IN THE SUPREME COURT OF OHIO

In the Matter of:	:	CASE NO. 2007-2317
T.M.	:	
	:	On Appeal from the Madison County Court of Appeals, Twelfth Appellate District
	:	

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STATEMENT OF FACTS

T.M., the subject of this case, was born August 18, 2004. She was admitted to Doctors Hospital in Columbus Ohio on October 13, 2004 for failure to thrive and a facial burn. Madison County Department of Job and Family Services, Children Services (hereinafter "Children Services") became involved with the case due to this visit to the hospital. On October 15, 2004, T.M. was released from Doctors West Hospital into her parent's care. On December 6, 2004, T.M.'s mother and father took her to the Fayette County Memorial Hospital emergency room for a swollen leg. The examination by the treating physician revealed a spiral fracture to the infant's left femur. The infant was then transferred to Children's Hospital in Columbus, Ohio where it was revealed that T.M. suffered from a total of five fractures at various stages of healing (Transcript Dr. Scribano, pp. 14-17) Dr. Philip V. Scribano, Medical Director, Center for Child and Family Advocacy, Child Abuse Services at Columbus Children's Hospital testified in a deposition that the fractures to all four of the infant's extremities could only have occurred by someone inflicting them. In other words, T.M's broken bones could only have been caused by abuse. (Transcript Dr. Scribano, p. 19) T.M. was admitted to Children's Hospital for these injuries and was discharged into the care of a foster family coordinated by Children Services.

This case arises from a dependency complaint filed on December 7, 2004 by Children Services in the interest of minor child T.M. in the Madison County, Ohio Common Pleas Court, Juvenile-Probate Division as a result of the five fractures sustained by T.M. (Td. p. 1) A shelter care hearing was held the same day and the court awarded

temporary custody to Children Services. (Td. p. 2) On January 18, 2005, an adjudication hearing was held and both Summer Overfield and Shane Manley, parents to T.M., admitted to the dependency. (Td. p. 22)

On April 22, 2005, Children Services filed for continued temporary custody out of concern that the parents lacked basic knowledge of childcare. (Td. p. 30) Continued temporary custody was granted to Children Services. (Td. p. 35)

On June 29, 2005, Children Services again filed for continued temporary custody given concerns that remained regarding the family. (Td. p. 39) On July 1, 2005, a review hearing was held and temporary custody was continued with Children Services. (Td. p. 41)

The trial court then held further dispositional hearings on September 22, 2005 and November 22, 2005. Temporary custody remained with Children Services and the case plan objective remained to be reunification.

On December 22, 2005, the trial court filed a decision that found reunification was not in the best interest of the infant, T.M. The court found that only four people had access to T.M. in the time frame in which the injuries occurred: her parents, Linda Overfield and Linda's fiancé, Charles Bryson, however the perpetrator had not been identified. *In re T.M.*, 2006-Ohio-6548. The father admitted to injuring T.M. on two separate occasions and continued to be observed as being rough during visitation. (Sept. 22, 2005, Tpp. 80, 83-84; Nov. 22, 2005, Tp. 227) All four possible perpetrators lived within close proximity of one another and had lifestyles that were interdependent. (Sept. 22, 2005, Tpp. 133-134) As such, the court found that it was not in the best interest of

the child to return her to an environment that would ensure the original perpetrator unsupervised access to her. The court ordered the case plan to be modified for a goal other than reunification. (Td. p. 64)

Final judgment was entered awarding permanent custody of T.M. to Children Services on April 10, 2007. (Td. p. 191)

