

IN THE SUPREME COURT OF OHIO

In The Matter Of: : Case No. 2008-1036
: Case No. 2008-1037
:
H.F. & R.F. : On Appeal from the
: Cuyahoga County Court
: of Appeals, Eighth
: Appellate District
:
: Court of Appeals
: Case Nos. 90299 & 90300

MERIT BRIEF OF APPELLANT CUYAHOGA COUNTY
DEPARTMENT OF CHILDREN AND FAMILY SERVICES

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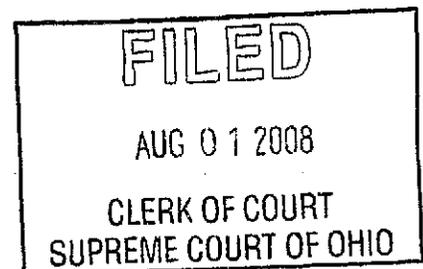


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STATEMENT OF FACTS

This cause arises from a contested trial on a *Motion to Modify Temporary Custody to Permanent Custody* which was filed in separate cases for each child on May 4, 2007 in the Cuyahoga County Juvenile Court by the Cuyahoga County Department of Children and Family Services (hereinafter referred to as “CCDCFS” or “the agency”). Prior to these filings, the children were brought under the trial court’s jurisdiction through the filing of complaints for abuse/neglect/dependency and for temporary custody, which complaints were resolved by entries issued in early June of 2006. (Appx. 45-50), (Supp. 1-6).

After a fully contested trial on CCDCFS’ motions was concluded on July 26, 2007, the trial court entered its decisions granting CCDCFS’ motions for permanent custody. (Appx. 37-40), (Supp. 11-14). The children’s father appealed to the Eighth District Court of Appeals, claiming, inter alia, that the trial court erred in its acceptance of his admissions at the time of the original adjudicatory hearing in this matter in May of 2006. The reviewing court determined that, pursuant to App.R. 4(B)(5), it had jurisdiction to consider not only the permanent custody order, but all prior orders of the court that had been issued in the case since its inception. (Appx. 23), (Supp. 31).

On April 11, 2008, CCDCFS filed separate motions for certification of a conflict and requesting the court hold an en banc conference in order to resolve intradistrict conflict on this issue.

On May 9, 2008 the reviewing court denied the motion for en banc conference, but granted the motion to certify a conflict. (Appx. 32-36), (Supp. 40-44).

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

In its May 9, 2008 order, the reviewing court certified to the Ohio Supreme Court 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.”

CCDCFS filed its Notice of Certified Conflict with the Supreme Court of Ohio on May 28, 2008. (Appx. 4). CCDCFS also filed its notice of discretionary appeal to the Supreme Court of Ohio on May 28, 2008. (Appx. 1).

On July 9, 2008, the Supreme Court granted jurisdiction to hear the case and allowed the appeal. The Supreme Court also determined that a conflict does exist, ordered the discretionary appeal and the certified conflict case consolidated, and ordered the parties to brief the issue.

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.”

ARGUMENT

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

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

App.R. 4(A) provides that “[a] party shall file the notice of appeal required by App.R. 3 within thirty days of the later of entry of the judgment or order appealed or, in a civil case, service of the notice of judgment and its entry if service is not made on the party within the three day period in Rule 58(B) of the Ohio Rules of Civil Procedure.” Failure to file a timely notice of appeal generally deprives the appellate court of jurisdiction to consider the appeal.¹ “The court may not enlarge or reduce the time for filing a notice of appeal***.” App.R. 14(B).

App.R. 4(B)(5), entitled “Partial final judgment or order”, provides a limited exception to the thirty day period during which an appeal may be perfected. As explained *infra*, this exception was promulgated in order to protect litigants from uncertainty or confusion relating to appealability in cases involving multiple claims and multiple parties. App.R. 4(B)(5), by its very terms, applies only in situations where “the trial court has not disposed of all claims as to all parties[.]” Such a case is the subject of Civ.R. 54(B), and is described as follows:

¹ See, e.g., *State ex rel. Curran v. Brookes* (1943), 142 Ohio St. 107, 50 N.E.2d 995, at paragraph seven of syllabus.

A case may involve multiple claims for relief (whether raised as a claim, counterclaim, cross-claim, or third party action), or multiple parties, or both. In such case, under Civ. R. 54(B), the court may enter final judgment as to some but not all of the claims or parties only upon a finding that there is no just reason for delay. Absent such finding, the rule provides that any order or decision which adjudicates only some of the claims or the rights and liabilities of only some parties does not end the action as to any claim or party. [Footnote citations omitted.] Rather, the order or decision remains tentative and subject to revision until a judgment is entered which adjudicates all claims and the rights and liabilities of all parties.

Ohio Appellate Practice, 2007 Ed., §2:22, p. 45. As indicated in the 1992 Staff Notes to App.R. 4, “Division (B)(5) is intended to give to a party who has the right to appeal a partial final judgment or order under section 2505.02 of the Revised Code the option to appeal the judgment or order at the time it is entered or when the final judgment disposing of all claims as to all parties is entered.” Said Staff Notes further elaborated on the reasoning behind enactment of App.R. 4(B)(5):

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

These concerns relating to appealability of judgments are inapplicable to a child protection case in juvenile court involving an adjudication followed by a dispositional order of temporary custody. A party can have no reasonable uncertainty as to whether or not such an order is a final appealable order. This Honorable Court unequivocally resolved this question in the case of *In re Murray* (1990), 52 Ohio St.3d 155, 556 N.E.2d 1169:

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

Id., at syllabus. Not only did the *Murray* decision resolve the appealability issue, it also specifically held that "the designation of the custody award as 'temporary' is not controlling" (*Id.*, 52 Ohio St.3d at 157), and further stated: "we conclude that a finding of neglect or dependency followed by a disposition awarding temporary custody to a public children services agency pursuant to R.C. 2151.353(A)(2) is an order which, in effect, **determines the action.**" *Id.*, at 159 (emphasis added). In the more recent decision of *In re Adams*, 115 Ohio St.3d 86, 2007-Ohio-4840, 873 N.E.2d 886, this Honorable Court reiterated its conclusion that "a finding of neglect or dependency by a trial court followed by an award of temporary custody to the agency **determines the action.**" *Id.*, at ¶40 (emphasis added).

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

order is issued, there remain no claims before the court for resolution pursuant to the original complaint. As such, the circumstances for which App.R. 4(B)(5) was created are absent.

As referenced in the Staff Notes to App.R. 4, this Honorable Court stated in its *Dayton Women's Health Ctr.* decision:

We recommend that the Rules Advisory Committee appointed by this court review whether an amendment to App.R. 4(A) should be adopted in order for a party to have the option of appealing an interlocutory final appealable order after final judgment is rendered in a case.

Dayton Women's Health Ctr. v. Enix (1990), 52 Ohio St.3d 67, 555 N.E.2d 956, at fn. 3. This note plainly demonstrates the intent underlying creation of the App.R. 4(B)(5) exception for purposes of appealing interlocutory final appealable orders. A dispositional order of temporary custody is not an interlocutory order, and App.R. 4(B)(5) is therefore inapplicable. "An interlocutory order or decree is one which does not finally determine a cause of action but only decides some intervening matter pertaining to the cause, and which requires further steps to be taken in order to enable the court to adjudicate the cause on the merits." *Black's Law Dictionary* (6th Ed. 1990) 815. Given the fact that this Honorable Court has specifically concluded that an original dispositional order of temporary custody "determines the action", and the fact that upon issuance of said order, all claims arising from the complaint have been adjudicated on their merits, such an order can hardly be characterized as "interlocutory".

In the context of a juvenile court child protection case, an order of adjudication without an accompanying order of disposition is not a partial final judgment or order since it is not a final order at all. See *Murray*, *supra* ("A finding of dependency without disposition is *not* a final order." *Id.*, at fn. 1, emphasis added). An order of adjudication with an accompanying order of

disposition is not a partial final judgment or order since it resolves all claims as to all parties with regard to the pending action. See *Murray*, supra (“[A] finding of neglect or dependency followed by a disposition awarding temporary custody to a public children services agency pursuant to R.C. 2151.353(A)(2) is an order which, in effect, **determines the action.**” Id., at 159, emphasis added. See also *Adams*, supra (“[A] finding of neglect or dependency by a trial court followed by an award of temporary custody to the agency **determines the action.**” Id., at ¶40, emphasis added. It therefore logically follows that, in the absence of a partial final order, App.R. 4(B)(5) cannot be applied to toll the time in which an appeal must be taken from an order of adjudication and the resulting original dispositional order. The holding of *H.F.* is therefore erroneous.

One possible explanation for the reviewing court’s misapplication of App.R. 4(B)(5) to dispositional orders in child protection cases may be that it mistakenly equates a child protection case with an ordinary civil action. While it is true that, in general, a juvenile court proceeding is a civil action², it must also be recognized that “proceedings in the juvenile division are the least amenable to coverage by the Civil Rules.” *State ex rel. Fowler v. Smith* (1994), 68 Ohio St.3d 357, 360, 626 N.E.2d 950, citing to 4 Harper, Anderson’s Ohio Civil Practice (1987), 57, Section 147.04(g). “The juvenile court is a statutory court and the proceedings are governed by special statutory guidelines. R.C. Chapter 2151. The juvenile court does not settle disputes between adverse civil litigants, but is, rather, charged with a special statutory duty to look after the best interests of the child.” *Mathis v. Mathis* (November 19, 1982), Lucas App. No. L-82-154, 1982 WL 6638 at *2. In the present matter, the reviewing court’s erroneous application of App.R. 4(B)(5) to dispositional orders issued by juvenile court actually serves to frustrate the best

interests of the child by indefinitely delaying the child's attainment of permanency.

