

IN THE SUPREME COURT OF OHIO

IN THE MATTER OF  
CHRISTIAN THOMAS

An Adjudged Dependent Child.

: Case No. 2008-0073  
:  
: On Appeal from the Crawford County  
: Court of Appeals, Third Appellate  
: District  
:  
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MERIT BRIEF OF APPELLANT,  
GEOFFREY L. STOLL, *GUARDIAN AD LITEM*

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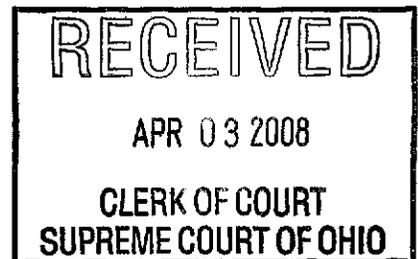
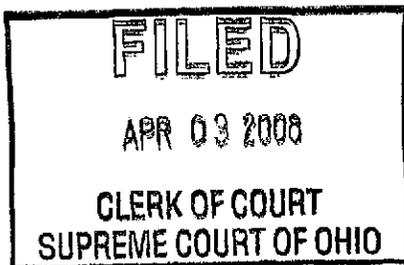


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## STATEMENT OF THE CASE AND FACTS

On January 9, 2006, the Crawford County Department of Job and Family Services (hereinafter "DJFS") filed a complaint alleging Christian Thomas to be a dependent child. (See Record - Complaint: January 9, 2006) The complaint filed by DJFS was predicated upon the filing of a companion case in the Crawford County Juvenile Court wherein Christian's sister, Angel Agapay, was alleged to be an abused child (See Record - Complaint: January 9, 2006).

Following a Shelter Care Hearing held on January 9, 2006, Christian Drake Thomas was placed into the temporary custody of DJFS. (Appendix vi.) An adjudicatory hearing on the abuse/dependency complaints was scheduled for February 7, 2006. (Appendix vi.) The February 7, 2006, hearing on Christian Thomas' case was continued on that date, by agreement of the parties due to the need to establish paternity. (See Record - Judgment Entry: February 8, 2006) On March 8, 2006, the continued adjudicatory hearing was held in the Crawford County Juvenile Court, with service upon Christian's unknown father having been effectuated by publication. (Appendix v.) At such time, based upon in-court admissions, Christian Thomas was found to be a dependent child. (Appendix v.)

A further hearing was held in the Crawford County Juvenile Court on January 9, 2007 (one year from the date of the initial Shelter Care Hearing). (See Record - Judgment Entry: January 17, 2007) This hearing came about as a result of two (2) motions filed in the trial Court. The first motion, filed by Christian's mother, Naomi Agapay, sought a review and modification of the Court's March 13, 2006, dispositional orders. The second motion, filed by DJFS, sought an initial extension of temporary custody. (See Record - Motion for 1<sup>st</sup> Extension of Temporary Custody: November 16, 2006) Following the hearing, the Court

denied Ms. Agapay's motion for the return of her child and granted the request for an initial extension filed of temporary custody by DJFS. (See Record - Judgment Entry: January 17, 2007)

On January 23, 2007, a motion for permanent custody was filed in the trial court by the *guardian ad litem*. (See Record - Motion for Permanent Custody: January 23, 2007) A hearing on said motion was held on March 21, 2007. (Appendix iv.) Thereafter, on June 28, 2007, the trial court rendered its decision, granting the motion for permanent custody. (Appendix iv.) On July 24, 2007, Ms. Agapay filed her original notice of appeal of the trial court's June 28, 2007, decision. (See Record - Notice of Appeal: July 24, 2007)

The Third District Court of Appeals rendered its decision and judgment on December 26, 2007, reversing the award of permanent custody and remanding the case to the trial court. (Appendix ii. and iii.)

## ARGUMENT

**Proposition of Law: R.C. §§2151.281 and 2151.415 vest in *guardians ad litem* the statutory authority to file and prosecute motions for termination of parental rights (i.e. permanent custody) under R.C. §§2151.413 and 2151.414.**

*Guardians ad litem* in child welfare cases derive their existence from the provisions of Chapter 2151 of the Ohio Revised Code. The statutory authority granted to *guardians ad litem* to act for the benefit of their wards is found within R.C. §2151.281.

In cases involving allegations of abuse, Subsection (B)(1) of R.C. §2151.281 mandates that a *guardian ad litem* shall be appointed for the benefit of a child (" *The court shall appoint a guardian ad litem . . .to protect the interest of a child in any proceeding concerning an alleged abused or neglected child . . .*"). Subsection (I) of R.C. §2151.281 imposes specific duties that are to be performed by *guardians ad litem* in the discharge of their obligations to their wards. To effectuate these statutory mandates, and to provide for the maximum protection for their wards, R.C. §2151.281(I) grants unto *guardians ad litem* broad, sweeping powers:

(I) The guardian ad litem for an alleged or adjudicated abused, neglected, or dependent child **shall perform whatever functions are necessary to protect the best interest of the child**, including, but not limited to, investigation, mediation, monitoring court proceedings, and monitoring the services provided the child by the public children services agency or private child placing agency that has temporary or permanent custody of the child, **and shall file any motions and other court papers that are in the best interest of the child.**

O.R.C. §2151.281. (Emphasis added)

Appellant's appointment as *guardian ad litem* in the underlying action in the trial court was effectuated by the entry of judgment on January 9, 2006. (See Record - Judgment Entry: January 9, 2006) Following the finding by the trial court that Christian was a

dependent child, DJFS created and presented to the trial court a case plan designed to remedy the presenting problems within the child's home. (See Record - Judgment Entry April 3, 2006) On April 24, 2006 the trial court filed an entry adopting the submitted case plan as part of the dispositional orders of the court. (See Record - Judgment Entry: April 24, 2006).

Unfortunately, as time passed, it became apparent that it was going to be impossible to ascertain which of the two (2) adults who were in the home at the time that Angel was abused (to-wit: the child's mother, Naomi Agapay, and her paramour, Daniel Thomas) had inflicted the injuries. Neither adult would accept responsibility for the abuse. This refusal of the mother and her paramour to accept responsibility for his/her/their action(s) created a dangerous situation where it was impossible to return Christian to his mother's care with any reasonable degree of assurance that he would remain safe and unharmed. (See Record - Judgment Entry: January 17, 2007) As a result, a modification of the dispositional order in the case was required.

R.C. §2151.415(F) governs the mechanism for modification of dispositional orders for children in the care of the public child care agencies. Subsection (F) of R.C. §2151.415 provides that:

*(F) The court, on its own motion **or the motion of** the agency or person with legal custody of the child, ***the child's guardian ad litem***, or any other party to the action, **may conduct a hearing with notice to all parties to determine** whether any order issued pursuant to this section should be modified or terminated or ***whether any other dispositional order set forth in divisions (A)(1) to (5) of this section should be issued. After the hearing and consideration of all the evidence presented, the court, in accordance with the best interest of the child, may*** modify or terminate any order issued pursuant to this section or ***issue any dispositional order set forth in divisions (A)(1) to (5) of this section.*** In rendering a decision under this division, the court shall comply with section 2151.42 of the Revised Code.*

(Emphasis added)

Subsection (A) of R.C. §2151.415 contains the five (5) dispositional orders which a trial court may issue, following the hearing referenced in R.C. §2151.415(F). Therein, Paragraph (4) of R.C. §2151.415(A) specifically provides, as one of the dispositional alternatives, that the trial court may issue "*An order permanently terminating the parental rights of the child's parents;*". Under the current state of Ohio law there are only two (2) mechanisms for the involuntary judicial termination of parental rights, to-wit: (1) the granting of a petition for adoption of a child, wherein it is alleged and established that consent of the biological parents is not required (R.C. §3107.07); and (2) the granting of a motion for permanent custody (R.C. §§2151.413 and 2151.414).

On January 23, 2007, Appellant, acting within the scope of authority granted to *guardians ad litem* under R.C. §§2151.281 and 2151.415(A)(4) and (F), filed with the trial court a motion seeking to modify the court's prior dispositional order by a termination of Naomi Agapay's parental rights and the award of permanent custody of Christian Thomas to DJFS. (See Record: Motion for Permanent Custody: January 23, 2007) Following a hearing held in the trial court on March 21, 2007, the trial court issued its decision granting Appellant's motion. (Appendix iv.) From this decision Ms. Agapay filed her notice of appeal to the Third District Court of Appeals. (See Record - Notice of Appeal: July 24, 2007)

On December 24, 2007 the Third District Court of Appeals issued its decision, reversing the the trial court's award of permanent custody. The rationale behind the appellate court's decision was that *guardians ad litem* lack statutory authority to file and prosecute motions for permanent custody. (Appendix ii. and iii.)

The decision of the appellate court in the case at bar is directly at odds with the clear and unambiguous language of R.C. §§2151.413, 2151.414 and 2151.415, and is predicated upon an unnecessary and unwarranted construction of these statutes. In rendering its decision the appellate court disregards over 100 years of case law regarding statutory construction that has heretofore been laid down by this Court.

"The object of judicial investigation in the construction of a **statute** is to ascertain and give effect to the intent of the law-making body which enacted it." *State v. Hairston* (2004) 101 Ohio St.3d 308 at 309, quoting *Slingluff v. Weaver* (1902), 66 Ohio St. 621. A "... court may engage in statutory interpretation when the statute under review is ambiguous ... "But the intent of the of the law-makers is to be sought first of all in the language employed, and if the words be free from ambiguity and doubt, and express plainly, clearly and distinctly, the sense of the law-making body, there is no occasion to resort to other means of interpretation. The question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact." *State v. Hairston* (2004) 101 Ohio St.3d 308 at 309-310, quoting *Slingluff v. Weaver* (1902), 66 Ohio St. 621. "**Where the language of a statute is plain and unambiguous and conveys a clear and definite meaning there is no occasion for resorting to rules of statutory interpretation. An unambiguous statute is to be applied, not interpreted.**" *Sears v. Weimer* (1944), 143 Ohio St. 312, paragraph five of syllabus. (Emphasis added) "...no clear standard has evolved to determine the level of lucidity necessary for a writing to be unambiguous. ... When confronted with allegations of ambiguity, a court is to objectively and thoroughly examine the writing to ascertain its meaning. ... **Only when a definitive meaning proves elusive should rules for construing**

**ambiguous language be employed.** Otherwise, allegations of ambiguity become self-fulfilling." **State v. Porterfield** (2005) 106 Ohio St.3d 5, at 7. (Emphasis added)

There is no "elusive meaning" to be found within either the language of O.R.C. §2151.281(I) (" . . . *and shall file any motions and other court papers that are in the best interest of the child . . .* "), nor within the language of O.R.C. §2151.415(A)(4) (" . . . *order permanently terminating the parental rights of the child's parents . . .* "). Rather, the meaning set forth in these plain and simple words is clear. The legislature of this State, by the very enactment of these sections of the Revised Code, vested *guardians ad litem* with the power to file and prosecute motions for the termination of parental rights/permanent custody. This is the law that the appellate court should have, but did not, apply. **Sears** (supra).