The case was then appealed to the Court of Appeals for Madison County, Ohio, Twelfth Appellate District claiming there was not clear and convincing evidence to grant permanent custody to Children Services, that the grant of permanent custody was a direct violation of the Appellants' Fifth Amendment right against self-incrimination and that Children Services did not make reasonable efforts to reunite the child with her parents and failed to make reasonable case planning and diligent efforts to assist the parents. The grandmother, Linda Overfield, raised the assignment of error that she was not considered as a placement option for T.M. On October 29, 2007, the Court of Appeals issued its decision to overrule each assignment of error made by appellants and to uphold the decision of the trial court. The Court of Appeals found that the trial court had significant evidence to support the fact that the parents cannot safely parent the child and that the decision to grant permanent custody is not based solely on the parents' failure to admit to abusing the child. *In the Matter of T.M.*, CA2007-04-016, CA2007-05-020 (Oct. 29, 2007)

ARGUMENT

Proposition of Law:
Compelling a parent to admit to the abuse of a child, as a requirement under a case plan for reunification of the child

with the parent, is unconstitutional and a violation of the parent's Fifth Amendment privilege against self-incrimination.

The Fifth Amendment to the United States Constitution provides that "No person . . . shall be compelled in any criminal case to be a witness against himself." U.S. Const. Amend. V. In order to invoke successfully the protection of the Fifth Amendment, an individual's statement must be compelled, testimonial, and self-incriminating. *Fisher v. U.S.* 425 U.S. 391, 408 (1976).

Whether the Fifth Amendment protection against self-incrimination is violated in the case of an abused or neglected child when a case plan requires the person responsible for the abuse to verbally admit their responsibility for the physical abuse is a question of fact. *In re A.D.*, 2005-Ohio-5183. If the facts of the case indicate significant credible evidence to support the trier of fact in its determination that parental rights are to be terminated independent of whether a parent is asked to admit to the abuse in a case plan, then the Fifth Amendment is not implicated. *Id. See also, In re Harmon,* Ohio App.4th Dist., 2000, 2000 WL 1424822 (unreported) (Assuming arguendo that a wife could raise the husband's Fifth Amendment privilege)

In this case, T.M.'s dependency was not challenged by appellants. (Td. p. 22) Furthermore, by Appellants' own admission, T.M. was in the care of only one of four people at the time the injuries occurred. (Sept. 22, 2005, Tpp. 51-53, 90, 115-118; Nov. 22, 2005, Tpp. 183-189) The injuries themselves indicate that they could have only occurred as a direct result of multiple episodes of inflicted trauma. (Transcript Dr. Scribano, pp. 28-29) The Appellants did not recognize T.M. to be injured and did not immediately seek treatment for her. The age of the injuries at the time T.M. finally

received medical treatment indicated that T.M. suffered her first bone fracture as early as ten to fourteen days prior to the date that Appellants called the hospital regarding what they believed to be a spider bite. (Transcript Dr. Scribano, p. 16) What they believed to be a spider bite was in fact a spiral fracture that was up to seven days old. (Transcript Dr. Scribano, p. 14)

Additional factors that led the trial court to determine that Appellants were unwilling to provide T.M. with a safe environment away from her abuser include the unhealthy living arrangements that Appellant Summer Overfield was unwilling to remedy. (Sept. 22, 2005, Tpp. 112-113) The four people who were potentially responsible for the abuse lived lives that were so enmeshed with each other that there was no way to guarantee that the abuser would be prohibited from unsupervised access to T.M. (Td. 193, p. 2-3) Also, the parent educator, Ms. Sue McClelland, who worked with Appellants noted some growth in the Appellants' skills as parents, but not the ability to carry it through on a long-term basis. (Sept. 22, 2005, Tp. 7) Ms. McClelland also found that Appellant Summer Overfield becomes overwhelmed when parenting T.M. and T.M's younger sibling at the same time. (Sept. 22, 2005, Tpp. 8, 10) In the end analysis, after two years of parenting, Ms. McClelland did not believe that the parents had taken away a significant amount of parenting skills. (Sept. 22, 2005, Tp. 12) In fact, she believed that the parenting would need to continue until the children reached school age. (Sept. 22, 2005, Tp. 13) Caseworker Bethlynn Recker also testified that Appellants had completed counseling, but she did not believe it was effective and was requiring them to resume counseling. (Sept. 22, 2005, Tp. 114) She was concerned that the parents were not

admitting that T.M. had five broken bones. (Sept. 22, 2005, Tp. 116) Ms. Recker did not believe that Appellants were consistent in their parenting and while she acknowledged that Appellants had made progress on their case plan, she did not believe that there had been enough progress to "reduce the risk of harm to a child in their care." (Sept. 22, 2005, Tp. 125)

