IN THE SUPREME COURT OF OHIO

In The Matter Of:	:	08-1036
	:	
H.F. & R.F.	:	**On Appeal from the Cuyahoga County**
	:	**Court of Appeals, Eighth Appellate District**
	:	
	:	**Court of Appeals Case Nos. 90299 & 90300**

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

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EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST

This cause presents a critical issue for child protection proceedings in juvenile court. The issue is whether adjudications of abuse/neglect/dependency followed by dispositional orders of temporary custody, which are final appealable orders, are deemed to resolve all pending claims as to all parties such that an appeal of those proceedings must be taken immediately pursuant to App.R. 4(A). The answer to this question will determine whether or not litigants must appeal such orders immediately following their issuance so as to preserve the right to review. Resolution of this issue is of great public and general interest and will impact appellate practice for the juvenile justice system in Ohio and the families and children thereby affected.

In this case, the trial court issued adjudicatory orders of abuse, neglect and dependency and dispositional orders of temporary custody in early June of 2006. (Appx. 39-44). No appeal was taken from these orders. On October 2, 2006, CCDCFS filed motions to modify the temporary custody to permanent custody, which were later withdrawn in favor of orders, journalized in April of 2007, extending temporary custody. (Appx. 35-38). No appeal was taken from these orders. CCDCFS again filed motions to modify the temporary custody to permanent custody on May 4, 2007, which motions the trial court granted after a fully contested trial. The trial court issued its journal entries on August 10, 2007 (Appx. 31-34), and timely appeals were taken from these orders. In considering said consolidated appeals, the Eighth District held that, pursuant to App.R. 4(B)(5), the appealing party could assign errors which related to the original adjudicatory proceedings which were concluded in June of 2006. (Appx. 17). This ruling impermissibly allows parties to an action to raise issues long since beyond the jurisdiction of the reviewing court.

In this case, the Eighth District Court of Appeals exceeded its jurisdiction by reviewing an adjudicatory proceeding that had been final for over a year at the time an appeal was filed. In doing so, the reviewing court erroneously determined that App.R. 4(B)(5) applied to extend the time in which such review could be sought. This decision rests on the false premise that cases involving adjudications of abuse/neglect/dependency followed by original dispositions of temporary custody are indistinguishable from those civil cases involving multiple claims and/or multiple parties, for which the exception of App.R. 4(B)(5) was created.

The implications of the reviewing court's decision may affect every child who is involved in the child protection system, since any errors made in the initial stages of the proceedings could be raised on appeal years later, thus jeopardizing the finality of the earlier judgments and precluding the resolution of the matter before the court. The impact is also felt by all taxpayers in that their tax dollars contribute to the operation of the juvenile court system as well as to the support and maintenance of the children remaining in foster care. The public has, through our federal and state legislatures, expressed its desire to effectuate more expeditious permanency for children within the foster care system. This interest in the expeditious transfer of children from the foster care system to permanent placement either with biological parents, relatives, or adoptive family, is profoundly affected by a ruling which has the effect of expanding appellate review to all orders of the trial court, irrespective of whether the parties pursued timely review of said orders. Under the reviewing court's ruling, adjudications and dispositions remain appealable long past the time when legitimate relief would have been otherwise possible. This ruling erodes the finality of orders, enlarges the time for filing notices of appeal regarding a given order, and condones a strategy of legal gamesmanship that works to the detriment of the children at issue in such cases. Such a holding seriously undermines the efforts of the courts and

the state and federal legislatures to achieve more expeditious permanency for all abused, neglected and dependent children.

To promote the purposes and preserve the integrity of the legal system, to assure finality of judgments and judicial economy, to recognize and give proper respect to the doctrine of stare decisis, to promote expeditious permanency for children in the foster care system, and to discourage unnecessarily lengthy and costly foster care placements, this court must grant jurisdiction to hear this case and review the decision of the court of appeals.

STATEMENT OF THE CASE AND FACTS

This cause arises from a contested trial on a *Motion to Modify Temporary Custody to Permanent Custody* which was filed in separate cases for each child on May 4, 2007 in the Cuyahoga County Juvenile Court by the Cuyahoga County Department of Children and Family Services (hereinafter referred to as "CCDCFS" or "the agency"). Prior to these filings, the children were brought under the trial court's jurisdiction through the filing of complaints for abuse/neglect/dependency and for temporary custody, which complaints were resolved in early June of 2006. (Appx. 39-44).

After a fully contested trial on CCDCFS' motions was concluded on July 26, 2007, the trial court entered its decisions granting CCDCFS' motions for permanent custody. (Appx. 31-34). The children's father appealed to the Eighth District Court of Appeals, claiming, inter alia, that the trial court erred in its acceptance of his admissions at the time of the original adjudicatory hearing in this matter. The reviewing court determined that, pursuant to App.R. 4(B)(5), it had jurisdiction to consider not only the permanent custody order, but all prior orders of the court that had been issued in the case since its inception. (Appx. 17)

On April 11, 2008, CCDCFS filed separate motions for certification of a conflict and

requesting the court hold an en banc conference in order to resolve intradistrict conflict on this issue. On May 9, 2008 the reviewing court denied the motion for en banc conference, but granted the motion to certify a conflict. (Appx. 26-30).

CCDCFS submits that the reviewing court erred in determining that the appeals filed by the children's father were timely as to all prior proceedings by virtue of the exception listed in App.R. 4(B)(5), and that it therefore had jurisdiction to consider proposed errors relating to the original adjudication.

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

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

Proposition of Law No. I: In a juvenile court action involving a complaint for abuse/neglect/dependency and temporary custody, when the trial court issues an adjudicatory order followed by a dispositional order placing a child in temporary custody pursuant to R.C. 2151.353(A)(2), those orders are final appealable orders which resolve all pending claims as to all parties pursuant to the complaint, and said orders must be appealed, if ever, within the time requirements of App.R. 4(A)

Pursuant to Section 3(B)(2), Article IV of the Ohio Constitution, "[c]ourts of appeals shall have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district, ***."

App.R. 4(A) provides that "[a] party shall file the notice of appeal required by App.R. 3 within thirty days of the later of entry of the judgment or order appealed or, in a civil case, service of the notice of judgment and its entry if service is not made on the party within the three day period in Rule 58(B) of the Ohio Rules of Civil Procedure." Failure to file a timely notice of

appeal generally deprives the appellate court of jurisdiction to consider the appeal.[1]

App.R. 4(B)(5), entitled "Partial final judgment or order", provides a limited exception to the thirty day period during which an appeal may be perfected. This exception was promulgated in order to protect litigants from uncertainty or confusion relating to appealability in cases involving multiple claims and multiple parties. As indicated in the 1992 Staff Notes to App.R. 4, "Division (B)(5) is intended to give to a party who has the right to appeal a partial final judgment or order under section 2505.02 of the Revised Code the option to appeal the judgment or order at the time it is entered or when the final judgment disposing of all claims as to all parties is entered." Said Staff Notes further elaborated on the reasoning behind enactment of App.R. 4(B)(5):

> The Supreme Court, in its decision in Dayton Women's Health Center v. Enix (1990), 52 Ohio St.3d 67, 555 N.E.2d 956, held that as to an order certifying a defendant class action, the appeal time under App.R. 4(A) begins to run when the order is entered, and an appeal from the order taken when the final judgment in the case is entered is too late. In its opinion, the Court noted the applicability of its holding to any type of partial final judgment or order appealable under section 2505.02 of the Revised Code as construed in *Amato v. General Motors Corp.* (1981), 67 Ohio St.2d 253, 423N.E.2d 452, 21 O.O.3d 158. It pointed out the difficulties attorneys have in determining whether a partial final judgment or order meets the requirements of section 2505.02 of the Revised Code as set forth in *Amato*. The Court suggested in a footnote to the opinion that the Rules Advisory Committee consider whether a party should have the option to appeal immediately or at the end of the case.

These concerns relating to appealability of judgments are inapplicable to a case involving an adjudication followed by a dispositional order of temporary custody. A party can have no reasonable uncertainty as to whether or not such an order is a final appealable order. This Honorable Court unequivocally resolved this question in the case of *In re Murray* (1990), 52

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1 *Bosco v. City of Euclid* (1974), 38 Ohio App. 2d 40, 311 N.E.2d 870, at paragraph one of syllabus.

Ohio St.3d 155, 159, 556 N.E.2d 1169:

> An adjudication by a juvenile court that a child is "neglected" or "dependent" as defined in R.C. Chapter 2151 followed by a disposition awarding temporary custody to a public children services agency pursuant to R.C. 2151.353 (A)(2) constitutes a "final order" within the meaning of R.C. 2505.02 and is appealable to the court of appeals pursuant to R.C. 2501.02.

Id., at syllabus. Not only did the *Murray* decision resolve the appealability issue, it also specifically held that "the designation of the custody award as 'temporary' is not controlling" (Id., 52 Ohio St.3d at 157), and further noted that "a finding of neglect or dependency, followed by a disposition awarding temporary custody to a public children services agency pursuant to R.C. 2151.353(A)(2) is an order which, in effect, **determines the action**." Id., at 159.