Another possible explanation for the misapplication of App.R. 4(B)(5) is the reviewing court's apparent confusion regarding the difference between an order of *pre-dispositional* temporary custody issued pursuant to R.C. 2151.31, R.C. 2151.33(B)(1)(b) and Juv.R. 13(B)(2)(b), which order is not a final appealable order, and a *dispositional* order of temporary custody issued pursuant to R.C. 2151.353(A)(2) and Juv.R. 34(D)(2), which order is a final appealable order. Cf. *In re Nice*, 141 Ohio App.3d 445, 452, 2001-Ohio-3214, 751 N.E.2d 552. See also *Borntreger*, supra, at ¶18-19. This misunderstanding is evident in the reviewing court's description of the orders at issue as "the trial court's decision accepting, approving and adopting the magistrate's adjudicatory finding of neglect as to H.F., and abuse, neglect and/or dependency as to R.F., [and] the dispositional findings granting *emergency* temporary custody to CCDCFS." *In re H.F.*, Cuyahoga App. Nos. 90299 & 90300, 2008-Ohio-1627 at ¶28 (emphasis added). (See Appx. 17), (Supp. 25). Despite this characterization, the order in question was not an order of emergency temporary custody. Rather, it was a dispositional order of temporary custody entered pursuant to R.C. 2151.353(A)(2).

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

² See *In re Anderson* (2001), 92 Ohio St.3d 63, 748 N.E.2d 67, at syllabus.

The reviewing court held that, pursuant to App.R. 4(B)(5), “S.F. could appeal the trial court’s final ruling adopting and approving the Magistrate’s Decision in the adjudicatory and dispositional hearing [entered in early June of 2006] or after the case was disposed of by the final dispositional hearing of the trial court judge by journal entries signed on July 27, 2007, and journalized by the Clerk of Court on August 10, 2007.” *H.F.*, supra, at ¶32. (Appx. 23), (Supp. 31). This holding is erroneous in that it fails to recognize that an adjudicatory order followed by an original dispositional order of temporary custody does resolve all claims in the original action and thereby determines the action. *Murray*, supra; *Adams*, supra.

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

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

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

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

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

In his fourth assignment of error, the appellant argues that the trial court erred in accepting his admission on the original complaint for temporary custody filed in September of 1999. The appellant's fourth assignment of error is without merit.

The record reflects that the order of the trial court adjudging the appellant's children to be abused and placing the children in the temporary custody of CCDCFS was journalized on October 8, 1999, at which point said order was a final, appealable order. "An adjudication by a juvenile court that a child is 'neglected' or 'dependent' * * * followed by a disposition awarding temporary custody to a public children services agency * * * constitutes a 'final order' within the meaning of R.C. 2505.02 and is appealable to the court of appeals * * *." *In re Murray* (1990), 52 Ohio St.3d 155, 556 N.E.2d 1169; *In re Michael A.* (March 21, 2002), Cuyahoga App. No. 79835.

Since the order of temporary custody constituted a final, appealable order, the appellant had thirty days from the date of journalization to timely appeal the trial court's order. Therefore, this court is without jurisdiction to consider the issue now proffered in the instant appeal.

Id., 2002-Ohio-6634 at ¶37-39.

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

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

Id., 2008-Ohio-1710 at ¶17. Thus, the Eighth District Court of Appeals has, in the span of eight

days, taken contradictory positions on the exact same legal issue, which involves the “bootstrapping” of a previously appealable order to assign error in a subsequent appeal. The Eighth District has recently condemned such a practice.

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

Chapon v. Std. Contracting & Engineering, Cuyahoga App. No. 88959, 2007-Ohio-4306 at ¶3.

Clearly there is a split of authority within the Eighth District itself regarding this issue. “The Eighth District's conflicting rulings on the same legal issue create confusion for lawyers and litigants and do not promote public confidence in the judiciary. Appellate courts are duty-bound to resolve conflicts within the district through en banc proceedings.” *In re J.J.*, 111 Ohio St.3d 205, 2006-Ohio-5484 at ¶18. Yet, despite this fact, and notwithstanding the directive issued by this Honorable Court in the *J.J.* decision, CCDCFS’ Motion for En Banc Conference was denied. (Appx. 32), (Supp. 40). The reviewing court did, however, grant CCDCFS Motion to Certify a Conflict [(Appx. 33-36), (Supp. 41-44)] as it recognized that its decision conflicted with those of other appellate jurisdictions. See, e.g., *In re P.N.M.*, Adams App. Nos. 07CA841 & 07CA842, 2007-Ohio-4976 at ¶38-40; *In re C.G.*, Preble App. Nos. CA2007-03-005 & CA2007-03-006, 2007-Ohio-4361 at ¶10-12. See also *In re A.L.*, Franklin App. Nos. 07AP638 & 07AP647, 2008-Ohio-800 at ¶43; *In re Calvert Children*, Guernsey App. Nos. 05-CA-19 & 05-CA-20, 2005-Ohio-5653 at ¶28-29; *In re Shaeffer Children* (1993), 85 Ohio App.3d 683, 694, 621 N.E.2d 426; *Ackerman v. Lucas Cty. Children Serv. Bd.* (1989), 49 Ohio App.3d 14, 16, 550 N.E.2d 549. Cf. *In re J.F.*, Summit App. No.

23492, 2007-Ohio-1945 at ¶22; *In re Nice*, supra, 141 Ohio App.3d at 452.

It may be helpful to the analysis of this issue to examine just how the ultimate holding in question evolved in the Eighth District Court of Appeals. The first case relevant to the discussion is that of *In re S.G.*, Cuyahoga App. No. 84228, 2005-Ohio-1163.

In *S.G.*, a complaint was filed requesting an adjudication of neglect and seeking an original dispositional order of permanent custody, which orders were entered following trial on the merits. The mother appealed the trial court decision. Because the *S.G.* case involved an adjudication order accompanied by an original dispositional order, both orders were properly appealable following issuance of the dispositional order, without reference to App.R. 4(B)(5). Cf. *Murray*, supra, at syllabus. In fact, despite the holding of the Eighth District, the mother could not have appealed the adjudication order until after the dispositional order was issued. “A finding of dependency without disposition is *not* a final order.” *Murray*, supra, at fn. 1 (emphasis added). In discussing the orders being appealed, the *S.G.* court stated: “The adjudication/temporary disposition order in this case was not entered under Civ.R. 54(B) and, thus, App.R. 4(B)(5) can be applied in this case to permit review of any alleged error associated with the April 24, 2003 adjudication order.” *Id.* at ¶13. There are a number of errors within this statement. First, the April 24, 2003 adjudication order did not contain a dispositional order as is suggested. At the time of the adjudication, the trial court did continue its order of predispositional temporary custody pending completion of the dispositional hearing. As explained supra, orders of predispositional temporary custody must be distinguished from dispositional orders, a fact that is often overlooked by the reviewing court. The court’s statement is more seriously flawed in that App.R. 4(B)(5) could not be applied unless the “adjudication/temporary disposition order” constituted a partial final judgment. It did not, and

App.R. 4(B)(5) is therefore inapplicable.

Following the *S.G.* decision, the Eighth District released its decision in the case of *In re A.C.*, Cuyahoga App. No. 84830, 2005-Ohio-1742. As in the *S.G.* case, the *A.C.* case involved “an immediate complaint for permanent custody.” *A.C.*, supra, at ¶5. Although the *A.C.* court relied on *S.G.* in erroneously applying App.R. 4(B)(5) (thereby failing to recognize the Ohio Supreme Court precedent that prohibited appeal of an adjudicatory order unless accompanied by a dispositional order), the *A.C.* court did seem to understand that the order of adjudication must be appealed immediately following issuance of the original dispositional order. As noted in *A.C.*, “the mother could appeal from the ruling in the adjudicatory hearing either after that hearing *or after the case was disposed of by the dispositional hearing.*” *Id.*, at ¶16 (emphasis added).

The Eighth District later released its decision in the case of *In re A.D.*, Cuyahoga App. No. 87510, 2006-Ohio-6036. In *A.D.*, a complaint was filed requesting an adjudication of neglect and seeking an original dispositional order of permanent custody. The complaint was resolved by issuance of a neglect adjudication in April of 2003 and an original dispositional order of temporary custody in January of 2004. No appeal was taken from these orders. A subsequent motion resulted in the issuance of a permanent custody order in December of 2005. The mother appealed that trial court decision ordering permanent custody. The *A.D.* case is perhaps as troubling for what it does not include as for what it does reflect. The *A.D.* decision purports to involve the identical issue as that contained in *S.G.*, and the same flaws exist in *A.D.*, which uses identical language to that contained in *S.G.*³ Unfortunately, the *A.D.* court failed to recognize, or to even acknowledge, the

³ The *A.D.* court failed to even change the language of its written decision, which incorrectly lists the April 23, 2003 date from *S.G.* rather than April 15, 2003, which is the actual date of

fact that an original dispositional order of temporary custody had been issued nearly two years before the order of permanent custody, which original dispositional order was itself never appealed.⁴ Therefore, while the *S.G.* and *A.C.* courts properly reviewed the adjudicatory orders at the same time they reviewed the original dispositional orders (see *Murray*, supra), the *A.D.* decision erroneously extended such treatment to later dispositional orders issued following subsequent litigation.

In sum, in *S.G.* the Eighth District erroneously applied App.R. 4(B)(5) to allow a party to appeal orders of adjudication following the issuance of the original dispositional order, where such appeal was permissible without reference to App.R. 4(B)(5). See *Murray*, supra. Unfortunately, the Eighth District later compounded its error in the *A.D.* case, erroneously extending its prior application of App.R. 4(B)(5) to cases involving modifications of original dispositional orders.