However, even assuming for the sake of argument that an ambiguity does exist (that there is some question as to whether or not *guardians ad litem* may file for permanent custody of a child under R.C. §2151.413, such that judicial construction of the statute is necessary) it is a well settled proposition of law that "All statutes relating to the same subject matter must be construed in *pari materia*." **State ex rel. Citizens for Open, Responsive & Accountable Govt. v. Register** (2007), 116 Ohio St.3d 88 at 94, citing **State ex rel. Gains v. Rossi** (1999), 86 Ohio St.3d 620, 622, 716 N.E.2d 204. When R.C. §§2151.281 and 2151.415 are read *in pari materia* with R.C. §§2151.413 and 2151.414, there can be no other logical conclusion reached but that R.C. §§2151.281, 2151.413, 2151.414, and 2151.415, expressly authorize *guardians ad litem* to file and prosecute motions for termination of parental rights/permanent custody.

Furthermore, when R.C. §§2151.281 and 2151.415 are read *in pari materia* with R.C. §2151.413, it is clear that, while the legislature may have failed to specifically include *guardians ad litem* as parties that may file for permanent custody under R.C. 2151.413, it was unquestionably the legislature's intent that *guardians ad litem* have that authority. To grant *guardians ad litem* the authority to file a motion seeking the termination of parental rights (R.C. §2151.415(A) and (F)) without also granting them authority to file and prosecute such a motion for permanent custody (R.C. §2151.413) would yield an absurd and irrational result. The power granted *guardians ad litem* to protect the best interests of their wards would be illusory, at best.

R.C. §2151.413 explicitly authorizes a public children services agency to file a motion with the court for permanent custody of a minor child. However, admittedly, the statute is silent with regard to whether *only* a public children services agency may file for permanent custody. The tension between R.C. §2151.413 and the authority of the *guardian ad litem* to act pursuant to R.C. §§2151.281 and 2151.415 is the issue to be resolved in this appeal. However, and as heretofore set forth, when these statutes are read *in pari materia* the issue resolves itself.

One need only look at the appellate court's interpretation of the express language of R.C. §2151.415, to comprehend the level of misunderstanding that the appellate court had as to the interdependence of these statutes (R.C. §§2151.281, 2151.413, 2151.414, and 2151.415) and the power of *guardians ad litem* to act in their ward's best interest:

"The statute permitting a GAL does permit the GAL to file any motions that are in the best interest of the child. See R.C. 2151.281(I) and 2151.415(F). However, while this may include a recommendation that a children services

agency move for permanent custody, the GAL cannot move on behalf of children's services to grant permanent custody to children's services. To rule otherwise would permit a third party to seek custody of a child on behalf of a nonmoving party."

(Appendix iii., Page 5. Emphasis added.)

There is nothing within the context of R.C. §2151.415 which even remotely supports the appellate court's conclusion that the power conferred upon *guardian ad litem*s to file for the termination of parental rights is intended only as an advisory "recommendation" to children services. Certainly no case law is cited by the appellate court in support of such a position.

Further illustration of the appellate court's confusion in this matter can be found in footnote 2 of its decision. In footnote 2 the court writes:

"Additionally, if this court were to find that the GAL did have authority to move for permanent custody, then the trial court errs by granting custody to the Agency. The statute mandates that permanent custody be granted to *the moving party*, which is the GAL, not the Agency. **Thus, the GAL would be required to accept permanent custody as he is the moving party.**"

(Appendix iii, Page 7. Emphasis added.)

Under Ohio law, termination of parental rights through a grant of permanent custody immediately vests permanent custody of the child into the public agency charged in this state with the welfare of children. R.C. §2151.011 (B)(23) defines "permanent custody" as "...a legal status that vests in a public children services agency or a private child placing agency, all parental rights... and divests the natural parents or adoptive parents of all parental rights . . ." (Emphasis added) In the case *sub judice*, the public children services agency that received permanent custody of Christian Drake Thomas was DJFS. Contrary to the appellate court's conclusion to the contrary, no other placement was legally possible under Chapter 2151.

The reasoning employed by the court of appeals in its decision creates an unnecessary incongruity wherein *guardians ad litem* are provided the mechanism by which to terminate parental rights (R.C. §§2151.281 and 2151.415(A)(4) and (F)), yet fails to authorize *guardians ad litem* to implement the termination of parental rights by preventing *guardians ad litem* from filing the appropriate and necessary motion to vest permanent custody of a child in the appropriate child welfare agency (R.C. §2151.413). The court of appeals' decision implies that there exists a distinction between the interdependent acts of filing a motion for termination of parental rights and the prosecution of a motion for permanent custody. No such distinction exists.

Prior to its decision in the within case, the Third District Court of Appeals had itself, in *In The Matter of Paige Olmstead* (Hancock App. No. 5-01-24, 2001 –Ohio- 2323), recognized and adopted the very proposition of law now proffered by Appellant. In *Olmstead* (supra), the court also relied upon the express language of subsection (A)(4) of O.R.C. 2151.415 (“ . . .*an order to terminate parental rights . . .*”),” in determining that R.C. 2151.415 did grant a *guardian ad litem* authority to move the court for permanent custody. In that decision the court held that “ . . . *because the concepts of termination of parental rights and establishment of permanent custody are inherently interdependent, a guardian ad litem may file a motion seeking permanent custody placement with the appropriate public agency.*” *Olmstead* (supra) at 2. In the case *sub judice*, the court of appeals now attempts to dismiss its holding in *Olmstead* as mere *dicta*. It is difficult to rationalize this new position proffered by the appellate court when the same pivotal issue that the Court determined in *Olmstead* (supra) was that *guardians ad litem* do have standing to prosecute a motion for permanent custody of a child.

In addition to the Third Appellate District's prior holding in Olmstead (supra) at least three other district courts of appeal in the State of Ohio have addressed the issue as to whether only the child welfare agency with custody of the child may file for termination of parental rights/permanent custody. The consensus of these cases is that the authority to file a motion for permanent custody is not a matter limited solely to discretion of the public child care agency.

In the case of In Re: Webster, 2006 WL 1063766 (Ohio App. 5 Dist.), 2006-Ohio-2029, the Court of Appeals for the Fifth Appellate District was presented with an appeal stemming from the trial court's denial of a motion for termination of parental rights. In that case the child's biological aunt and legal custodian had filed a motion, pursuant to R.C. §2151.415, seeking the termination of the parents' parental rights. The motion was, however, filed without also requesting the concomitant vesting of permanent custody of the child into the appropriate child care agency.

The Court, in upholding the trial court's denial of the motion, did not reject the proposition that an individual/entity separate and apart from the child care agency could file for termination of parental rights. Rather, the court based its decision upon the fact that, pursuant to statute, termination of parental rights cannot be effectuated without the corresponding grant of permanent custody to the appropriate child care agency ("*... any order granting the permanent termination of parental rights must be accompanied by an order granting permanent custody to a public children services agency or a private child placing agency. Permanent custody cannot be granted to an individual. See R.C.*

*2151.011(B)(30)) In Re Webster (supra)*

In its analysis of the interdependence of R.C. §§2151.413, 2151.414 and 2151.415, the court wrote:

" . . . a request made for **permanent** termination of parental rights pursuant to R.C. 2151.415(A)(4), whether made through R.C. 2151.415(A) or R.C. 2151.415(F), must be accompanied by a motion for **permanent custody**.

In addition, section (B) of R.C. 2151.415 when referring to section (A) of R.C. 2151.415 states that "the court...shall issue an order of disposition as set forth in division (A) of this section, except that *all orders for permanent custody* shall be made in accordance with sections 2151.413 and 2151.414 of the Revised Code..." (Emphasis added.) **Permanent custody** is not mentioned in (1) through (6) of R.C. 2151.415 but **permanent** termination of parental rights is. In other words, it appears that **permanent** termination of parental rights in R.C. 2151.415(A)(4) is used to mean **permanent custody** as set forth in R.C. 2151.415(B).

**Therefore, it appears from reading all sections of Chapter 2151 in pari materia that permanent termination of parental rights and permanent custody must go together, that the terms are used interchangeably and that the terms must be construed with reference to each other.**

Webster (supra) (Emphasis added)

While attempting to avoid the ultimate question of whether a public children services agency or private child placing agency were the only entities empowered by statute to file for "permanent custody", the court in Webster (supra) did express, in dicta, that: "*. . . it is clear that one of those entities must at least be a party to a motion for permanent custody since only one of those entities can be granted permanent custody.*" (Emphasis added.) Therefore, per Webster (supra), it seems clear that the Fifth District has tacitly approved a "partnership" approach to the filing of motions for permanent custody/termination of parental rights wherein the child care agency and one of the other entities named in R.C. §2151.415 are permitted to work together to accomplish this joint goal.

In the case of *In the Matter of Brian L.*, 2000 WL 216619 (Ohio App. 6 Dist.) the issue as to whether *guardians ad litem* have standing to file and prosecute motions for termination of parental rights/permanent custody, independent of the public child care agency, was directly placed before the Sixth District Court of Appeals. In *Brian L.* (supra) the child's mother had appealed an order issued by the Wood County Common Pleas Court Juvenile Division that had terminated her parental rights and vested permanent custody of the child to the Wood county Department of Human Services. The motion for permanent custody in *Brian L.* (supra) had been filed and prosecuted by the child's *guardian ad litem*. The appellate court, in its review of the clear and unambiguous language of R.C. §2151.415, found no merit in appellant's argument that the *guardian ad litem* lacked standing to take such action.

In her first assignment of error, appellant argues that the trial court erred in holding that permanent custody of a child may be awarded to a public children services agency having long term foster care when a *guardian ad litem*, not a public children services agency, files a motion for permanent custody. This court finds no merit in this assignment of error.

**R.C. 2151.415(F) provides that a neglected child's GAL may petition the trial court to modify an existing dispositional order and to issue a permanent custody order. . . . R.C. 2151.415(A)(4) sets forth the dispositional order of "permanently terminating the parental rights of the child's parents." In this case, Brian's GAL did have standing to file the motion seeking to place Brian in the permanent custody of DHS.** See, *In re Shepherd*, (Sept. 29, 1999), Highland App. No. 99CA04, unreported. (Child's legal custodians may file petition pursuant to R.C. 2151.415(F) for a termination of parental rights although their legal status in relation to the child would not be immediately affected; permanent custody would vest with a public children services agency or a private child placing agency.)

*In the Matter of Brian L.*, 2000 WL 216619 (Ohio App. 6 Dist.) (Emphasis added.)

The Sixth Appellate District's rejection of the Fifth Appellate District's "partnership" approach to filing/prosecuting motions for permanent custody has also been adopted by the

Ninth Appellate District. In the case of *In Re: Stanley*, 2000 WL 1507917 (Ohio App. 9 Dist.), following the filing of its original complaint, the public child care agency had filed an amended complaint in which it sought an award of permanent custody as a dispositional alternative. Thereafter, the agency attempted to withdraw its permanent custody motion and sought an award of legal custody to the child's grandparents. The trial court denied the agency's request. Following the denial, the child's *guardian ad litem* proceeded to successfully prosecute her own motion for permanent custody; a motion opposed at hearing by the child care agency. Although the trial court's grant of the *guardian's* motion for permanent custody was ultimately overturned for insufficiency of evidence ("*The determination by the trial court that permanent custody was in the best interest of Brenden was not supported by clear and convincing evidence.*") the appellate court found nothing inappropriate with the *guardian ad litem* having filed and prosecuted the motion independent of the child care agency.