One possible explanation for the reviewing court's apparent confusion in equating a child protection case with an ordinary civil action for purposes of applying App.R. 4(B)(5) may be due to the general consideration that a juvenile court proceeding is a civil action. See *In re Anderson* (2001), 92 Ohio St.3d 63, 748 N.E.2d 67, at syllabus. It has also been noted, however, that "proceedings in the juvenile division are the least amenable to coverage by the Civil Rules." *State ex rel. Fowler v. Smith* (1994), 68 Ohio St.3d 357, 360, 626 N.E.2d 950, citing to 4 Harper, Anderson's Ohio Civil Practice (1987), 57, Section 147.04(g). "The juvenile court is a statutory court and the proceedings are governed by special statutory guidelines. R.C. Chapter 2151. The juvenile court does not settle disputes between adverse civil litigants, but is, rather, charged with a special statutory duty to look after the best interests of the child." *Mathis v. Mathis* (November 19, 1982), Lucas App. No. L-82-154, 1982 WL 6638 at *2. Another explanation is the reviewing court's apparent lack of understanding regarding the difference between an order of *predispositional* temporary custody issued pursuant to R.C. 2151.31 and Juv.R. 13, which order is not a final appealable order, and a *dispositional* order of temporary custody issued pursuant to

R.C. 2151.353(A)(2), which order is a final appealable order. This apparent confusion is evident in the reviewing court's description of the order at issue as "the trial court's decision accepting, approving and adopting the magistrate's adjudicatory finding of neglect as to H.F., and abuse, neglect and/or dependency as to R.F., nor to the dispositional findings granting *emergency* temporary custody to CCDCFS." *In re H.F.*, Cuyahoga App. Nos. 90299 & 90300, 2008-Ohio-1627 at ¶28. (See Appx. 11).

In a case such as the one at issue in the present matter, a complaint is filed requesting an adjudication of abuse/neglect/dependency and a dispositional order of temporary custody. Once the trial court concludes its proceedings and enters orders of adjudication and disposition, those orders serve as the final judgment which disposes of all claims as to all parties as set forth in the complaint which instituted the action. See, e.g., *In re Borntreger*, Geauga App. No. 2001-G-2379, 2002-Ohio-6468 at ¶26-27. The fact that the child's case remains pending before the juvenile court for the duration of the dispositional order and any extensions or modifications of that order does nothing to change the appealable nature of the orders issued, nor does it indefinitely toll the time in which an appeal may be brought regarding those proceedings which culminated in the resolution of the original complaint. At the point that the original dispositional order is issued, there remain no claims before the court for resolution pursuant to the original complaint. As such, the circumstances for which App.R. 4(B)(5) was created are absent..

In the present matter, the children's father filed an appeal following the trial court's judgment granting CCDCFS' motion to modify the previously-issued dispositional order of temporary custody to one of permanent custody. Notwithstanding the fact that no appeal was ever taken following the trial court's judgments of adjudication and original disposition, those proceedings were the basis for at least one of the father's assignments of error on appeal of the

subsequent permanent custody order.

The reviewing court held that, pursuant to App.R. 4(B)(5), "S.F. could appeal the trial court's final ruling adopting and approving the Magistrate's Decision in the adjudicatory and dispositional hearing [entered in early June of 2006] or after the case was disposed of by the final dispositional hearing of the trial court judge by journal entries signed on July 27, 2007, and journalized by the Clerk of Court on August 10, 2007." (Appx. 17). This holding is erroneous in that it fails to recognize that an adjudicatory order followed by an original dispositional order of temporary custody does resolve all claims in the original action.

In reaching its decision the reviewing court erroneously applied the exception listed at App.R. 4(B)(5), and failed to recognize prior precedent from the court itself and from many other appellate jurisdictions throughout Ohio, which prior precedent supports the opposite conclusion than that reached by the reviewing court in this matter.

The reviewing court's holding in *H.F.*, supra, is in conflict with at least two earlier Eighth District decisions and with one more recent decision issued on April 10, 2008 (just seven days after the release of the *H.F.* decision), each of which rejected appellants' attempts to "bootstrap" prior adjudicatory orders to a later appeal following an order of permanent custody. For example, in the case of *In re Di.R*, Cuyahoga App. Nos.85765 & 85766, 2005-Ohio-5346, the Eighth District Court of Appeals held:

> Failure to timely challenge an order of adjudication or an order extending the original temporary custody order divests a reviewing court of jurisdiction to consider any error raised in a subsequent appeal. [Citation omitted.] Because appellant never appealed the final orders regarding temporary custody, she cannot now, on an appeal of an order awarding permanent custody, seek reversal by attacking those earlier proceedings.

Id., 2005-Ohio-5346 at ¶30. Likewise, in the case of *In re M.Z.*, Cuyahoga App. No. 80799,

2002-Ohio-6634, the Eighth District Court of Appeals held as follows:

> In his fourth assignment of error, the appellant argues that the trial court erred in accepting his admission on the original complaint for temporary custody filed in September of 1999. The appellant's fourth assignment of error is without merit.
>
> The record reflects that the order of the trial court adjudging the appellant's children to be abused and placing the children in the temporary custody of CCDCFS was journalized on October 8, 1999, at which point said order was a final, appealable order. "An adjudication by a juvenile court that a child is 'neglected' or 'dependent' * * * followed by a disposition awarding temporary custody to a public children services agency * * * constitutes a 'final order' within the meaning of R.C. 2505.02 and is appealable to the court of appeals * * *." *In re Murray* (1990), 52 Ohio St.3d 155, 556 N.E.2d 1169; *In re Michael A.* (March 21, 2002), Cuyahoga App. No. 79835.
>
> Since the order of temporary custody constituted a final, appealable order, the appellant had thirty days from the date of journalization to timely appeal the trial court's order. Therefore, this court is without jurisdiction to consider the issue now proffered in the instant appeal.

Id., 2002-Ohio-6634 at ¶37-39.

As noted above, on April 10, 2008, just seven days after the *H.F.* decision was released, another panel of the Eighth District Court of Appeals issued its decision in the case of *In re X.R., Cuyahoga App. No. 90066, 2008-Ohio-1710.* Faced with an identical attempt to raise error in relation to an original adjudication notwithstanding the fact that no objection or appeal had ever before been taken to the order of adjudication or the subsequent dispositional order of temporary custody, the *X.R.* panel rejected said attempt, stating:

> On September 22, 2005, the court granted temporary custody of X.R. and J.J. to CCDCFS. Appellant had 30 days from that date in which to file her appeal. In fact, appellant filed her appeal on June 26, 2007, nearly two years after temporary custody was decided. In addition, on the cover sheet accompanying her notice of appeal, appellant marked that she was appealing only the May 30, 2007 journal entry awarding permanent custody to CCDCFS. The first time appellant raises the issue of whether the trial court complied with Juv.R. 29(D) during her temporary custody hearing is in her appellate brief. By this time, it is too late.

In re X.R., Cuyahoga App. No. 90066, 2008-Ohio-1710 at ¶17. Thus, the Eighth District Court of Appeals has, in the span of eight days, taken contradictory positions on the exact same legal issue, which involves the "bootstrapping" of a previously appealable order to assign error in a subsequent appeal. The Eighth District has recently condemned such a practice.

> This court has held that "bootstrapping," that is, "the utilization of a subsequent order to indirectly and untimely appeal a prior order (which was never directly appealed) is procedurally anomalous and inconsistent with the appellate rules which contemplate a direct relationship between the order from which the appeal is taken and the error assigned as a result of that order." *State v. Church* (Nov. 2, 1995), Cuyahoga App. No. 68590, citing App.R. 3(D), 4(A), 5 and 16(A)(3).

Chapon v. Std. Contracting & Engineering, Cuyahoga App. No. 88959, 2007-Ohio-4306 at ¶3. Clearly there is a split of authority within the Eighth District itself regarding this issue. "The Eighth District's conflicting rulings on the same legal issue create confusion for lawyers and litigants and do not promote public confidence in the judiciary. Appellate courts are duty-bound to resolve conflicts within the district through en banc proceedings." *In re J.J.*, 111 Ohio St.3d 205, 2006-Ohio-5484 at ¶18. Yet, despite this fact, and notwithstanding the directive issued by this Honorable Court in the *J.J.* decision, CCDCFS' Motion for En Banc Conference was denied. (Appx. 26). The reviewing court did, however, grant CCDCFS Motion to Certify a Conflict (Appx. 27-30) as it recognized that its decision conflicted with those of other appellate jurisdictions.[2] See, e.g., *In re P.N.M.*, Adams App. Nos. 07CA841 & 07CA842, 2007-Ohio-4976 at ¶38-40; *In re C.G.*, Preble App. Nos. CA2007-03-005 & CA2007-03-006, 2007-Ohio-4361 at ¶10-12. See also *In re Shaeffer Children* (1993), 85 Ohio App.3d 683, 694, 621 N.E.2d 426; *Ackerman v. Lucas Cty. Children Serv. Bd.* (1989), 49 Ohio App.3d 14, 16, 550 N.E.2d 549.

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2 The reviewing court's framing of the issue in the certification, however, is itself confusing in much the same way as is the court's analysis of the issue in its decision.

The decision at issue herein creates an incentive for litigants to "stockpile" appealable issues for later use following potential future proceedings that have not yet been initiated. Such schemes serve only to benefit litigants with weak or nonexistent defenses to actions before the court, as they can hold on to potentially reversible errors for later (perhaps years later) use in the event that they are ultimately unsuccessful in achieving reunification. The resulting harm of the rationale espoused in this matter was noted in an Eleventh District decision:

> As previously explained, of course, appellant could appeal the August 6, 2001 order. Appellant, however, could not use this appeal to reach back and challenge the adjudication and dispositional order of June 20, 2001, and issues relating thereto. To do so would create the parade of horrors, to wit: every subsequent dispositional proceeding could invoke the right to raise on appeal every final order back to the inception of the case.

