IN THE SUPREME COURT OF OHIO

In The Matter Of:	:	08-1037
	:	
H.F. & R.F.	:	**On Appeal from the Cuyahoga County**
	:	**Court of Appeals, Eighth Appellate District**
	:	
	:	**Court of Appeals Case Nos. 90299 & 90300**

NOTICE OF CERTIFIED CONFLICT FILED ON BEHALF OF APPELLANT CUYAHOGA COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES

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FILED
MAY 28 2008
CLERK OF COURT
SUPREME COURT OF OHIO

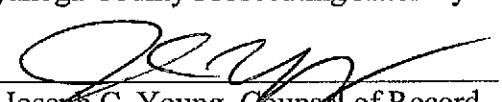
Notice of Certified Conflict

Appellant Cuyahoga County Department of Children and Family Services hereby gives notice of certified conflict to the Supreme Court of Ohio from the judgment of the Cuyahoga County Court of Appeals, Eighth Appellate District, entered in Court of Appeals Case Nos. 90299 & 90300 (2008-Ohio-1627) on May 9, 2008. The Eighth District Court of Appeals has certified the following issue to the Ohio Supreme Court:

> "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."

In so certifying the conflict, the Eighth District Court of Appeals has determined that its decision in this matter is in conflict with the following decisions of other appellate districts: *In re P.N.M.*, Adams App. Nos. 07CA841 & 07CA842, 2007-Ohio-4976 and *In re C.G.*, Preble App. Nos. CA2007-03-005 & CA2007-03-006, 2007-Ohio-4361. Copies of the Eight District Court of Appeals order certifying a conflict and of the decisions determined to be in conflict have been attached hereto in the Appendix following the proof of service pursuant to S.Ct. R. IV, Section 1.

Respectfully submitted,
WILLIAM D. MASON, ESQ.
Cuyahoga County Prosecuting Attorney

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

Proof of Service

I certify that a copy of this Notice of Appeal 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 the 27th day of May, 2008.

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

APPENDIX

Order of Eighth District Court of Appeals dated May 9, 2008, certifying a conflict

Decision of Eighth District Court of Appeals dated April 14, 2008

Conflicting cases:

In re P.N.M., Adams App. Nos. 07CA841 & 07CA842, 2007-Ohio-4976

In re C.G., Preble App. Nos. CA2007-03-005 & CA2007-03-006, 2007-Ohio-4361

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Gerald E. Fuerst, Clerk of Courts

IN RE: H[redacted]F[redacted]

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: R[redacted] F[redacted]	COA NOS.	LOWER COURT NOS.
H[redacted] F[redacted]	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.

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

CA07090299 51075361

CA07090300 51075363

0655 00600

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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.

CA07090300 50833152

CA07090299 50833151

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."**

H
In re P.N.M.
Ohio App. 4 Dist.,2007.

CHECK OHIO SUPREME COURT RULES FOR REPORTING OF OPINIONS AND WEIGHT OF LEGAL AUTHORITY.

Court of Appeals of Ohio,Fourth District, Adams County.
In the Matter of P.N.M., Adjudicated Dependent Child.
Nos. 07CA841, 07CA842.

Decided Sept. 17, 2007.

Miguel A. Santiago, Santiago & Xarhoulacos, LLC, Dayton, OH, for appellant, Millard Meadows.
Jessica A. Little, West Union, OH, for appellant, Ruby Buck.
Carrie A. Bidigare & Joshua A. Engel, Special Adams County Prosecutors, Lebanon, OH, for appellee, State of Ohio.[FN1]

FN1. Appellee represented by different counsel in trial court.

KLINE, J.
*1 {¶ 1} Millard Meadows ("father") and Ruby Buck ("mother") separately appeal the judgment of the Adams County Court of Common Pleas, Juvenile Division, which granted permanent custody of their child, P.N.M., to Adams County Children Services ("CS").[FN2] Father contends that the trial court erred when it granted CS permanent custody because CS failed to make reasonable efforts to reunite the child with mother and father. Because CS is not required to make reasonable efforts to reunite a child with the parents when the parents earlier had their parental rights involuntarily terminated in regards to a sibling of the child, we disagree.

FN2. We sua sponte consolidate these appeals only for purposes of this decision

{¶ 2} Mother contends that the trial court (1) violated Evid.R. 401 and Evid.R. 404(B) when it allowed testimony about prior terminations of parental rights and (2) should not have admitted "stale" I.Q. evidence. Because we find that the trial court did not abuse its discretion, we disagree. Mother next contends that the trial court's dependency finding was against the manifest weight of the evidence. Because this finding is separate from the permanent custody hearing, and because mother failed to appeal this earlier finding, we do not address it for lack of jurisdiction. Mother next contends that the trial court's decision to award CS permanent custody of P.N.M. is against the manifest weight of the evidence. Because competent, credible evidence supports the trial court's findings, we disagree. Finally, mother contends that R.C. 2151.414(E)(11) is unconstitutional as applied to her because the court's application violated her due process rights. Because mother wrongly assumes that the trial court relied solely upon the previous terminations of her parental rights to award permanent custody of P.N.M. to CS, we disagree.

{¶ 3} Accordingly, we overrule father's sole assignment of error; all five of mother's assignments of errors; and affirm the judgment of the trial court.

I.

{¶ 4} On September 29, 2005, CS filed a complaint in juvenile court alleging that P.N.M., born September 27, 2005, was a dependent/neglected child and requested temporary custody. The court immediately granted CS's motion for emergency temporary custody.

{¶ 5} The child's father received notice of the adjudication hearing but failed to appear. After hearing testimony, the magistrate entered an order on January 24, 2006, finding by clear and convincing evidence that P.N.M. was a dependent minor child, as defined by R.C. 2151.04(C). The magistrate further found that awarding temporary custody to CS was

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in the best interest of the child and scheduled a disposition hearing. No one filed objections to the magistrate's January 24, 2006 decision.

{¶ 6} The court granted CS temporary custody of P.N.M. at the dispositional hearing and filed its entry March 9, 2006. No one appealed.

{¶ 7} CS moved for permanent custody of the child. Several key witnesses testified, and the court admitted several exhibits into evidence.

*2 {¶ 8} Karen Kinker, a caseworker for CS, testified that mother and father had two other children together, but that a court terminated their parental rights and awarded permanent custody to the Children Services in Scioto County. She further testified that mother had three other children with a previous husband, and a court awarded permanent custody of all three of those children to Children Services in Scioto County. Children Services in Franklin County received custody of two other children.

{¶ 9} Dr. Robin Rippith, a psychologist, testified that she first met with mother in late 2003 for a psychological evaluation. She concluded that mother functioned at a fifth grade level on word recognition and at a fourth grade level with respect to spelling and arithmetic. She further concluded that the child "would be placed at risk for abuse and/or neglect, if [she] were in [her mother's] primary care."Dr. Rippith concluded that mother could not parent the child.