The present matter involves appeal of an order modifying an original dispositional order from temporary custody to permanent custody. As stated in the reviewing court's decision, the father did not appeal the adjudicatory order or the original dispositional order of temporary custody in this matter. *H.F.*, supra, at ¶28. (See Appx. 17), (Supp. 25). The *H.F.* court further noted that the appeal filed by the children's father "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." *Id.*, at ¶23. (See Appx. 20), (Supp. 28). In holding that it had jurisdiction to review the earlier orders of adjudication and original disposition, the *H.F.* court cited and relied upon its earlier decisions in *S.G.*, *A.C.* and *A.D.* in applying App.R. 4(B)(5) to the present case, while failing to

adjudication as identified earlier in the *A.D.* decision. See *Id.* at ¶7.

⁴ This oversight, and the resulting erroneous ruling, were the subject of an unsuccessful attempt to secure further review by this Honorable Court in Case No. 2007-0260. See *03/28/07 Case Announcements*, 2007-Ohio-1266.

distinguish *S.G.* and *A.C.* on the basis that they involved original dispositional orders and also failing to recognize that App.R. 4(B)(5) is inapplicable for the reasons set forth above.

It is interesting to note that on July 10, 2008 the Eighth District Court of Appeals issued the decision of *In re P.C.*, Cuyahoga App. Nos. 90540 & 90541, 2008-Ohio-3458, which decision states, in pertinent part, as follows:

“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.” *In re C.G.*, Preble App. Nos. CA2007-03-005 and CA2007-03-006, 2007-Ohio-4361, at ¶ 11, citing *In re Murray* (1990), 52 Ohio St.3d 155. Under App.R. 4, a party shall file a notice of appeal within 30 days of the entry of judgment or order appealed from.

The trial court adjudged P.C. dependent on July 12, 2006 and a disposition of temporary custody was granted on July 27, 2006. This dispositional order was journalized on August 2, 2006 and copies of the decision were mailed to the parties. No appeal was ever taken from this order. Because appellants never appealed from the August 2, 2006 order, this court has no jurisdiction in this appeal, which was filed on October 5, 2007 and relates only to the order granting permanent custody, to review any alleged errors relating to that order. *In re C.G.* at ¶ 12; *In re X.R.*, Cuyahoga App. No. 90066, 2008-Ohio-1710, at ¶ 17.

Id., 2008-Ohio-3458 at ¶10-11. Thus, the Eighth District takes the opposite position in *P.C.* than that espoused in *H.F.*, and in support of its holding cites *C.G.*, which is one of the cases it had previously certified to this Court as being in conflict with *H.F.* Despite this anomaly, the Eighth District does not distinguish, or even comment on, those prior decisions (including *A.D.* and *H.F.*) which espouse the exact opposite legal conclusion as that set forth in *P.C.* The fact that *P.C.* is in direct conflict with *A.D.* and *H.F.* yet makes no mention whatsoever of those decisions from the same court is quite simply confounding. In any event, it is clear that this issue should have been addressed within the Eighth District through its en banc procedure as directed by this Honorable Court in *J.J.*, *supra*. Appellant’s motion requesting such relief was denied. (Appx. 32, 34-35), (Supp. 40, 42-43).

App.R. 4(A) promotes the concept of finality of judgments so that, at some determinate point, litigants may rely on those judgments and move forward with their lives. In the context of child protection, state and federal legislation has been enacted to promote more expeditious permanency for children. See *In re A.B.*, 110 Ohio St.3d 230, 2006-Ohio-4359 at ¶¶18-19 & 22, 852 N.E.2d 1187. The *H.F.* holding undermines these concepts for children in the foster care system. These children must now indefinitely put their lives on hold so that parents can try to prolong what are often unsupportable ties to a child whom they have allowed to languish in the foster care system while the parents themselves have failed to take the steps necessary to achieve reunification. It thereby creates an unconscionable impediment to the goal of achieving permanency for children. The decision at issue herein creates an incentive for litigants to “stockpile” appealable issues for later use following potential future proceedings that have not yet been initiated. Such schemes serve only to benefit litigants with weak or nonexistent defenses to actions before the court, as they can hold on to potentially reversible errors for later use (perhaps even years later) in the event that they are ultimately unsuccessful in achieving reunification. The resulting harm of the rationale espoused in this matter was noted in an Eleventh District decision:

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

Bornreger, supra, 2002-Ohio-6468 at ¶100 (Christley, J., dissenting). Such an observation should not be viewed as advocating the denial of any rights and protections to which a party may be entitled, but does seek to make the party responsible for the timely exercise of those rights.

It is axiomatic that individual rights should be protected so that each party to a child protection proceeding is guaranteed due process and a fair trial. Conversely, however, a parent must be required to exercise those rights in a timely manner in order to preserve those rights, for parents are not the only participants in child welfare proceedings. This Honorable Court has long recognized that “it is plain that the natural rights of a parent are not absolute, but are always subject to the ultimate welfare of the child, which is the polestar or controlling principle to be observed.” *In re Cunningham* (1979), 59 Ohio St.2d 100, 106, 391 N.E.2d 1034, citing *In re R. J. C.* (Fla.App. 1974), 300 So.2d 54, 58. The *H.F.* decision improperly extends the time in which a parent may exercise the right to appellate review to the detriment of the child, whose right to permanency is thereby delayed. Such a result is untenable. “Children also have rights to be protected and to deny these children a chance at a stable home and environment would not only not be in their best interest – it would be just plain unfair!” *Mathis*, supra, at *4 (Douglas, J., concurring).

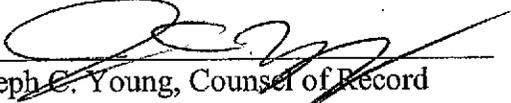
CONCLUSION

The decision below erroneously extends application of App.R. 4(B)(5) to child protection cases in juvenile court, thereby threatening permanency for children subject to juvenile court jurisdiction. The decision relies on flawed legal reasoning to support its conclusion that a dispositional order of temporary custody constitutes a partial final judgment which may be appealed either at the time it is issued or following a subsequent order modifying the original dispositional order. Such a holding, which undermines both state and federal legislation relating to child protection issues, must be rejected.

The decision below must be reversed. A reversal will promote the principle of finality of judgments as well as the goal of achieving more expeditious permanency for children, and will also adequately serve to protect the due process rights of all litigants in child protection proceedings without erroneously extending the application of App.R. 4(B)(5) to situations which were not intended to be covered by the rule.

Respectfully submitted,

WILLIAM D. MASON, ESQ.
Cuyahoga County Prosecuting Attorney

By: 
Joseph C. Young, Counsel of Record
Assistant Prosecuting Attorney
COUNSEL FOR APPELLANT

Proof of Service

I certify that a copy of this *Merit Brief* 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 31st day of July, 2008.


Joseph C. Young, Counsel of Record
Assistant Prosecuting Attorney

IN THE SUPREME COURT OF OHIO

In The Matter Of:

08-1036

H.F. & R.F.

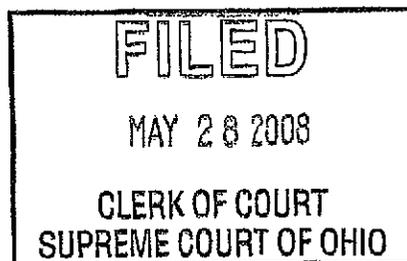
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: On Appeal from the Cuyahoga County
: Court of Appeals, Eighth Appellate District
:
: Court of Appeals Case Nos. 90299 & 90300

NOTICE OF APPEAL OF APPELLANT
CUYAHOGA COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES

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GUARDIAN AD LITEM FOR CHILD



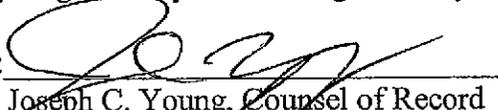
Notice of Appeal of Appellant
Cuyahoga County Department of Children and Family Services

Appellant Cuyahoga County Department of Children and Family Services hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Cuyahoga County Court of Appeals, Eighth Appellate District, which was announced on April 3, 2008 and entered on April 14, 2008 in Court of Appeals Case Nos. 90299 & 90300.

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

The Cuyahoga County Court of Appeals, Eighth Appellate District has granted Appellant's Motion to Certify a Conflict in this matter. Therefore, a Notice of Certified Conflict is being contemporaneously filed under separate cover.

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 this 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

IN THE SUPREME COURT OF OHIO

08-1037

In The Matter Of:

H.F. & R.F.

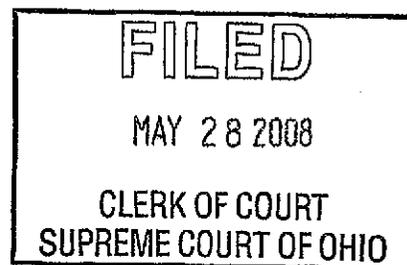
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: On Appeal from the Cuyahoga County
: Court of Appeals, Eighth Appellate District
:
: Court of Appeals Case Nos. 90299 & 90300

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

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GUARDIAN AD LITEM FOR CHILD



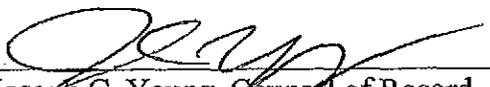
Notice of Certified Conflict

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, NEGLIGENCE, 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.”