Borntreger, supra, 2002-Ohio-6468 at ¶100 (Christley, J., dissenting).

App.R. 4(A) promotes the concept of finality of judgments so that, at some determinate point, litigants may rely on those judgments and move forward with their lives. The holding in the case sub judice does just the opposite; it forces children in the foster care system to indefinitely put their lives on hold so that their parents can take one more bite of an already well-consumed apple in an effort to prolong what are often unsupportable ties to a child whom they have allowed to languish in the foster care system while they failed to take the steps necessary to achieve reunification. It thereby creates an unconscionable impediment to the goal of achieving permanency for children.

CONCLUSION

For the reasons discussed above, this case involves matters of public and great general interest. The appellant requests that this court grant jurisdiction and allow this case so that the important issue presented in this case will be reviewed on the merits.

Respectfully submitted,

WILLIAM D. MASON, ESQ.
Cuyahoga County Prosecuting Attorney

By: _____
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OF CHILDREN AND FAMILY
SERVICES

Proof of Service

I certify that a copy of this *Memorandum in Support of Jurisdiction* was sent by ordinary U.S. mail to appellee Shedric Finklea through counsel Jonathan N. Garver, Esq., 4403 St. Clair Avenue, Cleveland, Ohio 44103, and to Guardian ad litem for the children, Carla L. Golubovic, Esq., P.O. Box 29127, Parma, Ohio 44129, on this 27th day of May, 2008.

_____
Joseph C. Young, Counsel of Record
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APPENDIX

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APR 1 4 2008

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
Nos. 90299 & 90300

IN RE: H.F. & R.F.,

Minor Children

JUDGMENT:
REVERSED AND REMANDED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case Nos. AD 06900231 & AD 06900286

BEFORE: Kilbane, P.J., Blackmon, J., and Boyle, J.

RELEASED: April 3, 2008

JOURNALIZED: APR 1 4 2008

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CA07090300 51075363

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

APR 14 2008

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

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

APR - 3 2008

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

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

NOTICE MAILED TO COUNSEL
FOR ALL PARTIES-COSTS TAXED

MARY EILEEN KILBANE, P.J.:

Appellant-father, S.F., appeals the decision of the Cuyahoga County Court of Common Pleas, Juvenile Division, terminating his parent-child relationship with his two minor children, H.F. and R.F.[1] S.F. argues that the the trial court abused its discretion, committed prejudicial error, and violated his due process rights. Because we find that the trial court did not substantially comply with the requirements of Juv.R. 29(D)(1), that the admission be voluntary and made with an understanding of its consequences, we reverse the decision of the trial and remand for further proceedings.

FACTS AND PROCEDURAL HISTORY

S.F. is the biological father of H.F., born April 2, 2004 and R.F., born November 10, 2005.

H.F. was removed from his mother's custody on May 17, 2004, and was committed to the legal custody of S.F. on September 2, 2004, after being adjudged abused, neglected, and dependent. The Cuyahoga County Department of Children and Family Services ("CCDCFS" or "the agency") removed H.F. from the custody of S.F. on February 6, 2006, after learning that he was homeless and incapable of providing for the child's basic needs.

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[1]The parties are referred to by their initials or title in accordance with this court's policy regarding non-disclosure of identities in juvenile cases.

R.F., born to the same biological mother as H.F., was removed from the hospital four days after her birth. A complaint alleging R.F. to be an abused, neglected and dependent child was filed by the agency on November 14, 2005. The complaint was later dismissed and refiled on February 14, 2006, in Case No. AD 06900286, which is before this court on appeal.

On February 6, 2006, the agency filed a complaint for neglect as to H.F. in Case No. AD 06900231, which also contained a prayer for temporary custody and a motion for predispositional custody. The complaint specifically alleged that on or about September 2, 2004, H.F. was adjudicated abused, neglected and dependent, and placed in the legal custody of father, S.F. in Case No. 04900862. The complaint further alleged that S.F. has a substance abuse problem, and that he could not provide basic needs for the child given his lack of stable residence and income.

The refiled complaint as to R.F. alleged that she was an abused, neglected, and dependent child. This complaint alleged that at the time of R.F.'s birth on November 10, 2005, both she and her biological mother tested positive for cocaine and marijuana. It further alleged that S.F. failed to establish paternity, and that he, the alleged father, is not prepared to provide the child, R.F., with her basic needs, given he has a substance abuse problem,

specifically, crack cocaine, which prevents him from providing adequate care for R.F.

On February 15, 2006, S.F. denied the allegations in the complaints but stipulated to the granting of the motion for predispositional custody. A magistrate found probable cause for removal of the children under R.C. 2151.31, and ordered the children committed to the emergency care and custody of CCDCFS. Testimony from the CCDCFS social worker was taken as it relates to mother, as she was the custodial parent with regard to R.F. The social worker testified that mother had failed to complete the treatment plan services in all particulars, including those regarding housing, parenting classes, substance abuse, and mental health treatment. S.F. was referred to the drug court program.

On May 17, 2006, the court held an adjudicatory hearing and granted, without objection, the agency's oral motions to consolidate the two cases and to make amendments to its complaints.

With regard to the complaint involving H.F., the complaint was amended to include the following allegations: "Father has a substance abuse problem, specifically cocaine, alcohol, and marijuana, which interferes with his providing appropriate care and supervision of the child. *** Father cannot provide the

basic needs for the child as he is in residential treatment. *** Father needs parenting education to provide adequate care and supervision of the child." (Tr. 6.)

With regard to the complaint involving R.F., the complaint was amended to include the following allegations: "Father, S.F., has established paternity. *** Father, S.F., is not prepared to provide the child with her basic needs as he is currently in residential treatment. *** Father, S.F., has a substance abuse problem, specifically crack/cocaine, which interferes with him providing appropriate care for the child." (Tr. 5.) The trial court noted the appearance of the assistant prosecuting attorney on behalf of the agency, the agency social worker, the guardian ad litem for the children, S.F., and the assistant public defender, Margaret Isquick, representing S.F. The mother had been served in both cases and had been sent a notice regarding the May 17, 2006 hearing, but failed to appear. Given her nonappearance, the agency social worker testified regarding the allegations of her neglect as to H.F. and the allegations of abuse, neglect and/or dependency of R.F. (Tr. 10.) The court found these allegations to be true as to the mother, and found the children to be neglected and abused, neglected and/or dependent respectively.

The court, when learning from counsel that there would be admissions to the allegations set forth in the amended complaints on the part of S.F., entered into the following colloquy with S.F. and his counsel:

"THE COURT:	***Dad, it's the Court's understanding that you're about to enter an admission to the amended complaint?
S.F.:	Yes.
THE COURT:	Okay. Very good. And you've had an opportunity to review that with your attorney, is that correct?
S.F.:	Yes.
THE COURT:	All right. Before I can accept your admission there are certain questions that I need to ask you. No. 1, are you under the influence of any drug or alcohol?
S.F.:	No.
THE COURT:	Has anyone made any threats or promises in order to get you to admit here this afternoon?
S.F.:	No.
THE COURT:	Do you understand that by admitting to the complaint as amended that both children – is it R.? ***
S.F.:	R.

THE COURT: R. can be found to be abused, neglected, and/or dependent, and H. could be found to be neglected. Do you understand that?

S.F.: Yes.

THE COURT: All right. Do you understand that if these two children are found to be abused, neglected, and/or dependent, the Agency is asking for what's called temporary custody. Do you understand that?

S.F.: Yes.

THE COURT: And do you understand that with temporary custody, if it's granted to the Agency, you as a parent would be losing some of your parental rights on a temporary basis. Do you understand all that?

S.F.: Yes.

THE COURT: Do you understand that by entering the admission today you're giving up certain rights. Those rights are the right to go to trial. Do you understand that? You're giving up the right to go to trial?

S.F.: Yes.

THE COURT: Okay. You're giving up the right to cross-examine any witnesses, bring in your own witnesses, or testify on your own behalf? Do you understand that?

S.F.: (Indicating.)

THE COURT: All right. You are represented by counsel. Do you have any questions that you wanted to ask your attorney at this time concerning anything that's going on here? And if you do, I certainly will give you time in private to talk with you attorney. Do you have any questions?"

S.F.: We already went through it.

THE COURT: Do you want to Miss Isquick?

MS. ISQUICK: No.

THE COURT: Oh, did he say no?

MS. ISQUICK: Yes.

THE COURT: Oh, I'm sorry.

MS. ISQUICK: He said we already went through it.

THE COURT: Okay. Real good. All right. With that being said, as to the amended complaint regarding R.F. Case No. 06900286, do you admit to the amended complaint or deny?

S.F.: I admit.

THE COURT: Okay. As to that case ending in 286, the Court will find the child, R.F., to be abused, neglected, and dependent. As to the child, H., Case No. 06900231, do you admit to the amended complaint or deny?

S.F: Yeah.

MS. ISQUICK: He admits.

THE COURT: **You'll admit?**

MS. ISQUICK: **You have to say you admit.**

S.F.: **Yes I admit.**

THE COURT: **Okay. The Court will accept your admission, find that admission also to be voluntarily, intelligently, and knowingly made. The child, H.F, will be found to be a neglected child." (Tr. 11-15.)**

The court granted the motion for temporary custody of both children to the agency, and they remained in a foster home together. S.F. was stated to be a participant of the drug court program, and the agency indicated that its goal was reunification of the children solely with S.F., once he addressed his needs, as the mother failed to participate in the agency's directives and failed to appear for hearing. The recommendation of the children's guardian ad litem concurred with the agency's plan.

