ORIGINAL

IN THE SUPREME COURT OF OHIO

IN RE:	**ADOPTION OF JAS**	:	**Case No.**	**09-1695**
	ADOPTION OF JNS	:		**09-1980**
		:		
		:	**On Appeal from the Lorain County**	
		:	**Court of Appeals, Ninth Appellate**	
		:	**District**	
		:		

MERIT BRIEF OF APPELLANTS R.S. AND S.E.S., PROSPECTIVE ADOPTIVE PARENTS

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STATEMENT OF THE CASE AND FACTS

On October 6, 2006, Appellants were granted legal custody of JAS and JNS. On October 3, 2008, Appellant's petitioned the Probate Court of Lorain County, Ohio, to adopt JAS and JNS. Accompanying the petition was a motion for an Order from the Probate Court that the requirement for adoptive placement under R.C. 5103.16(D) be deemed unnecessary. On November 26, 2008, the Probate Judge denied Appellant's/Petitioner's Motion to dispense with placement. Appellants are now before this Court, appealing the lower court's denial of their motion to deem placement under R.C. 5103.16(D) unnecessary.

Appellants timely filed their appeal to the Court of Appeals, Ninth Judicial District for the State of Ohio on March 2, 2009. On August 10, 2009, the Ninth District Court of Appeals affirmed the November 26, 2008 decision by the Probate Court of Lorain County, Ohio that denied Appellant's request to deem adoptive placement unnecessary.

On September 1, 2009, Appellants filed a request in the Ninth Judicial District to certify this matter pursuant to Appellate Rule 25 as this matter is in direct conflict with the decision of the Court of Appeals in the Second Judicial District, *In re: A.W.K.*, 2007-(OH) -6341. While Appellants were awaiting a decision by the Ninth District Court of Appeals with regard to their request to certify the conflict to this Court, Appellants filed a Memorandum in Support of Jurisdiction along with a Notice of pending motion to certify a conflict with this Court on September 21, 2009. The Clerk of the Supreme Court assigned Case No. 2009-1695.

On October 9, 2009, the Ninth District Court of Appeals issued its Journal Entry finding that a conflict of law exists and, therefore, granted Appellants' motion filed on September 1, 2009. However, the Ninth District Court of Appeals rephrased the issue for certification as follows:

"Does R.C. 5103.16(D) require pre-adoptive placement where the prospective adoptive parents have been awarded legal custody of the child pursuant to a final dispositional order out of the juvenile court, and the child has been living with the prospective adoptive parents since the award of legal custody?"

On October 29, 2009, the Clerk of this Court filed a copy of the Court of Appeals Order Certifying a Conflict and gave it Case No. 2009-1980. On November 18, 2009, this Court determined that a conflict exits in Case Number 2009-1980 and also consolidated this case with 2009-1965, which appeal this Court also accepted on November 18, 2009.

This matter is now properly before this Honorable Court for review and decision.

ARGUMENT

Proposition of Law No. I:
Does R.C. 5103.16(D) require pre-adoptive placement where the prospective adoptive parents have been awarded legal custody of the child pursuant to a final dispositional order out of the juvenile court, and the child has been living with the prospective adoptive parents since the award of legal custody?

This cause presents one critical issue: whether pre-adoptive placement under R.C. 5103.16(D) is necessary in a case where the prospective adoptive parents have been awarded legal custody of a minor child or children by the juvenile court when the child or children have been living with the prospective adoptive parents since the award of legal custody.

In this case, the Ninth District Court of Appeals overruled the adoptive parents' sole assignment of error, to wit: the trial court erred to the prejudice of Appellants when the trial court denied Appellant's motion for an order that adoptive placement under R.C. 5103.16(D) be deemed unnecessary.

In fact, the decision of the Ninth District Court of Appeals is in conflict with the Second District Court of Appeals in *In re: Adoption of A.W.K.*, Second Dist. No. 22248, 2007-Ohio-6341. Instead, the Court of Appeals relied on this Court's prior decision in *Lemley v. Kaiser* (1983), 6 Ohio St. 3d 258, wherein this Court stated at pg. 60...

