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**

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

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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).

In Ohio child protection proceedings, an order of adjudication refers to the determination that a child is an abused, neglected or dependent child. See R.C. 2151.35; R.C. 2151.353(A). There is no question that a party to a child protection proceeding has a right to challenge an order of adjudication on appeal. Although this Honorable Court, in the case of *In re Murray* (1990), 52 Ohio St.3d 155, 556 N.E.2d 1169, recognized that "[a] finding of dependency without disposition is not a final order" (Id. at fn. 1), it further held that "[a]n 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. Juv.R. 34 implicitly "provides for an appeal [of an adjudication order] following the final order issued subsequent to the dispositional hearing. The adjudicatory phase and the dispositional phase are the parts of a single bifurcated procedure." *In re Smith* (1991), 77 Ohio App.3d 1, 15 (fn. 3), 601 N.E.2d 45.

Notwithstanding the fact that Appellee's Brief devotes considerable argument to the underlying facts and application of Juv.R. 29 to those facts, the matter before this Honorable Court is not about Juv.R. 29. Rather, the focus of this matter is the application of App.R. 4(B)(5) to the proceedings in the trial court. The sole question before this Honorable Court relates to when an

appeal must be taken in exercise of the right to appellate review of the order of adjudication, and requires that this Court determine if App.R. 4(B)(5) is applicable to the proceedings in question. As stated in its Merit Brief, Appellant does not advocate 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 so that other parties to the action (namely, the children) are not unduly prejudiced.

Appellee cites to the case of *In re Smith*, supra, for the proposition that a permanent custody order is "the family law equivalent of the death penalty in a criminal case." Id., 77 Ohio App.3d at 16. This view may be appropriate for purposes of determining the potential effect on a parent, but is not as relevant from the viewpoint of a child awaiting permanency who cannot proceed in attaining this goal until such issues are finally resolved by the courts. While, as Appellee argues, a parent is certainly entitled to "every procedural and substantive protection the law allows" in a case, that parent must be required to timely exercise those rights lest they be deemed to have waived them. To hold otherwise provides a parent with much more than the process due them in the proceedings, and operates to significantly prejudice the child in question, which result is anathema to the entire framework of the child protection statutes. Such an argument improperly focuses on the parents rather than on the child, who is the true focus of child protection 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. In fact, a trial court is statutorily precluded from focusing on the parents to the detriment of the child. Cf., e.g, R.C. 2151.414(C), which states, in pertinent part: "In making the

determinations required by this section or division (A)(4) of section 2151.353 of the Revised Code, a court shall not consider the effect the granting of permanent custody to the agency would have upon any parent of the child."

While it is true that a parent is entitled to "every procedural and substantive protection the law allows" in a case, Appellant strenuously opposes the efforts of Appellee to go beyond that language in order to create new rights and protections for a parent involved in a permanent custody action. This effort is evident in Appellee's argument in support of extending to parents in civil actions the right to delayed appeal (Appellee's Brief at p. 25), which right only applies to criminal, delinquency and serious youthful offender proceedings. See App.R. 5(A). Appellee further appears to argue that some concession should be made for parents who may be "poorly educated, even illiterate, and indigent" and who "rely on underpaid, over-worked court-appointed lawyers." Appellee's Brief at p. 24. Such a suggestion flies in the face of well-settled law which recognizes that even pro se litigants are bound by the same rules and are presumed to have knowledge of the law. See, e.g., *McCormick v. Carroll*, Cuyahoga App. No. 83770, 2004-Ohio-5969 at ¶4. Appellee's argument that parties are often not informed of their appellate rights is unsupported by the record, which plainly demonstrates that all relevant orders in this matter contain such a written explanation immediately above the judge's signature. (See Appx. 38, 40, 41, 43, 47, 50; Supp. 3, 6, 7, 9, 12, 14). "Having been represented by counsel, there is no reason why [he] should not have been aware of [his] right to appeal." *In re Miller* (1984), 12 Ohio St.3d 40, 42, 465 N.E.2d 397.

Parents are presently afforded "every procedural and substantive protection the law allows", including the right to appeal orders of adjudication and original disposition within thirty

days of the issuance of the original dispositional order. The failure to do so operates as a waiver of those issues, but does not operate to deprive a parent of any of the protections the law allows. "Failure to assert a right is not the same as being prevented from asserting a right." *In re La.B.*, Cuyahoga App. No. 81981, 2003-Ohio-6852 at ¶26, citing *In re Kutcher*, Belmont App. No. 02 BE 58, 2003-Ohio-1235 at ¶24.

Appellee expends much discussion in his effort to justify a parent's decision not to appeal immediately following issuance of an adjudication order (See Appellee's Brief at p. 23-25), yet fails to recognize that such an order, by itself, is not a final appealable order. See *In re Murray*, supra ("A finding of dependency without disposition is not a final order." Id. at fn. 1). Appellee mistakenly claims that Appellant argues an appeal must be filed within thirty days of issuance of the *adjudication* order (Appellee's Brief at p. 15 et seq.), which claim is belied by Appellant's argument in its Briefs.

Appellee further argues that "[p]arents are loath to do anything that might adversely impact the ultimate outcome of the proceedings which remain active and ongoing." (Appellee's Brief at p. 24.) This statement reveals that the failure to timely file an appeal from adjudication and original disposition is a strategic decision rather than one related to confusion over the appealability of the order, the latter of which is the underlying rationale for creation of the App.R. 4(B)(5) exception. For the reasons stated in Appellant's Merit Brief, App.R. 4(B)(5) is inapplicable to the situation presented in this case. Appellee argues that Appellant's reliance on various Ohio appellate court decisions is misplaced" because they "contain absolutely no discussion or analysis of App.R. 4(B)(5)." Appellee's Brief at p. 26. Appellant submits that the reason they contain no analysis of App.R. 4(B)(5) is that it has no application to those cases.