The magistrate's decision with regard to the finding as to H.F. was filed on June 5, 2006, and the decision with regard to the findings as to R.F. was filed on June 7, 2006. S.F. did not file any objections to the magistrate's decisions under Civ.R. 53. The journal entry of the court accepting, approving and adopting the magistrate's decision as to H.F. was signed by the originally assigned judge on May 30, 2006, and was filed with the clerk and journalized on

June 5, 2006. The journal entry of the court accepting, approving and adopting the decision of the magistrate as to R.F. was signed by the same judge on May 30, 2006, and was filed with the clerk and journalized on June 7, 2006. S.F. did not file a Notice of Appeal from the trial court's decision accepting, approving and adopting the magistrate's adjudicatory finding of neglect as to H.F., and abuse, neglect and/or dependency as to R.F., nor to the dispositional findings granting emergency temporary custody to CCDCFS. Both journal entries noticed the parties of the right to appeal the judgment of the court to the Court of Appeals, thirty days from date of the entry.

On July 18, 2006, the court issued specific orders to prevail upon S.F. to abide by the terms and conditions of his drug court contract. (Tr. 8, 9.) S.F. failed to do so, and he was discharged from the program on September 12, 2006. (Tr. 5.)

On October 19, 2006, the case was remanded to the regular docket for further proceedings. On December 14, 2006, S.F. was appointed counsel on the agency's motion to modify temporary custody to permanent custody. The matter was then continued to January 18, 2007, for pretrial or preliminary hearing.

On January 18, 2007, at a pretrial, the court granted S.F.'s motion to continue the trial on the motions to remove the children from temporary to

permanent custody as he was in a shelter at the time and his assigned counsel wanted time to prepare. The court reset the next hearing for March 15, 2007.

All parties, save the children's mother, were present on March 15, 2007. The court granted the agency's motion to withdraw its motion to modify temporary custody to permanent custody and its motion for extension of temporary custody. S.F. had completed a thirty-day inpatient treatment program, but was unable to participate in the recommended intensive outpatient treatment program because he was recovering from a gunshot wound. However, he eventually completed an intensive outpatient treatment and aftercare program at another agency. Unfortunately, S.F. relapsed within a month of the March 15, 2007 hearing.

The court on March 15, 2007, scheduled a final preliminary hearing for June 21, 2007, and a dispositional hearing for July 26, 2007. S.F. failed to appear at both of these hearings.

On the date of the trial, July 26, 2007, motions regarding permanent custody were before the court. S.F.'s attorney made a motion to continue the trial, as his client's "whereabouts were unknown, and to see if we could get the opportunity for him to appear in court." (Tr. 5.)

The motion was denied. The court proceeded to take testimony from the agency's social worker, who testified that neither biological parent completed the basic needs objectives of their case plans, did not benefit from the services offered by the agency, and failed to remedy the conditions that led to the removal of the children from their care. (Tr. 22.) The trial court judge, after hearing from all parties present, indicated that based on the evidence, testimony, and the recommendation of the children's guardian ad litem, he was granting the order of permanent custody as to both children finding that it was in their best interest.

The trial court entered its orders, finding H.F. neglected and R.F. abused, neglected and/or dependent, based on S.F.'s admissions to the amended complaints, and as to the mother, based on the testimony of the agency social worker.

The successor judge's journal entries from the final trial of July 26, 2006, placing the children in permanent custody of CCDCFS, and terminating all parental rights of the mother and S.F., were signed on July 27, 2007, and journalized by the clerk of courts on August 10, 2007.

S.F., pro se, filed a preprinted Notice of Appeal in both cases on August 13, 2007, attaching the final journal entries of August 10, 2007. The Notice of

Appeal indicated that he, as pro se father of the children named, "gives notice that he will appeal on questions of law, the granting of permanent custody of this child/these children to the Cuyahoga County Department of Human Services." The notice also states that "[t]his appeal is taken pursuant to Ohio Rule of Appellate Procedure 4(A) and is filed as a matter of right."

A motion of S.F. pro se, filed with this court on August 14, 2007, requested appointment of counsel and a transcript at the State's expense. This court appointed appellate counsel of record to represent S.F.; and sua sponte consolidated Appeal Nos. 90299 (*In re H.F.*, AD 06900231), and 90300 (*In re R.F.* AD 06900286) for the record, briefing, hearing and disposition.

APPEALABILITY OF JUDGMENTS BASED ON
MAY 17, 2006 HEARING

Because we find the first assignment of error to be well-founded and determinative, we do not address the other two assignments of error set forth in the appendix attached to this opinion.

S.F.'s first assignment of error reads as follows:

> **"The trial court committed prejudicial error and denied Appellant due process of law at the adjudicatory hearing by accepting an admission from Appellant without first determining: (i) that he understood that by entering an admission he was waiving important constitutional rights, including the right to remain silent; and (ii) that he fully understood the consequences of an admission. *Juv.R. 29 (D).***

Fifth and Fourteenth Amendments, Constitution of the United States; Article I, §10 and §16, Constitution of the State of Ohio." **(Emphasis in original.)**

Before addressing S.F.'s first assignment of error, we must determine whether this issue is timely appealed pursuant to App.R. 4(A).

CCDCFS contends that S.F. failed to timely appeal the trial court's decision adopting as judgment of the court the May 17, 2006, adjudication of the children as abused, neglected and/or dependent, and the dispositional portion of the judgments placing the children in emergency temporary custody of the agency.

This court was presented with the same preliminary issue in the case of *In re A.C.,* Cuyahoga App. No. 84830, 2005-Ohio-1742, and relied on its then recent decision of *In re S.G. & M.G.,* Cuyahoga App. No. 84228, 2005-Ohio-1163, in revising previous holdings that when a trial court made an adjudicatory finding of dependency, neglect or abuse, the parent must appeal that finding within thirty days of the judgment entry as required by App.R. 4(A).[2] These holdings were based on the Supreme Court decision of *In re Murray* (1990), 52 Ohio St.3d 155, 556 N.E.2d 1169, finding that an aggrieved party generally has

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[2]See, also, *In re M.L.R.*, 150 Ohio App.3d 39, 2002-Ohio-5958; *In re C.H.*, Cuyahoga App. Nos. 82258, 82852, 2003-Ohio-6854; *In re M.Z.*, Cuyahoga App. No. 80799, 2002-Ohio-6634; *In re Michael A.*, Cuyahoga App. No. 79835, 2002-Ohio-1270; *In re Natalie Hart*, Cuyahoga App. No. 75326, 199 Ohio App. LEXIS 5896.

thirty days from the time of an adjudication order is entered to appeal that order, when it is accompanied by a temporary order of disposition, as a final appealable order, as it affects a significant parental right. Id. at syllabus.

This court in *In re A.C.*, supra, stated "this court revised its holding on this issue in *In re S.G. & M.G.*, Cuyahoga App. No. 84228, 2005-Ohio-1163, and ruled that App.R. 4(B)(5) permitted a parent to appeal an adjudicatory ruling either at the time that ruling was made or in the appeal of the final dispositional order." *In re A.C.*, at paragraph 11. The *A.C.* court further stated "[i]n *S.G.*, however, the Eighth District clarified an alternative opportunity to appeal an admission made at the adjudicatory hearing. *S.G.* relied on App.R. 4(B)(5) ***." *In re A.C.*, at paragraph 12. "*S.G.*, supra, acknowledged the adjudicatory ruling finding the children in question to be neglected was a final appealable order, consistent with the Ohio Supreme Court's holding in *In re Murray* ***." The court went on, however, to explain the rule also "authorizes an appeal of an adjudication order alternatively thirty days after the court renders a final order on all issues in the case." *A.C.*, at paragraph 15, quoting *S.G.*, at paragraph 11. "We agree with this interpretation." Id. at paragraph 15.

This interpretation was also adopted in *In re A.D.*, Cuyahoga App. No. 87510, 2006-Ohio-6036:

"App. R. 4(B)(5), however, provides an exception to App. R. 4(A), and authorizes an appeal of an adjudication order alternatively thirty days after the court renders a final order on all issues in the case. This rule governs partial judgments and provides:

'If an appeal is permitted from a judgment or order entered in a case in which the trial court has not disposed of all claims as to all parties, other than a judgment or order entered under Civ. R. 54(B), a party may file a notice of appeal within thirty days of entry of the judgment or order appealed or the judgment or order that disposes of the remaining claims. Division (A) of this rule applies to a judgment or order entered under Civ. R. 54(B).'" Id. at paragraph 14.

In the case sub judice, S.F. could appeal the trial court's final ruling adopting and approving the Magistrate's Decision in the adjudicatory and dispositional hearing or after the case was disposed of by the final dispositional hearing of the trial court judge by journal entries signed on July 27, 2007, and journalized by the Clerk of Court on August 10, 2007.

INSUFFICIENCY OF COMPLIANCE WITH JUV.R. 29(D)

At the outset, we must acknowledge that the termination of parental rights is "the family law equivalent of the death penalty," *In re Hayes* (1997), 79 Ohio St.3d 46, 48; *In re Hoffman*, 97 Ohio St.3d 92, 2002-Ohio-5368. See, also, *In re Murray* (1990), 52 Ohio St.3d 155 (which states that a parent has a "'fundamental liberty interest' in the care, custody, and management of his or

her child" and "the right to raise one's children is an 'essential' and 'basic' civil right.") Id. at 157.