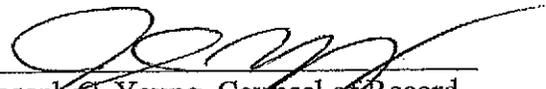
In so certifying the conflict, the Eighth District Court of Appeals has determined that its decision in this matter is in conflict with the following decisions of other appellate districts: *In re P.N.M.*, Adams App. Nos. 07CA841 & 07CA842, 2007-Ohio-4976 and *In re C.G.*, Preble App. Nos. CA2007-03-005 & 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

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 14 2008

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[Appx. 7]

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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 Jim 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 CEJ DEP

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

NOTICE MAILED TO COUNSEL
FOR ALL PARTIES-COSTS TAXED

0655 00601

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 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.

¹The 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

²See, 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 were 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 CCDCCFS 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

APPENDIX

- “II. The judgment terminating Appellant’s parental rights is against the manifest weight of the evidence and constitutes a denial of due process of law. *Fourteenth Amendment, Constitution of the United States: Article I, §16, Constitution of the State of Ohio.*
- III. The trial court abused its discretion and denied Appellant due process of law by denying his motion for continuance of the hearing held on July 26, 2007.”

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Gerald E. Fuerst, Clerk of Courts

IN RE: H/ FI

Appellee

COA NO.

LOWER COURT NO.

90299

AD 06900231

90300

AD 06900286

JUVENILE COURT DIVISION

MOTION NO. 407851

Date 05/09/2008

Journal Entry

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

RECEIVED FOR FILING

MAY 9 - 2008

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY: CEL Y DEP.

Judge PATRICIA A. BLACKMON, Concur

Judge MARY J. BOYLE, Concur

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: H. F.

Appellee

COA NO.
90299
90300

LOWER COURT NO.
AD 06900231
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 BANG CONFERENCE; MOTION TO CERTIFY A CONFLICT).

RECEIVED FOR FILING

MAY 9 - 2008

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY: [Signature] DER.

Judge PATRICIA A. BLACKMON, Concur

Judge MARY J. BOYLE, Concur

[Signature]
Presiding Judge
MARY EILEEN KILBANE

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

IN RE: R F : COA NOS. LOWER COURT NOS.
H F : 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 CCDCCFS.

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, NEGLIGENCE, 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

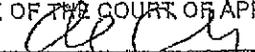
Judge Mary J. Boyle, CONCURS



Mary Eileen Kilbane, Presiding Judge

RECEIVED FOR FILING

MAY 9 - 2008

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

07 AUG 10 AM 9:59 CASE NO: AD06900286

IN THE MATTER OF:

R F (CLERK OF COURTS)
JOURNAL ENTRY

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

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

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

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

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

Following the placement of the children outside the child's home and notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused the child to be placed outside the home, the parent has failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home.

The parents have demonstrated a lack of commitment toward the children by failing to regularly support, visit, or communicate with the child when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for the child.

The Parents are unwilling to provide food, clothing, shelter, and other necessities for the children or to prevent the children from suffering emotional or mental neglect, as evidenced by their unwillingness to successfully complete a case plan so they can provide care for the child.

~~The Parents~~ have committed abuse or neglect to the children and the likelihood of recurrence of the abuse or neglect makes the child's placement with the parents a threat to the children's safety.

0059 3994

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

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

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

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

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

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

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

FILED WITH THE CLERK AND JOURNALIZED

8-10-07 MM

JOSEPH F. RUSSO EX-OFFICIO CLERK



THOMAS F. O'MALLEY

BY: MILLIE HERNANDEZ
DEPUTY CLERK

7/26/07
DATE

0059 3995

07 AUG 10 AM 08:50
CASE NO:

IN THE MATTER OF: H F

CLERK OF COURTS

AD06900231

JOURNAL ENTRY

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

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

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

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

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

Following the placement of the children outside the child's home and notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused the child to be placed outside the home, the parent has failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home.

The parents have demonstrated a lack of commitment toward the children by failing to regularly support, visit, or communicate with the child when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for the child.

The Parents are unwilling to provide food, clothing, shelter, and other necessities for the children or to prevent the children from suffering emotional or mental neglect, as evidenced by their unwillingness to successfully complete a case plan so they can provide care for the child.

~~The Parents~~ have committed abuse or neglect to the children and the likelihood of recurrence of the abuse or neglect makes the child's placement with the parents a threat to the children's safety.

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

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

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

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

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

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

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

FILED WITH THE CLERK AND JOURNALIZED

8-10-07 MM

JOSEPH F. RUSSO EX-OFFICIO CLERK

Thomas F. O'Malley
THOMAS F. O'MALLEY

BY: MILLIE HERNANDEZ
DEPUTY CLERK

7/26/07
DATE

0059 3997

CLERK OF COURTS
STATE OF OHIO
COUNTY OF CUYAHOGA
FILED
APR 11 2007
1:36

IN THE COMMON PLEAS COURT
JUVENILE DIVISION

IN THE MATTER OF: H F

CASE NOS.: AD 06900231

JOURNAL ENTRY

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

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

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

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

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

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

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

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

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

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

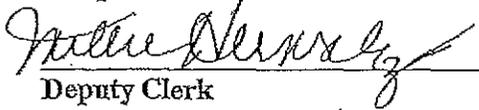
Filed with the Clerk and Journalized



Joseph F. Russo Ex-Officio Clerk



Judge Thomas F. O'Malley



Deputy Clerk

Date 3/15/07

STATE OF OHIO
COUNTY OF CUYAHOGA

FILED
IN THE COMMON PLEAS COURT
JUVENILE DIVISION

07 APR -4 PM 3:52

IN THE MATTER OF: R

CLERK OF COURTS

CASE NOS.: AD 06900286

JOURNAL ENTRY

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

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

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

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

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

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

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

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

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

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

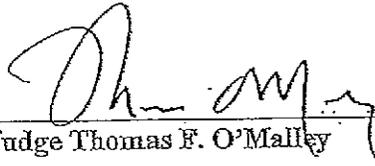
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Filed with the Clerk and Journalized

4-4-07 mm

Joseph F. Russo

Ex-Officio Clerk



Judge Thomas F. O'Malley

Deputy Clerk

Date 3/15/07

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MAGISTRATE'S DECISION

STATE OF OHIO
COUNTY OF CUYAHOGA

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

IN THE MATTER OF:
R F , d.o.b.

CASE NUMBER: 06900286

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8/24/06
Date

[Signature]
Magistrate Richard Walsh

FILED WITH THE CLERK OF COURTS AND JOURNALIZED

6/7/06 RK
Joseph F. Russo Ex-Officio Clerk

8-24-06
Date

By: [Signature]
Deputy Clerk

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FILED
JOURNAL ENTRY

06 JUN -7 AM 10:28

STATE OF OHIO
COUNTY OF CUYAHOGA

IN THE COMMON PLEAS COURT
CLERK OF COURTS JUVENILE COURT DIVISION

IN THE MATTER OF:
R F , d.o.b. ,

CASE NUMBER: 06900286

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

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

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

IT IS FURTHER ORDERED that this matter is consolidated with the case of H: F , case no. 06900231.

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

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

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

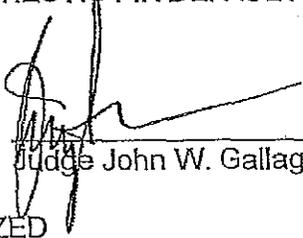
IT IS FURTHER ORDERED that the case plan filed herein is approved and journalized.

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

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

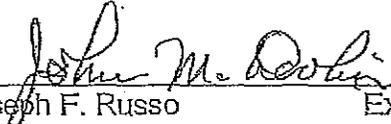
THE CLERK OF COURTS SHALL SERVE UPON ALL PARTIES NOT IN DEFAULT FOR FAILURE TO APPEAR NOTICE OF THIS JUDGMENT.

5/30/06
Date


Judge John W. Gallagher

FILED WITH THE CLERK OF COURTS AND JOURNALIZED

6/7/06 RK


Joseph F. Russo ExOfficio Clerk

Date

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COURT OF COMMON PLEAS
JUVENILE COURT DIVISION
MAGISTRATE DECISION
FILED

STATE OF OHIO
COUNTY OF CUYAHOGA

IN THE COMMON PLEAS COURT
JUVENILE COURT DIVISION
06 JUN -5 PM 11:40
CLERK OF COURTS
CASE NUMBER: 06900231

IN THE MATTER OF:
H F, d.o.b. .

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

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

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

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

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

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

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

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

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

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

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

IT IS THEREFORE RECOMMENDED that this matter be consolidated with the case of R F case no. 06900286.

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

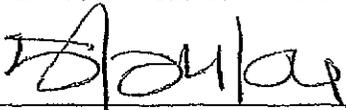
IT IS FURTHER RECOMMENDED that the child be committed to the TEMPORARY CUSTODY OF CCDCFS.

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

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

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

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



Date



Magistrate Richard Walsh

FILED WITH THE CLERK OF COURTS AND JOURNALIZED

6/5/06 RJK

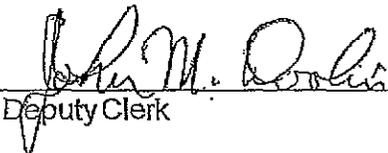
Joseph F. Russo

ExOfficio Clerk

5-24-06

Date

By:


Deputy Clerk

0043 9228

JOURNAL ENTRY

STATE OF OHIO
COUNTY OF CUYAHOGA

IN THE COMMON PLEAS COURT
JUVENILE COURT DIVISION

IN THE MATTER OF:
H: F d.o.b.

CASE NUMBER: 06900231

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

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

IT IS THEREFORE ORDERED that this matter is consolidated with the case of R: F, case no. 06900286.