In the case *sub judice*, the Third District Court of Appeals has erroneously held that *guardians ad litem* may not file a motion for permanent custody (R.C. §2151.413). The appellate court's holding is in direct contradiction to statutory law, to its own prior decision in *Olmstead* (supra), and creates a split of authority with other appellate jurisdictions in the State of Ohio. To uphold such a decision would yield the absurd and irrational result wherein *guardians ad litem* may file for "termination of parental rights" under R.C. §2151.415(A)(4), yet be denied the authority to prosecute a motion vesting permanent custody of a child in the appropriate child care agency under R.C. §2151.413. Moreover, the court of appeals' decision creates a conflict of law where the rule of law was previously settled and uniformly

applied across several jurisdictions. As such, to avoid the irrational result that accompanies the Third District Court of Appeals' decision, said court's ruling should be overturned.

## CONCLUSION

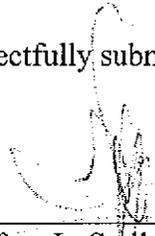
The implication of the Third District Court's decision in the within cause affects the future safety and security of untold numbers of children in the temporary custody of child care agencies throughout this State, both now and in the future. The public has a vested interest in insuring that abused, dependent and neglected children are provided a safe and secure home in which to live and grow. This interest was recognized by the General Assembly with the creation of Chapter 2151 of the Ohio Revised Code and the creation of an entirely new area of the law devoted to the welfare and protection of our children. A key and essential component of this new area of the law was the creation of a checks and balances system which provided that child welfare agencies were not to be the sole voice for what would be in the best interest of the children in their care. Rather, this system (Chapter 2151) provided for the appointment of an independent agent, to-wit: a *guardian ad litem*, to act as the voice for those without a voice, and armed the *guardian ad litem* with a variety of legal mechanisms to employ in the discharge of their duties. The interests of the public, in protecting children who have already been abused, neglected or rendered dependent by the actions of their caregivers, is critically damaged whenever, as in the within cause, a judicial body disregards the clear and unambiguous language of a lawfully adopted statute and substitutes its own interpretation for what was clearly intended by the legislature.

R.C. §§2151.281(I) and 2151.415(A) and (F) vest *guardians ad litem* with the statutory authority to file and prosecute a motion for termination of parental rights (i.e. permanent custody) pursuant to R.C. §§2151.413 and 2151.414. In overturning the trial court's grant of permanent custody in the case at bar, the appellate court has ignored the plain and unambiguous language of these statutes, and has impermissibly

imposed a statutory construction that is contrary to over one hundred years of case law issued by this Court. If allowed to remain intact, the decision of the appellate court would strip *guardians ad litem* of a key and essential tool guaranteed them by statute to act in the best interest of their wards.

The decision below must, therefore, be reversed as a matter of law, and the trial court's grant of permanent custody reinstated.

Respectfully submitted,



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*Guardian Ad Litem / Appellant*

**PROOF OF SERVICE**

I hereby certify that a copy of the foregoing Merit Brief of Appellant, Geoffrey L. Stoll, *Guardian Ad Litem*, was duly served upon Michael E. Wiener, Esq., **Asst. Prosecuting Attorney for Crawford County**, 112 East Mansfield Street, Suite 305, Bucyrus, Ohio 44820, Counsel for Crawford County Department of Job and Family Services; and Shane M. Leuthold, Esq., **LEUTHOLD LAW OFFICE, LLC**, 1309 East Mansfield Street, Bucyrus, Ohio 44820, Counsel for Naomi Loraine Agapay, by regular U.S. mail this 1<sup>st</sup> day of April, 2008.

\_\_\_\_\_  
Geoffrey L. Stoll #0038520  
*Guardian Ad Litem / Appellant*

IN THE SUPREME COURT OF OHIO

08-0076

IN THE MATTER OF  
CHRISTIAN THOMAS

: On Appeal from the Crawford County  
Court of Appeals, Third Appellate  
District

An Adjudged Dependent Child.

: Court of Appeals  
Case No. 3-07-0020

\*\*\*\*\*

NOTICE OF APPEAL OF APPELLANT, GEOFFREY L. STOLL, *GUARDIAN AD LITEM*

\*\*\*\*\*

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Appellant

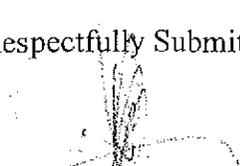


Notice of Appeal of Appellant, Geoffrey L. Stoll, *Guardian Ad Litem*

Appellant, Geoffrey L. Stoll, *Guardian Ad Litem* in the above -captioned matter, hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Crawford County Court of Appeals, Third Appellate District, entered in Court of Appeals Case No. 3-07-0020 on December 26, 2007.

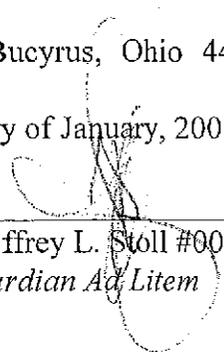
This case is one of public or great general interest and involves the termination of parental rights.

Respectfully Submitted,

  
\_\_\_\_\_  
Geoffrey L. Stoll (#0038520)  
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*Guardian Ad Litem*, Appellant

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Notice of Appeal was duly served upon Michael E. Wiener, Esq., **Asst. Prosecuting Attorney for Crawford County**, 112 East Mansfield Street, Suite 305, Bucyrus, Ohio 44820; and Shane M. Leuthold, **LEUTHOLD & LEUTHOLD**, 1317 East Mansfield Street, Bucyrus, Ohio 44820, Counsel for Naomi Loraine Agapay, by regular U.S. mail this 10<sup>th</sup> day of January, 2008.

  
\_\_\_\_\_  
Geoffrey L. Stoll #0038520  
*Guardian Ad Litem*

IN THE COURT OF APPEALS OF THE THIRD APPELLATE JUDICIAL DISTRICT OF OHIO  
CRAWFORD COUNTY

IN THE MATTER OF:

CASE NUMBER 3-07-20 FILED IN THE COURT OF APPEALS

CHRISTIAN DRAKE THOMAS,

JOURNAL

DEC 24 2007

ADJUDGED DEPENDENT CHILD.

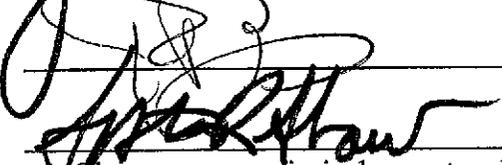
ENTRY

SUE SEEVERS  
CRAWFORD COUNTY CLERK

[NAOMI AGAPAY - MOTHER/APPELLANT]

For the reasons stated in the opinion of this Court rendered herein,  
it is the judgment and order of this Court that the judgment of the trial court is  
reversed at the costs of the appellee for which judgment is rendered and this cause  
is remanded to that court for further proceedings consistent with the opinion and  
judgment of this Court.

It is further ordered that the Clerk of this Court certify a copy of this  
judgment to that court as the mandate prescribed by Appellate Rule 27 or by any  
other provision of law, and also furnish a copy of any opinion filed concurrently  
herewith directly to the trial judge and parties of record.

  
\_\_\_\_\_  
  
\_\_\_\_\_  
(Shaw, concurs in judgment only)  
JUDGES

DATED: December 26, 2007

**COURT OF APPEALS  
THIRD APPELLATE DISTRICT  
CRAWFORD COUNTY**

FILED IN THE COURT OF APPEALS

**DEC 24 2007**

SUE SEEVERS  
CRAWFORD COUNTY CLERK

**IN THE MATTER OF:**

**CASE NUMBER 3-07-20**

**CHRISTIAN DRAKE THOMAS,**

**ADJUDGED DEPENDENT CHILD.**

**O P I N I O N**

**[NAOMI AGAPAY - MOTHER/APPELLANT]**

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**CHARACTER OF PROCEEDINGS:** Appeal from Common Pleas Court.

**JUDGMENT:** Judgment reversed and cause remanded.

**DATE OF JUDGMENT ENTRY:** December 26, 2007

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**ATTORNEYS:**

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**GEOFFREY L. STOLL**  
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**Guardian Ad Litem.**

**Willamowski, J.**

{¶1} Appellant Naomi Agapay (“Agapay”) brings this appeal from the judgment of the Court of Common Pleas of Crawford County, Juvenile Division, terminating her parental rights.

{¶2} On March 20, 2006, Christian Thomas (“Thomas”) was adjudicated a dependant child because his sister had been adjudicated an abused child. At disposition, occurring on the same day, temporary custody was granted to the Crawford County Department of Job and Family Services (“the Agency”). The Agency then created a case plan for Agapay which included the following requirements: 1) obtain financial independence; 2) obtain a psychological evaluation and complete any recommended counseling; and 3) obtain a parental evaluation and complete any recommended counseling. Agapay successfully completed the psychological evaluation and counseling. She also completed the

parental evaluation, which identified no problems and did not require any additional action.

{¶3} On January 9, 2007, a hearing was held on Agapay's motion for review and modification, which requested that custody be returned to her. The Agency also had filed a motion requesting an extension of temporary custody. The parties stipulated that with the exception of obtaining and maintaining stable employment, Agapay had completed the remaining goals and objectives of the original case plan. On January 17, 2007, the trial court granted the Agency's motion for a continuance of temporary custody and denied Agapay's motion for modification of custody.

{¶4} On January 23, 2007, the Guardian Ad Litem ("GAL") filed a motion requesting that permanent custody be granted to the Agency.<sup>1</sup> This motion was filed less than twelve months after the Agency assumed custody of the children pursuant to R.C. 2151.414(B)(2)(d). A hearing was held on the motion on March 21, 2007. On June 28, 2007, the trial court granted the GAL's motion and granted permanent custody to the Agency. Agapay appeals from this judgment and raises the following assignments of error.

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<sup>1</sup> This court finds it interesting that the motion for permanent custody does not reference any failure by Agapay to comply with the case plan. At the prior hearing, the Agency and Agapay stipulated that Agapay had substantially complied with the case plan by completing all of the objectives except obtaining employment. Instead, the motion rests on Agapay's failure to accept that a sibling had been abused by a boyfriend. However, there was no requirement concerning this or even to keep the child away from the boyfriend in the case plan.

The court's grant of permanent custody of [Thomas] to [the Agency] was against the manifest weight of the evidence since [Agapay] had substantially completed the case plan goals and objectives.

The court erred when it granted the motion for permanent custody since the Agency could have secured permanent placement without the grant of permanent custody to the Agency pursuant to R.C. 2151.414(D)(4).

{¶5} A review of the record in this case indicates that the GAL filed its motion and permanent custody was granted pursuant to R.C. 2151.414.

(A) A public children services agency or private child placing agency that, pursuant to an order of disposition under [R.C. 2151.353(A)(2)] \* \* \* 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.

\* \* \*

(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.

R.C. 2151.413.