Juv.R. 29 outlines the procedure the juvenile court must follow upon the entry of an admission to the allegations of a complaint at an adjudicatory hearing. The trial court, pursuant to Juv.R. 29(D),

> **"shall not accept an admission without addressing the party personally and determining both of the following:**
>
> **(1) The party is making the admission voluntarily with understanding of the nature of the allegations and the consequences of the admission;**
>
> **(2) The party understands that by entering an admission the party is waiving the right to challenge the witnesses and evidence against the party, to remain silent, and to introduce evidence at the adjudicatory hearing."**

Where a constitutional right is involved, as is the case here, the law requires "strict compliance" and the failure of the trial court to advise a parent of a constitutional right is, per se, prejudicial. *In re Onion*, 113 Ohio App.3d 498. This court has held that when a constitutional right is involved such as in cases involving termination of parental rights, a trial court's failure to comply with Juv.R. 29(D) has been found to constitute plain error. *In re A.C.*, at paragraph 24.

As recently stated by this court in *In re L.C.,* Cuyahoga App. No. 90390, 2008-Ohio-917, "Juv.R. 29(D) places an affirmative duty upon the Juvenile Court. Prior to accepting a parent's admission, the Juvenile Court must personally address the parent appearing before the court and determine that the parent, and not merely the attorney, understands the nature of the allegations and the consequences of entering the admission. The trial court is required to make careful inquiries in order to ensure that the party's admission is voluntary, intelligent, and knowing." Id. at paragraph 23.

A trial court's failure to substantially comply with Juv.R. 29(D) "constitutes prejudicial error that requires a reversal of the adjudication in order to permit the party to plead anew. We review whether a court has substantially complied with Juv.R. 29(D) de novo." *In re L.C.* at paragraph 24.

In re M.C., Cuyahoga App. Nos. 85054, 85108, 2005-Ohio-1916, this court reversed an adjudication of neglect and an award of permanent custody when the trial court failed to inform the parent and grandparent that by entering an admission under Juv.R. 29, they were admitting to the truth of the allegations in the amended complaint and to a finding of neglect, and that they were giving up rights that applied to the adjudicatory hearing.

In the case sub judice, as *In re M.C.,* supra, the trial court failed to personally address S.F., and inform him that by entering admissions, he was admitting to the truth of the allegations in the amended complaint and to the respective adjudicatory findings. In fact, the court, in a manner similar to that of the one in *In re Beechler*, 115 Ohio App.3d 567, 571, 685 N.E.2d 1257, (dealing with a review of Juv.R. 29 explanation of rights in the context of a delinquency case) focused on the responses of the attorney rather than the actual party giving up his or her rights.

> **"This rule places an affirmative duty upon the juvenile court. Prior to accepting an admission, the juvenile court must personally address the actual party before the court and determine that that party, and not merely the attorney, understands the nature of the allegations and the consequences of entering the admission. Furthermore, the test for the accused delinquents's understanding of the charges is subjective, rather than objective, in that it is not sufficient that a hypothetical reasonable party would understand. The person actually before the court must do so." Id. at 1259.**

Most critically, the trial court failed to inform S.F. that he was giving up up rights that not only applied to the adjudicatory and dispositional hearing, but more importantly to the final dispositional hearing, resulting in termination of his parental rights. S.F. responded affirmatively to the following questions of the magistrate:

"THE COURT: **Do you understand that if these two children are found to be abused, neglected, and/or dependent, the Agency is asking for what's called temporary custody?**

THE COURT: **And do you understand that with temporary custody, if it's granted to the Agency, you as a parent would be losing some of your parental rights on a temporary basis?"**

S.F. was not told that by entering into the admissions that the trial court would not only make a determination with respect to the adjudicatory status of the children and temporary custody, but that those findings could be used against S.F. at a later time if the agency sought permanent custody of the children, which is exactly what happened when S.F. relapsed and experienced difficulties stemming from the relapse.

In *In re A.A.*, Cuyahoga App. No. 85002, 2005-Ohio-2618, this court reversed an adjudication of neglect and an award of permanent custody where the trial court failed to advise the parent of the constitutional right to remain silent. A review of the record herein discloses that when the magistrate indicated that S.F. would be giving up the right to go to trial, she mentioned the right to cross-examine or challenge any witnesses, the right to bring in his own witnesses and his right to testify on his own behalf, i.e., the right to introduce evidence at the adjudicatory hearing, but she failed to mention the right to remain silent explicitly set forth in Juv.R. 29(D)(2). In the case at bar, it is clear from the

record that the magistrate failed to advise S.F. of his constitutional right to remain silent, and the trial court erred in adopting the findings on that basis alone.

In re S.G. & M.G., supra, this court reversed an adjudication of neglect and an award of permanent custody where the trial court failed to advise the parent of *any* of the constitutional rights that where being waived by the admission. Although this was not the case herein, the failure to include the right to remain silent in the review of constitutional rights being waived by admission, compels reversal.

Lastly, *In re A.D.*, Cuyahoga App. No. 87510, 2006-Ohio-6036, this court again reversed an adjudication of neglect and award of permanent custody where the trial court accepted the parent's admissions to allegations in an amended complaint without first determining that she understood that she was waiving her constitutional rights, as mandated by Juv.R. 29(D). Further, the *A.D.* court stated:

> **"Upon review of similar questioning of the appellant in *In re S.G. & M.G.*, supra, this court stated the following:**
>
> **'Even if we were to construe this colloquy as being in substantial compliance with Juv.R. 29(D)(1) regarding appellant's understanding of the nature of the allegations and the consequences of her admission, there is absolutely no compliance with respect to Juv.R. 29(D)(2), which governs the constitutional rights a party waives upon**

> **entering an admission. The court failed to advise appellant of any of the rights she would be waiving in exchange for her admission. Written in the conjunctive, both subsections of Juv.R. 29(D) must be satisfied before it can be said that there has been substantial compliance with the rule. Because there was no such compliance, appellant's admission to the complaint as amended was not voluntarily and knowingly entered.'" Id. at paragraphs 72, 73.**

Thus, as we found in the cases cited above, because the trial court failed to ascertain that S.F. understood the nature of the allegations and all the consequences of his admissions as required by Juv.R. 29(D(1), and because it failed to advise S.F. of all of the rights he would be waiving in exchange for his admissions as required by Juv.R. 29(D)(2), it cannot be said that his admissions to the amended complaints were voluntarily and knowingly entered. We agree with S.F.'s contention that the trial court accepted his admissions in violation of Juv.R. 29(D), requiring a reversal of the adjudication in order to permit him to plead anew.

Based on our disposition of the first assignment of error herein, this court will not address the remaining assignments of error set forth in the appendix to this opinion. See App.R. 12(A)(1)(c).

The orders of the juvenile court adjudicating H.F. as a neglected child and R.F. as an abused, neglected and dependent child, respectively, based on allegations set forth in the amended complaints as to S.F. only, are hereby

ordered reversed. Without these orders of adjudication relating to S.F., the dispositional award of permanent custody to CCDCFS as it relates to S.F. cannot stand and are, likewise, reversed. This case is remanded for further proceedings consistent with this opinion.

It is ordered that appellant recover of appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to the Cuyahoga County Common Pleas Court, Juvenile Division, to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Mary Eileen Kilbane

MARY EILEEN KILBANE, PRESIDING JUDGE

PATRICIA A. BLACKMON, J., and
MARY JANE BOYLE, J., CONCUR

"II. **The judgment terminating Appellant's parental rights is against the manifest weight of the evidence and constitutes a denial of due process of law.** ***Fourteenth Amendment, Constitution of the United States: Article I, §16, Constitution of the State of Ohio.***

III. **The trial court abused its discretion and denied Appellant due process of law by denying his motion for continuance of the hearing held on July 26, 2007."**

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Gerald E. Fuerst, Clerk of Courts

IN RE: HASSANI FINKLEA

Appellee	COA NO.	LOWER COURT NO.
	90299	AD 06900231
	90300	AD 06900286

JUVENILE COURT DIVISION

MOTION NO. 407851

Date 05/09/2008

Journal Entry

MOTION BY APPELLEE, C.C.D.C.F.S., FOR EN BANC CONFERENCE IS DENIED (SEE SEPARATE JOURNAL ENTRY OF SAME DATE CAPTIONED MOTION FOR EN BANC CONFERENCE; MOTION TO CERTIFY A CONFLICT).

RECEIVED FOR FILING

MAY 9 - 2008

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

Judge PATRICIA A. BLACKMON, Concurs

Judge MARY J. BOYLE, Concurs

Presiding Judge
MARY EILEEN KILBANE

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Gerald E. Fuerst, Clerk of Courts

IN RE: HASSANI FINKLEA

Appellee

COA NO.	LOWER COURT NO.
90299	AD 06900231
90300	AD 06900286

JUVENILE COURT DIVISION

MOTION NO. 407850

Date 05/09/2008

Journal Entry

MOTION BY APPELLEE, C.C.D.C.F.S. TO CERTIFY A CONFLICT IS GRANTED (SEE SEPARATE JOURNAL ENTRY OF SAME DATE CAPTIONED MOTION FOR EN BANC CONFERENCE; MOTION TO CERTIFY A CONFLICT).

RECEIVED FOR FILING
MAY 9 - 2008
GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY _____ DEP.