> "...Although R.C. 5103.16 is not part and parcel of the adoption statutes, it is in substance an adoption statute. As a result, R.C. 5103.16 is necessarily in derogation of the common law and must be strictly construed. Further, because the provisions authorizing adoptions are purely statutory, strict compliance with them is necessary." *Id.* 260

This Court, in *Lemley*, further reasoned:

> "...That measure of judicial control is accomplished by having the parents of the child personally appear before the proper probate court for approval of the placement and adoption. The integrity of this process is an absolute necessity. Otherwise, children could be sold to the highest bidder and shuffled around like objects on an auction block". (Internal citations and quotations omitted). (*Id.*)

Appellants here urged the Ninth District Court of Appeals to follow and adopt the reasoning of the Second District Court of Appeals in *In re: A.W.K.*, supra. *In re: A.W.K.* distinguished this Court's decision in *Lemley*. In the case at bar, the facts are arguably on all four corners of the decision in *In re: A.W.K.*, supra.

This Court has the opportunity to distinguish this Court's prior decision in *Lemley* with the facts that surround the case at bar and *In re: A.W.K.*. The basic premise of the Ninth District Court of Appeals was that under Appellants' theory, there would be no judicial oversight pursuant to this Court's decision in *Lemley*. However, it was pointed out that the adoption statute at issue, R.C. 5103.16(D), was effective September 21, 2006. Under (E) of that section, the legislature made 5103.16(D) inapplicable to adoptions by a step-parent, a grandparent or a guardian.

It is important for this Court to distinguish its decision in *Lemley*, as persons who are awarded legal custody of minor children must have some remedy for adoption without placement by the natural parents when situations arise where natural parents do not exercise their rights given to them under the award of legal custody. According to the Ninth District Court of Appeals, albeit relying on this Court's decision in *Lemley*, supra., minor children would never be able to be adopted by a legal custodian but for the natural parents placing the children for adoption.

The issue is further confusing when taking into consideration the Court's concern for judicial oversight. It is axiomatic that the legislature as well as this Court should be concerned with regard to adoptions and children "being sold to the highest bidder and shuffled around like objects on an auction block". *Lemley* at 261. Unfortunately, this Court in *Lemley* found that facts were such that it appeared that two attorneys were actively participating in a private,

independent and surreptitious placement for adoption.

The case at bar and the case in conflict with the Ninth District Court of Appeals, *In re: A.W.K.*, bear no resemblance to the issues and fears that were stated by this Court and enacted by the legislature. There are cases where good, honest, hard-working and willing people wish to provide security for children. The term placement is just that. Placement infers that the children be taken from one place and placed in another place for, in this case, the purpose of adoption. Placement also requires that a pre-adoptive home-study be done pursuant to R.C. 3107.033 and R.C. 3107.034 for purposes of criminal background checks. In the case at bar, the Appellants were awarded Legal Custody of JAS and JNS pursuant to R.C. 2151.353. See Appendix 15, Magistrate's Decision.

The Appellants were awarded Legal Custody after it was determined that the children were abused, neglected or dependent by clear and convincing evidence pursuant to R.C. 2151.35(A)(1), and the Court found that it was in the children's best interests by preponderance to award Appellants Legal Custody. This was not done without judicial oversight. Moreover, Lorain County Children's Services Agency was involved and was required to follow the Ohio Administrative Code for selection and placement. See Appendix 50, OAC 5101:2-42-05. Among the factors to consider, Appellants home must have been suitable and safe. See OAC 5101:2-42-05(E)(5) and (F)(2). In the case at bar and for legal custodians in the future, the children will have already been placed, i..e: in the possession of the legal custodian.

The issue of judicial oversight is unwarranted. In cases where legal custodians of minor children wish to adopt, judicial oversight is abundant. Juvenile courts always retain jurisdiction for matters involving children. Therefore, the Juvenile Court had jurisdiction over the minor children and could have issued further dispositional orders pursuant to O.R.C. 2151.353(E)(1).

However, prior to Appellants' petition for adopting, it did not.

The issue of placement not being necessary still requires significant judicial oversight. In cases of adoption, there are two prongs that adoptive parents must meet. The first is whether consent of the biological parents is necessary. The second is whether the court deems the adoption in the best interests of the minor child or children. The second prong requires a report by a disinterested third party approved by the court.

