys have been placed with their foster mother continuously since the date of their removal.

**(4) The children's need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody.**

The Court finds that there is a placement that can be achieved without a grant of permanent custody: planned permanent living arrangement. The Court finds that the following exist pursuant to RC 2151.415(C)(1)(b): the mother has significant physical, mental, or psychological problems and is unable to care for the children. Because of those problems, adoption is not in the best interest if the children, as determined in accordance with division (D) of section 2151.414 of the Revised Code.

The children retain a significant and positive relationship with a parent or relative. Evidence was presented that the mother has a club foot and severe mental health issues. The social workers testified that the mother has a dual diagnosis of chemical dependency issues and depression, and these issues were addressed separately on the case plan. The Court has determined that adoption is not in the children's best interest, and there was ample testimony that the both children have significant and positive relationships with their mother and adult sister.

Further pursuant to 2151.415(C)(1)(c), John is sixteen years of age, has been counseled on the permanent placement options available, and is unwilling to accept or unable to adapt to a permanent placement.

The Court emphasizes that it is aware it may not order PPLA; however, this factor requires the Court to consider whether a permanent placement can be achieved *without* permanent custody, and that is what this Court is doing.

**(5) The report of the Guardian Ad Litem.**

The GAL recommended denying the motion for permanent custody.

**(6) Whether any of the factors in division (E) of Section 2151.414 apply in relation to the parents and child.**

The Court finds that the mother has not been able to maintain her sobriety and has continued to relapse over the last two years that the boys have been in the custody of CCDCFS. Additionally, it is not clear to the Court whether the mother is adequately addressing her mental health issues. There was testimony presented that the mother has adequate housing and that she has been continuously employed with the U.S. Postal Service for at least nine years.

The Court finds that C.C.D.C.F.S. has made reasonable efforts to prevent placement and/or to make it possible for the children to remain in or return to the home.

The Court orders CCDCFS not to move the boys from their current placement with Ms. Tracy Robinson without first filing an amendment to the case plan with notice to all parties, and court approval prior to the move.

**IT IS ORDERED** that the order made committing the children to the temporary custody of CCDCFS is continued.

**This matter is continued for a custody review hearing pursuant to Section 2151.417(C) of the Ohio Revised Code.**

THE PARTIES ARE ADVISED THAT THEY HAVE THIRTY (30) DAYS FROM THE DATE OF THIS ENTRY TO FILE AN APPEAL WITH THE COURT OF APPEALS. THEY ARE ADVISED THAT THEY HAVE THE RIGHT TO COURT-APPOINTED COUNSEL AND FREE TRANSCRIPT OF THE PROCEEDINGS IF THEY ARE INDIGENT, IN ORDER TO PERFECT THEIR APPEAL. THE PARTIES ARE DIRECTED TO CONTACT THIS COURT IMMEDIATELY IN WRITING SHOULD THEY WISH TO EXERCISE THESE RIGHTS.

THE CLERK IS DIRECTED TO SERVE UPON THE PARTIES NOTICE OF THIS JUDGMENT AND ITS DATE OF ENTRY UPON THE JOURNAL. C.R. 58(B)

Filed with the Clerk and Journalized

2/7/07  
Joseph F. Russo      Ex-Officio Clerk  
Deputy Clerk      Mary L. Mitchell

Kristin W. Sweeney  
Judge Kristin W. Sweeney  
Date: 1-11-07