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

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

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

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

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

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

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

5/30/06
Date


Judge John W. Gallagher

FILED WITH THE CLERK OF COURTS AND JOURNALIZED

6/5/06 RIK
Joseph F. Russo Ex Officio Clerk

Date

By: John M. DeLong
Deputy Clerk

BALDWIN'S OHIO REVISED CODE ANNOTATED
CONSTITUTION OF THE STATE OF OHIO
ARTICLE IV. JUDICIAL

→ O Const IV Sec. 3 Organization and jurisdiction of courts of appeals

(A) The state shall be divided by law into compact appellate districts in each of which there shall be a court of appeals consisting of three judges. Laws may be passed increasing the number of judges in any district wherein the volume of business may require such additional judge or judges. In districts having additional judges, three judges shall participate in the hearing and disposition of each case. The court shall hold sessions in each county of the district as the necessity arises. The county commissioners of each county shall provide a proper and convenient place for the court of appeals to hold court.

(B) (1) The courts of appeals shall have original jurisdiction in the following:

(a) Quo warranto;

(b) Mandamus;

(c) Habeas corpus;

(d) Prohibition;

(e) Procedendo;

(f) In any cause on review as may be necessary to its complete determination.

(2) Courts of appeals shall have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district, except that courts of appeals shall not have jurisdiction to review on direct appeal a judgment that imposes a sentence of death. Courts of appeals shall have such appellate jurisdiction as may be provided by law to review and affirm, modify, or reverse final orders or actions of administrative officers or agencies.

(3) A majority of the judges hearing the cause shall be necessary to render a judgment. Judgments of the courts of appeals are final except as provided in section 2 (B) (2) of this article. No judgment resulting from a trial by jury shall be reversed on the weight of the evidence except by the concurrence of all three judges hearing the cause.

(4) Whenever the judges of a court of appeals find that a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by any other court of appeals of the state, the judges shall certify the record of the case to the supreme court for review and final determination.

(C) Laws may be passed providing for the reporting of cases in the courts of appeals.

Current through 2008 Files 1 to 119, 121, 123 & 125 to 127 of the 127th GA (2007-2008), apv. by 6/23/08, and filed with the Secretary of State by 6/23/08.

Copr. © 2008 Thomson Reuters/West

END OF DOCUMENT

R.C. § 2151.31

CBALDWIN'S OHIO REVISED CODE ANNOTATED
TITLE XXI. COURTS--PROBATE--JUVENILE
CHAPTER 2151. JUVENILE COURTS--GENERAL PROVISIONS
PRACTICE AND PROCEDURE

→ 2151.31 Apprehension, custody, and detention

(A) A child may be taken into custody in any of the following ways:

(1) Pursuant to an order of the court under this chapter or pursuant to an order of the court upon a motion filed pursuant to division (B) of section 2930.05 of the Revised Code;

(2) Pursuant to the laws of arrest;

(3) By a law enforcement officer or duly authorized officer of the court when any of the following conditions are present:

(a) There are reasonable grounds to believe that the child is suffering from illness or injury and is not receiving proper care, as described in section 2151.03 of the Revised Code, and the child's removal is necessary to prevent immediate or threatened physical or emotional harm;

(b) There are reasonable grounds to believe that the child is in immediate danger from the child's surroundings and that the child's removal is necessary to prevent immediate or threatened physical or emotional harm;

(c) There are reasonable grounds to believe that a parent, guardian, custodian, or other household member of the child's household has abused or neglected another child in the household and to believe that the child is in danger of immediate or threatened physical or emotional harm from that person.

(4) By an enforcement official, as defined in section 4109.01 of the Revised Code, under the circumstances set forth in section 4109.08 of the Revised Code;

(5) By a law enforcement officer or duly authorized officer of the court when there are reasonable grounds to believe that the child has run away from the child's parents, guardian, or other custodian;

(6) By a law enforcement officer or duly authorized officer of the court when any of the following apply:

(a) There are reasonable grounds to believe that the conduct, conditions, or surroundings of the child are endangering the health, welfare, or safety of the child.

(b) A complaint has been filed with respect to the child under section 2151.27 or 2152.021 of the Revised Code or the child has been indicted under division (A) of section 2152.13 of the Revised Code or charged by information as described in that section and there are reasonable grounds to believe that the child may abscond or be removed from the jurisdiction of the court.

R.C. § 2151.31

(c) The child is required to appear in court and there are reasonable grounds to believe that the child will not be brought before the court when required.

(d) There are reasonable grounds to believe that the child committed a delinquent act and that taking the child into custody is necessary to protect the public interest and safety.

(B)(1) The taking of a child into custody is not and shall not be deemed an arrest except for the purpose of determining its validity under the constitution of this state or of the United States.

(2) Except as provided in division (C) of section 2151.311 of the Revised Code, a child taken into custody shall not be held in any state correctional institution, county, multicounty, or municipal jail or workhouse, or any other place where any adult convicted of crime, under arrest, or charged with crime is held.

(C)(1) Except as provided in division (C)(2) of this section, a child taken into custody shall not be confined in a place of juvenile detention or placed in shelter care prior to the implementation of the court's final order of disposition, unless detention or shelter care is required to protect the child from immediate or threatened physical or emotional harm, because the child is a danger or threat to one or more other persons and is charged with violating a section of the Revised Code that may be violated by an adult, because the child may abscond or be removed from the jurisdiction of the court, because the child has no parents, guardian, or custodian or other person able to provide supervision and care for the child and return the child to the court when required, or because an order for placement of the child in detention or shelter care has been made by the court pursuant to this chapter.

(2) A child alleged to be a delinquent child who is taken into custody may be confined in a place of juvenile detention prior to the implementation of the court's final order of disposition if the confinement is authorized under section 2152.04 of the Revised Code or if the child is alleged to be a serious youthful offender under section 2152.13 of the Revised Code and is not released on bond.

(D) Upon receipt of notice from a person that the person intends to take an alleged abused, neglected, or dependent child into custody pursuant to division (A)(3) of this section, a juvenile judge or a designated referee may grant by telephone an ex parte emergency order authorizing the taking of the child into custody if there is probable cause to believe that any of the conditions set forth in divisions (A)(3)(a) to (c) of this section are present. The judge or referee shall journalize any ex parte emergency order issued pursuant to this division. If an order is issued pursuant to this division and the child is taken into custody pursuant to the order, a sworn complaint shall be filed with respect to the child before the end of the next business day after the day on which the child is taken into custody and a hearing shall be held pursuant to division (E) of this section and the Juvenile Rules. A juvenile judge or referee shall not grant an emergency order by telephone pursuant to this division until after the judge or referee determines that reasonable efforts have been made to notify the parents, guardian, or custodian of the child that the child may be placed into shelter care and of the reasons for placing the child into shelter care, except that, if the requirement for notification would jeopardize the physical or emotional safety of the child or result in the child being removed from the court's jurisdiction, the judge or referee may issue the order for taking the child into custody and placing the child into shelter care prior to giving notice to the parents, guardian, or custodian of the child.

(E) If a judge or referee pursuant to division (D) of this section issues an ex parte emergency order for taking a child into custody, the court shall hold a hearing to determine whether there is probable cause for the emergency order. The hearing shall be held before the end of the next business day after the day on which the emergency order is issued, except that it shall not be held later than seventy-two hours after the emergency order is issued.

If the court determines at the hearing that there is not probable cause for the issuance of the emergency order issued pursuant to division (D) of this section, it shall order the child released to the custody of the child's parents, guardian, or custodian. If the court determines at the hearing that there is probable cause for the issuance of the

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emergency order issued pursuant to division (D) of this section, the court shall do all of the following:

- (1) Ensure that a complaint is filed or has been filed;
- (2) Comply with section 2151.419 of the Revised Code;
- (3) Hold a hearing pursuant to section 2151.314 of the Revised Code to determine if the child should remain in shelter care.

(F) If the court determines at the hearing held pursuant to division (E) of this section that there is probable cause to believe that the child is an abused child, as defined in division (A) of section 2151.031 of the Revised Code, the court may do any of the following:

- (1) Upon the motion of any party, the guardian ad litem, the prosecuting attorney, or an employee of the public children services agency, or its own motion, issue reasonable protective orders with respect to the interviewing or deposition of the child;
- (2) Order that the child's testimony be videotaped for preservation of the testimony for possible use in any other proceedings in the case;
- (3) Set any additional conditions with respect to the child or the case involving the child that are in the best interest of the child.

(G) This section is not intended, and shall not be construed, to prevent any person from taking a child into custody, if taking the child into custody is necessary in an emergency to prevent the physical injury, emotional harm, or neglect of the child.

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TITLE XXI. COURTS--PROBATE--JUVENILE
CHAPTER 2151. JUVENILE COURTS--GENERAL PROVISIONS
PRACTICE AND PROCEDURE

→2151.33 Temporary care; emergency medical treatment; reimbursement

(A) Pending hearing of a complaint filed under section 2151.27 of the Revised Code or a motion filed or made under division (B) of this section and the service of citations, the juvenile court may make any temporary disposition of any child that it considers necessary to protect the best interest of the child and that can be made pursuant to division (B) of this section. Upon the certificate of one or more reputable practicing physicians, the court may summarily provide for emergency medical and surgical treatment that appears to be immediately necessary to preserve the health and well-being of any child concerning whom a complaint or an application for care has been filed, pending the service of a citation upon the child's parents, guardian, or custodian. The court may order the parents, guardian, or custodian, if the court finds the parents, guardian, or custodian able to do so, to reimburse the court for the expense involved in providing the emergency medical or surgical treatment. Any person who disobeys the order for reimbursement may be adjudged in contempt of court and punished accordingly.