The best interest of a child has been held to be of paramount importance. It is given more deference than that of a parent's right to be a parent. The Ohio Twelfth District Court of Appeals has recognized the importance of considering the best interest of the child by a court when determining placement of a child. *In re Patterson*, (1984) 16 Ohio App.3d 214 at 215. In *Patterson*, the court stated, ". . .even though the parent may be able to show that she is now able to resume her parenting duties. . .this does not necessarily equate to the child's best interests." *Id.* The Ohio Twelfth District Court of Appeals has also held that, ". . .in essence, parents are the natural custodians of their offspring. But parents may forfeit or lose the right of custody by neglect or inability to discharge their legal responsibilities." *In re Burkhart*, (1968) 15 Ohio Misc. 170 to 177.

The trial court was bound by Ohio Revised Code Section 2151.414 when making the determination regarding permanent custody. The court found that T.M. had been in the temporary custody of children services for 12 or more months of a consecutive 22 month period. (Td. 191; ORC 2151.414(B)(1)) As such, the court went on to make a best interest determination. The court found that it was in T.M.'s best interest to grant permanent custody to the Madison County Department of Children Services finding that T.M. could not be placed with a parent within a reasonable time and should not be placed

with either of the child's parents. (ORC 2151.414(B)(1) and 2151.414(B)(1)(a); Td. 191, pp. 1-2)

The trial court in this case had clear and convincing evidence before it to indicate abuse and the only people seeking custody of T.M. were the people who were caring for T.M. during the time in which the abuse occurred. The trial court made its decision based on facts that clearly indicate Appellants are unable to protect T.M. from future abuse, independent of the fact that the case plan included a requirement for the person responsible for the abuse to verbally admit it. *In the Matter of T.M.*, CA2007-04-016, CA2007-05-020 (Oct. 29, 2007)

Testimony required for the purposes of rehabilitating and providing services to an abusive parent in an effort to reunite a family falls outside the purview of the Fifth Amendment. *In re A.D.*, 2005-Ohio-5183. The Minnesota Supreme Court in *Matter of Welfare of J.W. and A.W.* held that termination of the parents' rights as a result of their invocation of the privilege against self-incrimination was impermissible based on the facts in that case, however the court held that a trial court may compel the parents to undergo "effective" treatment and recognized that it may be difficult for the parents to demonstrate that any treatment has been effective if it does not involve fully disclosing prior actions. *In the Interest of Clifford M.*, 577 N.W.2d 547, 555 (Neb. Ct. App. 1998) (citing *Matter of Welfare of J.W. and A.W*, 415 N.W.2d 879 (Minn. 1987) The parents in the *J.W .and A.W.* case were attempting to maintain custody of their two children in light of the fact that their 3-year-old nephew died in their care. The Minnesota Supreme Court noted that the Fifth Amendment privilege did not prevent the trial court from considering