{¶ 10} Dr. Omar Dye, a psychologist, testified that mother did not present major mental illness problems, but she did present problems with intellectual ability. He said that mother tested into the mildly retarded range of intelligence. He concluded that mother has a low level of concentration; has a weak memory; entertained suicidal thoughts in the past, though not currently; and tends to avoid responsibility for her actions. Dr. Dye testified that mother is not prone to following instructions, including instructions from medical professionals. He stated that mother was "low functioning" and that some, but not all, low functioning people can parent children.

{¶ 11} Dawn Grooms, a foster care and adoption specialist for CS, testified that at the time CS filed its motion for permanent custody, father was in prison. She testified that the state arrested the mother for possession of crack cocaine in 2003. Grooms recommended that the court not place P.N.M. into mother's home, or the home of father upon his release from prison. She stated that: she witnessed the interaction of the child with her foster parents, and the interaction was very good; the foster parents love the child; and the foster parents desire to adopt the child. Further, Grooms testified that the foster parents have bonded with the child, take care of her medical and basic needs, and provide necessary stability for the child.

{¶ 12} Andrea Williams, an on-going caseworker for CS, also testified that the child is in a very loving foster home with foster parents that interact with the child appropriately. She testified that courts have removed a total of seven of mother's children from her home. She stated that after P.N.M.'s birth, CS scheduled visitation for the parents, and she noticed at this visitation no bond between child and mother. She said that CS's decision to remove P.N.M. from the home was based primarily on the past removal of mother's seven other children from her home. She also cited the inability of mother and father to handle an infant child and their living arrangements as other factors supporting the removal of the child. She testified that CS had concerns with mother's and father's substance abuse. Finally, she opined that adoption is in the best interest of the child.

*3 {¶ 13} Mother and father both testified about their desire to parent the child. Mother testified that, in fact, courts in Franklin and Scioto counties previously terminated her parental rights to seven of her other natural children. Mother and father are both unemployed and both receive a little over $600 per month in social security disability. Mother also receives approximately $129 a month in food

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stamps. Both testified about the conditions of their current apartment, which include a collapsed ceiling and a portion of the front porch that collapsed when mother walked over it. Neither mother nor father has valid drivers licenses or an operable vehicle. However, father testified that he currently is trying to secure housing in West Union. If successful, he stated that they could walk to anything they needed, such as medical care and shopping.

{¶ 14} After the hearing, the court filed its entry on May 9, 2006 awarding CS permanent custody of P.N.M.

{¶ 15} Father appeals in case no. 07CA842 and asserts the following assignment of error: THE TRIAL COURT ERRED AS A MATTER OF LAW IN GRANTING PERMANENT CUSTODY OF THE MINOR CHILD TO THE ADAMS COUNTY CHILDREN'S SERVICE WHERE THE COURT FOUND THAT REASONABLE EFFORTS WERE NOT PUT FORTH BY THE AGENCY TO REUNITE THE CHILD AND THE PARENTS."

{¶ 16} Mother appeals in case no. 07CA841 and asserts the following five assignments of error: I. "THE TRIAL COURT ERRED TO THE PREJUDICE OF THE APPELLANT WHEN IT OVERRULED APPELLANT'S OBJECTIONS TO THE TESTIMONY OF KAREN KINKER AT THE ADJUDICATORY AND PERMANENT CUSTODY HEARINGS."II. "THE EVIDENCE IN SUPPORT OF AN ADJUDICATION OF DEPENDENCY WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."III. "REVISED CODE § 2151.414(E)(11) IS UNCONSTITUTIONAL AND VIOLATIVE OF DUE PROCESS AS APPLIED TO APPELLANT."IV. "THE TRIAL COURT ERRED WHEN IT ADMITTED THE REPORT OF DR. RIPPITH OVER THE OBJECTION OF THE APPELLANT."And, V. "THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT WHEN IT GRANTED PERMANENT CUSTODY OF THE MINOR CHILD TO THE ADAMS COUNTY CHILDREN'S SERVICES AGENCY."

FATHER'S APPEAL-CASE NO. 07CA842

II.

{¶ 17} In his sole assignment of error, Father contends that, under Ohio law, a trial court cannot grant permanent custody of a child to CS unless it finds that CS made reasonable efforts to reunite the child with the parents. We undertake a de novo review to answer this legal question. See, e.g., *Yazdani-Isfehani v. Yazdani-Isfehani,* 170 Ohio App.3d 1, 2006-Ohio-7105, ¶ 20.

{¶ 18} R.C. 2151.419(A)(1) requires the trial court to determine whether CS made reasonable efforts to prevent the continued removal of a child from the home before granting the state's request for permanent custody. *In re Meadows,* Scioto App. No. 05CA3009, 2005-Ohio-5018, ¶ 16. When making "a reasonable efforts determination, the issue is not whether the agency could have done more, but whether it did enough to satisfy the reasonableness standard under the statute."*Id.,* citing *In re Myers,* Athens App. No. 02CA50, 2003-Ohio-2776, ¶ 18.

*4 {¶ 19} However, R.C. 2151.419(A)(2)(e) states that the trial court must make a finding that CS does not need to make reasonable efforts to prevent the removal of the child from the home when "[t]he parent from whom the child was removed has had parental rights involuntarily terminated pursuant to section 2151.353, 2151.414, or 2151.415 of the Revised Code with respect to a sibling of the child."See, also, *In re Harness,* Athens App. No. 06CA28, 2006-Ohio-6359, ¶ 19.

{¶ 20} Further, "[i]n addition to the statutory reasons why reasonable efforts may be unnecessary, courts have recognized an implied exception when case planning efforts would be futile."*In re Keaton,* Ross App. Nos. 04CA2785 & 04CA2788, 2004-Ohio-6210, ¶ 69, citing *In re Harmon* (Sept. 25, 2000), Scioto App. No. 00CA2693;*In re Crosten* (Mar. 21, 1996), Athens App. No. 95CA1692.However, "trial courts should be cau-

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tious in finding that reasonable efforts would have been futile[.]"*Id.,* citing *In re Efaw* (Apr. 21, 1998), Athens App. No. 97CA49; see, also, *In re T.K.,* Wayne App. No. 03CA6, 2003-Ohio-2634. Thus, "[w]hile a children services agency generally should make a good faith effort to reunite a dependent child with his biological parent, a reunification plan is not required where it would be futile to implement one."*In re Meadows* at ¶ 16, citing *In re Leitwein,* Hocking App. No. 03CA18, 2004-Ohio-1296, ¶ 30;*Elmer v. Lucas Cty. Children Serv. Bd.* (1987), 36 Ohio App.3d 241, 244.

{¶ 21} Here, the trial court's order is unclear whether it ultimately found that CS made reasonable efforts to reunify the child with father or that such efforts were not required. However, the trial court specifically found that father and mother "have had parental rights involuntarily terminated with respect to seven (7) former siblings as relates to the mother, and three (3) former siblings as relate to the father."