Appellee cites to *In re Borntreger*, Geauga App. No. 2001-G-2379, 2002-Ohio-6468, in support of his argument that App.R. 4(B)(5) applies to juvenile cases. This argument is flawed. It must initially be noted that *Borntreger* is distinguishable from the matter before this Court in that it involved only an adjudication order and an original order of disposition. Therefore, as explained in Appellant's Brief, all orders issued in that case were properly appealed in that matter.[1] *Borntreger* does not involve an original dispositional order followed by subsequent modification of that order, as does the case sub judice. A careful reading of *Borntreger* reveals that it recognized that an adjudication order without a dispositional order was not a final order. Id. at ¶19. *Borntreger* then continues its analysis by stating: "Even if we were to hold that [the adjudication order] was a final appealable order, this would not bar the instant appeal." Id. at ¶19. It then proceeds to analyze the hypothetical scenario under the parameters of App.R. 4(B)(5). This entire portion of its decision is mere dicta and irrelevant to the discussion since it is preceded by the court's recognition that the condition precedent to the discussion, the finality of the adjudication order, was lacking. Therefore, contrary to Appellee's argument, the relevant portion of *Borntreger* does not stand for the proposition that App.R. 4(B)(5) allows appeal of an adjudication order at any time other than within thirty days following issuance of the original dispositional order. The later portion of the *Borntreger* decision which states that "App.R. 4(B)(5) would most certainly be applicable to juvenile cases such as this" (Id. at ¶25) is flawed in that it fails to acknowledge that none of the orders issued prior to the original dispositional order was a final order, which fact precludes application of App.R. 4(B)(5). See Appellant's Merit Brief at p. 6-7.

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1 For this same reason, Appellee's reliance on *In re Fordyce*, Butler App. No. CA96-09-193 is also inapposite.

Appellant's citation to *In re Adoption of Eblin* (1998), 126 Ohio App.3d 774, 711 N.E.2d 319, is inapposite. The *Eblin* case dealt with an adoption petition, whereby the probate court was required to first make a determination as to whether a parent's consent was necessary for the adoption, and was then required to make a best interest determination as to the adoption itself. Id., 126 Ohio App.3d at 776. Unlike an order of adjudication in child protection proceedings, a probate court determination regarding necessity of consent has been determined to be a final appealable order. Id. As such, while App.R. 4(B)(5) may have application to such final orders within a probate adoption case, the *Eblin* decision has no relevance to the matter before this Court.

Appellee cites to the Florida case of *G.L.S. v. Department of Children and Families* (1998), 724 So.2d 1181, to support his argument that "orders authorized by the Ohio Revised Code in abuse, neglect, and dependency proceedings do not always fit neatly into the traditional categories of final and non-final orders." (Appellee's Brief at p. 19.) This statement is irrelevant to the discussion, as it has been plainly demonstrated that the orders in question are clearly final orders. As set forth in Appellant's Merit Brief, this Honorable Court unequivocally resolved this question in its *Murray* decision:

> 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.

Murray, supra, at syllabus. Appellee also cites to the Florida Supreme Court in *G.L.S.* for his proposition that a party may appeal either immediately after an adjudication order or after a later dispositional order. See Appellee's Brief at p. 23. This position, however, again fails to recognize that the Ohio Supreme Court has held that appeal immediately following issuance of

an adjudication order is not possible. "A finding of dependency without disposition is *not* a final order." *Murray*, supra, at fn. 1 (emphasis added). As such, Appellee's extensive argument that a parent should not be required to appeal an adjudication order immediately following its issuance is misguided, as the law is clear that such an appeal would be premature, and no party to this appeal has argued the contrary. Appellee states: "A review of the case law in permanent custody cases reveals that very few appeals are actually taken from adjudication orders. Why is that so?" Appellee's Brief at p. 23. Simply put, that is so because such orders are not themselves final appealable orders. *Murray*, supra.

The *G.L.S.* case is of little import for purposes of this case, and serves only to confuse the issue before this Court in that the Florida statutes addressed in *G.L.S.* are markedly different from the Ohio statutes governing child protection cases in general and permanent custody proceedings in particular. As the *G.L.S.* decision demonstrates, the Florida statute requires a two-part determination for resolution of a permanent custody proceeding, the first of which is termed "adjudicatory" and involves a decision as to whether a parent's rights should be terminated, and the second of which determines the ultimate placement order once parental rights have been terminated. *G.L.S.*, supra, at 1182-1184. "In such event, as to the parties, the issues of termination and disposition are similar to two separate and distinct causes of action in a single proceeding." Id., at 1186. The *G.L.S.* court did hold that a parent could appeal after either of these determinations. These separate determinations, however, are both made in the proceedings arising under the single motion for permanent custody, and do not directly involve an order of adjudication as the term is used in Ohio statutes. Unlike the Florida procedure described in *G.L.S.*, the Ohio procedure regarding permanent custody determinations involves a single

proceeding which is dispositional in nature. "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." Juv.R. 34(I). Additionally, unlike the Florida procedure discussed in *G.L.S.*, in Ohio an order of permanent custody encompasses the termination of parental rights. "'Permanent custody' means a legal status that vests in a public children services agency or a private child placing agency, all parental rights, duties, and obligations, including the right to consent to adoption, and divests the natural parents or adoptive parents of all parental rights, privileges, and obligations, including all residual rights and obligations." R.C. 2151.011(B)(30). The rationale of *G.L.S.* is therefore of little, if any, value in the discussion before this Court.

Appellee also cites to the Nebraska case of *In re Interest of Mainor T.*, 267 Neb. 232, 674 N.W.2d 442 (2004), to further support his argument that a parent should be permitted to raise issues related to the adjudication order following later proceedings, notwithstanding that parent's "failure to appeal from an adjudication order, dispositional order, or other final, appealable order..." Appellee's Brief at p. 23. The *Mainor T.* case, however, is readily distinguishable from the present matter.

The Supreme Court of Nebraska has generally held that "[c]ollateral attacks on previous proceedings are impermissible unless the attack is grounded upon the court's lack of jurisdiction over the parties or subject matter." *In re Interest of Joshua M. et al.*, 251 Neb. 614, 629, 558 N.W.2d 548, 559 (1997). Despite this general principle, the Nebraska Supreme Court determined in *Mainor T.* that, based on prior case law and the facts of that case, it was appropriate to review all proceedings rather than limiting review to just the most recent parental

rights termination proceedings. In so holding, the *Mainor T.* court stated: "As we determine that plain error permeates the entire proceedings and that such error denied fundamental fairness to [mother], we will not limit our de novo review to only the termination hearing or the assigned errors." Id. at 245-246. The Court noted, among other things, that "expecting [mother] to have contacted the court to request attendance when the notice of the hearing was provided by a summons in a language she could not read, and when, as discussed below, she was not represented by counsel at the adjudication hearing, would not comport with fundamental fairness." Id. at 251. Additionally, the trial court failed to facilitate the mother's appearance at court from the jail next door, "she was neither represented by counsel at the adjudication hearing nor had she waived this right" (Id. at 251-252), she had no contact with her later-appointed attorney at any time, and she was deported to Guatemala shortly after the adjudication hearing and well before the proceedings to terminate her parental rights were initiated more than a year later. See Id. at 235 et seq.