Under the current state of the law where placement is not necessary for a step-parent, a grandparent or a guardian, two of those three have far less judicial oversight. A step-parent or a grandparent is able to pursue an adoption without placement with the possibility that they have never had any form of judicial oversight. But, by virtue of that status, they can proceed with an adoption. It does not make sense that a step-parent or a grandparent may proceed with an adoption having had no judicial oversight and never having been a party to any case while preventing a legal custodian, who may have been in possession of the child for far longer than the other two with extensive litigation to get to the point where a juvenile court awards them legal custody, from proceeding. Also, the exempt individuals have no judicial or administrative oversight that determines suitability or safety.

The parties specifically rely on *In re: Adoption of A.W.K.*, 2007-OH-6341 App. Case No. 22248, Sec. Dist. Ct. of Appeals of Ohio, Montgomery County, decided on Nov. 21, 2007. In the aforementioned case, the facts were identical to the facts in this case. The prospective adoptive parents received assistance from the Montgomery County Children's Services Agency and were granted legal custody in the Juvenile Court. The lower court dismissed the Petition for Adoption in that the court interpreted R.C. 5103.16(D) to mean that the biological parents are required to appear before the Probate Court and to obtain court approval to have the child placed

in the prospective adoptive parents' home for purposes of adoption. The prospective adoptive parents objected and argued that the purpose of R.C. 5103.16 was to prevent surreptitious, private placements for adoptions and that the statute had no applicability where, as here, the child already was living in the home after intervention by Montgomery County Children's Services pursuant to a grant of legal custody by the Juvenile Court. See *A.W.K.*, supra. at pg. 1, para. 4)

Although the magistrate and lower court did not agree with the prospective adoptive parents' argument, the Court of Appeals was persuaded by their argument. The Court relied on *Lemley v. Kaiser* (1983), 6 Ohio St. 3d, 258 at 260 (App. C, p. 11). where it stated:

> "...although R.C. 5103.16 is not part and parcel of the adoption statutes, it is in substance an adoption statute."

The Court in *Lemley* also went on to discuss the intent of the Legislature in enacting R.C. 5103.16. Once again, the Court was concerned and felt the intent of the statute was to prevent black market transactions and have some judicial control before a proper probate court.

Both in *In re: A.W.K.* and the case at bar, the minor children have not been placed in the home surreptitiously for adoption or without any judicial oversight. In the case at bar as in *A.W.K.*, the children were placed in the prospective adoptive parents' home in connection with a neglect, dependency and abuse action filed by Lorain County Children's Services and ordered through the Lorain County Juvenile Court. The placement in the case at bar in Case No. 05JC10948 and 49 was not done surreptitiously and bears no similarity to a black market transaction. Also, the concern that the natural parents will not be informed is not present. Notice is still required to be given to the parents for purposes of whether or not their consent is necessary under R.C. 3107.05, 06 and 07.

The Ninth District Court of Appeals was concerned by the lack of judicial oversight that they believe is present if prospective adoptive parents file for an adoption without complying with R.C. 5103.16(D) (adoptive placement).

There is more judicial oversight in the case at bar where the adoptive parents are legal custodians than step-parents and grandparents. There is at least as much judicial oversight in the case at bar as legal guardians.

The juvenile court has continuing jurisdiction over the children, the biological parents and the legal custodians. If the parents wished to exercise their rights or moved the court for the legal custodians to show cause why their rights were being denied, the juvenile court would have continuing jurisdiction to hear same.

Furthermore, if R.S. and S.E.S.'s appeal is sustained, R.S. and S.E.S. will still be subject to judicial oversight. R.S. and S.E.S. must still satisfy the two-pronged test in order to adopt; all with notice to the biological parents with the right to be heard. They must first show that the biological parents' consent is not necessary and, secondly, must satisfy the court that the adoption is in the best interests of the minor children. The latter must be done through a study and report by a disinterested third party, approved by the court.

Moreover, the effective date of R.C. 5103.16 was September 21, 2006. Under 5103.16(E), the statute states:

> "this section does not apply to an adoption by a step-parent, a grandparent, or a guardian".

This section should also apply to legal custodians.

The definition of legal guardian means:

> "A person, association or corporation that is granted authority by the 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. R.C. 2151.011(B)(16)

The definition of Legal Custody means:

"A legal status that vests in the custodian the right to have physical care and control of the child and determine where and with whom the child should live and the right and duty to protect, train, and discipline the child and to provide the child 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. " R.C. 2151.011(B)(19).