(A)(1) Upon the filing of a motion pursuant to [R.C. 2151.413] for permanent custody of a child, the court shall schedule a hearing and give notice of the filing of the motion and of the hearing \* \* \* to all parties to the action and to the child's guardian ad litem.

\* \* \*

**(B)(2) With respect to a motion made pursuant to [R.C. 2151.413(D)(2)], the court shall grant permanent custody of the child to the movant if the court determines in accordance with division (E) of this section that the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent and determines that permanent custody is in the child's best interest.**

R.C. 2151.414. No where in this statute is a GAL granted authority to move for permanent custody. A GAL is not an agent of the Agency, but rather an agent of the court, created by statute to represent the best interests of the child. R.C. 2151.281. "The [GAL] so appointed shall not be the attorney responsible for presenting the evidence alleging that the child is an abused or neglected child and shall not be an employee of any party in the proceeding." R.C. 2151.281(B)(1). The statute permitting a GAL does permit the GAL to file any motions that are in the best interest of the child. See R.C. 2151.281(I) and 2151.415(F). However, while this may include a recommendation that a children's services agency move for permanent custody, the GAL cannot move on behalf of children's services to grant permanent custody to children's services. To rule otherwise would permit a third party to seek custody of a child on behalf of a nonmoving party.

{¶6} This court notes that in *In re Olmsted*, 3<sup>rd</sup> Dist. No. 5-01-24, 2001-Ohio-2323, this court was asked whether a trial court erred when it denied a guardian ad litem the opportunity to argue and present evidence with regard to a motion filed by the guardian ad litem for permanent custody. This court held that

as a matter of law, the trial court did not err because the statute which permits the guardian ad litem to file the motion only states that the trial court may hold a hearing, not that it shall. See R.C. 2151.415(F). This court was not required in *Olmsted* to determine whether a guardian ad litem has the authority to file the motion. Thus, notwithstanding the dicta in *Olmsted* which may appear to permit a guardian ad litem to file a motion for permanent rights, this court now holds that the guardian ad litem is not permitted to file a motion for permanent custody because said motion is subject to the requirements of R.C. 2151.413 and 2151.414, which require the motion to be filed by the appropriate agency. R.C. 2151.415(B).

{¶7} A specific statute governing the motion for permanent custody is found at R.C. 2151.413. This statute is specifically referenced by R.C. 2151.414, which is the statute governing the hearing on the motion for permanent custody. “There is only one mechanism for a public children services agency or a private child placing agency to obtain an order for the permanent termination of parental rights and that is by filing a motion for permanent termination of parental rights and permanent custody.” *In re Kenyarra Webster*, 5<sup>th</sup> Dist. No. 05-CA-21, 2006-Ohio-2029, ¶18. At no point do these statutes reference other statutes which grant any party other than the Agency to move for permanent custody of a child. In fact, R.C. 2151.415(B), when referring to the remedies set forth in division A of

the section specifically states that “the court \* \* \* shall issue an order of disposition as set forth in division (A) of this section, except that all orders for permanent custody shall be made in accordance with [R.C. 2151.413 and 2151.414] \* \* \*.” Id. at ¶19. Since R.C. 2151.413 and 2151.414 require a motion by the Agency, the GAL did not have standing to seek permanent custody of Thomas to the Agency and the GAL’s motion is not permitted under R.C. 2151.413. The granting of the GAL’s motion is plain error.<sup>2</sup>

¶8} Having found that the trial court’s judgment granting the GAL’s motion for permanent custody when the GAL lacked standing to file the motion was error, there is no need to address the assignments of error. The judgment of the Court of Common Pleas of Crawford County, Juvenile Division is reversed and the matter is remanded.

*Judgment reversed  
and remanded.*

**ROGERS, P.J., concurs.**

**SHAW, J., concurs in judgment only.**

**r**

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<sup>2</sup> Additionally, if this court were to find that the GAL did have authority to move for permanent custody, then the trial court errs by granting custody to the Agency. The statute mandates that permanent custody be granted to *the moving party*, which is the GAL, not the Agency. Thus, the GAL would be required to accept permanent custody as he is the moving party.

IN THE COURT OF COMMON PLEAS, JUVENILE DIVISION  
CRAWFORD COUNTY, OHIO

In the Matter of:

Case Nos. C 265002  
and F 275008

**CHRISTIAN DRAKE THOMAS,**

JUDGMENT ENTRY

adjudged dependent child.

This matter came on to the further attention of the Court on March 21, 2007 upon the Motion for Permanent Custody as provided in O.R.C. Secs. 2151.413 and 2151.414 as was filed by the Guardian Ad Litem on January 23, 2007.

From the record of the case file the Court finds that mother was personally served Summons to Appear and a copy of the Motion, together with a written explanation of legal rights, by the Crawford County Sheriff on January 24, 2007. The record should reflect that at the initial adjudicatory hearing on February 7, 2006 it was discovered that there was confusion as to the true biological father of the within child as there existed competing presumptions of parentage. Rex Marlon Agapay was presumed father pursuant to the provisions of O.R.C. Sec. 3111.03(A)(1) as the child was born during the couple's marriage and Daniel Lee Thomas was presumed father pursuant to the provisions of O.R.C. Sec. 3727.17 as he had signed a voluntary acknowledgement of paternity at birth. To eliminate the presenting confusion all parties were referred to the Crawford County Child Support Enforcement Agency for genetic testing. Based upon the genetic test results both Rex Marlon Agapay and Daniel Lee Thomas were both excluded as the father of the within child. Pursuant to Civil Rule 21 both were officially and formally dismissed and deleted as necessary parties to these proceedings as a parent of this child by Judgment Entry dated March 20, 2006. Because the identity of the father of the child was unknown, and could not be ascertained with reasonable diligence, the Guardian Ad Litem requested a publication for any person claiming to be the father of this child. So pursuant to O.R.C. Sec. 2151.29 and Juvenile Rule 16 the unknown father, or any person claiming to be the father of this child, was served with Summons to Appear, Notice of the Motion and an explanation of rights, by a publication in the Bucyrus Telegraph

Forum newspaper on March 15, 2007. The Court further specifically finds that attached to the Summons delivered to mother, and contained within the text of the publication for the unknown father, was a full written explanation of the consequences of the Court granting permanent custody, as well as an explanation of all rights afforded to respondent's, as is required by O.R.C. Sec. 2151.414(A).

Present for the proceedings were Peggy Reeves, Intervention Supervisor for Job + Family Services; Sasha Rondy, Jodi Miller and Traci Mason, Case Workers for Job + Family Services; Connie Taylor, Family Support Worker for Job + Family Services; Michael J. Wiener, Assistant County Prosecutor; Naomi L. Agapay, mother; David R. Cory, court appointed counsel for mother; Shane M. Leuthold, retained co-counsel for mother and Geoffrey L. Stoll, Guardian Ad Litem. The record should reflect that the Court had delayed the commencement of these proceedings for approximately fifteen (15) minutes to allow for the late arrival of any other party, but that no person claiming to be father appeared or offered any explanation for his absence and was found to be in default of an appearance or any responsive pleading. For these proceedings the Court did designate Tammy K. McGhee as the official Court Reporter, and a complete steno-type record of the proceedings was taken by the reporter.

In support of the Motion the Court received sworn testimony from Jodi Miller, Sasha Rondy, Peggy Reeves, Connie Taylor and Tracy Reedy. Upon the Movant resting his case, counsel for the respondent/mother made an oral motion for a directed verdict for failing to sustain the required burden of proof. The court received arguments from counsel and found the motion not to be well taken and did deny the same. In reply to the Motion the Court then received sworn testimony from Jodi Miller and Rebecca Rushing and admitted into evidence, without objection, Respondent's Exhibit 1. At the conclusion of all testimony counsel for the respondent/mother again made a motion for a directed verdict for the lack of filing a written Guardian Ad Litem's report in advance of hearing any evidence as required by O.R.C. Sec. 2151.414(C), the same being a jurisdictional requirement. Whereupon a discussion ensued as to the authority in support of the position this would be a jurisdictional requirement when the Guardian Ad Litem was the Movant in this case and as a result of those discussions it was determined that all parties would submit briefs on the motion and written summations of the evidence. The briefs and

summations were duly filed and considered herein. This then is the written opinion of the Court of the findings of fact and conclusions of law required by O.R.C. Sec. 2151.414(C).

The first matter to be resolved is the second motion for directed verdict. The brief filed by the respondent/mother raises the point of the guardian ad litem usurping the authority of the agency to file a motion for permanent custody. This matter of “standing” of a guardian ad litem to file a motion for permanent custody has previously been addressed by this Court in another case and although this issue has been decided in our appellate district by the holding in *In the Matter of Paige Olmsted, Alleged Dependent Child* (2001 Ohio App. LEXIS 5236) this court believes there is additional support for the holding in *Olmsted*. Even though this is a dependency case, immediately upon the filing of the Complaint herein a guardian ad litem was appointed pursuant to the provisions of O.R.C. Sec. 2151.281(B)(1) because of the allegation the infant was residing in a household where a sibling was alleged to have been abused, see Judgment Entry dated January 9, 2006. The guardian ad litem statute, O.R.C. Sec. 2151.281 at subsection (I) provides:

“The guardian ad litem for an alleged or adjudicated abused, neglected, or dependent child shall perform whatever functions are necessary to protect the best interest of the child, including, but not limited to, investigation, mediation, monitoring court proceedings, and monitoring the services provided the child by the public children services agency or private child placing agency that has temporary or permanent custody of the child, and shall file any motions and other court papers that are in the best interest of the child.” (Emphasis added.)

Clearly the State Legislature has empowered a guardian ad litem with the authority to file motions on behalf of the child, and, in fact, by the use of the word shall in the statute made it a responsibility and obligation to file motions when determined by the guardian ad litem’s judgment to be appropriate to the best interests of the child. Juvenile Rule 2(Y) clearly defines a guardian ad litem as a necessary party and affords him interested party status in the proceedings. O.R.C. Sec. 2151.353(E)(2) provides any party may file a motion to modify a disposition. O.R.S. Sec. 2151.417 provides for review at any time of the child’s placement or custody arrangement and Subsection (B) of that section provides as follows:

“The court may amend a dispositional order in accordance with division (E)(2) of section 2151.353 of the Revised Code at any time upon its own motion or upon the motion of any interested party.” (Emphasis added.)

Clearly, in addition to the reasoning in *Olmsted* there is sufficient statutory authority for a guardian ad litem to file an independent motion for permanent custody without being denounced as assuming a power reserved to the public child caring agency.

The initially argued gravamen of the second motion for directed verdict was that the failure to file a written guardian ad litem's report prior to or at the time of the hearing upon the motion is a fatal *jurisdictional* error. However, in carefully examining the brief of the respondent/mother this Court can find no citation of authority for that proposition. This is not the first occasion before this Court that the guardian ad litem has moved for permanent custody. In those instances it is usually the habit of this Court, before receiving any testimony, to address the matter of the necessity of the filing of a separate written report of the guardian ad litem as required by 2151.414(C) as obviously from the text of the motion and prayer for relief all other parties clearly know the alleged grounds and his recommendation and therefore a further written report would be redundant and unnecessary as it would be requiring procedure over substance. However, by oversight, this was not done at the outset in this particular case.