The egregious facts extant in the *Mainor T.* case are a far cry from those present in the case before this Court, and persuaded the Nebraska Supreme Court to depart from its general principle that collateral attacks on previous proceedings would not be permitted. No such justification is present in the case before this Court. Appellee in the case sub judice was present and represented by counsel at the hearing on the adjudication and original disposition, and remained actively involved in the case before the trial court following issuance of those orders. There is simply no valid legal reason why Appellee did not exercise his rights to appeal the adjudication and original dispositional order within thirty days of the conclusion of said proceedings if it was his intention to challenge those proceedings. By failing to do so, he has

waived any purported errors in those proceedings.

The position which supports barring collateral attack on prior proceedings finds support in other jurisdictions as well. For example, in the California case of *In re Cicely L.* (1994), 28 Cal.App.4th 1697, 34 Cal.Rptr.2d 345, the reviewing court stated as follows:

> "An appeal from the most recent order entered in a dependency matter may not challenge prior orders, for which the statutory time for filing an appeal has passed." (*In re Elizabeth M.*, supra, 232 Cal.App.3d at p. 563, 283 Cal.Rptr. 483; accord *Elizabeth G.*, supra, 205 Cal.App.3d at p. 1331, 253 Cal.Rptr. 161.) Accordingly, it is too late for Kenneth to challenge the reasonableness, adequacy or sufficiency of the reunification services. (*In re Daniel D.* (1994) 24 Cal.App.4th 1823, 1832-1833, 30 Cal.Rptr.2d 245 [interim orders placing child in foster care were appealable and could not be challenged in mother's appeal from later order terminating parental rights].)

Id., 28 Cal.App.4th at 1705, 34 Cal.Rptr.2d at 351. While recognizing that some orders which were not themselves appealable (i.e., interlocutory orders) could be challenged on appeal of a later order to terminate parental rights, the California courts adhere to the above-stated principle barring collateral attack on those prior orders which were themselves separately appealable. In discussing the California Supreme Court case of *In re Matthew C.* (1993), 6 Cal.4th 386, the California reviewing court noted as follows:

> However, *Matthew C.* does not permit review of all earlier juvenile court decisions on an appeal from the section 366.26 hearing. Instead, as the Supreme Court expressly noted: "If an order is appealable ... and no timely appeal is taken therefrom, the issues determined by the order are res judicata. [Citation.]" (6 Cal.4th at p. 393.) (1c) As discussed, the orders from October 1992 through April 1993 continuing Daniel in foster care were independently appealable. Since Stacy did not timely appeal such orders, the issues determined in those rulings are res judicata. (Ibid.; *In re Elizabeth M.*, supra, 232 Cal.App.3d at p. 563; *In re Elizabeth G.*, supra, 205 Cal.App.3d at p. 1331.)

In re Daniel D. (1994) 24 Cal.App.4th 1823, 1833, 30 Cal.Rptr.2d 245, 250. Similar precedent is also found in other jurisdictions. See, e.g., *In re A.A.*, 252 Ga.App. 167, 555 S.E.2d 827

(2001) ("When the juvenile court awarded temporary custody to DFCS, it found that the children were deprived and entered an order to that effect, which the parents did not appeal. Accordingly, the parents are bound by that finding." Id., 252 Ga.App. at 171.).

Appellee argues that "the orders of adjudication, coupled with the award of temporary custody, did *not* dispose of all matters as to all parties." Appellee's Brief at p. 20 (emphasis in original). Contrary to this assertion, and as argued in Appellant's Merit Brief, the fact that a 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. It is simply a reflection of the unique nature of child protection proceedings, which are not amenable to application of traditional notions of general civil practice. 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. This rationale is echoed by the Supreme Court of Vermont in recent case law. "[I]n [child protection] cases such as this, each petition to terminate parental rights after initial disposition commences a new and separate proceeding, even if the docket number does not change." *In re A.D.T.* (2002), 174 Vt. 369, 374, 817 A.2d 20, 24, citing as support the case of *In re E.W.* (1999), 169 Vt. 542, 726 A.2d 58. "Regardless of whether the same docket number is retained, a TPR petition seeking to modify a prior disposition order commences a new and separate proceeding." *E.W.*, supra, 169 Vt. at 544, 726 A.2d. at 61.

Appellee argues that "the State asked the Court of Appeals to dispose of Appellee's weighty claims on a procedural technicality, rather than the merits." Appellee's Brief at p. 16. Appellee's attempt to characterize a reviewing court's lack of jurisdiction as a "procedural technicality" strains the bounds of credulity. Failure to file a timely notice of appeal generally deprives the appellate court of jurisdiction to consider the appeal.

> The filing of notice of appeal, in the court from which the appeal is taken, within the time prescribed by law, is the only jurisdictional step necessary to perfect an appeal and where such notice is not filed within such time the reviewing court is without jurisdiction to consider the appeal.

State ex rel. Curran v. Brookes (1943), 142 Ohio St. 107, 50 N.E.2d 995, at paragraph seven of syllabus. "The court may not enlarge or reduce the time for filing a notice of appeal***." App.R. 14(B). Appellee's failure to timely appeal the orders of adjudication and original disposition amounts to much more than a procedural technicality – it operates as a waiver of his right to review of said orders.

CONCLUSION

As argued in appellant's Merit Brief, 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. Appellee's arguments rely on case law which is inapplicable to, or distinguishable from, the matter before the Court, and should therefore be rejected in favor of those offered by appellant. The order of the reviewing court should be reversed and the appeal remanded for consideration of the remaining assignments of error that were previously determined to be moot by the reviewing court.

Respectfully submitted,

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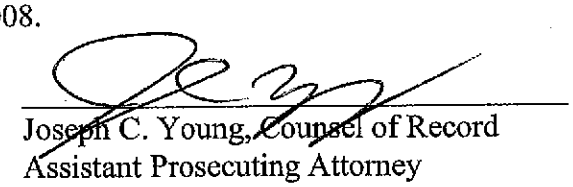
Proof of Service

I certify that a copy of this *Reply 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 27th day of August, 2008.