{¶ 22} Therefore, any error that the trial court made regarding its reasonable efforts finding is harmless. CS had no duty, pursuant to R.C. 2151.419(A)(2)(e), to use reasonable efforts to prevent the continued removal of P.N.M. from father's home because the undisputed facts show that father's parental rights were involuntarily terminated with regard to several of P.N.M.'s siblings.

{¶ 23} Accordingly, we overrule father's sole assignment of error and affirm the judgment of the trial court in case no. 07CA842.

MOTHER'S APPEAL-CASE NO. 07CA841

III.

{¶ 24} In her first and fourth assignments of error, mother claims that the trial court erred when it admitted certain evidence into the record. We disagree.

{¶ 25} Mother contends in her first assignment of error that the trial court should not have allowed the testimony of Karen Kinker, a CS caseworker, regarding the involuntary termination of her parental rights in prior cases in Scioto County because the testimony was irrelevant, pursuant to Evid.R. 401. Mother further claims that the court should have excluded Kinker's same testimony pursuant to Evid.R. 404(B).

*5 {¶ 26} A trial court has broad discretion in the admission or exclusion of evidence, and so long as such discretion is exercised in line with the rules of procedure and evidence, its judgment will not be reversed absent a clear showing of an abuse of discretion with attendant material prejudice to defendant. *Rigby v. Lake Cty.* (1991), 58 Ohio St.3d 269, 271;*State v. Hymore* (1967), 9 Ohio St.2d 122,certiorari denied(1968), 390 U.S. 1024. The words "abuse of discretion" mean that the trial court acted unreasonably, arbitrarily or unconscionably. *Blakemore v. Blakemore,* (1983), 5 Ohio St.3d 217, 219. When applying the abuse of discretion standard, a reviewing court may not substitute its judgment for that of the trial court. *Berk v. Matthews* (1990), 53 Ohio St.3d 161, 169. An error in an evidentiary ruling does not warrant reversal of the trial court's judgment unless the trial court's actions were inconsistent with substantial justice and affects the substantial rights of the parties. Evid.R. 103 and Civ.R. 61.

{¶ 27} Evidence is relevant when it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."Evid.R. 401. "The unfitness of a parent, guardian or custodian can be predicted by past history."*In re Bishop* (1987), 36 Ohio App.3d 123, 126. Thus, a parent's "past parenting history and [the parent's] ability to comply with prior reunification plans regarding [the parent's] other children [are] relevant considerations in the juvenile court's dispositional determination to commit [a child] to the permanent custody of the Department

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pursuant to R.C. 2151.353 and 2151.414."*In re Brown* (1989), 60 Ohio App.3d 136, 139.

{¶ 28} Further, pursuant to R.C. 2151.414, a "court may grant permanent custody of a child to a movant if the court determines at the hearing * * * 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[.]"R.C. 2151.414(D) provides that "[i]n determining the best interest of a child at a hearing * * *, the court shall consider all relevant factors[.]" Those factors include, but are not limited to:

(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;

***6** (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.

R.C. 2151.414(D).R.C. 2151.414(E)(11) directs the court to specifically consider whether "[t]he 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" when determining whether permanent custody is in the best interests of the parties. See *In re Baby Girl Elliott,* Butler App. No. CA2003-10-256, 2004-Ohio-3539, ¶¶ 50-51. Further, a trial court must consider R.C. 2151.414(E) in determining whether the child can be placed with a parent within a reasonable period of time. Therefore, the evidence is relevant pursuant to Evid.R. 401.

{¶ 29} Mother next contends that such evidence is improper evidence of character. Again, we dis- agree.

{¶ 30} Evid.R. 404(B) provides that "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith."

{¶ 31} Here, the state did not admit this evidence "to prove the character of a person in order to show action in conformity therewith."Instead, the state offered this evidence to show that the mother's compliance with case plans with regard to her seven other children. This testimony is directly relevant in a permanent custody case because "past parenting history and [the parent's] ability to comply with prior reunification plans regarding [the parent's] other children [are] relevant considerations in the juvenile court's dispositional determination to commit [a child] to the permanent custody of the Department pursuant to R.C. 2151.353 and 2151.414."*In re Brown* (1989), 60 Ohio App.3d 136, 139.

{¶ 32} Therefore, for the above stated reasons, Kinker's testimony on this issue did not violate either Evid.R. 401or Evid.R. 404(B). Consequently, we find that the trial court did not abuse its discretion by allowing the admission of this evidence.

{¶ 33} Mother contends in her fourth assignment of error that the trial court erred when it allowed Dr. Rippith's report and testimony into evidence. Specifically, Mother contends that Dr. Rippith's report contained "stale" evidence of mother's I.Q. because it included the results of an I.Q. test performed by another doctor in 1997. Mother asserts that she was

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prejudiced by such information because without the prior I.Q. score set forth in the report, the court could not have concluded that her current I.Q. had diminished.

{¶ 34} During the direct examination of Dr. Rippith, the state attempted to admit into evidence the prior I.Q. score contained in Dr. Rippith's report. The court sustained an objection by mother and ruled that it would "not consider [Dr. Rippith's] expert opinion in regard to the I.Q. of [mother] * * *, based upon the unqualified expert opinion of another doctor."

*7 {¶ 35} Despite an earlier objection, mother's attorney elicited testimony from Dr. Omar Dye, wherein Dr. Dye testified that he performed his own intellectual testing of mother. He concluded that mother's full scale I.Q. was 64, which placed her in "the upper end of the mildly retarded range of intelligence."Mother's attorney then questioned Dr. Dye about Dr. Rippith's report, and asked him specifically, "[d]o you have any comments you would like to make, based on [Dr. Rippith's] report[?]" Dr. Dye answered that "one of the things that I noted is that * * * they perform[ed] an intelligence test * * *, now the score is a little bit higher than what I reported[,]" but the court should not rely on it because the testing is ten years old.

{¶ 36} Here, mother invited this testimony into evidence. "A party will not be permitted to take advantage of an error which he himself invited or induced."*State v. Bey* (1999), 85 Ohio St.3d 487, 493, citing *Hal Artz Lincoln-Mercury, Inc. v. Ford Motor Co.* (1986), 28 Ohio St.3d 20, paragraph one of the syllabus; *State v. Seiber* (1990), 56 Ohio St.3d 4, 17. This rule is generally referred to as the "invited error doctrine." *State v. Ellis,* Scioto App. No. 06CA3071, 2007-Ohio-2177, at ¶ 27. Therefore, we find that the mother invited any alleged error of the court in concluding that mother's I.Q. diminished. Consequently, the trial court did not abuse its discretion when it allowed and considered this evidence.

{¶ 37} Accordingly, we overrule mother's first and fourth assignments of error.

IV.

{¶ 38} In her second assignment of error, mother contends that the trial court erred when it adjudicated P.N.M. a dependent child. She asserts that the trial court's dependency finding was against the manifest weight of the evidence. We do not address this alleged error because we lack jurisdiction to consider it. Jurisdiction is a legal question, which we review de novo. See, e.g., *Yazdani-Isfehani,* supra, at ¶ 20.