Once again the matter of the necessity of filing a separate formal written guardian ad litem's report prior to or at the time of the hearing upon the motion has previously been addressed by this Court in another case. An examination of O.R.C. Sec. 2151.414(C) does not set forth any guidance as to what should be the format or contents of such a written report. The only directive it does issue is that the guardian ad litem cannot be silent on the issue of permanent custody and must express an opinion in writing. There is no requirement that copies of the report must be provided to the other parties to the case or that it is sworn to. The only purpose of the guardian ad litem's report is nothing more than a further independent source to assist the *court* in deciding the matter. The Civil Rules of Procedure and Juvenile Rules of Procedure, which generally provide guidance as to a particular format and/or contents of pleadings, likewise are of no help. So what such written report must look like could be subject to reasonable interpretation. Could not the format and contents be subject to the discretion of the one to whom its purpose it is to assist? Even though what the guardian ad litem filed herein on January 23, 2007

was clearly captioned "Motion for Permanent Custody" its contents clearly and succinctly set for the analysis and grounds for what was being requested and the prayer for relief clearly and succinctly set forth the opinion of the guardian ad litem as to what should occur as a permanency plan for this child. Clearly its purpose was intended to guide the ultimate decision maker {the court} in a certain direction. By filing the actual post-dispositional motion the guardian ad litem has acquired the weight of sustaining the burden of proof and is actually seeking an Order of the court for a certain result, but that does not mean that what was filed could not fulfill the requirement of O.R.C. Sec. 2151.414(C). The Third District Court of Appeals had concluded *In the Matter of Danny Clark* (90-LW-2232) that a respondent has no standing to challenge the contents of the report of the guardian ad litem. The contents would surely have more importance than format, so a simple extension of inductive reasoning would likewise conclude that a respondent has no standing to challenge the particular format of the report of the guardian ad litem.

Finally, as stated above, the purpose of the report is for the assistance of the court and is not evidence to the advantage or disadvantage of any other party. It seems incomprehensible that the respondent/mother should now claim a fatal error to the proceedings from the lack of something that would neither improve nor detract from her position in the case. This Court fails to comprehend how construing that if the guardian ad litem is the movant for permanent custody that the filing of a separate written report would be redundant and unnecessary biases or prejudices a respondent's position in the case. If such insight as could be gained from a separate written report was so important to the respondent/mother's position, then she could have rectified the deficiency by availing herself of the opportunity to call the guardian ad litem as a witness to question him regarding the substance of his analysis and recommendation, but in this case she specifically chose not to do so. Also, should a party benefit from a claimed error they invited to occur by remaining silent and not questioning the deficiency at a time when the same could have been appropriately corrected?

Therefore, based upon the foregoing, it is the determination of the Court that the guardian ad litem filing a motion for permanent custody, clearly and succinctly setting forth the analysis and grounds for the motion and clearly and succinctly setting forth the opinion of the guardian ad litem as to what

should occur as a permanency plan for the child, fulfills the requirement of O.R.C. Sec. 2151.414(C) and is an equivalent to an actual formal written guardian ad litem report so that the second motion for a directed verdict is found not to be well taken and is denied.

The initial removal and finding of dependency in this case stemmed from the finding of abuse of a sibling residing in the same home. The abuse adjudication of the sibling was based upon competent medical reports and corroborating photographic evidence of other bruising. At the time these cases came to the attention of the authorities this child was a swaddling infant only two months old. The evidence from the commencement of the case has been clear there were two adults present at the time the sibling suffered the presenting fractures. The medical findings (left proximal tibia metaphyseal fracture and left distal femur metaphyseal fracture) did not comport to the explanation given for the cause of the injury. The primary concern at the outset of this case was identifying who caused the injuries to the sibling. Fourteen months later who caused those injuries remains unknown. Who to protect this child from remains unknown and therefore the risk level to this child continues to be high. The respondent/mother continues to deny the injury to the sibling was due to a deliberate act, but rather attempts to diminish the whole situation as being an unexplained self-inflicted accidental injury. On the other hand the guardian ad litem opined that from the known facts three potential scenarios exist as an explanation, any one of which poses a grave risk of harm to this child.

Essentially what was presented at this hearing was also well litigated at the hearing on January 9, 2007. At the hearing on January 9, 2007 it was stipulated and the evidence at this hearing clearly shows the respondent/mother has substantially completed goals No.2 and No. 3 of the Case Plan. However in the fourteen months this case has been open she has not successfully completed goal No. 1 in that she has continuously failed to address the economic concerns for the family. She has failed to obtain stable employment or engage in the JOBS programs offered by Job + Family Services and is completely reliant upon her paramour or others for her and her children's basic sustenance. The significance of this goal comes from the unrefuted testimony of the case work supervisor that child welfare research statistically shows that family financial difficulties contribute to abuse and raise risk concerns.

As to an analysis of the foregoing the pertinent statutory section would be O.R.C. Sec. 2151.414(B)(1)(a) and the question for resolution is whether by having completed two of three case plan goals the child should be placed back with mother or can be placed back with mother within a reasonable time. While the guiding principle of Ohio's child welfare law, to wit: Senate Bill 89 in response to federal Public Law 69-272, is that children should be cared for in the family setting and separated from their parents only when necessary for the child's welfare and safety, that does not mean that reunification is always the paramount result. The Adoption and Safe Families Act of 1997 mandates child safety as a "paramount concern" of national child welfare policy. Ohio's response to the Adoption and Safe Families Act of 1997, House Bill 484, now makes clear that safety concerns must be addressed throughout the life of a child welfare court case and provides reunification must be tempered by safety concerns and recognizes that reunification may not always be appropriate. To phrase the matter another way, the issue is not whether the parents have substantially complied with the case plans as such, or *can* accomplish those tasks, but rather whether the conditions that caused the child's removal have been substantially remedied so that with reasonable certainty the child can be safely returned home. The focus of case plan goals and objectives is the genuine remedying of, and elimination of, conditions detrimental to children and not the mere rote of completing the process outlined in a case plan.

Once again, the provisions of House Bill 484 require the court to evaluate the progress realized towards resolving safety concerns and the adequacy of protecting children from recurrence of maltreatment. As was stated earlier, basically what was presented at this hearing was also presented at the hearing on January 9, 2007 and nothing that has been presented at this hearing has changed the findings from that earlier hearing and perhaps it is well to repeat those findings herein:

"Based upon the testimony, stipulated case plan goals completion and stipulated documents the Court finds that mother presents a significant denial of the obvious existence of the condition found on January 7, 2006. Based upon the medical reports, corroborated by the photographs of the bruising of the sibling of the within child, the Court found probable cause of the condition of the dependency at the Shelter Care Hearing on January 9, 2006 and so adjudicated at the hearing on March 9, 2006. Quite simply mother's opinion does not comply with the known medical facts and physical evidence. Further mother seems to present a victim posture in that the 'system' has not filed charges against her or her paramour and therefore they must be innocent of any

involvement concerning the cause of the sibling of the within child's injuries and continuing to keep the child away from her makes her the victim of this whole incident. Nothing has been presented in this or preceding hearings to competently and reliably identify the cause of the obvious injuries to the sibling of the within child. Nine months later who to protect this child from continues to be unknown and the risk level still very significant. Mother's presenting attitude and position causes a significant elevated concern for the adequate protection of this child. The perceived attitude that it is someone else's responsibility to identify the cause of the harm to the sibling of the within child and since 'they' have not satisfied the obligation then the child should be summarily returned home causes this Court to be very uncomfortable. The highest duty of care for protecting children should be from parents and not necessarily the 'system' and from what has been presented this Court does not trust mother to adequately exercise that duty of care for the safety and welfare of the child."

As stated earlier, the known fact is two adults were present at the time the sibling suffered the fractures. Neither adult can provide any definitive information as to how those fractures occurred. The medical findings do not support the respondent/mother's theory of an unexplained self-inflicted accidental injury. The testimony revealed that during visits the respondent/mother would engage Job + Family Services personnel in discussions that always involved a new explanation of how neither adult could be at fault. The simple question involved in this case is who the perpetrator was and who failed to protect. This is the dilemma that confronted Job + Family Services in creating the Case Plan goals. The inference of three potential scenarios existing as an explanation for the unknown had to be ruled out of consideration. In an attempt to resolve the unknown and to eliminate the respondent/mother as a suspect, the child welfare agency offered the opportunity to take a polygraph examination but the respondent/mother declined. The testimony revealed that if the perpetrator were identified, then definitive services and protections could have been added to the Case Plan to eliminate the concern of the significant risk of harm to this child. The child welfare agency found itself in a "catch 22" conundrum beyond their control. The Court must find that without a competent and reliable identification of the cause of the obvious injuries to the sibling nothing could be put in a Case Plan that would be effective in remedying the condition that caused the child to be placed out of the home.

In addition to the two broken bones, the sibling also exhibited numerous bruises and a bite mark on her arm. The paramour had admitted he bit the child and the respondent/mother acknowledged this had happened. The testimony revealed the paramour had slapped the sibling because she had tried to bite

him. The unrefuted testimony was that mother knew her paramour was generally physically aggressive with the sibling. Further, it was revealed that in the course of discussions with the various Job + Family Services personnel during visitations that mother would focus on the fractures and ignore the other multiple injuries of the sibling and the prior conduct of the paramour towards the sibling. Although the Court cannot draw a reliable and conclusive inference from these facts as to whom the perpetrator was, they do raise a significant elevated concern for the safety and protection of this child and, as stated from the hearing on January 9, 2007, does not establish an acceptable level of confidence to believe that mother will exercise the appropriate duty of care for the protection of this child.

From the foregoing the Court must conclude that notwithstanding reasonable case planning under the circumstances and diligent efforts by the agency to assist the parent to remedy the problems that initially caused the child to be placed out of the home those concerns have not been adequately resolved to consider *safely* reunifying the child back home and that this situation is not likely to significantly improve in the near foreseeable future. Now, having concluded that the criteria of O.R.C. Sec. 2151.414(B)(1)(a) exist, the next consideration is whether a grant of permanent custody to the public child caring agency would be in the best interests of the child. For this determination the Court must consider the five (5) factors set forth in O.R.C. Sec. 2151.414(D).

While in the preceding fourteen months mother exercised consistent weekly visitation with the child, the testimony divulged that the child lacks a strong bond to mother and while there for the purpose of visitation mother would rather interact with the other adults present in the room and had to be frequently redirected to the child. The child has been in the same foster home since January 13, 2006. The child is well bonded with the foster family and given the opportunity they are prepared to adopt him.

The mother proposes that a legally secure placement could be accomplished without granting permanent custody to the public child caring agency by placing the child with the maternal aunt. The maternal aunt, Rebecca Rushing, is an out-of-state resident, residing in North Carolina. She testified she is a Certified Nursing Assistant employed at the Five Oakes Manor nursing home. The maternal aunt has never met the child, but claims she loves him already. The maternal aunt testified that as a family

member it was her “right” to demand the child be placed with her. The maternal aunt testified that, if ordered by the court, she would keep the child safe from mother’s paramour. Cross-examination revealed how little the maternal aunt actually knows of the circumstances of the injuries to the sibling and the reasons for the removal of these children from their family home.