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Baldwin's Ohio Revised Code Annotated Currentness
Title XXI. Courts--Probate--Juvenile (Refs & Annos)
Chapter 2151. Juvenile Courts--General Provisions (Refs & Annos)
Construction; Definitions
2151.011 Definitions

(A) As used in the Revised Code:

(1) "Juvenile court" means whichever of the following is applicable that has jurisdiction under this chapter and Chapter 2152. of the Revised Code:

(a) The division of the court of common pleas specified in section 2101.022 or 2301.03 of the Revised Code as having jurisdiction under this chapter and Chapter 2152. of the Revised Code or as being the juvenile division or the juvenile division combined with one or more other divisions;

(b) The juvenile court of Cuyahoga county or Hamilton county that is separately and independently created by section 2151.08 or Chapter 2153. of the Revised Code and that has jurisdiction under this chapter and Chapter 2152. of the Revised Code;

(c) If division (A)(1)(a) or (b) of this section does not apply, the probate division of the court of common pleas.

(2) "Juvenile judge" means a judge of a court having jurisdiction under this chapter.

(3) "Private child placing agency" means any association, as defined in section 5103.02 of the Revised Code, that is certified under section 5103.03 of the Revised Code to accept temporary, permanent, or legal custody of children and place the children for either foster care or adoption.

(4) "Private noncustodial agency" means any person, organization, association, or society certified by the department of job and family services that does not accept temporary or permanent legal custody of children, that is privately operated in this state, and that does one or more of the following:

(a) Receives and cares for children for two or more consecutive weeks;

(b) Participates in the placement of children in certified foster homes;

(c) Provides adoption services in conjunction with a public children services agency or private child placing agency.

(B) As used in this chapter:

(1) "Adequate parental care" means the provision by a child's parent or parents, guardian, or custodian of adequate food, clothing, and shelter to ensure the child's health and physical safety and the provision by a child's parent or parents of specialized services warranted by the child's physical or mental needs.

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(2) "Adult" means an individual who is eighteen years of age or older.

(3) "Agreement for temporary custody" means a voluntary agreement authorized by section 5103.15 of the Revised Code that transfers the temporary custody of a child to a public children services agency or a private child placing agency.

(4) "Certified foster home" means a foster home, as defined in section 5103.02 of the Revised Code, certified under section 5103.03 of the Revised Code.

(5) "Child" means a person who is under eighteen years of age, except that the juvenile court has jurisdiction over any person who is adjudicated an unruly child prior to attaining eighteen years of age until the person attains twenty-one years of age, and, for purposes of that jurisdiction related to that adjudication, a person who is so adjudicated an unruly child shall be deemed a "child" until the person attains twenty-one years of age.

(6) "Child day camp," "child care," "child day-care center," "part-time child day-care center," "type A family day-care home," "certified type B family day-care home," "type B home," "administrator of a child day-care center," "administrator of a type A family day-care home," "in-home aide," and "authorized provider" have the same meanings as in section 5104.01 of the Revised Code.

(7) "Child care provider" means an individual who is a child-care staff member or administrator of a child day-care center, a type A family day-care home, or a type B family day-care home, or an in-home aide or an individual who is licensed, is regulated, is approved, operates under the direction of, or otherwise is certified by the department of job and family services, department of mental retardation and developmental disabilities, or the early childhood programs of the department of education.

(8) "Chronic truant" has the same meaning as in section 2152.02 of the Revised Code.

(9) "Commit" means to vest custody as ordered by the court.

(10) "Counseling" includes both of the following:

(a) General counseling services performed by a public children services agency or shelter for victims of domestic violence to assist a child, a child's parents, and a child's siblings in alleviating identified problems that may cause or have caused the child to be an abused, neglected, or dependent child.

(b) Psychiatric or psychological therapeutic counseling services provided to correct or alleviate any mental or emotional illness or disorder and performed by a licensed psychiatrist, licensed psychologist, or a person licensed under Chapter 4757. of the Revised Code to engage in social work or professional counseling.

(11) "Custodian" means a person who has legal custody of a child or a public children services agency or private child placing agency that has permanent, temporary, or legal custody of a child.

(12) "Delinquent child" has the same meaning as in section 2152.02 of the Revised Code.

(13) "Detention" means the temporary care of children pending court adjudication or disposition, or execution of a court order, in a public or private facility designed to physically restrict the movement and activities of children.

(14) "Developmental disability" has the same meaning as in section 5123.01 of the Revised Code.

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(15) "Foster caregiver" has the same meaning as in section 5103.02 of the Revised Code.

(16) "Guardian" means a person, association, or corporation that is granted authority by a probate court pursuant to Chapter 2111. of the Revised Code to exercise parental rights over a child to the extent provided in the court's order and subject to the residual parental rights of the child's parents.

(17) "Habitual truant" means any child of compulsory school age who is absent without legitimate excuse for absence from the public school the child is supposed to attend for five or more consecutive school days, seven or more school days in one school month, or twelve or more school days in a school year.

(18) "Juvenile traffic offender" has the same meaning as in section 2152.02 of the Revised Code.

(19) "Legal custody" means a legal status that vests in the custodian the right to have physical care and control of the child and to determine where and with whom the child shall live, and the right and duty to protect, train, and discipline the child and to provide the child with food, shelter, education, and medical care, all subject to any residual parental rights, privileges, and responsibilities. An individual granted legal custody shall exercise the rights and responsibilities personally unless otherwise authorized by any section of the Revised Code or by the court.

(20) A "legitimate excuse for absence from the public school the child is supposed to attend" includes, but is not limited to, any of the following:

(a) The fact that the child in question has enrolled in and is attending another public or nonpublic school in this or another state;

(b) The fact that the child in question is excused from attendance at school for any of the reasons specified in section 3321.04 of the Revised Code;

(c) The fact that the child in question has received an age and schooling certificate in accordance with section 3331.01 of the Revised Code.

(21) "Mental illness" and "mentally ill person subject to hospitalization by court order" have the same meanings as in section 5122.01 of the Revised Code.

(22) "Mental injury" means any behavioral, cognitive, emotional, or mental disorder in a child caused by an act or omission that is described in section 2919.22 of the Revised Code and is committed by the parent or other person responsible for the child's care.

(23) "Mentally retarded person" has the same meaning as in section 5123.01 of the Revised Code.

(24) "Nonsecure care, supervision, or training" means care, supervision, or training of a child in a facility that does not confine or prevent movement of the child within the facility or from the facility.

(25) "Of compulsory school age" has the same meaning as in section 3321.01 of the Revised Code.