at disposition the evidence that the parents had previously been found responsible for the death of the 3-year-old and that the parents would have to attempt to overcome that evidence in conjunction with demonstrating that they had undergone meaningful therapy. *Matter of Welfare of J.W. and A.W*, supra. In this context, if the court concludes that the "therapy undergone by the parents had been ineffectual in resolving the underlying cause of the adjudication, termination of the parents' parental rights will not be a consequence of having invoked the Fifth Amendment, but, rather, will simply be a consequence of the reality that it is unsafe for children to be with abusive and violent parents who have not undergone meaningful and effective therapy." *Id.* (*See also, Dutchess County Dept. of Social Services v. Mr. and Mrs. G.*,141 Misc.2d 641 (N.Y. Fam.Ct. 1988) (Terminating the parental rights of sexually abusive parents who refused to admit to committing the abuse in the face of clear and convincing evidence to the contrary thereby prohibiting them from obtaining meaningful therapy to overcome and resolve the issue of abuse.); *Nelson v. Jones*, 781 P.2d 964 (Alaska 1989) (Terminating visitation rights between father and daughter due to harm to child when abusive father refused to acknowledge committing sexual abuse against his daughter so that he could obtain meaningful treatment.)

So too, Appellants in this case struggled to explain how the abuse possibly could have occurred and denied any responsibility for perpetrating or even preventing it from happening. (Sept. 22, 2005, Tpp. 57-58; 86-88) The denial effectively creates a barrier against treatment as therapists are unable to talk to the Appellants about how to handle issues of physical abuse as they self-report that none exist. (Sept. 22, 2005, Tpp. 112-114;

Nov. 22, 2005, Tpp. 299-300); *See also, U.S. v. Hull*, 792 F2d 941 (Cal. App. 9th, 1986) (Finding in the context of sentencing that an admission indicates the first step in rehabilitation). Instead, Appellants offer inadequate excuses for the abuse in an attempt to minimize the seriousness of T.M's injuries. When asked how T.M. possibly could have sustained five fractures at the age of four months, Appellants offered the explanation that the father was pushing her in a cart at Wal-mart and accidentally bumped her leg while she was riding in the cart. (Sept. 22, 2005, Tpp. 54, 83, 84) Appellant Shane Manley believes there was only one fracture and cites to the cart incident as the cause. (Sept. 22, 2005, Tpp. 81, 83-84) Medical evidence clearly indicates five fractures and medical testimony indicates that the only explanation for the injuries is abuse. (Transcript Dr. Scribano, pp. 28-29) The Appellants' failure to admit that abuse occurred prohibits any meaningful therapy as they cannot be expected to correct abusive behavior or to protect T.M. from abusive behavior when they do not believe it exists.

The fact that they cannot protect T.M. from violent behavior falls outside of the Fifth Amendment and speaks not to the risk of self-incrimination, but to their ability to safely and adequately parent a child. Accordingly, the trial court found that it would take "at least two or three more years of assistance in order to safely parent the child. Other witnesses who testified for the State expressed serious concerns for the parents' ability to learn and apply safe parenting techniques at any time without assistance." *In the Matter of T.M.*, Case No. 20430024 (April 10, 2007) The Court of Appeals, in overruling Appellants' second assignment of error concerning the parents' failure to take the polygraph test, stated that, "there is significant evidence supporting the fact that the

parents can not safely parent the child, and the decision to grant permanent custody is not based solely on the parents' failure to admit to abusing the child." *In the Matter of T.M.*, CA2007-04-016, CA2007-05-020 (Oct. 29, 2007)

The lack of an admission that there is a problem prevents Appellants from receiving the therapy that they need in order to have an opportunity to learn how to protect their child. Appellants have demonstrated that no amount of work put into the case by Children Services can remedy the Appellants' disbelief that their child was abused. It is illogical and unreasonable to believe that an otherwise healthy four-month-old infant with five fractures received those injuries in any way other than by abuse, yet that is precisely the position that Appellants have adopted in the face of the services that were offered to them. They stand in their own way toward obtaining meaningful and effective therapy. The supporting case law cited above demonstrates that this barrier speaks to the Appellants' inability to become competent parents, not toward a violation of the Fifth Amendment rights.