If the emergency medical or surgical treatment is furnished to a child who is found at the hearing to be a nonresident of the county in which the court is located and if the expense of the medical or surgical treatment cannot be recovered from the parents, legal guardian, or custodian of the child, the board of county commissioners of the county in which the child has a legal settlement shall reimburse the court for the reasonable cost of the emergency medical or surgical treatment out of its general fund.

(B)(1) After a complaint, petition, writ, or other document initiating a case dealing with an alleged or adjudicated abused, neglected, or dependent child is filed and upon the filing or making of a motion pursuant to division (C) of this section, the court, prior to the final disposition of the case, may issue any of the following temporary orders to protect the best interest of the child:

- (a) An order granting temporary custody of the child to a particular party;
- (b) An order for the taking of the child into custody pursuant to section 2151.31 of the Revised Code pending the outcome of the adjudicatory and dispositional hearings;
- (c) An order granting, limiting, or eliminating parenting time or visitation rights with respect to the child;
- (d) An order requiring a party to vacate a residence that will be lawfully occupied by the child;
- (e) An order requiring a party to attend an appropriate counseling program that is reasonably available to that party;
- (f) Any other order that restrains or otherwise controls the conduct of any party which conduct would not be in the best interest of the child.

(2) Prior to the final disposition of a case subject to division (B)(1) of this section, the court shall do both of the following:

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(a) Issue an order pursuant to Chapters 3119. to 3125. of the Revised Code requiring the parents, guardian, or person charged with the child's support to pay support for the child.

(b) Issue an order requiring the parents, guardian, or person charged with the child's support to continue to maintain any health insurance coverage for the child that existed at the time of the filing of the complaint, petition, writ, or other document, or to obtain health insurance coverage in accordance with sections 3119.29 to 3119.56 of the Revised Code.

(C)(1) A court may issue an order pursuant to division (B) of this section upon its own motion or if a party files a written motion or makes an oral motion requesting the issuance of the order and stating the reasons for it. Any notice sent by the court as a result of a motion pursuant to this division shall contain a notice that any party to a juvenile proceeding has the right to be represented by counsel and to have appointed counsel if the person is indigent.

(2) If a child is taken into custody pursuant to section 2151.31 of the Revised Code and placed in shelter care, the public children services agency or private child placing agency with which the child is placed in shelter care shall file or make a motion as described in division (C)(1) of this section before the end of the next day immediately after the date on which the child was taken into custody and, at a minimum, shall request an order for temporary custody under division (B)(1)(a) of this section.

(3) A court that issues an order pursuant to division (B)(1)(b) of this section shall comply with section 2151.419 of the Revised Code.

(D) The court may grant an ex parte order upon its own motion or a motion filed or made pursuant to division (C) of this section requesting such an order if it appears to the court that the best interest and the welfare of the child require that the court issue the order immediately. The court, if acting on its own motion, or the person requesting the granting of an ex parte order, to the extent possible, shall give notice of its intent or of the request to the parents, guardian, or custodian of the child who is the subject of the request. If the court issues an ex parte order, the court shall hold a hearing to review the order within seventy-two hours after it is issued or before the end of the next day after the day on which it is issued, whichever occurs first. The court shall give written notice of the hearing to all parties to the action and shall appoint a guardian ad litem for the child prior to the hearing.

The written notice shall be given by all means that are reasonably likely to result in the party receiving actual notice and shall include all of the following:

- (1) The date, time, and location of the hearing;
- (2) The issues to be addressed at the hearing;
- (3) A statement that every party to the hearing has a right to counsel and to court-appointed counsel, if the party is indigent;
- (4) The name, telephone number, and address of the person requesting the order;
- (5) A copy of the order, except when it is not possible to obtain it because of the exigent circumstances in the case.

If the court does not grant an ex parte order pursuant to a motion filed or made pursuant to division (C) of this section or its own motion, the court shall hold a shelter care hearing on the motion within ten days after the motion is filed. The court shall give notice of the hearing to all affected parties in the same manner as set forth in the

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Juvenile Rules.

(E) The court, pending the outcome of the adjudicatory and dispositional hearings, shall not issue an order granting temporary custody of a child to a public children services agency or private child placing agency pursuant to this section, unless the court determines and specifically states in the order that the continued residence of the child in the child's current home will be contrary to the child's best interest and welfare and the court complies with section 2151.419 of the Revised Code.

(F) Each public children services agency and private child placing agency that receives temporary custody of a child pursuant to this section shall maintain in the child's case record written documentation that it has placed the child, to the extent that it is consistent with the best interest, welfare, and special needs of the child, in the most family-like setting available and in close proximity to the home of the parents, custodian, or guardian of the child.

(G) For good cause shown, any court order that is issued pursuant to this section may be reviewed by the court at any time upon motion of any party to the action or upon the motion of the court.

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TITLE XXI. COURTS--PROBATE--JUVENILE
CHAPTER 2151. JUVENILE COURTS--GENERAL PROVISIONS
HEARING AND DISPOSITION

→ **2151.353 Disposition of abused, neglected, or dependent child**

(A) If a child is adjudicated an abused, neglected, or dependent child, the court may make any of the following orders of disposition:

(1) Place the child in protective supervision;

(2) Commit the child to the temporary custody of a public children services agency, a private child placing agency, either parent, a relative residing within or outside the state, or a probation officer for placement in a certified foster home, or in any other home approved by the court;

(3) Award legal custody of the child to either parent or to any other person who, prior to the dispositional hearing, files a motion requesting legal custody of the child or is identified as a proposed legal custodian in a complaint or motion filed prior to the dispositional hearing by any party to the proceedings. A person identified in a complaint or motion filed by a party to the proceedings as a proposed legal custodian shall be awarded legal custody of the child only if the person identified signs a statement of understanding for legal custody that contains at least the following provisions:

(a) That it is the intent of the person to become the legal custodian of the child and the person is able to assume legal responsibility for the care and supervision of the child;

(b) That the person understands that legal custody of the child in question is intended to be permanent in nature and that the person will be responsible as the custodian for the child until the child reaches the age of majority. Responsibility as custodian for the child shall continue beyond the age of majority if, at the time the child reaches the age of majority, the child is pursuing a diploma granted by the board of education or other governing authority, successful completion of the curriculum of any high school, successful completion of an individualized education program developed for the student by any high school, or an age and schooling certificate. Responsibility beyond the age of majority shall terminate when the child ceases to continuously pursue such an education, completes such an education, or is excused from such an education under standards adopted by the state board of education, whichever occurs first.

(c) That the parents of the child have residual parental rights, privileges, and responsibilities, including, but not limited to, the privilege of reasonable visitation, consent to adoption, the privilege to determine the child's religious affiliation, and the responsibility for support;

(d) That the person understands that the person must be present in court for the dispositional hearing in order to affirm the person's intention to become legal custodian, to affirm that the person understands the effect of the custodianship before the court, and to answer any questions that the court or any parties to the case may have.

(4) Commit the child to the permanent custody of a public children services agency or private child placing agency,

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if the court determines in accordance with division (E) of section 2151.414 of the Revised Code that the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent and determines in accordance with division (D) of section 2151.414 of the Revised Code that the permanent commitment is in the best interest of the child. If the court grants permanent custody under this division, the court, upon the request of any party, shall file a written opinion setting forth its findings of fact and conclusions of law in relation to the proceeding.

(5) Place the child in a planned permanent living arrangement with a public children services agency or private child placing agency, if a public children services agency or private child placing agency requests the court to place the child in a planned permanent living arrangement and if the court finds, by clear and convincing evidence, that a planned permanent living arrangement is in the best interest of the child and that one of the following exists:

(a) The child, because of physical, mental, or psychological problems or needs, is unable to function in a family-like setting and must remain in residential or institutional care.

(b) The parents of the child have significant physical, mental, or psychological problems and are unable to care for the child because of those problems, adoption is not in the best interest of the child, as determined in accordance with division (D) of section 2151.414 of the Revised Code, and the child retains a significant and positive relationship with a parent or relative.

(c) The child is sixteen years of age or older, has been counseled on the permanent placement options available to the child, is unwilling to accept or unable to adapt to a permanent placement, and is in an agency program preparing the child for independent living.

(6) Order the removal from the child's home until further order of the court of the person who committed abuse as described in section 2151.031 of the Revised Code against the child, who caused or allowed the child to suffer neglect as described in section 2151.03 of the Revised Code, or who is the parent, guardian, or custodian of a child who is adjudicated a dependent child and order any person not to have contact with the child or the child's siblings.

(B) No order for permanent custody or temporary custody of a child or the placement of a child in a planned permanent living arrangement shall be made pursuant to this section unless the complaint alleging the abuse, neglect, or dependency contains a prayer requesting permanent custody, temporary custody, or the placement of the child in a planned permanent living arrangement as desired, the summons served on the parents of the child contains as is appropriate a full explanation that the granting of an order for permanent custody permanently divests them of their parental rights, a full explanation that an adjudication that the child is an abused, neglected, or dependent child may result in an order of temporary custody that will cause the removal of the child from their legal custody until the court terminates the order of temporary custody or permanently divests the parents of their parental rights, or a full explanation that the granting of an order for a planned permanent living arrangement will result in the removal of the child from their legal custody if any of the conditions listed in divisions (A)(5)(a) to (c) of this section are found to exist, and the summons served on the parents contains a full explanation of their right to be represented by counsel and to have counsel appointed pursuant to Chapter 120. of the Revised Code if they are indigent.

If after making disposition as authorized by division (A)(2) of this section, a motion is filed that requests permanent custody of the child, the court may grant permanent custody of the child to the movant in accordance with section 2151.414 of the Revised Code.