{¶ 39} The Supreme Court of Ohio has held that "[a]n adjudication by a juvenile court that a child is * * * " 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 pursuant to R.C. 2501.02." *In re Murray* (1990), 52 Ohio St.3d 155, syllabus. As this court has found, when temporary custody is the disposition, then "failing to file a notice of appeal within thirty days of the temporary custody order * * * [waives] any error that occurred with regard to that order."*In re Zimmerman* (Aug. 4, 1994), Gallia App. No. 94CA5.

{¶ 40} Here, on January 26, 2006, the court filed its entry adopting the magistrate's decision from the adjudicatory hearing, which found that P.N.M. was a dependent child and set disposition for March 6, 2006. On March 9, 2006, the court filed its entry from the March 6 dispositional hearing and again adopted the magistrate's decision, which continued temporary custody of P.N.M. with CS. Mother did not appeal the March 9 dispositional judgment within thirty days. Therefore, we lack jurisdiction to consider this issue.

*8 {¶ 41} Accordingly, we overrule mother's second assignment of error.

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V.

{¶ 42} In her fifth assignment of error, the mother asserts that the trial court's decision to award CS permanent custody of P.N .M. is against the manifest weight of the evidence. We disagree.

{¶ 43} An award of permanent custody must be supported by clear and convincing evidence. *In re Hiatt* (1993), 86 Ohio App.3d 716, 725. The Ohio Supreme Court has defined "clear and convincing evidence" as "[t]he measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the allegations sought to be established. It is intermediate, being more than a mere preponderance, but not to the extent of such certainty as required beyond a reasonable doubt in criminal cases. It does not mean clear and unequivocal."*In re Estate of Haynes* (1986), 25 Ohio St.3d 101, 103-04.

{¶ 44} We will not reverse the judgment of the trial court when some competent, credible evidence supports the trial court's findings. *In re Marano,* Athens App. No. 04CA30, 2004-Ohio-6826, ¶ 12. We give the trial court's final determination "the utmost respect, given the nature of the proceeding and the impact the court's determination will have on the lives of the parties concerned."*In re Alfrey,* Montogomery App. No. 01 CA0083, 2003-Ohio-608, at 102, citing *Miller v. Miller* (1988), 37 Ohio St.3d 71, 74.

{¶ 45} "[B]efore a trial court may award a children services agency permanent custody, it must find: (1) that one of the circumstances described in R.C. 2151.414(B)(1) applies; and (2) that awarding the children services agency permanent custody would further the child's best interests."*In re McCain,* Vinton App. No. 06CA654, 2007-Ohio-1429, ¶ 13. Thus, once the court determines that just one of the specific instances in R.C. 2151.414(E) exist, *and* that "permanent custody is in the best interest of the child[,]" permanent custody can be awarded. *In re William S.* (1996), 75 Ohio St.3d 95, 99.

{¶ 46} Here, the trial court made a finding that the circumstances found in R.C. 2151.414(B)(1)(a) applies. This part of the statute states: "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."

{¶ 47} The only disputed part of the finding involves the last part, i.e., "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."

{¶ 48} R.C. 2151.414(E) provides that "In determining * * * 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."Further, "[i]f the court determines, by clear and convincing evidence * * * that one or more of the following [16 factors] 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[.]"

*9 {¶ 49} Here, the trial court found that the factors in R.C. 2151.414(E)(2), (4), (11), (13), and (16) applied.

A. The R.C. 2151.414(E)(2) factor.

{¶ 50} R.C. 2151.414(E)(2) provides that the court "shall enter a finding that the child cannot be placed with either parent within a reasonable time" if the state can show: "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

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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[.]" In regards to this factor, the trial court found that mother has "mental retardation, that is so severe, that she is unable to provide an adequate permanent home for the child at the present time, and that due to documented reduction in I.Q. scores as noted by Dr. Dye, would continue to be unable to provide an adequate permanent home for the child within one year."

{¶ 51} We find that competent, credible evidence supports the trial court's R.C. 2151.414(E)(2) finding. Dr. Robin Rippith, a psychologist for Mid-Ohio Psychological Service, Inc., testified that she first met with mother in November 2003 for a psychological evaluation. She concluded that (1) mother functioned at a fifth grade level on word recognition and at a fourth grade level with respect to spelling and arithmetic; (2) the child "would be placed at risk for abuse and/or neglect, if [she] were in [mother's] primary care [;]" and (3) mother was unable to parent the child.

{¶ 52} In addition, Dr. Omar Dye, a psychologist, testified on direct examination that mother (1) did not present major mental illness problems, but that she did present problems with intellectual ability; (2) tested into the mildly retarded range of intelligence; (3) has a low level of concentration; (4) has a weak memory; (5) entertained suicidal thoughts in the past, though not currently; (6) tends to avoid responsibility for her actions; (7) is prone to not follow instructions, including instructions from medical professionals; and (8) was "low functioning[.]" On cross-examination, Dr. Dye testified that mother's I.Q. score is a bit lower than ten years ago.

{¶ 53} Therefore, we find that the above testimony is competent, credible evidence that supports the trial court's finding as it relates to R.C. 2151.414(E)(2), and thus, R.C. 2151.414(B)(1)(a). Our finding renders moot the trial court's remaining findings involving other factors in R.C. 2151.414(E).*In re Pettiford,* Ross App. No. 06CA2883, 2006-Ohio-3647, ¶ 41 ("The existence of one factor alone will support a finding that the child cannot be placed with either parent within a reasonable time.").

B. Child's Best Interest.

***10** {¶ 54} As we stated earlier, "[B]efore a trial court may award a children services agency permanent custody, it must find: (1) that one of the circumstances described in R.C. 2151.414(B)(1) applies; and (2) that awarding the children services agency permanent custody would further the child's best interests."*In re McCain,* Supra.

{¶ 55} Now that we have found competent, credible evidence supports the trial court's R.C. 2151.414(B)(1)(a) finding, we now move on to the second part of the trial court's findings as they relate to P.N.M.'s best interests.

{¶ 56} R.C. 2151.414(D) provides that "[i]n determining the best interest of a child at a hearing * * *, the court shall consider all relevant factors [.]" Those factors include, but are not limited to:

(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;

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

{¶ 57} We find that competent, credible evidence supports the trial court's findings that R.C. 2151.414(D)(1), (4), and (5) apply.

{¶ 58} With regard to R.C. 2151.414(D)(1), Andrea Williams, an on-going caseworker for CS, testified that she noticed no bond between P.N.M. and mother during visitation time. Dawn Grooms, a foster care and adoption specialist for CS, testified that she witnessed the interaction of P.N.M. with her foster parents. She said that (1) the interaction was very good, (2) the foster parents love P.N.M., (3) want to adopt her, (4) have bonded with her, (5) take care of her medical and basic needs, and (6) provide necessary stability for the child. We find that this competent, credible evidence supports the trial court's finding.