An Interstate Compact Placement of Children as provided in O.R.C. Sec. 5103.20 through 5103.28 would need to be completed for placement with maternal aunt to be a viable consideration. The maternal aunt had testified that she had expressed interest early on in the case of having custody of the child, but she did not push the matter due to mother’s stated desire to maintain the child in a local foster home so that it would be more convenient for her to visit him. The local public child welfare agency made a referral to the State of North Carolina for an interstate compact homestudy of the maternal aunt in January of 2007. As of the date of the hearing the reciprocal child welfare agency of North Carolina has never come to the maternal aunt’s home for an inspection or secured releases for a records check of the members of her household. The unrefuted testimony of the case work supervisor is that an interstate compact placement approval takes an average of nine (9) months.

Mother has urged that whatever time it would take for the reciprocal child welfare agency in North Carolina to complete the home study of maternal aunt should now be indulged, however the provisions of House Bill 484 requires a “*fast-track*” for permanency for children. The provisions of House Bill 484 would require time conflicts to be resolved in the favor of the interests of children. Further, from the circumstance of the lack of accurate knowledge of why the child was removed, this Court does not find the maternal aunt’s assurance of adequately protecting this child to be trustworthy and reliable. For these reasons this Court does not find the maternal aunt to be a suitable and appropriate alternative long-term secure placement for this child.

Considering everything, the Court finds that there is a questionable parent-child relationship in existence. That the child has been in an out-of-home placement for fourteen (14) months. That given the presenting circumstances, that in the preceding fourteen (14) months all reasonable efforts have been made to help the mother resolve the primary problem that initially caused the child to be removed from

home and to consider reunifying the child back home, however the mother has continuously failed to substantially remedy the conditions causing the child's initial removal and there is no indication that this situation is likely to improve in the near foreseeable future. That it is in the best interests and welfare of this child to provide him with a safe, stable nurturing environment from another home and family.

Based upon the evidence, the Court specifically finds by clear and convincing evidence as follows: (a) that the child should not be placed back with mother because in fourteen (14) months she has continuously failed to substantially remedy the conditions causing the child to be placed outside the home as provided in O.R.C. Sec. 2151.414(E)(1), (b) that the child cannot be placed back with mother within a reasonable time, (c) that considering the circumstances the public child caring agency has made all reasonable efforts to consider *safely* reunify the child back home, however the uncertainty of the cause of the injuries to the sibling of the within child effectively prevented the complete provision of those services, (d) that there are no available relatives suitable and appropriate to assume legal custody of the child, and (e) that considering the factors established in O.R.C. Sec. 2151.414(D) that it would be in the best interests of the child to grant permanent custody to the public child caring agency to provide him with a safe, stable nurturing environment from another family home.

**WHEREFORE**, based upon the foregoing, it is hereby **ORDERED, ADJUDGED** and **DECERRED** as follows:

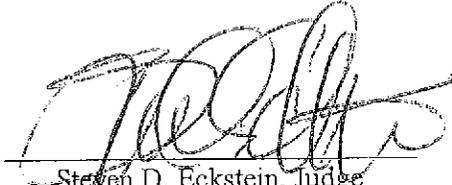
1. That this matter is properly within the jurisdiction of the Court and that all notice requirements have been properly complied with as required by law;
2. That the second motion for a directed verdict is found not to be well taken and is denied;
3. That the parental rights of mother, Naomi Lorraine Agapay, and the unknown biological father, are herewith terminated and forever severed and released;
4. That the child is committed to the permanent custody of Crawford County Job + Family Services for appropriate adoptive placement;
5. That Crawford County Job + Family Services shall develop a Case Plan Amendment consistent with this decision and submit the same for approval herein within two weeks;

6. That mother is Ordered to fully cooperate in the completion of the social and medical history as provided in O.R.C. Sec. 3107.12.

FILED  
PROBATE COURT  
JUVENILE COURT

JUN 28 2007

Steven D. Eckstein, Judge  
CRAWFORD COUNTY OHIO



Steven D. Eckstein, Judge  
Dated: June 28, 2007

CERTIFICATE OF SERVICE

Pursuant to Civil Rule 58(B), I, the undersigned Deputy Clerk of the Crawford County Juvenile Court, do hereby certify that I caused a true and exact copy of the foregoing Judgment Entry to be served upon counsel of record, to wit: David R. Cory, Shane M. Leuthold, Michael J. Wiener and Geoffrey L. Stoll, by depositing a copy of same in their respective correspondence slots in the court offices this 28th day of June, 2007.



Deputy Clerk

cc: Job + Family Services  
Child Support Enforcement Agency

**IN THE COURT OF COMMON PLEAS, JUVENILE DIVISION  
CRAWFORD COUNTY, OHIO**

In the Matter of:	:	Case No. C 265002
<b>CHRISTIAN DRAKE THOMAS</b>	:	
Adjudged dependent child	:	<b>JUDGMENT ENTRY</b>

This matter came on to the attention of the Court on March 8<sup>th</sup>, 2006, for the continued adjudication of the Complaint filed by the Crawford County Job and Family Services alleging the child to be dependent as defined in Ohio Revised Code §2151.04(D). From a review of the case file the Court finds that all Notice and Jurisdictional requirements have been met and previously addressed by the Court.

Present for the proceedings were Wanda Sharrock, Director of Crawford County Job and Family Services; Jodi Miller, Assessment Caseworker for Crawford County Job and Family Services; Tina Howell, Intervention Caseworker for Crawford County Job and Family Services; Michael J. Wiener, Assistant Prosecuting Attorney; and Naomi L. Agapay, mother; represented by attorney David R. Cory. For the purposes of this proceeding, pursuant to Superintendence Rule 11(A), a record was taken by audio-electronic recording device, and preserved through Tape No. 267, Side A, meter reading 2743 through 2951.

As a preliminary matter prior to commencing these proceedings, the Court was provided with the CSEA Administrative Orders of Non-existence of Child-Parent Relationship based upon the genetic test results wherein both Daniel L. Thomas and Rex M. Agapay were excluded as the father of the within child. Pursuant to Civil Rule 21 Daniel L. Thomas and Rex M. Agapay are officially and formally dismissed and deleted as necessary parties to these proceedings as a parent of this child.

The Court then inquired of the mother as to how she answered to the allegations of the Complaint, to which she admitted the same. The parties stipulated that clear and convincing evidence does exist for the Court to find that the child was dependent, with nothing further being required. Based upon the admission, together with the stipulation, the Court does find by clear and convincing evidence the child was dependent as defined in Ohio Revised Code Section 2151.04(D). **THEREFORE**, it is hereby **ORDERED, ADJUDGED** and **DECREED** that the child is a dependent child.

The Court then did inquire if the parties were prepared to proceed to the dispositional hearing as provided in Ohio Revised Code § 2151.35(B). The Court finds that all documents required for the dispositional hearing were served on all parties in advance of the adjudicatory hearing, and all parties present consented to the dispositional hearing being held immediately after the adjudicatory hearing. Thereafter, the Court did receive statements as to the proper disposition to be made under Ohio Revised Code §2151.353.

From the information presented, the Court finds that all reasonable efforts have been made to work with the youth from the home to prevent removal; however, the surrounding situation and condition now existing presents a significant danger to the safety and welfare of the child for which a removal is now necessary to protect the child. The Court further finds that the child should be formally committed to the temporary custody of the Job and Family Services for appropriate foster care or relative placement. All parties in interest concur with this disposition.

**THEREFORE**, by way of disposition, pursuant to Ohio Revised Code §2151.353, it is hereby **ORDERED, ADJUDGED** and **DECREED**, as follows:

1. That this matter is properly within the jurisdiction of the Court and that all notice requirements have been properly complied with as provided by law;

2. That as a father-child relationship does not exist between either Daniel L. Thomas or Rex M. Agapay and the within child, pursuant to Civil Rule 21 Daniel L. Thomas and Rex M. Agapay are officially and formally dismissed and deleted as necessary parties to these proceedings;

3. That the child is formally committed to the temporary custody of the Crawford County Job and Family Services for appropriate foster care or relative placement;

4. That the commitment to the Temporary Custody of the Crawford County Job and Family Services will extend only through January 7<sup>th</sup>, 2007, unless extended or modified pursuant to the provisions of Ohio Revised Code §§ 2151.353 or 2151.415;

5. That Crawford County Job and Family Services shall develop an interim Case Plan document, consistent with today's proceedings, to initiate the necessary evaluations for further case planning determinations, and shall submit the same to the Court for approval within two (2) weeks.

6. That the costs are waived herein.



Steven D. Eckstein, Judge  
Dated: March 20, 2006

cc: Job and Family Services, Galion Office  
Michael J. Wiener  
J. Andrew Motter  
M. Lore' Whitney  
David R. Cory  
Geoffrey L. Stoll

FILED  
PROBATE COURT  
JUVENILE COURT

MAR 20 2006

Steven D Eckstein, Judge  
CRAWFORD COUNTY OHIO

**IN THE COURT OF COMMON PLEAS, JUVENILE DIVISION  
CRAWFORD COUNTY, OHIO**

In the Matter of : Case No. C 265002

**CHRISTIAN DRAKE THOMAS** :

Alleged dependent child : **JUDGMENT ENTRY**

This matter came on to the attention of the Court on January 9<sup>th</sup>, 2006, upon a Shelter Care Hearing pursuant to Ohio Revised Code Section 2151.314. A sworn Complaint has been filed alleging the child to be dependent as defined in Ohio Revised Code §2151.04(D), together with a Motion for a Shelter Care Hearing. Actual notice of the hearing was personally served on the mother on January 9<sup>th</sup>, 2006.

Present for the proceedings were Wanda Sharrock, Direction Crawford County Job and Family Services; Billie Jo Carr, Children's Services Administrator, Crawford County Job and Family Services; Jodi Miller, Caseworker, Crawford County Job and Family Services; Michael J. Wiener, Assistant Prosecuting Attorney; Naomi Loraine Agapay, mother; Shane Leuthold, counsel for mother; and Geoffrey L. Stoll, Guardian Ad Litem. For the purposes of this proceeding, pursuant to Superintendence Rule 11(A), a record was taken by audio-electronic recording device, and preserved through Tape No. 261, Side A, meter reading 2293 through 2504.

Prior to commencing today's proceedings, the parties privately discussed the issues involved with this hearing before officially convening these proceedings. Upon commencing these proceedings, the parties stipulated that probable cause does exist to believe that the child was in a dependent condition and that a removal from his home on January 7, 2006 was necessary and appropriate to protect the child from immediate harm from the condition of his surroundings, to provide adequate care for the child, and to protect the best interest and welfare of the child.

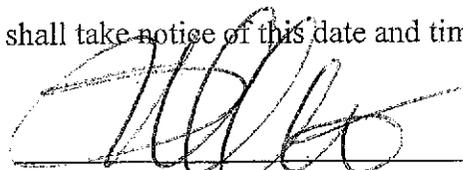
Based upon the stipulation of the parties, the Court finds that probable cause does exist to believe that the child was in a dependent condition on January 7, 2006, and that a removal from his home was necessary and appropriate to protect the child from immediate harm from the condition of his surroundings, to provide adequate care for the child, and to protect the best interest and welfare of the child. The Court finds that due to the exigent nature of the circumstances all reasonable efforts to work with the child in the home and prevent a removal was not possible of completion and the surrounding situation and conditions then existing presented a significant danger to the safety and welfare of the child for which an immediate removal was necessary to protect the child until the adjudication. The Court further finds that due to the presenting circumstances, that there are no available family members or relatives available to assume the care and custody of the child at this time.