(C) If the court issues an order for protective supervision pursuant to division (A)(1) of this section, the court may place any reasonable restrictions upon the child, the child's parents, guardian, or custodian, or any other person, including, but not limited to, any of the following:

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(1) Order a party, within forty-eight hours after the issuance of the order, to vacate the child's home indefinitely or for a specified period of time;

(2) Order a party, a parent of the child, or a physical custodian of the child to prevent any particular person from having contact with the child;

(3) Issue an order restraining or otherwise controlling the conduct of any person which conduct would not be in the best interest of the child.

(D) As part of its dispositional order, the court shall journalize a case plan for the child. The journalized case plan shall not be changed except as provided in section 2151.412 of the Revised Code.

(E)(1) The court shall retain jurisdiction over any child for whom the court issues an order of disposition pursuant to division (A) of this section or pursuant to section 2151.414 or 2151.415 of the Revised Code until the child attains the age of eighteen years if the child is not mentally retarded, developmentally disabled, or physically impaired, the child attains the age of twenty-one years if the child is mentally retarded, developmentally disabled, or physically impaired, or the child is adopted and a final decree of adoption is issued, except that the court may retain jurisdiction over the child and continue any order of disposition under division (A) of this section or under section 2151.414 or 2151.415 of the Revised Code for a specified period of time to enable the child to graduate from high school or vocational school. The court shall make an entry continuing its jurisdiction under this division in the journal.

(2) Any public children services agency, any private child placing agency, the department of job and family services, or any party, other than any parent whose parental rights with respect to the child have been terminated pursuant to an order issued under division (A)(4) of this section, by filing a motion with the court, may at any time request the court to modify or terminate any order of disposition issued pursuant to division (A) of this section or section 2151.414 or 2151.415 of the Revised Code. The court shall hold a hearing upon the motion as if the hearing were the original dispositional hearing and shall give all parties to the action and the guardian ad litem notice of the hearing pursuant to the Juvenile Rules. If applicable, the court shall comply with section 2151.42 of the Revised Code.

(F) Any temporary custody order issued pursuant to division (A) of this section shall terminate one year after the earlier of the date on which the complaint in the case was filed or the child was first placed into shelter care, except that, upon the filing of a motion pursuant to section 2151.415 of the Revised Code, the temporary custody order shall continue and not terminate until the court issues a dispositional order under that section.

(G)(1) No later than one year after the earlier of the date the complaint in the case was filed or the child was first placed in shelter care, a party may ask the court to extend an order for protective supervision for six months or to terminate the order. A party requesting extension or termination of the order shall file a written request for the extension or termination with the court and give notice of the proposed extension or termination in writing before the end of the day after the day of filing it to all parties and the child's guardian ad litem. If a public children services agency or private child placing agency requests termination of the order, the agency shall file a written status report setting out the facts supporting termination of the order at the time it files the request with the court. If no party requests extension or termination of the order, the court shall notify the parties that the court will extend the order for six months or terminate it and that it may do so without a hearing unless one of the parties requests a hearing. All parties and the guardian ad litem shall have seven days from the date a notice is sent pursuant to this division to object to and request a hearing on the proposed extension or termination.

(a) If it receives a timely request for a hearing, the court shall schedule a hearing to be held no later than thirty days after the request is received by the court. The court shall give notice of the date, time, and location of the hearing to all parties and the guardian ad litem. At the hearing, the court shall determine whether extension or termination of

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the order is in the child's best interest. If termination is in the child's best interest, the court shall terminate the order. If extension is in the child's best interest, the court shall extend the order for six months.

(b) If it does not receive a timely request for a hearing, the court may extend the order for six months or terminate it without a hearing and shall journalize the order of extension or termination not later than fourteen days after receiving the request for extension or termination or after the date the court notifies the parties that it will extend or terminate the order. If the court does not extend or terminate the order, it shall schedule a hearing to be held no later than thirty days after the expiration of the applicable fourteen-day time period and give notice of the date, time, and location of the hearing to all parties and the child's guardian ad litem. At the hearing, the court shall determine whether extension or termination of the order is in the child's best interest. If termination is in the child's best interest, the court shall terminate the order. If extension is in the child's best interest, the court shall issue an order extending the order for protective supervision six months.

(2) If the court grants an extension of the order for protective supervision pursuant to division (G)(1) of this section, a party may, prior to termination of the extension, file with the court a request for an additional extension of six months or for termination of the order. The court and the parties shall comply with division (G)(1) of this section with respect to extending or terminating the order.

(3) If a court grants an extension pursuant to division (G)(2) of this section, the court shall terminate the order for protective supervision at the end of the extension.

(H) The court shall not issue a dispositional order pursuant to division (A) of this section that removes a child from the child's home unless the court complies with section 2151.419 of the Revised Code and includes in the dispositional order the findings of fact required by that section.

(I) If a motion or application for an order described in division (A)(6) of this section is made, the court shall not issue the order unless, prior to the issuance of the order, it provides to the person all of the following:

- (1) Notice and a copy of the motion or application;
- (2) The grounds for the motion or application;
- (3) An opportunity to present evidence and witnesses at a hearing regarding the motion or application;
- (4) An opportunity to be represented by counsel at the hearing.

(J) The jurisdiction of the court shall terminate one year after the date of the award or, if the court takes any further action in the matter subsequent to the award, the date of the latest further action subsequent to the award, if the court awards legal custody of a child to either of the following:

- (1) A legal custodian who, at the time of the award of legal custody, resides in a county of this state other than the county in which the court is located;
- (2) A legal custodian who resides in the county in which the court is located at the time of the award of legal custody, but moves to a different county of this state prior to one year after the date of the award or, if the court takes any further action in the matter subsequent to the award, one year after the date of the latest further action subsequent to the award.

The court in the county in which the legal custodian resides then shall have jurisdiction in the matter.

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BALDWIN'S OHIO REVISED CODE ANNOTATED
RULES OF APPELLATE PROCEDURE
TITLE II. APPEALS FROM JUDGMENTS AND ORDERS OF COURT OF RECORD
→ App R 4 Appeal as of right--when taken

(A) Time for appeal

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

(B) Exceptions

The following are exceptions to the appeal time period in division (A) of this rule:

(1) Multiple or cross appeals. If a notice of appeal is timely filed by a party, another party may file a notice of appeal within the appeal time period otherwise prescribed by this rule or within ten days of the filing of the first notice of appeal.

(2) Civil or juvenile post-judgment motion. In a civil case or juvenile proceeding, if a party files a timely motion for judgment under Civ.R. 50(B), a new trial under Civ.R. 59(B), vacating or modifying a judgment by an objection to a magistrate's decision under Civ.R. 53(E)(4)(c) or Rule 40(E)(4)(c) of the Ohio Rules of Juvenile Procedure, or findings of fact and conclusions of law under Civ.R. 52, the time for filing a notice of appeal begins to run as to all parties when the order disposing of the motion is entered.

(3) Criminal post-judgment motion. In a criminal case, if a party timely files a motion for arrest of judgment or a new trial for a reason other than newly discovered evidence, the time for filing a notice of appeal begins to run when the order denying the motion is entered. A motion for a new trial on the ground of newly discovered evidence made within the time for filing a motion for a new trial on other grounds extends the time for filing a notice of appeal from a judgment of conviction in the same manner as a motion on other grounds. If made after the expiration of the time for filing a motion on other grounds, the motion on the ground of newly discovered evidence does not extend the time for filing a notice of appeal.

(4) Appeal by prosecution. In an appeal by the prosecution under Crim. R. 12(K) or Juv. R. 22(F), the prosecution shall file a notice of appeal within seven days of entry of the judgment or order appealed.

(5) Partial final judgment or order. 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).

(C) Premature notice of appeal

A notice of appeal filed after the announcement of a decision, order, or sentence but before entry of the judgment or order that begins the running of the appeal time period is treated as filed immediately after the entry.

(D) Definition of "entry" or "entered"

As used in this rule, "entry" or "entered" means when a judgment or order is entered under Civ.R. 58(A) or Crim.R. 32(C).

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**CBALDWIN'S OHIO REVISED CODE ANNOTATED
RULES OF APPELLATE PROCEDURE
TITLE III. GENERAL PROVISIONS**

→ App R 14 Computation and extension of time

(A) Computation of time

In computing any period of time prescribed or allowed by these rules, by the local rules of any court, by an order of court or by any applicable statute, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

(B) Enlargement or reduction of time

For good cause shown, the court, upon motion, may enlarge or reduce the time prescribed by these rules or by its order for doing any act, or may permit an act to be done after the expiration of the prescribed time. The court may not enlarge or reduce the time for filing a notice of appeal or a motion to certify pursuant to App. R. 25. Enlargement of time to file an application to reconsider pursuant to App. R. 26(A) shall not be granted except on a showing of extraordinary circumstances.

(C) Additional time after service by mail

Whenever a party is required or permitted to do an act within a prescribed period after service of a paper upon him and the paper is served by mail, three days shall be added to the prescribed period.

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RULES OF CIVIL PROCEDURE
TITLE VII. JUDGMENT
→ Civ R 54 Judgments; costs

(A) Definition; form

"Judgment" as used in these rules includes a decree and any order from which an appeal lies as provided in section 2505.02 of the Revised Code. A judgment shall not contain a recital of pleadings, the magistrate's decision in a referred matter, or the record of prior proceedings.

(B) Judgment upon multiple claims or involving multiple parties

When more than one claim for relief is presented in an action whether as a claim, counterclaim, cross-claim, or third-party claim, and whether arising out of the same or separate transactions, or when multiple parties are involved, the court may enter final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay. In the absence of a determination that there is no just reason for delay, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties, shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(C) Demand for judgment

A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded the relief in the pleadings.

(D) Costs

Except when express provision therefor is made either in a statute or in these rules, costs shall be allowed to the prevailing party unless the court otherwise directs.