{¶ 59} With regard to R.C. 2151.414(D)(4), the trial court found that "[t]he child has special needs for a legally secure placement, due to displayed delays in mobility with limited oratory skills for her age, which cannot be achieved without grant of permanent custody to the agency, in light of the limiting factors of the biological parents[.]"

{¶ 60} State's exhibit 5 showed that Ann Pavey, an Early Intervention Specialist from the Highland County MR/DD, assessed P.N .M. on July 10, 2006. She advised that P.N.M. "is having some sensory processing challenges and does appear to be showing a very mild delay in the areas of language, motor and self help skills."She recommended: "referral to occupational and physical therapists for assessment; referral to speech pathologist; provide a daily language enriching environment for [P.N.M.]; read to and play music for her on a daily basis; provide a regular schedule and calm, consistent and reassuring environment for her; follow therapists' recommendations; provide opportunities for her to have floor time' to develop her motor skills; discuss options for periodic visits by Early Intervention to monitor progress and discuss ongoing concerns and/or techniques for working with [P.N.M.] on at least a quarterly basis." We find that this exhibit when combined with the testimonies we outlined earlier from Dr. Rippith and Dr. Dye is competent, credible evidence that supports the trial court's finding.

***11** {¶ 61} With regard to the final factor, i.e., R.C. 2151.414(D)(5), the trial court is directed to consider R.C. 2151.414(E)(7) to (E)(11). The trial court found that R.C. 2151.414(E)(11) applies. It directs the court to specifically consider whether "[t]he 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" when determining whether permanent custody is in the best interests of the parties. The state presented the testimony of several witnesses, including mother, that mother's parental rights have been involuntarily terminated with regard to seven other children. We find that this is competent, credible evidence to support the trial court's finding.

{¶ 62} Therefore, in conclusion, competent, credible evidence supports the trial court's findings. Consequently, the trial court's judgment is not against the manifest weight of the evidence.

{¶ 63} Accordingly, we overrule mother's fifth assignment of error.

VI.

{¶ 64} Mother contends in her third assignment of error that R.C. 2151.414(E)(11) is unconstitutional as applied to her because the court's application violated her due process rights. She asserts that the court terminated her right to parent P.N.M. solely because other courts terminated her parental rights with regard to seven of her other children.

{¶ 65} Mother's assignment of error assumes that the trial court relied solely upon the previous terminations of her parental rights to her seven other

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children when it terminated her parental rights to P.N.M. Stated differently, mother assumes that we will not find competent, credible evidence to support the trial court's other findings that did not involve the R.C. 2151.414(E)(11) factor. However, in her fifth assignment of error, we found competent, credible evidence to support the court's other findings. Therefore, R.C. 2151.414(E)(11) is not unconstitutional as applied to mother.

{¶ 66} Accordingly, we overrule mother's third assignment of error and affirm the judgment of the trial court in case no. 07CA841.

VII.

{¶ 67} In conclusion, we overrule the father's sole assignment of error and all of the mother's assignments of error. We affirm the judgment of the trial court.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED, and that the Appellee shall recover from the Appellants costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Adams County Court of Common Pleas, 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.

HARSHA, J. and ABELE, J.: Concur in Judgment and Opinion.
Ohio App. 4 Dist.,2007.
In re P.N.M.
Slip Copy, 2007 WL 2758708 (Ohio App. 4 Dist.), 2007 -Ohio- 4976

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C
In re C.G.
Ohio App. 12 Dist.,2007.

CHECK OHIO SUPREME COURT RULES FOR REPORTING OF OPINIONS AND WEIGHT OF LEGAL AUTHORITY.

Court of Appeals of Ohio,Twelfth District, Preble County.
In the Matter of C.G.
Nos. CA2007-03-005, CA2007-03-006.

Decided Aug. 27, 2007.

Appeal from Preble County Court of Common Pleas, Juvenile Division, Case No. 14457.

Elliott Law Offices, Jonathan E. Faulkner, Dayton, OH, guardian ad litem.
Stamps & Stamps, Eric A. Stamps, Dayton, OH, for appellants, Charles G., Jr., Charles G., Sr. and Geneva G.
Martin P. Votel, Preble County Prosecuting Attorney, Valerie Sargent-Eckert, Preble County Courthouse, Eaton, OH, for appellee.
Marshall G. Lachman, Springboro, OH, for appellant, Kasaundra W.
PER CURIAM.
*1 {¶ 1} Appellants, Charles G., Jr. and Kasaundra W., separately appeal the decision of the Preble County Court of Common Pleas, Juvenile Division, granting permanent custody of their son, C .G., to appellee, the Preble County Job and Family Services, Children Services Division (the "Agency"). Appellants, Charles G., Sr. and Geneva G., the paternal grandparents of the child, appeal the decision of the juvenile court denying their motion to intervene.

{¶ 2} C.G. was born in August 2004; his parents, Charles and Kasaundra, were never married. On March 22, 2005, Kasaundra, then 18 years old, was arrested for a probation violation for testing positive for cocaine. C.G., then six months old, was with her when she was arrested. As a result of a lack of information regarding any appropriate relative that could take care of C.G., the child was placed in the Agency's temporary custody that same day.

{¶ 3} On March 23, the Agency filed a complaint alleging that C.G. was dependent and seeking temporary custody of him. The Agency was granted temporary custody of C.G. on March 29. A case plan was subsequently developed for reunification. The juvenile court required Charles to provide at least one clean drug screen before he could be allowed visitation with his son. He never did.

{¶ 4} On June 22, 2005, during an adjudicatory hearing, Charles and Kasaundra both entered a plea of admit to the allegation that C.G. was dependent. By entry filed that day, the juvenile court adjudicated the child dependent and ordered that temporary custody remain with the Agency. On June 15, 2006, the Agency moved for permanent custody of C.G. under R.C. 2151.413(A).

{¶ 5} C.G.'s paternal grandparents subsequently moved to intervene in the permanent custody proceedings. According to their motion, they had been visiting with C.G. every week since September 2005. The grandparents also filed a motion for legal custody of C.G. The juvenile court ruled that the grandparents' motions would be held in abeyance pending the court's determination of the Agency's motion for permanent custody, and would be heard at a separate bifurcated dispositional hearing if required. A hearing was held on the Agency's motion for permanent custody in October and December 2006. On February 7, 2007, the juvenile court denied the grandparents' motions to intervene and for legal custody.

{¶ 6} On February 20, the juvenile court granted permanent custody of C.G. to the Agency and terminated the parental rights of Charles and Kasaundra. The court found that C.G. had "been in the temporary custody of [the Agency] for 12 of the

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last 22 months, specifically 14 1/2 at the time of the filing [of the permanent custody motion]," and that "[w]hile the law does not require a finding regarding whether the child could or should be placed with either parent within a reasonable period of time, * * * [C.G.] cannot and should not be placed with either Kasaundra [W.] and certainly not Charles [G.] within a reasonable period of time."The juvenile court further found "as a matter of fact that it is in the best interest of [C.G.] to have his permanent custody placed with [the Agency]."