**THEREFORE**, pursuant to Ohio Revised Code Section 2151.33, and Juvenile Rule 13, it is hereby **ORDERED, ADJUDGED and DECREED**

(1) That pending the hearing on the Complaint, and any further Order of this Court, the child is committed to the temporary custody of the Crawford County Job and Family Services for appropriate foster care or relative placement;

(2) That the parents shall be afforded reasonable visitation with the minor child upon such terms and conditions as will be arranged by Crawford County Job and Family Services;

(3) That the hearing for the adjudication of the within Complaint is scheduled for February 7, 2006 at 1:30 p.m., all parties in interest shall take notice of this date and time, with no further notice required from the Court.



Steven D. Eckstein, JUDGE

Dated: January 25, 2006

**FILED  
PROBATE COURT  
JUVENILE COURT**

**JAN 25 2006**

cc: Job and Family Services, Galion Office  
Michael J. Wiener  
Geoffrey L. Stoll  
Shane M. Leuthold

Steven D Eckstein, Judge

**2151.011****Statutes and Session Law****TITLE [21] XXI COURTS -- PROBATE -- JUVENILE****CHAPTER 2151: JUVENILE COURT****2151.011 Juvenile court definitions.**

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**2151.011 Juvenile court 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.

(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.



(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, 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 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.

(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.

(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.

Effective Date: 04-03-2003; 09-16-2004; 05-18-2005; 09-21-2006

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child.

(G) In any case involving an alleged or adjudicated abused or neglected child or an agreement for the voluntary surrender of temporary or permanent custody of a child that is made in accordance with section 5103.15 of the Revised Code, the court shall appoint the guardian ad litem in each case as soon as possible after the complaint is filed, the request for an extension of the temporary custody agreement is filed with the court, or the request for court approval of the permanent custody agreement is filed. In any case involving an alleged dependent child in which the parent of the child appears to be mentally incompetent or is under eighteen years of age, there is a conflict of interest between the child and the child's parents, guardian, or custodian, or the court believes that the parent of the child is not capable of representing the best interest of the child, the court shall appoint a guardian ad litem for the child. The guardian ad litem or the guardian ad litem's replacement shall continue to serve until any of the following occur:

- (1) The complaint is dismissed or the request for an extension of a temporary custody agreement or for court approval of the permanent custody agreement is withdrawn or denied;
- (2) All dispositional orders relative to the child have terminated;
- (3) The legal custody of the child is granted to a relative of the child, or to another person;
- (4) The child is placed in an adoptive home or, at the court's discretion, a final decree of adoption is issued with respect to the child;
- (5) The child reaches the age of eighteen if the child is not mentally retarded, developmentally disabled, or physically impaired or the child reaches the age of twenty-one if the child is mentally retarded, developmentally disabled, or physically impaired;
- (6) The guardian ad litem resigns or is removed by the court and a replacement is appointed by the court.

If a guardian ad litem ceases to serve a child pursuant to division (G)(4) of this section and the petition for adoption with respect to the child is denied or withdrawn prior to the issuance of a final decree of adoption or prior to the date an interlocutory order of adoption becomes final, the juvenile court shall reappoint a guardian ad litem for that child. The public children services agency or private child placing agency with permanent custody of the child shall notify the juvenile court if the petition for adoption is denied or withdrawn.

(H) If the guardian ad litem for an alleged or adjudicated abused, neglected, or dependent child is an attorney admitted to the practice of law in this state, the guardian ad litem also may serve as counsel to the ward. Until the supreme court adopts rules regarding service as a guardian ad litem that regulate conflicts between a person's role as guardian ad litem and as counsel, if a person is serving as guardian ad litem and counsel for a child and either that person or the court finds that a conflict may exist between the person's roles as guardian ad litem and as counsel, the court shall relieve the person of duties as guardian ad litem and appoint someone else as guardian ad litem for the child. If the court appoints a person who is not an attorney admitted to the practice of law in this state to be a guardian ad litem, the court also may appoint an attorney admitted to the practice of law in this state to serve as counsel for the guardian ad litem.

- (I) The guardian ad litem for an alleged or adjudicated abused, neglected, or dependent child shall

perform whatever functions are necessary to protect the best interest of the child, including, but not limited to, investigation, mediation, monitoring court proceedings, and monitoring the services provided the child by the public children services agency or private child placing agency that has temporary or permanent custody of the child, and shall file any motions and other court papers that are in the best interest of the child.

The guardian ad litem shall be given notice of all hearings, administrative reviews, and other proceedings in the same manner as notice is given to parties to the action.

(J)(1) When the court appoints a guardian ad litem pursuant to this section, it shall appoint a qualified volunteer or court appointed special advocate whenever one is available and the appointment is appropriate.

(2) Upon request, the department of job and family services shall provide for the training of volunteer guardians ad litem.

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**2151.413****Statutes and Session Law****TITLE [21] XXI COURTS -- PROBATE -- JUVENILE****CHAPTER 2151: JUVENILE COURT****2151.413 Motion requesting permanent custody.****2151.413 Motion requesting 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 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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**2151.414****Statutes and Session Law****TITLE [21] XXI COURTS -- PROBATE -- JUVENILE****CHAPTER 2151: JUVENILE COURT****2151.414 Hearing on motion requesting permanent custody.**

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**2151.414 Hearing on motion requesting permanent custody.**

(A)(1) Upon the filing of a motion pursuant to section **2151.413** of the Revised Code for permanent custody of a child, the court shall schedule a hearing and give notice of the filing of the motion and of the hearing, in accordance with section 2151.29 of the Revised Code, to all parties to the action and to the child's guardian ad litem. The notice also shall contain a full explanation that the granting of permanent custody permanently divests the parents of their parental rights, 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, and the name and telephone number of the court employee designated by the court pursuant to section 2151.314 of the Revised Code to arrange for the prompt appointment of counsel for indigent persons.

The court shall conduct a hearing in accordance with section 2151.35 of the Revised Code to determine if it is in the best interest of the child to permanently terminate parental rights and grant permanent custody to the agency that filed the motion. The adjudication that the child is an abused, neglected, or dependent child and any dispositional order that has been issued in the case under section 2151.353 of the Revised Code pursuant to the adjudication shall not be readjudicated at the hearing and shall not be affected by a denial of the motion for permanent custody.

(2) The court shall hold the hearing scheduled pursuant to division (A)(1) of this section not later than one hundred twenty days after the agency files the motion for permanent custody, except that, for good cause shown, the court may continue the hearing for a reasonable period of time beyond the one-hundred-twenty-day deadline. The court shall issue an order that grants, denies, or otherwise disposes of the motion for permanent custody, and journalize the order, not later than two hundred days after the agency files the motion.

If a motion is made under division (D)(2) of section **2151.413** of the Revised Code and no dispositional hearing has been held in the case, the court may hear the motion in the dispositional hearing required by division (B) of section 2151.35 of the Revised Code. If the court issues an order pursuant to section 2151.353 of the Revised Code granting permanent custody of the child to the agency, the court shall immediately dismiss the motion made under division (D)(2) of section **2151.413** of the Revised Code.

The failure of the court to comply with the time periods set forth in division (A)(2) of this section does not affect the authority of the court to issue any order under this chapter and does not provide any basis for attacking the jurisdiction of the court or the validity of any order of the court.

(B)(1) Except as provided in division (B)(2) of this section, the court may grant permanent custody of a child to a movant if the court determines at the hearing held pursuant to division (A) of this section, by clear and convincing evidence, that it is in the best interest of the child to grant permanent custody of the child to the agency that filed the motion for permanent custody and that any of the following apply:

(a) The child is not abandoned or orphaned or has not 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, and the child cannot be placed with either of the child's parents within a reasonable time or should not be placed with the child's parents.

(b) The child is abandoned.

(c) The child is orphaned, and there are no relatives of the child who are able to take permanent custody.

(d) The 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.

For the purposes of division (B)(1) of this section, 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) With respect to a motion made pursuant to division (D)(2) of section 2151.413 of the Revised Code, the court shall grant permanent custody of the child to the movant if the court determines in accordance with division (E) of this section 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 this section that permanent custody is in the child's best interest.

(C) In making the determinations required by this section or division (A)(4) of section 2151.353 of the Revised Code, a court shall not consider the effect the granting of permanent custody to the agency would have upon any parent of the child. A written report of the guardian ad litem of the child shall be submitted to the court prior to or at the time of the hearing held pursuant to division (A) of this section or section 2151.35 of the Revised Code but shall not be submitted under oath.

If the court grants permanent custody of a child to a movant 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. The court shall not deny an agency's motion for permanent custody solely because the agency failed to implement any particular aspect of the child's case plan.

(D) In determining the best interest of a child at a hearing held pursuant to division (A) of this section or for the purposes of division (A)(4) or (5) of section 2151.353 or division (C) of section 2151.415 of the Revised Code, the court shall consider all relevant factors, including, but not limited to, the following:

(1) The interaction and interrelationship of the child with the child's parents, siblings, relatives, foster caregivers and out-of-home providers, and any other person who may significantly affect the child;

(2) The wishes of the child, as expressed directly by the child or through the child's guardian ad litem, with due regard for the maturity of the child;

(3) The custodial history of the child, including whether the 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;

(4) The child's need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency;

(5) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child.

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.

(E) In determining at a hearing held pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code whether a child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents, the court shall consider all relevant evidence. If the court determines, by clear and convincing evidence, at a hearing held pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code that one or more of the following exist as to each of the child's parents, the court shall enter a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent:

(1) Following the placement of the child outside the child's home and notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused the child to be placed outside the home, the parent has failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home. In determining whether the parents have substantially remedied those conditions, the court shall consider parental utilization of medical, psychiatric, psychological, and other social and rehabilitative services and material resources that were made available to the parents for the purpose of changing parental conduct to allow them to resume and maintain parental duties.

(2) Chronic mental illness, chronic emotional illness, mental retardation, physical disability, or chemical dependency of the parent that is so severe that it makes the parent unable to provide an adequate permanent home for the child at the present time and, as anticipated, within one year after the court holds the hearing pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code;

(3) The parent committed any abuse as described in section 2151.031 of the Revised Code against the child, caused the child to suffer any neglect as described in section 2151.03 of the Revised Code, or allowed the child to suffer any neglect as described in section 2151.03 of the Revised Code between the date that the original complaint alleging abuse or neglect was filed and the date of the filing of the motion for permanent custody;

(4) The parent has demonstrated a lack of commitment toward the child by failing to regularly support, visit, or communicate with the child when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for the child;

(5) The parent is incarcerated for an offense committed against the child or a sibling of the child;

(6) The parent has been convicted of or pleaded guilty to an offense under division (A) or (C) of section 2919.22 or under section 2903.16, 2903.21, 2903.34, 2905.01, 2905.02, 2905.03, 2905.04, 2905.05, 2907.07, 2907.08, 2907.09, 2907.12, 2907.21, 2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 2919.24, 2919.25,

2923.12, 2923.13, 2923.161, 2925.02, or 3716.11 of the Revised Code and the child or a sibling of the child was a victim of the offense or the parent has been convicted of or pleaded guilty to an offense under section 2903.04 of the Revised Code, a sibling of the child was the victim of the offense, and the parent who committed the offense poses an ongoing danger to the child or a sibling of the child.