The definitions of those two legal statuses are similar. One could argue that the legislature overlooked the term legal custodian as an exemption under Div. E of 5103.16.

Appellants herein were granted legal custody of JAS and JNS on October 6, 2006. Appellants subsequently filed a petition to adopt JAS and JNS on October 3, 2008. Accompanying their Petition was a motion for an order from the Probate Court that the requirement for adoptive placement pursuant to R.C. 5103.16 to be deemed unnecessary. The purpose of R.C. 5103.16(D) was to prevent black market transactions. Appellants' petition is not remotely close to a black market transaction. Moreover, the minor children, JAS and JNS have been in the home of Appellants since at least October 2006. JAS and JNS have been in the physical possession of Appellants since before legal custody was granted in October 2006. Although Appellants assert that placement for purposes of adoption is not necessary, there will be judicial oversight and the parents of JAS and JNS will have the opportunity to be heard, in court, on two occasions. The first occasion will be at the hearing to determine whether their consent is necessary and the second will be at the hearing to determine whether it is in the best interests of the minor children to be adopted by Appellants.

In sum this Court made a decision in 1983 in *Lemley*, supra. with certain requirements for placement and strict statutory compliance. The legislature, however, in 2006, removed the requirement of placement for certain individuals with certain status. However, in relying on the theory of *Lemley*, supra. and R.C. 5103.16, it does not make sense where a legal custodian who has had possession of a child or children by judicial order needs to satisfy placement for adoption when people with other status and no judicial oversight do not. It is important for children to be able to have some finality and the potential to know whom their parents are, whether that be biological or adoptive.

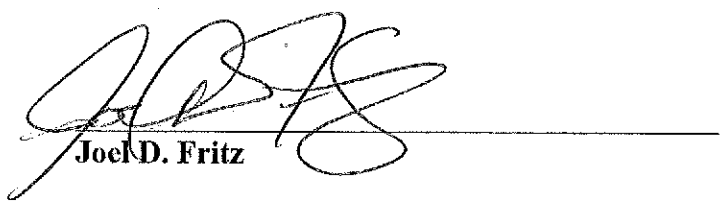
This matter is of public or great general interest as well as in conflict with the Court of Appeals, Second Judicial District. This Court has the opportunity to cure the above by overruling the Ninth District Court of Appeals and allowing legal custodians to petition a probate court to adopt children without the need for pre-adoptive placement.

CONCLUSION

The proposition of law asks the question: Does R.C. 5103.16(D) require pre-adoptive placement where the prospective adoptive parents have been awarded legal custody of the child pursuant to a final dispositional order out of the juvenile court, and the child has been living with the prospective adoptive parents since the award of legal custody?

The answer must emphatically be no! For the foregoing reasons, it is respectfully submitted that this Court should overturn the decision in the Court of Appeals, adopt the decision in *In re: AWK* as well as the case at bar.

Respectfully submitted,



Joel D. Fritz

COUNSEL FOR APPELLANTS R.S. AND S.E.S.
Prospective Adoptive Parents

Proof of Service

I certify that a copy of the foregoing Brief was mailed by ordinary U.S. mail to Elizabeth J. Cooke, Counsel for Appellee Jennifer Wahl and Appellee Christopher Robinson, c/o 316 9th Street, Elyria, Ohio, 44035, this 15th day of January, 2010.

Joel D. Fritz

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Prospective Adoptive Parents

APPENDIX

ORIGINAL

IN THE SUPREME COURT OF OHIO

IN RE:	ADOPTION OF JAS ADOPTION OF JNS	:	09-1695
		:	On Appeal from the Lorain County Court of Appeals, Ninth Appellate District
		:	Court of Appeals Case No. 08CA009518 Case No. 08CA009519

NOTICE OF APPEAL OF APPELLANTS R.S. AND S.E.S., PROSPECTIVE ADOPTIVE PARENTS

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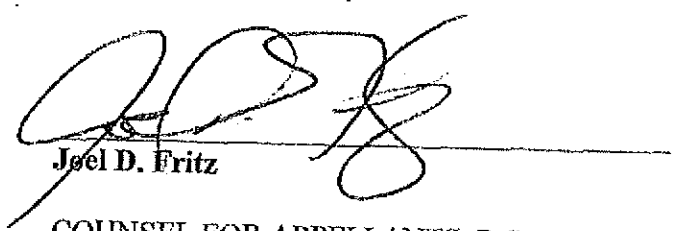
Notice of Appeal of Appellants Raymond Shepherd and Sue Ellen Shepherd

Appellants R.S. and S.E.S., Prospective Adoptive Parents, hereby give notice of appeal to the Supreme Court of Ohio from the judgment of the Lorain County Court of Appeals, Ninth Appellate District; entered into Court of Appeals No. 08CA009518 and No. 08CA009519 on August 10, 2009.