***2** {¶ 7} On appeal, Kasaundra raises two assignments of error. Charles and the paternal grandparents each raise one assignment of error.

{¶ 8} Kasaundra's Assignment of Error No. 1:

{¶ 9} "THE APPELLANT'S ADMISSION WAS NOT KNOWING, INTELLIGENT AND VOLUNTARY IN VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, ARTICLE I, SECTIONS 10 AND 16 OF THE OHIO CONSTITUTION, AND RULE 29 OF THE OHIO RULES OF JUVENILE PROCEDURE, WHERE THE TRIAL COURT FAILED TO ADEQUATELY EXPLAIN THE NATURE OF THE ALLEGATIONS, THE RIGHTS WAIVED BY ENTERING AN ADMISSION, AND THE CONSEQUENCES OF HER ADMISSION."

{¶ 10} Kasaundra argues that the juvenile court failed to comply with Juv.R. 29(D) before accepting her plea of admit at the adjudicatory hearing, and that as a result, C.G.'s dependency adjudication must be reversed. We agree that the juvenile court failed to comply with Juv.R. 29(D). However, this court lacks jurisdiction over the juvenile court's finding of dependency, and therefore cannot sustain Kasaundra's first assignment of error.

{¶ 11} It is well-established that a dependency adjudication followed by a disposition awarding or continuing temporary custody of a child to a public children services agency constitutes a final appealable order. See *In re Murray* (1990), 52 Ohio St.3d 155;*In re Sessoms,* Butler App. No. CA2002-11-280, 2003-Ohio-5281. Thus, the juvenile court's June 22, 2005 entry adjudicating C.G. dependent and ordering that temporary custody remain with the Agency, was a final appealable order.

{¶ 12} App.R. 4 provides that a notice of appeal in a civil case must be filed "within 30 days of the date of the entry of the judgment or order appealed from."Kasaundra never appealed the dependency adjudication which continued temporary custody of the child with the Agency. She cannot now, on appeal of a subsequent grant of permanent custody, raise errors which occurred at the earlier adjudication hearing. See *Sessoms; In re Caputo* (Apr. 13, 1998), Butler App. No. CA97-02-032.Because Kasaundra never appealed the juvenile court's June 22, 2005 entry, this court is without jurisdiction to consider Kasaundra's first assignment of error, and it is overruled. *In re Keltner* (Aug. 10, 1998), Butler App. No. CA97-10-188, at 14.

{¶ 13} That being said, we wish to briefly address the juvenile court's procedure with respect to Juv.R. 29(D).*Id.*Juv.R. 29 outlines the procedure a trial court must follow upon the entry of an admission to the allegations of a complaint at an adjudicatory hearing. Specifically, Juv.R. 29(D) provides that "[t]he court may refuse to accept an admission and 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."

***3** {¶ 14} Under Juv.R. 29(D), the court must perform an on-the-record exchange with the party to determine whether his or her admission is knowing, intelligent and voluntary. See *In re M. T.,* Madison App. No. CA2006-04-018, 2007-Ohio-2446. And

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while the " 'trial court need not strictly adhere to the procedures imposed by these rules,' it must substantially comply with their provisions."*Id.*

{¶ 15} The transcript of the adjudicatory hearing shows that the juvenile court failed to engage in any kind of colloquy with Kasaundra to ascertain whether her admission was voluntarily made or whether she had a complete understanding of the proceeding and the consequences of entering such admission. Instead, the record shows that upon being told that Kasaundra wanted to enter a plea of admit, the juvenile court merely inquired whether that was her plea. Kasaundra replied that it was.

{¶ 16} Merely asking a parent whether such was his or her plea does not comply at all with Juv.R. 29(D), let alone substantially. In the future, we strongly urge the juvenile court to take the time to elicit the information required under Juv.R. 29(D) from stipulating parties before accepting their admissions. *In re Keltner,* Butler App. No. CA97-10-188, at 15.

{¶ 17} Kasaundra's Assignment of Error No. 2:

{¶ 18} "THE TRIAL COURT'S DECISION TO GRANT PREBLE COUNTY JOB AND FAMILY SERVICES PERMANENT CUSTODY OF THE MINOR CHILDREN [SIC] IS NOT SUPPORTED BY CLEAR AND CONVINCING EVIDENCE."

{¶ 19} Charles' Assignment of Error No. 1:

{¶ 20} "THE TRIAL COURT ERRED IN GRANTING CHILDREN'S SERVICES [sic] MOTION FOR PERMANENT CUSTODY."

{¶ 21} In the foregoing two assignments of error, Kasaundra and Charles both argue that the juvenile court erred by granting permanent custody of C.G. to the Agency. Specifically, Kasaundra and Charles argue that the juvenile court failed to make its finding that permanent custody was in C.G.'s best interest, under the clear and convincing standard in violation of R.C. 2151.414(B). The Agency counters that the juvenile court was not required to use the phrase "by clear and convincing evidence" and cites *In re Bacorn* (Dec. 20, 1996), Portage App. No. 96-P-0015 and *State v. Miller,* Preble App. No. CA2006-05-011, 2007-Ohio-784, in support.

{¶ 22} "R.C. 2151.414 sets forth the procedures a juvenile court *must* follow and the findings it *must* make before granting a motion [for permanent custody] filed pursuant to R.C. 2151.413."*In re C. W.,* 104 Ohio St.3d 163, 2004-Ohio-6411, ¶ 9 (emphasis added). According to R.C. 2151.414(B), before a juvenile court can grant permanent custody to a children services agency, the court *"must 'determin[e] * * *, 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 and that any of the [factors set forth in R.C. 2151.414(B)(1)(a) through (d)] apply.' " *Id.* (emphasis added); see, also, *In re A. W.,* Clinton App. No. CA2006-10-036, 2007-Ohio-722 (under R.C. 2151.414[B][1], a juvenile court may grant permanent custody of a child to a public children services agency *only if the court finds, by clear and convincing evidence,* that granting permanent custody to the agency is in the best interest of the child).

*4 {¶ 23} As the Ohio Supreme Court noted, "[p]arents have a basic civil right to raise their children. [P]ermanent termination of parental rights has been described as 'the family law equivalent of the death penalty in a criminal case.' Consequently, parents 'must be afforded every procedural and substantial protection the law allows.' " *In re C.W.* at ¶ 23 (citations omitted). "Trial courts have the mandatory duty to fully comply with the permanent custody statutes and may not award permanent custody without making the requisite findings." *In re McCain,* Vinton App. No. 06CA654, 2007-Ohio-1429, ¶ 25.

{¶ 24} We therefore hold that before a juvenile court can grant permanent custody of a child to a children services agency, the court *must determine, by clear and convincing evidence,* that permanent custody is in the child's best interest, *and must so*

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state in its decision and/or entry terminating parental rights and granting permanent custody to an agency.