(26) "Organization" means any institution, public, semipublic, or private, and any private association, society, or agency located or operating in the state, incorporated or unincorporated, having among its functions the furnishing of protective services or care for children, or the placement of children in certified foster homes or elsewhere.

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(27) "Out-of-home care" means detention facilities, shelter facilities, certified children's crisis care facilities, certified foster homes, placement in a prospective adoptive home prior to the issuance of a final decree of adoption, organizations, certified organizations, child day-care centers, type A family day-care homes, child care provided by type B family day-care home providers and by in-home aides, group home providers, group homes, institutions, state institutions, residential facilities, residential care facilities, residential camps, day camps, public schools, chartered nonpublic schools, educational service centers, hospitals, and medical clinics that are responsible for the care, physical custody, or control of children.

(28) "Out-of-home care child abuse" means any of the following when committed by a person responsible for the care of a child in out-of-home care:

(a) Engaging in sexual activity with a child in the person's care;

(b) Denial to a child, as a means of punishment, of proper or necessary subsistence, education, medical care, or other care necessary for a child's health;

(c) Use of restraint procedures on a child that cause injury or pain;

(d) Administration of prescription drugs or psychotropic medication to the child without the written approval and ongoing supervision of a licensed physician;

(e) Commission of any act, other than by accidental means, that results in any injury to or death of the child in out-of-home care or commission of any act by accidental means that results in an injury to or death of a child in out-of-home care and that is at variance with the history given of the injury or death.

(29) "Out-of-home care child neglect" means any of the following when committed by a person responsible for the care of a child in out-of-home care:

(a) Failure to provide reasonable supervision according to the standards of care appropriate to the age, mental and physical condition, or other special needs of the child;

(b) Failure to provide reasonable supervision according to the standards of care appropriate to the age, mental and physical condition, or other special needs of the child, that results in sexual or physical abuse of the child by any person;

(c) Failure to develop a process for all of the following:

(i) Administration of prescription drugs or psychotropic drugs for the child;

(ii) Assuring that the instructions of the licensed physician who prescribed a drug for the child are followed;

(iii) Reporting to the licensed physician who prescribed the drug all unfavorable or dangerous side effects from the use of the drug.

(d) Failure to provide proper or necessary subsistence, education, medical care, or other individualized care necessary for the health or well-being of the child;

(e) Confinement of the child to a locked room without monitoring by staff;

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(f) Failure to provide ongoing security for all prescription and nonprescription medication;

(g) Isolation of a child for a period of time when there is substantial risk that the isolation, if continued, will impair or retard the mental health or physical well-being of the child.

(30) "Permanent custody" means a legal status that vests in a public children services agency or a private child placing agency, all parental rights, duties, and obligations, including the right to consent to adoption, and divests the natural parents or adoptive parents of all parental rights, privileges, and obligations, including all residual rights and obligations.

(31) "Permanent surrender" means the act of the parents or, if a child has only one parent, of the parent of a child, by a voluntary agreement authorized by section 5103.15 of the Revised Code, to transfer the permanent custody of the child to a public children services agency or a private child placing agency.

(32) "Person" means an individual, association, corporation, or partnership and the state or any of its political subdivisions, departments, or agencies.

(33) "Person responsible for a child's care in out-of-home care" means any of the following:

(a) Any foster caregiver, in-home aide, or provider;

(b) Any administrator, employee, or agent of any of the following: a public or private detention facility; shelter facility; certified children's crisis care facility; organization; certified organization; child day-care center; type A family day-care home; certified type B family day-care home; group home; institution; state institution; residential facility; residential care facility; residential camp; day camp; school district; community school; chartered nonpublic school; educational service center; hospital; or medical clinic;

(c) Any person who supervises or coaches children as part of an extracurricular activity sponsored by a school district, public school, or chartered nonpublic school;

(d) Any other person who performs a similar function with respect to, or has a similar relationship to, children.

(34) "Physically impaired" means having one or more of the following conditions that substantially limit one or more of an individual's major life activities, including self-care, receptive and expressive language, learning, mobility, and self-direction:

(a) A substantial impairment of vision, speech, or hearing;

(b) A congenital orthopedic impairment;

(c) An orthopedic impairment caused by disease, rheumatic fever or any other similar chronic or acute health problem, or amputation or another similar cause.

(35) "Placement for adoption" means the arrangement by a public children services agency or a private child placing agency with a person for the care and adoption by that person of a child of whom the agency has permanent custody.

(36) "Placement in foster care" means the arrangement by a public children services agency or a private child placing agency for the out-of-home care of a child of whom the agency has temporary custody or permanent custody.

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(37) "Planned permanent living arrangement" means an order of a juvenile court pursuant to which both of the following apply:

(a) The court gives legal custody of a child to a public children services agency or a private child placing agency without the termination of parental rights.

(b) The order permits the agency to make an appropriate placement of the child and to enter into a written agreement with a foster care provider or with another person or agency with whom the child is placed.

(38) "Practice of social work" and "practice of professional counseling" have the same meanings as in section 4757.01 of the Revised Code.

(39) "Sanction, service, or condition" means a sanction, service, or condition created by court order following an adjudication that a child is an unruly child that is described in division (A)(4) of section 2152.19 of the Revised Code.

(40) "Protective supervision" means an order of disposition pursuant to which the court permits an abused, neglected, dependent, or unruly child to remain in the custody of the child's parents, guardian, or custodian and stay in the child's home, subject to any conditions and limitations upon the child, the child's parents, guardian, or custodian, or any other person that the court prescribes, including supervision as directed by the court for the protection of the child.

(41) "Psychiatrist" has the same meaning as in section 5122.01 of the Revised Code.

(42) "Psychologist" has the same meaning as in section 4732.01 of the Revised Code.

(43) "Residential camp" means a program in which the care, physical custody, or control of children is accepted overnight for recreational or recreational and educational purposes.

(44) "Residential care facility" means an institution, residence, or facility that is licensed by the department of mental health under section 5119.22 of the Revised Code and that provides care for a child.

(45) "Residential facility" means a home or facility that is licensed by the department of mental retardation and developmental disabilities under section 5123.19 of the Revised Code and in which a child with a developmental disability resides.

(46) "Residual parental rights, privileges, and responsibilities" means those rights, privileges, and responsibilities remaining with the natural parent after the transfer of legal custody of the child, including, but not necessarily limited to, the privilege of reasonable visitation, consent to adoption, the privilege to determine the child's religious affiliation, and the responsibility for support.

(47) "School day" means the school day established by the state board of education pursuant to section 3313.48 of the Revised Code.