This case raises a substantial constitutional question and is one of public or great general interest.

Respectfully submitted,

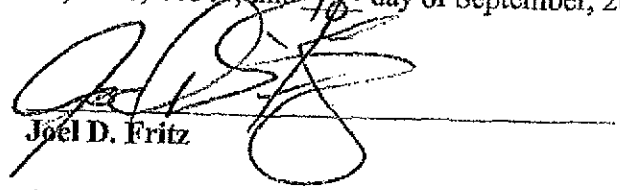


Joel D. Fritz

COUNSEL FOR APPELLANTS, R.S. AND S.E.S.,
Prospective Adoptive Parents

Certificate of Service

I certify that a copy of this Notice of Appeal was sent by ordinary U.S. mail to Pro Se Appellee, Jennifer L. Wahl, 1628 Dunbar Road, Madison, Ohio, 44057 and Pro Se Appellee, Christopher B. Robinson, #A521955, Grafton Correctional Institution, c/o Warden Maggie Bradshaw, 2500 S. Avon Belden Road, Grafton, Ohio, 44044, this 18th day of September, 2009.



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Prospective Adoptive Parents

IN THE SUPREME COURT OF OHIO

IN RE:	**ADOPTION OF JAS** **ADOPTION OF JNS**	:	09-1980
		:	**On Appeal from the Lorain County Court of Appeals, Ninth Appellate District**
		:	**Court of Appeals** **Case No. 08CA009518** **Case No. 08CA009519**

NOTICE OF CERTIFIED CONFLICT

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PRO SE APPELLEE

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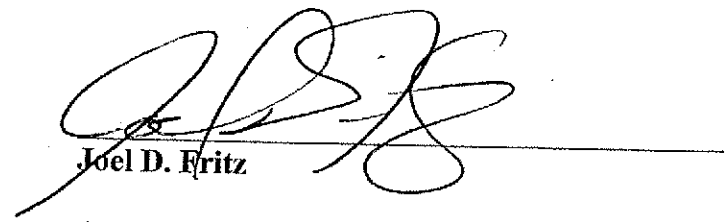
OCT 29 2009
CLERK OF COURT
SUPREME COURT OF OHIO

Notice of Certified Conflict

Appellants R.S. and S.E.S., hereby give Notice that the Ninth District Court of Appeals has issued a Journal Entry certifying a conflict in this matter on October 9, 2009.

Respectfully submitted,

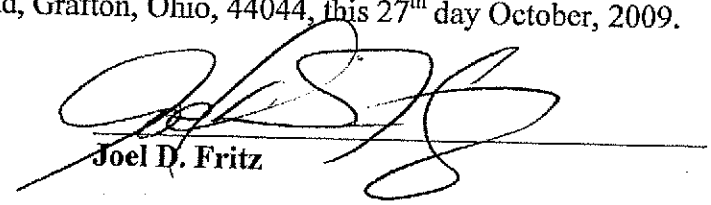


Joel D. Fritz

COUNSEL FOR APPELLANTS, R.S. AND S.E.S.,
Prospective Adoptive Parents

Certificate of Service

I certify that a copy of this Notice of Filing was sent by ordinary U.S. mail to Pro Se Appellee, Jennifer L. Wahl, 1628 Dunbar Road, Madison, Ohio, 44057 and Pro Se Appellee, Christopher B. Robinson, #A521955, Grafton Correctional Institution, c/o Warden Maggie Bradshaw, 2500 S. Avon Belden Road, Grafton, Ohio, 44044, this 27th day October, 2009.