{¶ 25} In the case at bar, the juvenile court found that it was in the best interest of C.G. to grant permanent custody to the Agency. However, the juvenile did not make that determination by clear and convincing evidence. Rather, the juvenile court found *"as a matter of fact* that it is in the best interest of [C.G.] to have his permanent custody placed with [the Agency]." (Emphasis added.)

{¶ 26} We decline to apply the cases cited by the Agency. The Agency is correct that in *Miller,* Preble App. No. CA2006-05-011, we held that "[a]lthough the trial court did not state that his findings were to a 'clear and convincing standard,' we presume that the judge followed the law."*Id.* at ¶ 17.However, we find that the decision does not apply to the case at bar as it involved a criminal case and the adjudication of an offender as a sexual predator.

{¶ 27} Likewise, we find that *In re Bacorn* does not apply to the case at bar. In that case, the child's parents challenged the trial court's grant of permanent custody to the agency on the ground that because the trial court found that the child's placement was in his best interest, the court failed to find that permanent custody was in the child's best interest by clear and convincing evidence. The Eleventh Appellate District upheld the trial court's decision. First, looking at the overall context of the entry, the court of appeals found it could presume that the trial court was referring to permanent custody as the type of placement at issue. Then, with regard to the trial court's failure to use the phrase "clear and convincing evidence," the court of appeals stated:

{¶ 28} "Although it would have been preferable had the court written a single sentence stating that it found placement to be [in the child's] best interest by clear and convincing evidence, its failure to do so in this case was not reversible error. In each paragraph leading up to that statement, the court specifically found clear and convincing evidence of the factors which must be considered prior to awarding permanent custody. The juvenile court's finding that the factors indicating that permanent custody was in [the child's] best interest were supported by clear and convincing evidence implicitly leads to the conclusion that there was clear and convincing evidence that permanent custody was in his best interests."*In re Bacorn,* Portage App. No. 96-P-0015, 1996 WL 762005, at *3.

*5 {¶ 29} In the case at bar, the juvenile court never found by clear and convincing evidence that permanent custody was in C.G.'s best interest, never stated that its findings under the best interest factors in R.C. 2151.414(D) were to a clear and convincing standard, and instead merely found that permanent custody of C.G. to the Agency was in his best interest "as a matter of fact." *In re Bacorn,* therefore, does not apply.

{¶ 30} We therefore find that the juvenile court violated the clear mandatory provisions of R.C. 2151.414(B)(1) when it failed to expressly make its best interest determination under the clear and convincing standard, and that such violation constitutes a reversible error. It follows that the juvenile court erred by granting permanent custody of the child to the Agency. Kasaundra's second assignment of error is sustained. Likewise, Charles' first argument under his assignment of error is sustained.

{¶ 31} Under his assignment of error, Charles also argues that the juvenile court (1) improperly found that C.G. had been in the Agency's temporary custody for 14 1/2 months at the time the permanent custody motion was filed; (2) failed to state its finding that C.G. could not be placed with either parent, to a clear and convincing standard in violation of R.C. 2151.414(B); (3) improperly granted permanent custody to the Agency under the wrong statutory provision; and (4) erred by ruling that a legally secure placement could not be achieved without granting permanent custody to the Agency.

{¶ 32} The juvenile court found that C.G. had

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"been in the temporary custody of [the Agency] for 12 of the last 22 months, specifically 14 1/2 at the time of the filing [of the permanent custody motion]."R.C. 2151.414(B)(1) provides that a juvenile court may grant permanent custody of a child to an agency if the child has been in the temporary custody of the agency "for twelve or more months of a consecutive twenty-two months[.]" A child is considered to have entered the temporary custody of the agency "on the earlier of the date the child is adjudicated * * * or the date that is sixty days after the removal of the child from home."*Id.*

{¶ 33} C.G. was removed from home on March 22, 2005 and adjudicated dependent on June 22, 2005. Thus, under R.C. 2151.414(B)(1), C.G. entered the temporary custody of the Agency on May 21, 2005 (60 days added to the date of March 22). We agree with Charles that when the Agency moved for permanent custody on June 15, 2006, C.G. had not been in the Agency's temporary custody for 14 1/2 months. However, the record clearly shows that C.G. had been in the Agency's temporary custody for almost 13 months, or "for twelve or more months of a consecutive twenty-two month period," as required by statute. Accordingly, the juvenile court's misstatement is harmless error. See *In re Borders,* Brown App. No. CA2001-10-017, 2002-Ohio-2578.

*6 {¶ 34} Charles next argues that the juvenile court failed to state its finding that C.G. could not be placed with either parent, to a clear and convincing standard in violation of R.C. 2151.414(B). However, given our resolution under Kasaundra's second assignment of error and Charles' first argument under his assignment of error, and the fact that the juvenile court was not required to find whether C.G. could or should be placed with his parents within a reasonable time, we decline to address Charles' argument. See *In re T. T.,* Butler App. Nos. CA2004-07-175 and CA2004-08-198, 2005-Ohio-240, ¶ 25-26; and *In re J.I.,* Preble App. No. CA2005-05-008, 2005-Ohio-4920, ¶ 22.

{¶ 35} Charles next argues that the juvenile court improperly granted permanent custody to the Agency under the wrong statutory provision. In its February 20, 2007 entry, the juvenile court granted the Agency's permanent custody motion "pursuant to [R .C.] 2151.413." While R.C. 2151.414 governs the procedures a juvenile court must follow and the findings it must make before granting a motion for permanent custody, R.C. 2151.413 only governs when a children services agency may or must move for permanent custody. The juvenile court, therefore, cited the wrong statutory provision under R.C. Chapter 2151 when it granted permanent custody of C.G. to the Agency. On remand under Kasaundra's second assignment of error, the juvenile court is instructed to cite the proper statutory provision when ruling on the Agency's permanent custody motion. Likewise, in the future, we urge the juvenile court to cite the proper statutory provision under R.C. Chapter 2151 when ruling on a permanent custody motion.

{¶ 36} Finally, Charles argues that the juvenile court erred by ruling that a legally secure placement could not be achieved without granting permanent custody to the Agency. Specifically, Charles argues that the juvenile court "was not in a position" to make such a finding under R.C. 2151.414(D)(4) because it did not allow C.G.'s paternal grandparents to intervene, and thus to present evidence "they in fact had a 'legally secure permanent placement' for the child."The juvenile court found that Charles' "nothingness and his families' failure to motivate him does not mean that he or his family could be considered for a legally secure permanent placement."