Judge PATRICIA A. BLACKMON, Concurs

Judge MARY J. BOYLE, Concurs

Mary Eileen Kilbane
Presiding Judge
MARY EILEEN KILBANE

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT
COUNTY OF CUYAHOGA
GERALD E. FUERST, CLERK OF COURTS

IN RE: RIYAN FINKLEA	:	COA NOS.	LOWER COURT NOS.
HASSANI FINKLEA	:	90299	AD 06900231
	:	90300	AD 06900286
	:		
	:		
	:		
	:	COMMON PLEAS	
	:	JUVENILE DIVISION	
	:		
	:	Motion Nos.	
	:	407851, 407850	
	:		
	:	Motion to Certify a Conflict;	
	:	Motion for En Banc Conference	
	:		

DATE: May 9, 2008

JOURNAL ENTRY

Appellee Cuyahoga County Department of Children and Family Services (CCDCFS) has filed a timely motion to certify a conflict and, alternatively, a motion for an en banc conference.

At the outset, the court denies the alternative motion for en banc conference. Appellee sought the same en banc hearing in *In re A.D.*, Cuyahoga App. No. 87510, 2006-Ohio-6036, which was denied. *In re A.D.*, one of the concurring judges in the court's holding followed herein, was the writing judge

in the recent decision of *In re X.R.*, Cuyahoga App. No. 90066, 2008-Ohio-1710. The majority of the decisions from this appellate district have consistently followed the line of cases cited in the court's decision herein, including *In re A.D.*

For the following reasons, the court grants the motion to certify a conflict requested by appellee CCDCFS.

Pursuant to App.R. 25(A), a party can file a motion to certify a conflict within ten days of the appellate court's decision. Pursuant to Section 3(B)(4), Article IV, of the Ohio Constitution, a court of appeals shall certify the case to the Supreme Court if it finds its judgment in conflict with a judgment of another court of appeals on the same question. Thus, the conflict must be on the same question; the conflict must be on a rule of law, not facts; and, the journal entry or opinion of the certifying court must clearly set forth the rule of law in which the certifying court contends is in conflict with another court's decision. *Whitelock v. Gilbane Bldg. Co.*, 66 Ohio St.3d 594, 596, 1993-Ohio-223.

In accordance with *Whitelock*, this court finds that the decision announced April 3, 2008 herein, to wit: *In re H.F. & R.F.*, Cuyahoga App. Nos. 90299 & 90300, 2008-Ohio-1627, is in conflict with the Fourth District Court of Appeals decision of *In re P.N.M.*, Adams App. Nos. 07CA841 & 07CA842, 2007-Ohio-

4976, and the Twelfth District Court of Appeals decision of *In re C.G.*, Preble App. Nos. CA2007-03-005 & CA2007-03-006, 2007-Ohio-4361.

The court hereby certifies this matter to the Ohio Supreme Court for resolution of the following issue:

> **"WHETHER APP.R. 4(B)(5), PROVIDES AN EXCEPTION TO APP.R. 4(A), AND AUTHORIZES AN APPEAL OF AN ADJUDICATION ORDER, DETERMINING ABUSE, NEGLECT, OR DEPENDENCY, ALTERNATIVELY THIRTY DAYS AFTER THE COURT RENDERS A FINAL ORDER ON ALL ISSUES IN THE CASE, INCLUDING FINAL DISPOSITION AS TO PARENTAL RIGHTS."**

Judge Patricia A. Blackmon, CONCURS

Judge Mary J. Boyle, CONCURS

Mary Eileen Kilbane

Mary Eileen Kilbane, Presiding Judge

RECEIVED FOR FILING

MAY 9 - 2008

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

STATE OF OHIO
COUNTY OF CUYAHOGA

COURT OF COMMON PLEAS
JUVENILE COURT DIVISION
CUYAHOGA COUNTY
FILED

IN THE COMMON PLEAS COURT
JUVENILE COURT DIVISION

07 AUG 10 AM 9:59

CASE NO: AD06900286

IN THE MATTER OF:

Riyan Finklea

CLERK OF COURTS

JOURNAL ENTRY

This matter came on for hearing this 26th day of July, 2007, before the Honorable Thomas F. O'Malley, upon the motion to modify temporary custody to permanent custody filed by the Cuyahoga County Department of Children and Family Services on May 4, 2007.

The Court finds that all necessary parties were served. Present this day in Court were: Assistant Prosecuting Attorney Tammy Semanco, Social Worker from Children Family Services Michelle Oliver, Counsel for the Father Attorney Mark Witt, and Guardian Ad Litem Carla Golubovic. The mother and father, have been duly served, failed to appear.

Whereupon the Court heard testimony as it relates to the request for permanent custody and accepted evidence.

The Court received the report of the Guardian ad Litem recommending that an order of Permanent Custody to the Cuyahoga County Department of Children and Family Services would be in the children's best interest.

Upon due consideration of the evidence presented and the report of the Guardian ad Litem, the Court finds by clear and convincing evidence that the children cannot be placed with their his/her parents within a reasonable time or should not be placed with their parents for the following reasons pursuant to Section 2151.414(E).

> Following the placement of the children 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.
>
> The parents have demonstrated a lack of commitment toward the children 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.
>
> The Parents are unwilling to provide food, clothing, shelter, and other necessities for the children or to prevent the children from suffering emotional or mental neglect, as evidenced by their unwillingness to successfully complete a case plan so they can provide care for the child.
>
> The Parents have committed abuse or neglect to the children and the likelihood of recurrence of the abuse or neglect makes the child's placement with the parents a threat to the children's safety.

0059 3994

The Court further finds, based on the evidence presented and the recommendation of the Guardian ad Litem for the children and after considering all relevant factors, including but not limited to each of the factors listed at O.R.C. 2154.414(D)(1)-(5), that an order of Permanent Custody is in the children's best interest and the children cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent.

The Court further finds that reasonable efforts were made by the Cuyahoga County Department of Children and Family Services to prevent the removal and the continued removal of the children from the home and to finalize a permanency plan, to wit: substance abuse treatment, housing referrals, employment assistance, visitation, and case management services. Adoption is the permanency plan.

IT IS FURTHER ORDERED that the previous order of temporary custody to CCDCFS is terminated.

IT IS FURTHER ORDERED that the children, Hassani Finklea and Riyan Finklea, is placed in the Permanent Custody of the Cuyahoga County Department of Children Family Services pursuant to R.C. 2151.353 and R.C. 2151.41(B)(1) and that all parental rights of Luchana Williams and Shedric Finklea to the children are hereby terminated. The children will remain in the Permanent Custody of said agency until an adoptive home is secured and the child is placed according to law. Pursuant to R.C. 2151.417(C), this matter will be scheduled for a Permanent Custody review hearing before the Magistrate Wayne Strunk.

IT IS FURTHER ORDERED that the Cleveland School District is to bear the cost of educating said child.

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

THE CLERK IS DIRECTED TO SERVE A COPY OF THIS ENTRY ON THE PARTIES.

FILED WITH THE CLERK AND JOURNALIZED

8-10-07 MM

JOSEPH F. RUSSO EX-OFFICIO CLERK

THOMAS F. O'MALLEY

BY: MILLIE HERNANDEZ
DEPUTY CLERK

7/26/07
DATE

0059 3995

STATE OF OHIO
COUNTY OF CUYAHOGA

COURT OF COMMON PLEAS
JUVENILE COURT DIVISION
CUYAHOGA COUNTY
FILED

IN THE COMMON PLEAS COURT
JUVENILE COURT DIVISION

07 AUG 10 AM 8:58
CLERK OF COURTS

IN THE MATTER OF: Hassani Finklea

CASE NO: AD06900231

JOURNAL ENTRY

This matter came on for hearing this 26th day of July, 2007, before the Honorable Thomas F. O'Malley, upon the motion to modify temporary custody to permanent custody filed by the Cuyahoga County Department of Children and Family Services on May 4, 2007.

The Court finds that all necessary parties were served. Present this day in Court were: Assistant Prosecuting Attorney Tammy Semanco, Social Worker from Children Family Services Michelle Oliver, Counsel for the Father Attorney Mark Witt, and Guardian Ad Litem Carla Golubovic. The mother and father, have been duly served, failed to appear.

Whereupon the Court heard testimony as it relates to the request for permanent custody and accepted evidence.

The Court received the report of the Guardian ad Litem recommending that an order of Permanent Custody to the Cuyahoga County Department of Children and Family Services would be in the children's best interest.

Upon due consideration of the evidence presented and the report of the Guardian ad Litem, the Court finds by clear and convincing evidence that the children cannot be placed with their his/her parents within a reasonable time or should not be placed with their parents for the following reasons pursuant to Section 2151.414(E).

> Following the placement of the children 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.
>
> The parents have demonstrated a lack of commitment toward the children 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.
>
> The Parents are unwilling to provide food, clothing, shelter, and other necessities for the children or to prevent the children from suffering emotional or mental neglect, as evidenced by their unwillingness to successfully complete a case plan so they can provide care for the child.
>
> The Parents have committed abuse or neglect to the children and the likelihood of recurrence of the abuse or neglect makes the child's placement with the parents a threat to the children's safety.

0059 3996

The Court further finds, based on the evidence presented and the recommendation of the Guardian ad Litem for the children and after considering all relevant factors, including but not limited to each of the factors listed at O.R.C. 2154.414(D)(1)-(5), that an order of Permanent Custody is in the children's best interest and the children cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent.

The Court further finds that reasonable efforts were made by the Cuyahoga County Department of Children and Family Services to prevent the removal and the continued removal of the children from the home and to finalize a permanency plan, to wit: substance abuse treatment, housing referrals, employment assistance, visitation, and case management services. Adoption is the permanency plan.

IT IS FURTHER ORDERED that the previous order of temporary custody to CCDCFS is terminated.