In support of their argument that a violation of the Fifth Amendment has occurred, Appellants cite *In re Puckett,* (Sept. 17, 2001), Butler App. No. CA2000-10-203, CA2000-11-223, unreported. In *Puckett,* the Appellant appealed a trial court decision to grant permanent custody of his two children to the Butler County Children Services Board. The trial court found that the father-Appellant in that case was the perpetrator of sexual abuse on his two children due to testimony given by the children at trial. The court ordered intensive sexual abuse therapy for the father. The case plan included the requirement to undergo therapy, but did not require an admission by the

father. The trial court was found to have had clear and convincing evidence to support its decision to terminate the father's rights and the Twelfth District Court of Appeals upheld that decision. *Id.* *In re Puckett* involved issues of termination unrelated to the requirement of an admission of culpability in a case plan and therefore does not apply to the case of T.M. currently before the court.

Next, Appellants cite *In re Amanda W.* in support of their case. The *Amanda W.* case involved an allegation of sexual abuse committed against a minor child by her father. In contrast to the case involving T.M., which includes volumes of medical testimony and documented evidence of physical abuse, the decision in the *Amanda W.* case does not point to any other evidence of abuse other than the allegation of the child. *In re Amanda W.* (1997), 124 Ohio App.3d 136 (Finding that the father's Fifth Amendment right against self-incrimination was violated due to the fact that he refused to admit to committing sexual abuse against his daughter and therefore could not complete the case plan which required an admission to undergo a sex offender treatment program.) The court in *Amanda W.* had no other evidence on which to rely aside from the father's admission. The *Amanda W.* case has been distinguished from cases that do involve credible evidence to show abuse. In the case of *In re Harmon*, the Court of Appeals of the Fourth District of the State of Ohio found that "[U]nlike the situation in *Amanda W.*.. . . .failure to admit to the sexual abuse allegation was not the sole reason the children could not or should not have been returned to the parents," and that "substantial competent and credible evidence exists that the children should not or cannot be placed with either parent within a reasonable time and that the children's best interests will be served by

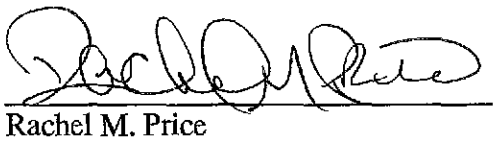
granting SCCS permanent custody." *In re Harmon*, Ohio App.4th Dist., 2000, 2000 WL 1424822 (unreported) (Assuming arguendo that the wife could raise the husband's Fifth Amendment privilege.) Accordingly, *Amanda W.* is not on point and represents a decision borne out of an entirely different fact pattern than the case before this court.

CONCLUSION

This case is not about the Fifth Amendment right against self-incrimination. This case is about a four-month-old infant who was brutalized by her caregivers. There were only four people taking care of her at the time the injuries occurred: two of whom are not parties to this appeal, but who did willingly take polygraph tests that did not indicate them in the abuse, the other two people are the Appellants in this matter. Appellants' unwillingness to acknowledge that abuse occurred prevents them from learning how to protect and safely parent T.M. The overwhelming physical evidence and medical testimony in this case clearly demonstrates the need to protect T.M. Ohio case law, as well as authority from other jurisdictions, stands for the proposition that when there is substantial evidence of abuse, the failure of parents to admit to abuse and receive effective counseling as provided in a case plan do not interfere with Fifth Amendment rights. For each of the foregoing reasons, the State of Ohio respectively requests that the Ohio Supreme Court uphold the decisions of the trial court and the Court of Appeals in

this case.

Respectfully submitted,



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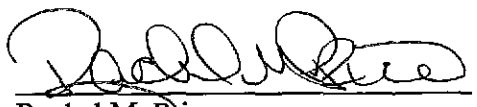
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was deposited in the U.S. Mail on the 12th day of May, 2008, addressed to Richard A. Dunkle, Attorney at Law, 2 North Main Street, London, Ohio 43140; J. Michael Murray, Attorney at Law, 8 East Main Street, West Jefferson, Ohio 43162 and Renae E. Zabloudil, Attorney at Law, 58 East High Street, Suite B, London, Ohio 43140.



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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.

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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