Joel D. Fritz

COUNSEL FOR APPELLANTS, R.S. AND S.E.S.,
Prospective Adoptive Parents

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

COURT OF APPEALS
2009 OCT -9 A 11: 02
CLERK OF COMMON PLEAS
RON NAGAKOWSKI
9th APPELLATE DISTRICT

IN RE ADOPTION OF J.A.S. AND J.N.S.

C.A. No. 08CA009518
08CA009519

JOURNAL ENTRY

Appellants, adoptive parents, have moved, pursuant to App.R. 25, to certify a conflict between the judgment in this case, which was journalized on August 10, 2009, and the judgment of the Second District Court of Appeals in *In re Adoption of A.W.K.*, 2d Dist. No. 22248, 2007-Ohio-6341. Appellees have not responded to the motion.

Article IV, Section 3(B)(4) of the Ohio Constitution requires this Court to certify the record of the case to the Ohio Supreme Court whenever the "judgment *** is in conflict with the judgment pronounced upon the same question by any other court of appeals in the state[.]" "[T]he alleged conflict must be on a rule of law -- not facts." *Whitelock v. Gilbane Bldg. Co.* (1993), 66 Ohio St. 3d 594, 596.

Appellants have proposed that a conflict exists between the districts on the following issue:

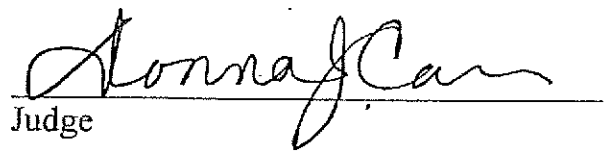
> "The issue proposed for certification is that the decision in the Adoption of AWK, 2007-OH-6341, that pre-adoptive placement under R.C. 5103.16(d) is unnecessary, is in direct conflict with this Court's decision in the above-referenced case numbers issued on August 10, 2009."

This Court rephrases the issue for certification as follows:

> "Does R.C. 5103.16(D) require pre-adoptive placement where the prospective adoptive parents have been awarded legal custody of the child pursuant to a

final dispositional order out of the juvenile court, and the child has been living with the prospective adoptive parents since the award of legal custody?"

We find that a conflict of law exists; therefore, the motion to certify is granted.



Judge

Concur:
MOORE, P.J.
DICKINSON, J.

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

IN RE ADOPTION OF J.A.S. AND J.N.S.

C.A. Nos. 08CA009518
08CA009519

COURT OF APPEALS
FILED
LORAIN COUNTY
2009 AUG 10 A 9:58
CLERK OF COMMON PLEAS
RON NABAKOWSKI
9th APPELLATE DISTRICT

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF LORAIN, OHIO
CASE Nos. 2008AD00062
2008AD00063

DECISION AND JOURNAL ENTRY

Dated: August 10, 2009

CARR, Judge.

{¶1} Appellants, R.S. and S.E.S. (the "adoptive parents"), appeal the judgment of the Lorain County Court of Common Pleas, Probate Division. This Court affirms.

I.

{¶2} On October 3, 2008, the adoptive parents filed petitions for adoption of the minor children, J.A.S. and J.N.S. The same day, the adoptive parents filed a motion for an order deeming the requirement for adoptive placement pursuant to R.C. 5103.16(D) unnecessary. The adoptive parents asserted that they were granted an award of legal custody of the children from the Lorain County Juvenile Court pursuant to a final dispositional order in a dependency/neglect/abuse case filed by Lorain County Children Services Board. Accordingly, they urged the probate court to adopt the reasoning and holding of the Second District Court of Appeals in *In re Adoption of A.W.K.*, 2d Dist. No. 22248, 2007-Ohio-6341, and dispense with the

statutory requirement for adoptive placement under the circumstances. In an affidavit attached to the motion, the adoptive parents averred, in part, that "this is not a black market or surreptitious request for adoption." The probate court summarily denied the motion to dispense with placement. The adoptive parents timely appealed, raising one assignment of error for review.

II.

ASSIGNMENT OF ERROR

> "THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANTS WHEN THE TRIAL COURT DENIED APPELLANTS' MOTION FOR AN ORDER THAT ADOPTIVE PLACEMENT UNDER R.C. 5103.16(D) [] BE DEEMED UNNECESSARY."

{¶3} The adoptive parents argue that the trial court erred by denying their motion for an order deeming adoptive placement pursuant to R.C. 5103.16(D) unnecessary. This Court disagrees.