(48) "School month" and "school year" have the same meanings as in section 3313.62 of the Revised Code.

(49) "Secure correctional facility" means a facility under the direction of the department of youth services that is designed to physically restrict the movement and activities of children and used for the placement of children after

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adjudication and disposition.

(50) "Sexual activity" has the same meaning as in section 2907.01 of the Revised Code.

(51) "Shelter" means the temporary care of children in physically unrestricted facilities pending court adjudication or disposition.

(52) "Shelter for victims of domestic violence" has the same meaning as in section 3113.33 of the Revised Code.

(53) "Temporary custody" means legal custody of a child who is removed from the child's home, which custody may be terminated at any time at the discretion of the court or, if the legal custody is granted in an agreement for temporary custody, by the person who executed the agreement.

(C) For the purposes of this chapter, a child shall be presumed abandoned when the parents of the child have failed to visit or maintain contact with the child for more than ninety days, regardless of whether the parents resume contact with the child after that period of ninety days.

CREDIT(S)

(2006 S 238, eff. 9-21-06; 2004 H 11, eff. 5-18-05; 2004 H 106, eff. 9-16-04; 2002 H 400, eff. 4-3-03; 2000 S 179, § 3, eff. 1-1-02; 2000 H 332, eff. 1-1-01; 2000 H 448, eff. 10-5-00; 2000 S 181, eff. 9-4-00; 1999 H 470, eff. 7-1-00; 1998 H 484, eff. 3-18-99; 1998 S 212, eff. 9-30-98; 1997 H 408, eff. 10-1-97; 1996 S 223, eff. 3-18-97; 1996 H 124, eff. 3-31-97; 1996 H 265, eff. 3-3-97; 1996 H 274, § 4, eff. 8-8-96; 1996 H 274, § 1, eff. 8-8-96; 1995 S 2, eff. 7-1-96; 1995 H 1, eff. 1-1-96; 1994 H 715, eff. 7-22-94; 1993 S 21, eff. 10-29-93; 1993 H 152, eff. 7-1-93; 1992 H 356; 1991 H 155; 1990 H 38; 1989 H 257; 1988 H 403)

Current through 2008 File 129 of the 127th GA (2007-2008), apv. by 8/19/08, and filed with the Secretary of State by 8/19/08.

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Baldwin's Ohio Revised Code Annotated Currentness
Title XXI. Courts--Probate--Juvenile (Refs & Annos)
Chapter 2151. Juvenile Courts--General Provisions (Refs & Annos)
Hearing and Disposition
2151.35 Hearing procedure; findings; record

(A)(1) Except as otherwise provided by division (A)(3) of this section or in section 2152.13 of the Revised Code, the juvenile court may conduct its hearings in an informal manner and may adjourn its hearings from time to time. The court may exclude the general public from its hearings in a particular case if the court holds a separate hearing to determine whether that exclusion is appropriate. If the court decides that exclusion of the general public is appropriate, the court still may admit to a particular hearing or all of the hearings relating to a particular case those persons who have a direct interest in the case and those who demonstrate that their need for access outweighs the interest in keeping the hearing closed.

Except cases involving children who are alleged to be unruly or delinquent children for being habitual or chronic truants and except as otherwise provided in section 2152.13 of the Revised Code, all cases involving children shall be heard separately and apart from the trial of cases against adults. The court may excuse the attendance of the child at the hearing in cases involving abused, neglected, or dependent children. The court shall hear and determine all cases of children without a jury, except cases involving serious youthful offenders under section 2152.13 of the Revised Code.

If a complaint alleges a child to be a delinquent child, unruly child, or juvenile traffic offender, the court shall require the parent, guardian, or custodian of the child to attend all proceedings of the court regarding the child. If a parent, guardian, or custodian fails to so attend, the court may find the parent, guardian, or custodian in contempt.

If the court finds from clear and convincing evidence that the child violated section 2151.87 of the Revised Code, the court shall proceed in accordance with divisions (F) and (G) of that section.

If the court at the adjudicatory hearing finds from clear and convincing evidence that the child is an abused, neglected, or dependent child, the court shall proceed, in accordance with division (B) of this section, to hold a dispositional hearing and hear the evidence as to the proper disposition to be made under section 2151.353 of the Revised Code. If the court at the adjudicatory hearing finds beyond a reasonable doubt that the child is a delinquent or unruly child or a juvenile traffic offender, the court shall proceed immediately, or at a postponed hearing, to hear the evidence as to the proper disposition to be made under section 2151.354 or Chapter 2152. of the Revised Code. If the court at the adjudicatory hearing finds beyond a reasonable doubt that the child is an unruly child for being an habitual truant, or that the child is an unruly child for being an habitual truant and that the parent, guardian, or other person having care of the child has failed to cause the child's attendance at school in violation of section 3321.38 of the Revised Code, the court shall proceed to hold a hearing to hear the evidence as to the proper disposition to be made in regard to the child under division (C)(1) of section 2151.354 of the Revised Code and the proper action to take in regard to the parent, guardian, or other person having care of the child under division (C)(2) of section 2151.354 of the Revised Code. If the court at the adjudicatory hearing finds beyond a reasonable doubt that the child is a delinquent child for being a chronic truant or for being an habitual truant who previously has been adjudicated an unruly child for being an habitual truant, or that the child is a delinquent child for either of those reasons and the parent, guardian, or other person having care of the child has failed to cause the child's attendance at school in violation of section 3321.38 of the Revised Code, the court shall proceed to hold a hearing to hear the evidence as to the proper disposition to be made in regard to the child under division (A)(7)(a) of section 2152.19 of the Revised Code and the proper action to take in regard to the parent, guardian, or other person having care of the child under division (A)(7)(b) of section 2152.19 of the Revised Code.

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If the court does not find the child to have violated section 2151.87 of the Revised Code or to be an abused, neglected, dependent, delinquent, or unruly child or a juvenile traffic offender, it shall order that the case be dismissed and that the child be discharged from any detention or restriction theretofore ordered.

(2) A record of all testimony and other oral proceedings in juvenile court shall be made in all proceedings that are held pursuant to section 2151.414 of the Revised Code or in which an order of disposition may be made pursuant to division (A)(4) of section 2151.353 of the Revised Code, and shall be made upon request in any other proceedings. The record shall be made as provided in section 2301.20 of the Revised Code.

(3) The authority of a juvenile court to exclude the general public from its hearings that is provided by division (A)(1) of this section does not limit or affect any right of a victim of a crime or delinquent act, or of a victim's representative, under Chapter 2930. of the Revised Code.