IT IS FURTHER ORDERED that the children, Hassani Finklea and Riyan Finklea, is placed in the Permanent Custody of the Cuyahoga County Department of Children Family Services pursuant to R.C. 2151.353 and R.C. 2151.41(B)(1) and that all parental rights of Luchana Williams and Shedric Finklea to the children are hereby terminated. The children will remain in the Permanent Custody of said agency until an adoptive home is secured and the child is placed according to law. Pursuant to R.C. 2151.417(C), this matter will be scheduled for a Permanent Custody review hearing before the Magistrate Wayne Strunk.

IT IS FURTHER ORDERED that the Cleveland School District is to bear the cost of educating said child.

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

THE CLERK IS DIRECTED TO SERVE A COPY OF THIS ENTRY ON THE PARTIES.

FILED WITH THE CLERK AND JOURNALIZED

8-10-07 MM

JOSEPH F. RUSSO EX-OFFICIO CLERK

THOMAS F. O'MALLEY

BY: MILLIE HERNANDEZ
DEPUTY CLERK

7/26/07
DATE

0059 3997

COURT OF COMMON PLEAS
JUVENILE COURT DIVISION
CUYAHOGA COUNTY
FILED
07 APR 1 1:36
CLERK OF COURTS

STATE OF OHIO
COUNTY OF CUYAHOGA

IN THE COMMON PLEAS COURT
JUVENILE DIVISION

IN THE MATTER OF: Hassani Finklea

CASE NOS.: AD 06900231

JOURNAL ENTRY

This matter came on for hearing this 15th day of March, 2007, before the Honorable Judge Thomas F. O'Malley upon a Motion to Withdraw motion to Modify Temporary Custody to Permanent Custody and motion for First Extension of Temporary Custody and Request for Specific Findings filed by the Cuyahoga County Department of Children and Family Services on March 5th 2007.

The Court finds that all necessary parties were served. Present this day in court were: Assistant Prosecuting Attorney, Gina Lowe; Michell Oliver, social worker from the Cuyahoga County Department of Children and Family Services; father, Shedric Finklea; Counsel for the father Attorney Mark Witt and Carla Golubovic, Guardian ad Litem for the children.

Hearing had on the Motion to Withdraw Motion to Modify Temporary Custody to Permanent Custody and Motion for first and second extension of Temporary Custody and request for Specific Findings.

The Court grants Motion to Withdraw Motion to Modify Temporary Custody to Permanent Custody and a first and second six-month extension of temporary custody, until August 6, 2007 and specific findings.

The Court further finds that reasonable efforts were made by the Cuyahoga County Department of Children and Family Services to finalize a permanency plan for the child and to prevent the continued removal of the child from the home. Specifically, CCDCFS intends to reunify the children with the father following this request for a six month extension, if father achieves the remaining objectives of the case plan.. The Court approves the permanency plan.

IT IS FURTHER ORDERED that said child is continued in the Temporary Custody of the Cuyahoga County Department of Children and Family Servicespursuant to R.C. 2151.353 and R.C. 2151.414(B)(1)

Matter to be set for review on Magistrate Wayne Strunk's Docket

IT IS FURTHER ORDERED that the Cleveland School District is to bear the cost of educating said children.

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

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

Filed with the Clerk and Journalized

3/17/07

Joseph F. Russo Ex-Officio Clerk

Judge Thomas F. O'Malley

Deputy Clerk

Date 3/15/07

FILED
07 APR -4 PM 3:52
CLERK OF COURTS

STATE OF OHIO
COUNTY OF CUYAHOGA

IN THE COMMON PLEAS COURT
JUVENILE DIVISION

IN THE MATTER OF: Riyan Finklea

CASE NOS.: AD 06900286

JOURNAL ENTRY

This matter came on for hearing this 15th day of March, 2007, before the Honorable Judge Thomas F. O'Malley upon a Motion to Withdraw motion to Modify Temporary Custody to Permanent Custody and motion for First and second Extension of Temporary Custody and Request for Specific Findings filed by the Cuyahoga County Department of Children and Family Services on March 5th 2007.

The Court finds that all necessary parties were served. Present this day in court were: Assistant Prosecuting Attorney Gina Lowe; Michell Oliver, social worker from the Cuyahoga County Department of Children and Family Services; father, Shedric Finklea; Counsel for the father Attorney Mark Witt and Carla Golubovic, Guardian ad Litem for the children.

Hearing had on the Motion to Withdraw Motion to Modify Temporary Custody to Permanent Custody and Motion for first and second extension of Temporary Custody and request for Specific Findings.

The Court grants Motion to Withdraw Motion To Modify Temporary Custody to Permanent Custody and a first six-month extension of temporary custody until August 6, 2007 and specific findings.

The Court further finds that reasonable efforts were made by the Cuyahoga County Department of Children and Family Services to finalize a permanency plan for the child. Specifically, CCDCFS intends to reunify the children with the father following this request for a six month extension, if father achieves the remaining objectives of the case plan. The removal and the continued removal of the children from the home and to finalize a permanency plan to wit: drug and alcohol assessment and treatment, parenting education, basic needs referrals and case management The Court approves the permanency plan.

IT IS FURTHER ORDERED that said child is continued in the Temporary Custody of the Cuyahoga County Department of Children and Family Services pursuant to R.C. 2151.353 and R.C. 2151.414(B)(1)

Matter to be set for review on Magistrate Wayne Strunk's Docket

IT IS FURTHER ORDERED that the Shaker Heights School District is to bear the cost of educating said children.

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

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

Filed with the Clerk and Journalized

4-4-07 mm

Joseph F. Russo Ex-Officio Clerk

Judge Thomas F. O'Malley

Deputy Clerk

Date 3/15/07

CLERK OF COMMON PLEAS
JUVENILE COURT DIVISION
CUYAHOGA COUNTY
FILED

MAGISTRATE'S DECISION

06 JUN -7 AM 10:28
CLERK OF COURTS

STATE OF OHIO
COUNTY OF CUYAHOGA

IN THE COMMON PLEAS COURT
JUVENILE COURT DIVISION

IN THE MATTER OF:
RIYAN FINKLEA, d.o.b. 11/10/05

CASE NUMBER: 06900286

This matter came on for hearing this 17th day of May, 2006, before Magistrate Deanna O'Donnell, upon the complaint for Abuse, Neglect, Dependency and Temporary Custody filed by the Cuyahoga County Department of Children and Family Services, ("CCDCFS") on February 14, 2006.

Present in court were: Father, Shedric Finklea; Father's attorney, Margaret Isquick; Social Worker from CCDCFS, Michelle Oliver; Assistant Prosecuting Attorney, Michelle Myers and Guardian Ad Litem/Attorney for the child, Carla Golubovic. The Mother, having received proper service, failed to appear.

The Court explained the legal rights, procedures and possible consequences of the hearing pursuant to Ohio Juvenile Rule 29 and Ohio Revised Code 2151.35.

The Court finds that Father, Shedric Finklea, was previously served with a copy of the complaint and voluntarily and knowingly waives any defect in service.

Whereupon, Assistant Prosecuting Attorney Myers moved to amend remove John Doe as a party to this action. Upon agreement of the parties, the Court grants said motion.

Whereupon, Assistant Prosecuting Attorney Myers moved to consolidate this matter with the sibling case, Hassani Finklea, case no. 06900231. Based upon the facts presented and having received no objection, the Court grants said motion and consolidates the case.

Whereupon, Assistant Prosecuting Attorney Myers moved to amend the complaint. Upon agreement of the parties, the Court grants said motion and accepts the amendments to the complaint. The Father, Shedric Finklea, knowingly and voluntarily entered admissions to the allegations of the complaint as amended. The social worker, Michelle Oliver, provided sworn testimony regarding the mother.

Based upon the admissions of the Father, Shedric Finklea and the sworn testimony of the social worker, the Court finds by clear and convincing evidence that the child is ABUSED, NEGLECTED AND DEPENDENT as defined in Sections 2151.031(D), 2151.03(A)(2) and 2151.044(C) of the Ohio Revised Code in the following particulars:

1. On November 10, 2005, the date of the child's birth, mother and child both tested positive for cocaine and marijuana.
2. Mother failed to obtain prenatal care during her entire pregnancy.
3. Mother has a substance abuse problem, specifically crack cocaine, which prevents her from providing appropriate care for the child.
4. Mother has mental health issues, specifically schizophrenia and bipolar disorder, which prevent her from providing appropriate care for the child.
5. Mother has an extensive history with CCDCFS spanning approximately eleven (11) years. Mother has five older children who were committed to the care of relatives and

one child who was adopted.

6. Mother is not prepared to provide the child with her basic needs. Mother does not have housing and basic needs to provide for the child.
7. Father, Shedric Finklea, has established paternity.
8. Father, Shedric Finklea, is not prepared to provide the child with her basic needs, as he is currently in residential treatment.
9. Father, Shedric Finklea, has a substance abuse problem, specifically crack cocaine, which inteferes with him providing appropriate care for the child.

Whereupon, Assistant Prosecuting Attorney Myers moved to disposition. Without objection, the Court grants said motion. Upon review of the evidence, agreement of the parties and the report of the Guardian Ad Litem/Attorney for the child, the Court finds by clear and convincing evidence that it is in the best interest of the child to be committed to the Temporary Custody of CCDCFS.

IT IS THEREFORE RECOMMENDED that John Doe be removed as a party to this action.

IT IS FURTHER RECOMMENDED that this matter be consolidated with the case of Hassani Finklea, case no. 06900231.

IT IS THEREFORE RECOMMENDED that the child be adjudged ABUSED, NEGLECTED AND DEPENDENT as defined in Sections 2151.031(D), 2151.03(A)(2) and 2151.044(C) of the Ohio Revised Code.