{¶ 37} In determining the best interest of a child, a juvenile court must consider all relevant factors, including 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[.]"R.C. 2151.414(D)(4). It is well-established that relatives seeking custody of a child are not afforded the same presumptive rights that a natural parent receives. *In re A. C.,* Butler

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App. No. CA2006-12-105, 2007-Ohio-3350, ¶ 17. Though a " 'children services agency should strive to place a child with a willing and suitable relative [,]' there is no requirement or duty on the agency to do so under a best interest analysis."*In re Jones-Dentigance,* Portage App. No.2005-P-0058, 2005-Ohio-5960, ¶ 26. "Rather, a juvenile court is vested with discretion to determine what placement option is in the child's best interest. The child's best interests are served by the child being placed in a permanent situation that fosters growth, stability, and security."*In re McCain,* Vinton App. No. 06CA654, ¶ 20. A juvenile court is not required to favor a relative if, after considering all the factors, it is in the child's best interest for the agency to be granted permanent custody. *In re A.C.* at ¶ 17.

*7 {¶ 38} The paternal grandparents were not allowed to intervene in the permanent custody proceedings and were, therefore, prevented from presenting evidence. However, there is evidence in the record relative to the grandparents in the form of a report filed on August 7, 2006 by the guardian ad litem. The report states in pertinent part:

{¶ 39} "As a result of my home visit, I cannot recommend [the paternal grandparents] as custodians for [C.G.]. First, and perhaps most importantly, the condition of [their] home is not suitable or appropriate for [C.G.]. The home is infested with bugs and [the grandparents] house two pit bulls in their backyard. Additionally, the backyard holds a deteriorating swimming pool and piles of scrap metal and junk. The home has only two bedrooms, with one bedroom occupied by [the grandparents] and the other bedroom set up for [other relatives], and the home has a dangerous flight of stairs that lead from the front door to the street that passes in front of the home.

{¶ 40} "In addition to the condition of [the] home, [the grandparents] live in close proximity to [their son] Charles, and Charles has yet to provide a clean drug screen to begin visitation with [C.G.]. Additionally, Charles has admitted to me that he must register as a sex offender in the state of Indiana, which causes me grave concern about his involvement in [C.G.'s] life.

{¶ 41} "According to [the grandparents], they live roughly ten minutes from Charles, and they see Charles on a regular weekly basis. [The grandparents] live approximately 27 miles from Eaton and [the grandmother], who works two jobs, is the only one in the home with the ability to drive using a valid driver's license.

{¶ 42} "Because of the safety concerns I have regarding the [grandparents'] home, their close proximity to Charles, and their inability to properly transport [C.G.] in the event of an emergency while [the grandmother] is at one of her jobs, neither [grandparents] should be considered as a placement of any kind for [C.G.]."

{¶ 43} In light of the foregoing, we find Charles' fifth argument under his assignment of error to be meritless. The juvenile court did not err when it ruled that the paternal grandparents could not be considered for a legally secure placement. Charles' first assignment of error is sustained in part and reversed in part.

{¶ 44} We reverse the juvenile court's decision granting permanent custody of C.G. to the Agency and remand this matter to the juvenile court for further proceedings in compliance with the law and consistent with this opinion. On remand, the juvenile court is not required to hold a new evidentiary hearing and is permitted to make the proper findings required under R.C. 2151.414 based on the previous record. See *In re Arnold,* Allen App. No. 1-06-04, 2006-Ohio-2794. Further, we hasten to add that our decision today should not be construed in any manner as a comment on the underlying merits of this case.

*8 {¶ 45} The paternal grandparents' Assignment of Error No. 1:

{¶ 46} "THE TRIAL COURT ERRED IN DENYING PATERNAL GRANDPARENTS' MOTION

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TO BE ADDED AS A THIRD PARTY."

{¶ 47} The juvenile court denied the paternal grandparents' motion to intervene in the permanent custody proceedings on February 7, 2007. Before we address the grandparents' assignment of error, we must first determine whether the juvenile court's February 7, 2007 entry was a final appealable order.[FN1]

FN1. The Agency first challenges the paternal grandparents' assignment of error on the ground that because they were never parties below, they have no standing to appeal. We disagree. Though "a person who was not a party to an action generally has no right of appeal, it is well-settled that a person who has attempted to intervene as a party does have standing to appeal."*In re J. W.,* Franklin App. Nos. 06AP-864, 06AP-1062, and 06AP-875, 2007-Ohio-1419, ¶ 24, citing *In re Fusik,* Athens App. No. 02CA16, 2002-Ohio-4410.

{¶ 48} Appellate courts have jurisdiction to review the final appealable orders from lower courts. See Section 3(B)(2), Article IV, Ohio Constitution; *In re Murray,* 52 Ohio St.3d 155;R.C. 2505.03. Appellate courts lack jurisdiction to review nonfinal appealable orders and must dismiss matters lacking final appealable orders. *In re T.M.,* Madison App. Nos. CA2006-01-001 and CA2006-01-004, 2006-Ohio-6548, ¶ 12.

{¶ 49} A "final order" is defined in R.C. 2505.02(B), in pertinent part as: "(1) an order that affects a substantial right in an action that in effect determines the action and prevents a judgment; (2) an order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment[.]" According to the Ohio Supreme Court, proceedings in juvenile courts are special statutory proceedings. *Id.* at ¶ 16, citing *State ex rel. Fowler v. Smith,* 68 Ohio St.3d 357, 1994-Ohio-302.An order affects a substantial right if it would foreclose appropriate relief in the future. *In re Goff,* Portage App. No.2001-P-0144, 2003-Ohio-6768, ¶ 10.

{¶ 50} In *In re Goff,* paternal grandparents moved to intervene in the dependency proceeding involving their grandson. The juvenile court denied their motion and the grandparents appealed. The Eleventh Appellate District found that the juvenile court's denial of the motion to intervene was a final appealable order:

{¶ 51} "Put differently, an order affects a substantial right if it completely takes away a party's right to litigate the point to which they are objecting. A finding that the [denial of the motion to intervene] was not a final appealable order would foreclose [the grandparents'] only opportunity to be included in the underlying action involving their grandchild. In sum, the order denying [the grandparents'] motion to intervene involves a 'special proceeding' and affects a substantial right. Therefore, the order denying [the grandparents'] motion to intervene is a final appealable order." *Id.* at ¶ 10.

{¶ 52} We agree with the Eleventh Appellate District's reasoning and find that the juvenile court's February 7, 2007 entry denying the paternal grandparents' motion to intervene was a final appealable order. As noted earlier, App.R. 4 provides that a notice of appeal in a civil case must be filed "within 30 days of the date of the entry of the judgment or order appealed from."The grandparents filed their notice of appeal on March 15, 2007. Because the grandparents did not timely appeal the juvenile court's denial of their motion to intervene, this court is without jurisdiction to consider their assignment of error, and it is overruled. See *In re Keltner,* Butler App. No. CA97-10-188.

*9 {¶ 53} Judgment affirmed in part, reversed in part, and remanded.

YOUNG, P.J., BRESSLER and POWELL, JJ., concur.
Ohio App. 12 Dist.,2007.

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In re C.G.
Slip Copy, 2007 WL 2410714 (Ohio App. 12 Dist.),
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