(B)(1) If the court at an adjudicatory hearing determines that a child is an abused, neglected, or dependent child, the court shall not issue a dispositional order until after the court holds a separate dispositional hearing. The court may hold the dispositional hearing for an adjudicated abused, neglected, or dependent child immediately after the adjudicatory hearing if all parties were served prior to the adjudicatory hearing with all documents required for the dispositional hearing. The dispositional hearing may not be held more than thirty days after the adjudicatory hearing is held. The court, upon the request of any party or the guardian ad litem of the child, may continue a dispositional hearing for a reasonable time not to exceed the time limits 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 the period of time required by this division, 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.

(2) The dispositional hearing shall be conducted in accordance with all of the following:

(a) The judge or referee who presided at the adjudicatory hearing shall preside, if possible, at the dispositional hearing;

(b) The court may admit any evidence that is material and relevant, including, but not limited to, hearsay, opinion, and documentary evidence;

(c) Medical examiners and each investigator who prepared a social history shall not be cross-examined, except upon consent of the 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.

(3) After the conclusion of the dispositional hearing, the court shall enter an appropriate judgment within seven days and shall schedule the date for the hearing to be held pursuant to section 2151.415 of the Revised Code. The court may make any order of disposition that is set forth in section 2151.353 of the Revised Code. A copy of the judgment shall be given to each party and to the child's guardian ad litem. If the judgment is conditional, the order shall state the conditions of the judgment. If the child is not returned to the child's own home, the court shall determine which school district shall bear the cost of the child's education and shall comply with section 2151.36 of the Revised Code.

(4) As part of its dispositional order, the court may issue any order described in division (B) of section 2151.33 of the Revised Code.

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(C) The court shall give all parties to the action and the child's guardian ad litem notice of the adjudicatory and dispositional hearings in accordance with the Juvenile Rules.

(D) If the court issues an order pursuant to division (A)(4) of section 2151.353 of the Revised Code committing a child to the permanent custody of a public children services agency or a private child placing agency, the parents of the child whose parental rights were terminated cease to be parties to the action upon the issuance of the order. This division is not intended to eliminate or restrict any right of the parents to appeal the permanent custody order issued pursuant to division (A)(4) of section 2151.353 of the Revised Code.

(E) Each juvenile court shall schedule its hearings in accordance with the time requirements of this chapter.

(F) In cases regarding abused, neglected, or dependent children, the court may admit any statement of a child that the court determines to be excluded by the hearsay rule if the proponent of the statement informs the adverse party of the proponent's intention to offer the statement and of the particulars of the statement, including the name of the declarant, sufficiently in advance of the hearing to provide the party with a fair opportunity to prepare to challenge, respond to, or defend against the statement, and the court determines all of the following:

(1) The statement has circumstantial guarantees of trustworthiness;

(2) The statement is offered as evidence of a material fact;

(3) The statement is more probative on the point for which it is offered than any other evidence that the proponent can procure through reasonable efforts;

(4) The general purposes of the evidence rules and the interests of justice will best be served by the admission of the statement into evidence.

(G) If a child is alleged to be an abused child, the court may order that the testimony of the child be taken by deposition. On motion of the prosecuting attorney, guardian ad litem, or any party, or in its own discretion, the court may order that the deposition be videotaped. Any deposition taken under this division shall be taken with a judge or referee present.

If a deposition taken under this division is intended to be offered as evidence at the hearing, it shall be filed with the court. Part or all of the deposition is admissible in evidence if counsel for all parties had an opportunity and similar motive at the time of the taking of the deposition to develop the testimony by direct, cross, or redirect examination and the judge determines that there is reasonable cause to believe that if the child were to testify in person at the hearing, the child would experience emotional trauma as a result of participating at the hearing.

CREDIT(S)

(2002 H 400, eff. 4-3-03; 2000 S 179, § 3, eff. 1-1-02; 2000 S 179, § 1, eff. 4-9-01; 2000 S 218, eff. 3-15-01; 2000 S 181, eff. 9-4-00; 1996 H 124, eff. 3-31-97; 1996 H 274, eff. 8-8-96; 1995 H 1, eff. 1-1-96; 1988 S 89, eff. 1-1-89; 1980 H 695; 1975 H 85; 1969 H 320)

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R.C. § 2151.353

BALDWIN'S OHIO REVISED CODE ANNOTATED
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, 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.

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(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:

(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;

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(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 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

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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.

Current through 2008 File 129 of the 127th GA (2007-2008), apv. by
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Baldwin's Ohio Revised Code Annotated Currentness
Title XXI. Courts--Probate--Juvenile (Refs & Annos)
Chapter 2151. Juvenile Courts--General Provisions (Refs & Annos)
General Provisions
→ **2151.414 Procedures upon motion**

<Note: See also version(s) of this section with later effective date(s).>

(A)(1) Upon the filing of a motion pursuant to section 2151.413 of the Revised Code for permanent custody of a child, the court shall schedule a hearing and give notice of the filing of the motion and of the hearing, in accordance with section 2151.29 of the Revised Code, to all parties to the action and to the child's guardian ad litem. The notice also shall contain a full explanation that the granting of permanent custody permanently divests the parents of their parental rights, a full explanation of their right to be represented by counsel and to have counsel appointed pursuant to Chapter 120. of the Revised Code if they are indigent, and the name and telephone number of the court employee designated by the court pursuant to section 2151.314 of the Revised Code to arrange for the prompt appointment of counsel for indigent persons.

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

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

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

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

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

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(a) The child is not abandoned or orphaned or has not been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two month period ending on or after March 18, 1999, and the child cannot be placed with either of the child's parents within a reasonable time or should not be placed with the child's parents.

(b) The child is abandoned.

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

(d) The child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two month period ending on or after March 18, 1999.

For the purposes of division (B)(1) of this section, a child shall be considered to have entered the temporary custody of an agency on the earlier of the date the child is adjudicated pursuant to section 2151.28 of the Revised Code or the date that is sixty days after the removal of the child from home.

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

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

If the court grants permanent custody of a child to a movant under this division, the court, upon the request of any party, shall file a written opinion setting forth its findings of fact and conclusions of law in relation to the proceeding. The court shall not deny an agency's motion for permanent custody solely because the agency failed to implement any particular aspect of the child's case plan.