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Juv. R. Rule 13

**CBALDWIN'S OHIO REVISED CODE ANNOTATED
RULES OF JUVENILE PROCEDURE**

→ Juv R 13 Temporary disposition; temporary orders; emergency medical and surgical treatment

(A) Temporary disposition

Pending hearing on a complaint, the court may make such temporary orders concerning the custody or care of a child who is the subject of the complaint as the child's interest and welfare may require.

(B) Temporary orders

(1) Pending hearing on a complaint, the judge or magistrate may issue temporary orders with respect to the relations and conduct of other persons toward a child who is the subject of the complaint as the child's interest and welfare may require.

(2) Upon the filing of an abuse, neglect, or dependency complaint, any party may by motion request that the court issue any of the following temporary orders to protect the best interest of the child:

- (a) An order granting temporary custody of the child to a particular party;
- (b) An order for the taking of the child into custody pending the outcome of the adjudicatory and dispositional hearings;
- (c) An order granting, limiting, or eliminating visitation rights with respect to the child;
- (d) An order for the payment of child support and continued maintenance of any medical, surgical, or hospital policies of insurance for the child that existed at the time of the filing of the complaint, petition, writ, or other document;
- (e) An order requiring a party to vacate a residence that will be lawfully occupied by the child;
- (f) An order requiring a party to attend an appropriate counseling program that is reasonably available to that party;
- (g) Any other order that restrains or otherwise controls the conduct of any party which conduct would not be in the best interest of the child.

(3) The orders permitted by division (B)(2) of this rule may be granted ex parte if it appears that the best interest and welfare of the child require immediate issuance. If the court issues the requested ex parte order, the court shall hold a hearing to review the order within seventy-two hours after it is issued or before the end of the next court day after the day on which it is issued, whichever occurs first. The court shall appoint a guardian ad litem for the child prior to the hearing. The court shall give written notice of the hearing by means reasonably likely to result in the party's receiving actual notice and include all of the following:

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- (a) The date, time, and location of the hearing;
 - (b) The issues to be addressed at the hearing;
 - (c) A statement that every party to the hearing has a right to counsel and to court appointed counsel, if the party is indigent;
 - (d) The name, telephone number, and address of the person requesting the order;
 - (e) A copy of the order, except when it is not possible to obtain it because of the exigent circumstances in the case.
- (4) The court may review any order under this rule at any time upon motion of any party for good cause shown or upon the motion of the court.
- (5) If the court does not grant an ex parte order, the court shall hold a shelter care hearing on the motion within ten days after the motion is filed.

(C) Emergency medical and surgical treatment

Upon the certification of one or more reputable practicing physicians, the court may order such emergency medical and surgical treatment as appears to be immediately necessary for any child concerning whom a complaint has been filed.

(D) Ex parte proceedings

In addition to the ex parte proceeding described in division (B) of this rule, the court may proceed summarily and without notice under division (A), (B), or (C) of this rule, where it appears to the court that the interest and welfare of the child require that action be taken immediately.

(E) Hearing; notice

In addition to the procedures specified in division (B) of this rule and wherever possible, the court shall provide an opportunity for hearing before proceeding under division (D) of this rule. Where the court has proceeded without notice under division (D) of this rule, it shall give notice of the action it has taken to the parties and any other affected person and provide them an opportunity for a hearing concerning the continuing effects of the action.

(F) Probable cause finding

Upon the finding of probable cause at a shelter care hearing that a child is an abused child, the court may do any of the following:

- (1) Upon motion by the court or of any party, issue reasonable protective orders with respect to the interviewing or deposition of the child;
- (2) Order that the child's testimony be videotaped for preservation of the testimony for possible use in any other proceedings in the case;
- (3) Set any additional conditions with respect to the child or the case involving the child that are in the best interest

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of the child.

(G) Payment

The court may order the parent, guardian, or custodian, if able, to pay for any emergency medical or surgical treatment provided pursuant to division (C) of this rule. The order of payment may be enforced by judgment, upon which execution may issue, and a failure to pay as ordered may be punished as contempt of court.

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**CBALDWIN'S OHIO REVISED CODE ANNOTATED
RULES OF JUVENILE PROCEDURE****→ Juv R 34 Dispositional hearing****(A) Scheduling the hearing**

Where a child has been adjudicated as an abused, neglected, or dependent child, the court shall not issue a dispositional order until after it holds a separate dispositional hearing. The dispositional hearing for an adjudicated abused, neglected, or dependent child shall be held at least one day but not more than thirty days after the adjudicatory hearing is held. The dispositional hearing may be held immediately after the adjudicatory hearing if all parties were served prior to the adjudicatory hearing with all documents required for the dispositional hearing and all parties consent to the dispositional hearing being held immediately after the adjudicatory hearing. Upon the request of any party or the guardian ad litem of the child, the court may continue a dispositional hearing for a reasonable time not to exceed the time limit set forth in this division to enable a party to obtain or consult counsel. The dispositional hearing shall not be held more than ninety days after the date on which the complaint in the case was filed. If the dispositional hearing is not held within this ninety day period of time, the court, on its own motion or the motion of any party or the guardian ad litem of the child, shall dismiss the complaint without prejudice.

In all other juvenile proceedings, the dispositional hearing shall be held pursuant to Juv. R. 29(F)(2)(a) through (d) and the ninety day requirement shall not apply. Where the dispositional hearing is to be held immediately following the adjudicatory hearing, the court, upon the request of any party, shall continue the hearing for a reasonable time to enable the party to obtain or consult counsel.

(B) Hearing procedure

The hearing shall be conducted in the following manner:

- (1) The judge or magistrate who presided at the adjudicatory hearing shall, if possible, preside;
- (2) Except as provided in division (I) of this rule, the court may admit evidence that is material and relevant, including, but not limited to, hearsay, opinion, and documentary evidence;
- (3) Medical examiners and each investigator who prepared a social history shall not be cross-examined, except upon consent of all parties, for good cause shown, or as the court in its discretion may direct. Any party may offer evidence supplementing, explaining, or disputing any information contained in the social history or other reports that may be used by the court in determining disposition.

(C) Judgment

After the conclusion of the hearing, the court shall enter an appropriate judgment within seven days. A copy of the judgment shall be given to any party requesting a copy. In all cases where a child is placed on probation, the child shall receive a written statement of the conditions of probation. If the judgment is conditional, the order shall state the conditions. If the child is not returned to the child's home, the court shall determine the school district that shall bear the cost of the child's education and may fix an amount of support to be paid by the responsible parent or from

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public funds.

(D) Dispositional Orders

Where a child is adjudicated an abused, neglected, or dependent child, the court may make any of the following orders of disposition:

- (1) Place the child in protective supervision;
- (2) Commit the child to the temporary custody of a public or private agency, either parent, a relative residing within or outside the state, or a probation officer for placement in a certified foster home or approved foster care;
- (3) Award legal custody of the child to either parent or to any other person who, prior to the dispositional hearing, files a motion requesting legal custody;
- (4) Commit the child to the permanent custody of a public or private agency, if the court determines that the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent and determines that the permanent commitment is in the best interest of the child;
- (5) Place the child in a planned permanent living arrangement with a public or private agency if the agency requests the court for placement, if the court finds that a planned permanent living arrangement is in the best interest of the child, and if the court finds that one of the following exists:
 - (a) The child because of physical, mental, or psychological problems or needs is unable to function in a family-like setting;
 - (b) The parents of the child have significant physical, mental or psychological problems and are unable to care for the child, adoption is not in the best interest of the child and the child retains a significant and positive relationship with a parent or relative;
 - (c) The child is sixteen years of age or older, has been counseled, is unwilling to accept or unable to adapt to a permanent placement and is in an agency program preparing the child for independent living.

(E) Protective supervision

If the court issues an order for protective supervision, the court may place any reasonable restrictions upon the child, the child's parents, guardian, or any other person including, but not limited to, any of the following:

- (1) Ordering a party within forty-eight hours to vacate the child's home indefinitely or for a fixed period of time;
- (2) Ordering a party, parent, or custodian to prevent any particular person from having contact with the child;
- (3) Issuing a restraining order to control the conduct of any party.

(F) Case plan

As part of its dispositional order, the court shall journalize a case plan for the child. The agency required to maintain a case plan shall file the case plan with the court prior to the child's adjudicatory hearing but not later than thirty

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days after the earlier of the date on which the complaint in the case was filed or the child was first placed in shelter care. The plan shall specify what additional information, if any, is necessary to complete the plan and how the information will be obtained. All parts of the case plan shall be completed by the earlier of thirty days after the adjudicatory hearing or the date of the dispositional hearing for the child. If all parties agree to the content of the case plan and the court approves it, the court shall journalize the plan as part of its dispositional order. If no agreement is reached, the court, based upon the evidence presented at the dispositional hearing and the best interest of the child, shall determine the contents of the case plan and journalize it as part of the dispositional order for the child.

(G) Modification of temporary order

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

(H) Restraining orders

In any proceeding where a child is made a ward of the court, the court may grant a restraining order controlling the conduct of any party if the court finds that the order is necessary to control any conduct or relationship that may be detrimental or harmful to the child and tend to defeat the execution of a dispositional order.

(I) Bifurcation; Rules of Evidence

Hearings to determine whether temporary orders regarding custody should be modified to orders for permanent custody shall be considered dispositional hearings and need not be bifurcated. The Rules of Evidence shall apply in hearings on motions for permanent custody.

(J) Advisement of rights after hearing

At the conclusion of the hearing, the court shall advise the child of the child's right to record expungement and, where any part of the proceeding was contested, advise the parties of their right to appeal.

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