IT IS FURTHER RECOMMENDED that the child be committed to the TEMPORARY CUSTODY OF CCDCFS.

IT IS FURTHER RECOMMENDED that the prior order committing the child to the pre-dispositional temporary custody of CCDCFS be terminated.

IT IS FURTHER RECOMMENDED that the case plan filed herein be approved and journalized.

THE PARTIES ARE ADVISED THAT OBJECTIONS MAY BE FILED WITH THE ASSIGNED JUDGE WITHIN FOURTEEN DAYS OF THE FILING OF THIS DECISION.

THE CLERK OF COURTS SHALL SERVE UPON ALL PARTIES NOT IN DEFAULT FOR FAILURE TO APPEAR NOTICE OF THIS JUDGMENT.

5/24/06

Date

Magistrate Richard Walsh

FILED WITH THE CLERK OF COURTS AND JOURNALIZED

6/7/06 RK

Joseph F. Russo ExOfficio Clerk

8-24-06

Date

By: _____
Deputy Clerk

COURT OF COMMON PLEAS
JUVENILE COURT DIVISION
CUYAHOGA COUNTY
FILED
06 JUN -7 AM 10: 28
CLERK OF COURTS

JOURNAL ENTRY

STATE OF OHIO
COUNTY OF CUYAHOGA

IN THE COMMON PLEAS COURT
JUVENILE COURT DIVISION

IN THE MATTER OF:
RIYAN FINKLEA, d.o.b. 11/10/05

CASE NUMBER: 06900286

This matter came on for consideration this 30th day of May, 2006, upon the decision of Magistrate Richard Walsh, from a hearing held on May 17, 2006.

The Court finds that the Magistrate's decision is appropriate and in the best interest of the child. Accordingly, the decision of the Magistrate is APPROVED.

IT IS THEREFORE ORDERED that John Doe is removed as a party to this action.

IT IS FURTHER ORDERED that this matter is consolidated with the case of Hassani Finklea, case no. 06900231.

IT IS FURTHER ORDERED that the child is adjudged ABUSED, NEGLECTED AND DEPENDENT as defined in Sections 2151.031(D), 2151.03(A)(2) and 2151.044(C) of the Ohio Revised Code.

IT IS FURTHER ORDERED that the child is committed to the TEMPORARY CUSTODY OF CCDCFS.

IT IS FURTHER ORDERED that the prior order committing the child to the pre-dispositional temporary custody of CCDCFS is terminated.

IT IS FURTHER ORDERED that the case plan filed herein is approved and journalized.

Cleveland School District shall bear the cost of education for the child.

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

THE CLERK OF COURTS SHALL SERVE UPON ALL PARTIES NOT IN DEFAULT FOR FAILURE TO APPEAR NOTICE OF THIS JUDGMENT.

5/30/06
Date

Judge John W. Gallagher

FILED WITH THE CLERK OF COURTS AND JOURNALIZED
6/7/06 RK

Joseph F. Russo ExOfficio Clerk Date

COURT OF COMMON PLEAS
JUVENILE COURT DIVISION
CUYAHOGA COUNTY
FILED

MAGISTRATE'S DECISION

STATE OF OHIO
COUNTY OF CUYAHOGA

06 JUN -5 PM 11: 40
CLERK OF COURTS

IN THE COMMON PLEAS COURT
JUVENILE COURT DIVISION

IN THE MATTER OF:
HASSANI FINKLEA, d.o.b. 4/2/04

CASE NUMBER: 06900231

This matter came on for hearing this 17th day of May, 2006, before Magistrate Deanna O'Donnell, upon the complaint for Neglect and Temporary Custody filed by the Cuyahoga County Department of Children and Family Services, ("CCDCFS") on February 6, 2006.

Present in court were: Father, Shedric Finklea; Father's attorney, Margaret Isquick; Social Worker from CCDCFS, Michelle Oliver; Assistant Prosecuting Attorney, Michelle Myers and Guardian Ad Litem/Attorney for the child, Carla Golubovic. The Mother, having received proper service, failed to appear.

The Court explained the legal rights, procedures and possible consequences of the hearing pursuant to Ohio Juvenile Rule 29 and Ohio Revised Code 2151.35.

The Court finds that Father, Shedric Finklea, was previously served with a copy of the complaint and voluntarily and knowingly waives any defect in service.

Whereupon, Assistant Prosecuting Attorney Myers moved to consolidate this matter with the sibling case, Riyan Finklea, case no. 06900286. Based upon the facts presented and having received no objection, the Court grants said motion and consolidates the case.

Whereupon, Assistant Prosecuting Attorney Myers moved to amend the complaint. Upon agreement of the parties, the Court grants said motion and accepts the amendments to the complaint. The Father, Shedric Finklea, knowingly and voluntarily entered admissions to the allegations of the complaint as amended. The social worker, Michelle Oliver, provided sworn testimony regarding the mother.

Based upon the admissions of the Father, Shedric Finklea and the sworn testimony of the social worker, the Court finds by clear and convincing evidence that the child is NEGLECTED as defined in Section 2151.03(A)(2) of the Ohio Revised Code in the following particulars:

1. On or about September 2, 2004, the child was adjudicated abused, neglected, and dependent, and placed in the legal custody of father. Case no. 04900862.
2. Father has a substance abuse problem, specifically cocaine, alcohol, and marijuana, which interferes with him providing appropriate care and supervision of the child.
3. Father cannot provide the basic needs for the child, as he is in residential treatment.
4. Father needs parenting education to provide adequate care and supervision of the child.
5. Mother has a substance abuse problem, specifically crack cocaine, which prevents her from providing appropriate care and supervision of the child.
6. Mother lacks stable housing and income to provide the basic needs for the child. Her current whereabouts are unknown.
7. Mother has mental health issues, specifically schizophrenia and bipolar disorder, which prevent her from providing appropriate care for the child.
8. Mother has an extensive history with CCDCFS spanning approximately eleven (11)

years. Mother has four older children who were committed to the care of relatives and one child who was placed in the permanent custody of CCDCFS and subsequently adopted. Case nos. 01904433, 01900437, 00900681-83.

9. Mother and father have another child who is currently in the emergency custody of CCDCFS. Case no. 04900862. Mother tested positive for cocaine and marijuana at the birth of this child on November 10, 2005.

Whereupon, Assistant Prosecuting Attorney Myers moved to disposition. Without objection, the Court grants said motion. Upon review of the evidence, agreement of the parties and the report of the Guardian Ad Litem/Attorney for the child, the Court finds by clear and convincing evidence that it is in the best interest of the child to be committed to the Temporary Custody of CCDCFS.

IT IS THREFORE RECOMMENDED that this matter be consolidated with the case of Riyan Finklea, case no. 06900286.

IT IS FURTHER RECOMMENDED that the child be adjudged NEGLECTED as defined in Section 2151.03(A)(2) of the Ohio Revised Code.

IT IS FURTHER RECOMMENDED that the child be committed to the TEMPORARY CUSTODY OF CCDCFS.

IT IS FURTHER RECOMMENDED that the prior order committing the child to the pre-dispositional temporary custody of CCDCFS be terminated.

IT IS FURTHER RECOMMENDED that the case plan filed herein be approved and journalized.

THE PARTIES ARE ADVISED THAT OBJECTIONS MAY BE FILED WITH THE ASSIGNED JUDGE WITHIN FOURTEEN DAYS OF THE FILING OF THIS DECISION.

THE CLERK OF COURTS SHALL SERVE UPON ALL PARTIES NOT IN DEFAULT FOR FAILURE TO APPEAR NOTICE OF THIS JUDGMENT.

5/24/06

Date

Magistrate Richard Walsh

FILED WITH THE CLERK OF COURTS AND JOURNALIZED.

6/5/06 RK

Joseph F. Russo ExOfficio Clerk

5-24-06

Date

By: _____
Deputy Clerk

JOURNAL ENTRY

STATE OF OHIO
COUNTY OF CUYAHOGA

IN THE COMMON PLEAS COURT
JUVENILE COURT DIVISION

IN THE MATTER OF:
HASSANI FINKLEA, d.o.b. 4/2/04

CASE NUMBER: 06900231

This matter came on for consideration this 30th day of May, 2006, upon the decision of Magistrate Richard Walsh, from a hearing held on May 17, 2006.

The Court finds that the Magistrate's decision is appropriate and in the best interest of the child. Accordingly, the decision of the Magistrate is APPROVED.

IT IS THREFORE ORDERED that this matter is consolidated with the case of Riyan Finklea, case no. 06900286.

IT IS THEREFORE ORDERED that the child is adjudged NEGLECTED as defined in Section 2151.03(A)(2) of the Ohio Revised Code.

IT IS FURTHER ORDERED that the child is committed to the TEMPORARY CUSTODY OF CCDCFS.

IT IS FURTHER ORDERED that the prior order committing the child to the pre-dispositional temporary custody of CCDCFS is terminated.

IT IS FURTHER ORDERED that the case plan filed herein is approved and journalized.

Cleveland School District shall bear the cost of education for the child.

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

THE CLERK OF COURTS SHALL SERVE UPON ALL PARTIES NOT IN DEFAULT FOR FAILURE TO APPEAR NOTICE OF THIS JUDGMENT.

5/30/06
Date

Judge John W. Gallagher

FILED WITH THE CLERK OF COURTS AND JOURNALIZED

6/5/06 RK
Joseph F. Russo ExOfficio Clerk Date

By: John M. Dolan
Deputy Clerk