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

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

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

(3) The custodial history of the child, including whether the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two month period ending on or after March 18, 1999;

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

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

For the purposes of this division, a child shall be considered to have entered the temporary custody of an agency on the earlier of the date the child is adjudicated pursuant to section 2151.28 of the Revised Code or the date that is sixty days after the removal of the child from home.

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

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

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

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

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

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

(6) The parent has been convicted of or pleaded guilty to an offense under division (A) or (C) of section 2919.22 or under section 2903.16, 2903.21, 2903.34, 2905.01, 2905.02, 2905.03, 2905.04, 2905.05, 2907.07, 2907.08, 2907.09, 2907.12, 2907.21, 2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 2919.24, 2919.25, 2923.12, 2923.13, 2923.161, 2925.02, or 3716.11 of the Revised Code and the child or a sibling of the child was a victim of the offense or the parent has been convicted of or pleaded guilty to an offense under section 2903.04 of the Revised Code, a sibling of the child was the victim of the offense, and the parent who committed the offense poses an ongoing danger to the child or a sibling of the child.

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

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

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

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

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

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

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

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

(10) The parent has abandoned the child.

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

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

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

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

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

(16) Any other factor the court considers relevant.

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

CREDIT(S)

(2000 H 448, eff. 10-5-00; 1999 H 176, eff. 10-29-99; 1998 H 484, eff. 3-18-99; 1996 H 274, eff. 8-8-96; 1996 H 419, eff. 9-18-96; 1988 S 89, eff. 1-1-89; 1980 H 695)

Current through 2008 File 129 of the 127th GA (2007-2008), apv. by 8/19/08, and filed with the Secretary of State by 8/19/08.

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C
Baldwin's Ohio Revised Code Annotated Currentness
Rules of Appellate Procedure
Title II. Appeals from Judgments and Orders of Court of Record
→ **App R 5 Appeals by leave of court**

(A) Motion by defendant for delayed appeal.

(1) After the expiration of the thirty day period provided by App. R. 4(A) for the filing of a notice of appeal as of right, an appeal may be taken by a defendant with leave of the court to which the appeal is taken in the following classes of cases:

(a) Criminal proceedings;

(b) Delinquency proceedings; and

(c) Serious youthful offender proceedings.

(2) A motion for leave to appeal shall be filed with the court of appeals and shall set forth the reasons for the failure of the appellant to perfect an appeal as of right. Concurrently with the filing of the motion, the movant shall file with the clerk of the trial court a notice of appeal in the form prescribed by App. R. 3 and shall file a copy of the notice of the appeal in the court of appeals. The movant also shall furnish an additional copy of the notice of appeal and a copy of the motion for leave to appeal to the clerk of the court of appeals who shall serve the notice of appeal and the motions upon the prosecuting attorney.

(B) Motion to reopen appellate proceedings.

If a federal court grants a conditional writ of habeas corpus upon a claim that a defendant's constitutional rights were violated during state appellate proceedings terminated by a final judgment, a motion filed by the defendant or on behalf of the state to reopen the appellate proceedings may be granted by leave of the court of appeals that entered the judgment. The motion shall be filed with the clerk of the court of appeals within forty-five days after the conditional writ is granted. A certified copy of the conditional writ and any supporting opinion shall be filed with the motion. The clerk shall serve a copy of a defendant's motion on the prosecuting attorney.

(C) Motion by prosecution for leave to appeal

When leave is sought by the prosecution from the court of appeals to appeal a judgment or order of the trial court, a motion for leave to appeal shall be filed with the court of appeals within thirty days from the entry of the judgment and order sought to be appealed and shall set forth the errors that the movant claims occurred in the proceedings of the trial court. The motion shall be accompanied by affidavits, or by the parts of the record upon which the movant relies, to show the probability that the errors claimed did in fact occur, and by a brief or memorandum of law in support of the movant's claims. Concurrently with the filing of the motion, the movant shall file with the clerk of the trial court a notice of appeal in the form prescribed by App. R. 3 and file a copy of the notice of appeal in the court of appeals. The movant also shall furnish a copy of the motion and a copy of the notice of appeal to the clerk of the

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court of appeals who shall serve the notice of appeal and a copy of the motion for leave to appeal upon the attorney for the defendant who, within thirty days from the filing of the motion, may file affidavits, parts of the record, and brief or memorandum of law to refute the claims of the movant.

(D)(1) Motion by defendant for leave to appeal consecutive sentences pursuant to R.C. 2953.08(C)

When leave is sought from the court of appeals for leave to appeal consecutive sentences pursuant to R.C. 2953.08(C), a motion for leave to appeal shall be filed with the court of appeals within thirty days from the entry of the judgment and order sought to be appealed and shall set forth the reason why the consecutive sentences exceed the maximum prison term allowed. The motion shall be accompanied by a copy of the judgment and order stating the sentences imposed and stating the offense of which movant was found guilty or to which movant pled guilty. Concurrently with the filing of the motion, the movant shall file with the clerk of the trial court a notice of appeal in the form prescribed by App. R. 3 and file a copy of the notice of appeal in the court of appeals. The movant also shall furnish a copy of the notice of appeal and a copy of the motion to the clerk of the court of appeals who shall serve the notice of appeal and the motion upon the prosecuting attorney.

(D)(2) Leave to appeal consecutive sentences incorporated into appeal as of right

When a criminal defendant has filed a notice of appeal pursuant to App. R. 4, the defendant may elect to incorporate in defendant's initial appellate brief an assignment of error pursuant to R.C. 2953.08(C), and this assignment of error shall be deemed to constitute a timely motion for leave to appeal pursuant to R.C. 2953.08(C).

(E) Determination of the motion

Except when required by the court the motion shall be determined by the court of appeals on the documents filed without formal hearing or oral argument.

(F) Order and procedure following determination

Upon determination of the motion, the court shall journalize its order and the order shall be filed with the clerk of the court of appeals, who shall certify a copy of the order and mail or otherwise forward the copy to the clerk of the trial court. If the motion for leave to appeal is overruled, except as to motions for leave to appeal filed by the prosecution, the clerk of the trial court shall collect the costs pertaining to the motion, in both the court of appeals and the trial court, from the movant. If the motion is sustained and leave to appeal is granted, the further procedure shall be the same as for appeals as of right in criminal cases, except as otherwise specifically provided in these rules.

CREDIT(S)

(Adopted eff. 7-1-71; amended eff. 7-1-88, 7-1-92, 7-1-94, 7-1-96, 7-1-03)

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C BALDWIN'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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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.

Current with amendments received through 7/15/08

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