(7) The parent has been convicted of or pleaded guilty to one of the following:

(a) An offense under section 2903.01, 2903.02, or 2903.03 of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to an offense described in those sections and the victim of the offense was a sibling of the child or the victim was another child who lived in the parent's household at the time of the offense;

(b) An offense under section 2903.11, 2903.12, or 2903.13 of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to an offense described in those sections and the victim of the offense is the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense;

(c) An offense under division (B)(2) of section 2919.22 of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to the offense described in that section and the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense is the victim of the offense;

(d) An offense under section 2907.02, 2907.03, 2907.04, 2907.05, or 2907.06 of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to an offense described in those sections and the victim of the offense is the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense;

(e) A conspiracy or attempt to commit, or complicity in committing, an offense described in division (E)(7)(a) or (d) of this section.

(8) The parent has repeatedly withheld medical treatment or food from the child when the parent has the means to provide the treatment or food, and, in the case of withheld medical treatment, the parent withheld it for a purpose other than to treat the physical or mental illness or defect of the child by spiritual means through prayer alone in accordance with the tenets of a recognized religious body.

(9) The parent has placed the child at substantial risk of harm two or more times due to alcohol or drug abuse and has rejected treatment two or more times or refused to participate in further treatment two or more times after a case plan issued pursuant to section 2151.412 of the Revised Code requiring treatment of the parent was journalized as part of a dispositional order issued with respect to the child or an order was issued by any other court requiring treatment of the parent.

(10) The parent has abandoned the child.

(11) The parent has had parental rights involuntarily terminated pursuant to this section or section 2151.353 or 2151.415 of the Revised Code with respect to a sibling of the child.

(12) The parent is incarcerated at the time of the filing of the motion for permanent custody or the dispositional hearing of the child and will not be available to care for the child for at least eighteen months after the filing of the motion for permanent custody or the dispositional hearing.

(13) The parent is repeatedly incarcerated, and the repeated incarceration prevents the parent from providing care for the child.

(14) The parent for any reason is unwilling to provide food, clothing, shelter, and other basic necessities for the child or to prevent the child from suffering physical, emotional, or sexual abuse or physical, emotional, or mental neglect.

(15) The parent has committed abuse as described in section 2151.031 of the Revised Code against the child or caused or allowed the child to suffer neglect as described in section 2151.03 of the Revised Code, and the court determines that the seriousness, nature, or likelihood of recurrence of the abuse or neglect makes the child's placement with the child's parent a threat to the child's safety.

(16) Any other factor the court considers relevant.

(F) The parents of a child for whom the court has issued an order granting permanent custody pursuant to this section, upon the issuance of the order, cease to be parties to the action. This division is not intended to eliminate or restrict any right of the parents to appeal the granting of permanent custody of their child to a movant pursuant to this section.

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**2151.415****Statutes and Session Law****TITLE [21] XXI COURTS -- PROBATE -- JUVENILE****CHAPTER 2151: JUVENILE COURT****2151.415 Motion for order of disposition upon termination of temporary custody order.**

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**2151.415 Motion for order of disposition upon termination of temporary custody order.**

(A) Except for cases in which a motion for permanent custody described in division (D)(1) of section 2151.413 of the Revised Code is required to be made, a public children services agency or private child placing agency that has been given temporary custody of a child pursuant to section 2151.353 of the Revised Code, not later than thirty days prior to the earlier of the date for the termination of the custody order pursuant to division (F) of section 2151.353 of the Revised Code or the date set at the dispositional hearing for the hearing to be held pursuant to this section, shall file a motion with the court that issued the order of disposition requesting that any of the following orders of disposition of the child be issued by the court:

- (1) An order that the child be returned home and the custody of the child's parents, guardian, or custodian without any restrictions;
- (2) An order for protective supervision;
- (3) An order that the child be placed in the legal custody of a relative or other interested individual;
- (4) An order permanently terminating the parental rights of the child's parents;
- (5) An order that the child be placed in a planned permanent living arrangement;
- (6) In accordance with division (D) of this section, an order for the extension of temporary custody.

(B) Upon the filing of a motion pursuant to division (A) of this section, the court shall hold a dispositional hearing on the date set at the dispositional hearing held pursuant to section 2151.35 of the Revised Code, with notice to all parties to the action in accordance with the Juvenile Rules. After the dispositional hearing or at a date after the dispositional hearing that is not later than 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, the court, in accordance with the best interest of the child as supported by the evidence presented at the dispositional hearing, shall issue an order of disposition as set forth in division (A) of this section, except that all orders for permanent custody shall be made in accordance with sections 2151.413 and 2151.414 of the Revised Code. In issuing an order of disposition under this section, the court shall comply with section 2151.42 of the Revised Code.

(C)(1) If an agency pursuant to division (A) of this section requests the court to place a child into a planned permanent living arrangement, the agency shall present evidence to indicate why a planned permanent living arrangement is appropriate for the child, including, but not limited to, evidence that the agency has tried or considered all other possible dispositions for the child. A court shall not place a child in a planned permanent living arrangement, unless it 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, is unwilling to accept or unable to adapt to a permanent placement, and is in an agency program preparing for independent living.

(2) If the court issues an order placing a child in a planned permanent living arrangement, both of the following apply:

(a) The court shall issue a finding of fact setting forth the reasons for its finding;

(b) The agency may make any appropriate placement for the child and shall develop a case plan for the child that is designed to assist the child in finding a permanent home outside of the home of the parents.

(D)(1) If an agency pursuant to division (A) of this section requests the court to grant an extension of temporary custody for a period of up to six months, the agency shall include in the motion an explanation of the progress on the case plan of the child and of its expectations of reunifying the child with the child's family, or placing the child in a permanent placement, within the extension period. The court shall schedule a hearing on the motion, give notice of its date, time, and location to all parties and the guardian ad litem of the child, and at the hearing consider the evidence presented by the parties and the guardian ad litem. The court may extend the temporary custody order of the child for a period of up to six months, if it determines at the hearing, by clear and convincing evidence, that the extension is in the best interest of the child, there has been significant progress on the case plan of the child, and there is reasonable cause to believe that the child will be reunified with one of the parents or otherwise permanently placed within the period of extension. In determining whether to extend the temporary custody of the child pursuant to this division, the court shall comply with section 2151.42 of the Revised Code. If the court extends the temporary custody of the child pursuant to this division, upon request it shall issue findings of fact.

(2) Prior to the end of the extension granted pursuant to division (D)(1) of this section, the agency that received the extension shall file a motion with the court requesting the issuance of one of the orders of disposition set forth in divisions (A)(1) to (5) of this section or requesting the court to extend the temporary custody order of the child for an additional period of up to six months. If the agency requests the issuance of an order of disposition under divisions (A)(1) to (5) of this section or does not file any motion prior to the expiration of the extension period, the court shall conduct a hearing in accordance with division (B) of this section and issue an appropriate order of disposition. In issuing an order of disposition, the court shall comply with section 2151.42 of the Revised Code.

If the agency requests an additional extension of up to six months of the temporary custody order of the child, the court shall schedule and conduct a hearing in the manner set forth in division (D)(1) of this section. The court may extend the temporary custody order of the child for an additional period of up to six months if it determines at the hearing, by clear and convincing evidence, that the additional extension is in the best interest of the child, there has been substantial additional progress since the

original extension of temporary custody in the case plan of the child, there has been substantial additional progress since the original extension of temporary custody toward reunifying the child with one of the parents or otherwise permanently placing the child, and there is reasonable cause to believe that the child will be reunified with one of the parents or otherwise placed in a permanent setting before the expiration of the additional extension period. In determining whether to grant an additional extension, the court shall comply with section 2151.42 of the Revised Code. If the court extends the temporary custody of the child for an additional period pursuant to this division, upon request it shall issue findings of fact.

(3) Prior to the end of the extension of a temporary custody order granted pursuant to division (D)(2) of this section, the agency that received the extension shall file a motion with the court requesting the issuance of one of the orders of disposition set forth in divisions (A)(1) to (5) of this section. Upon the filing of the motion by the agency or, if the agency does not file the motion prior to the expiration of the extension period, upon its own motion, the court, prior to the expiration of the extension period, shall conduct a hearing in accordance with division (B) of this section and issue an appropriate order of disposition. In issuing an order of disposition, the court shall comply with section 2151.42 of the Revised Code.

(4) No court shall grant an agency more than two extensions of temporary custody pursuant to division (D) of this section.

(E) After the issuance of an order pursuant to division (B) of this section, the court shall retain jurisdiction over the child until the child attains the age of eighteen if the child is not mentally retarded, developmentally disabled, or physically impaired, the child attains the age of twenty-one if the child is mentally retarded, developmentally disabled, or physically impaired, or the child is adopted and a final decree of adoption is issued, unless the court's jurisdiction over the child is extended pursuant to division (E) of section 2151.353 of the Revised Code.

(F) The court, on its own motion or the motion of the agency or person with legal custody of the child, the child's guardian ad litem, or any other party to the action, may conduct a hearing with notice to all parties to determine whether any order issued pursuant to this section should be modified or terminated or whether any other dispositional order set forth in divisions (A)(1) to (5) of this section should be issued. After the hearing and consideration of all the evidence presented, the court, in accordance with the best interest of the child, may modify or terminate any order issued pursuant to this section or issue any dispositional order set forth in divisions (A)(1) to (5) of this section. In rendering a decision under this division, the court shall comply with section 2151.42 of the Revised Code.

(G) If the court places a child in a planned permanent living arrangement with a public children services agency or a private child placing agency pursuant to this section, the agency with which the child is placed in a planned permanent living arrangement shall not remove the child from the residential placement in which the child is originally placed pursuant to the case plan for the child or in which the child is placed with court approval pursuant to this division, unless the court and the guardian ad litem are given notice of the intended removal and the court issues an order approving the removal or unless the removal is necessary to protect the child from physical or emotional harm and the agency gives the court notice of the removal and of the reasons why the removal is necessary to protect the child from physical or emotional harm immediately after the removal of the child from the prior setting.

(H) If the hearing held under this section takes the place of an administrative review that otherwise would have been held under section 2151.416 of the Revised Code, the court at the hearing held under this section shall do all of the following in addition to any other requirements of this section:

- (1) Determine the continued necessity for and the appropriateness of the child's placement;
- (2) Determine the extent of compliance with the child's case plan;
- (3) Determine the extent of progress that has been made toward alleviating or mitigating the causes necessitating the child's placement in foster care;
- (4) Project a likely date by which the child may be returned to the child's home or placed for adoption or legal guardianship;
- (5) Approve the permanency plan for the child consistent with section 2151.417 of the Revised Code.

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