{¶4} R.C. 5103.16 addresses the placing of children for purposes of adoption. R.C. 5103.16(D) states:

> "No child shall be placed or received for adoption or with intent to adopt unless placement is made by a public children services agency, an institution or association that is certified by the department of job and family services under section 5103.03 of the Revised Code to place children for adoption, or custodians in another state or foreign country, or unless all of the following criteria are met:
>
> "(1) Prior to the placement and receiving of the child, the parent or parents of the child personally have applied to, and appeared before, the probate court of the county in which the parent or parents reside, or in which the person seeking to adopt the child resides, for approval of the proposed placement specified in the application and have signed and filed with the court a written statement showing that the parent or parents are aware of their right to contest the decree of adoption subject to the limitations of section 3107.16 of the Revised Code;
>
> "(2) The court ordered an independent home study of the proposed placement to be conducted as provided in section 3107.031 of the Revised Code, and after completion of the home study, the court determined that the proposed placement is in the best interest of the child;
>
> "(3) The court has approved of record the proposed placement."

R.C. 5103.16(E) provides that "[t]his section does not apply to an adoption by a stepparent, a grandparent, or a guardian."

{¶5} The Ohio Supreme Court has held:

> "Although R.C. 5103.16 is not part and parcel of the adoption statutes, it is in substance an adoption statute. As such, R.C. 5103.16 is necessarily in derogation of the common law and must be strictly construed. Further, because the provisions authorizing adoptions are purely statutory, strict compliance with them is necessary." (Internal citations omitted.) *Lemley v. Kaiser* (1983), 6 Ohio St.3d 258, 260.

The *Lemley* court further noted that the legislature's intent in enacting R.C. 5103.16 was "to provide some measure of judicial control over the placement of children for adoption which is not conducted under the auspices of a statutorily recognized and authorized agency." Id. The high court reasoned:

> "That measure of judicial control is accomplished by having the parents of the child personally appear before the proper probate court for approval of the placement and adoption. The integrity of this [statutory] process is an absolute necessity. Otherwise, children could be sold to the highest bidder and shuffled around like objects on an auction block." (Internal citations and quotations omitted.) Id.

{¶6} Nevertheless, the adoptive parents urge this Court to adopt the reasoning and holding of the Second District Court of Appeals in *In re A.W.K.*, supra, wherein our sister district dispensed with strict construction and grafted an additional exception for legal custodians upon the statute. The Second District concluded that adoptive placement pursuant to R.C. 5103.16(D) is unnecessary where the child sought to be adopted has been residing in the prospective adoptive parents' home pursuant to a prior award of legal custody to the petitioners. Id. at ¶19. The appellate court reasoned that its conclusion comports with the legislature's intent because placement of the child pursuant to an award of legal custody necessarily implicates judicial oversight by the juvenile court. Id. at ¶13. This Court is not persuaded by such reasoning.

{¶7} First, the reasoning flies in the face of the Supreme Court's directive that R.C. 5103.16 requires both strict construction and strict compliance. Second, because the legislature made express exceptions to the placement requirement for stepparents, grandparents and guardians, it could have done so for legal custodians if it so intended.

{¶8} A "custodian" is "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." R.C. 2151.011(A)(11). "Legal custody" is "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." R.C. 2151.011(A)(19). "Residual parental rights, privileges, and responsibilities" are "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." R.C. 2151.011(A)(46). Once a juvenile court issues a final disposition awarding legal custody of a child to a person, judicial (and agency) oversight ceases.

{¶9} A "guardian," on the other hand, is "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." R.C. 2151.011(A)(16). R.C. 2111.01(A) similarly defines "guardian" as "any person, association, or corporation appointed by the probate court to have the care and management of the person, the estate, or both of an incompetent or minor." R.C.

2101.24(A)(1)(e) reserves exclusive jurisdiction to the probate court to appoint guardians. The probate court maintains on-going judicial oversight of the ward and guardian during the pendency of the guardianship. In fact, R.C. 2111.50(A)(1) states that the probate court is the "superior guardian of wards who are subject to its jurisdiction, and all guardians who are subject to the jurisdiction of the court shall obey all orders of the court that concern their wards or guardianships." R.C. 2111.13 enumerates the duties of a guardian of a person, including "[t]o obey all the orders and judgments of the probate court touching the guardianship." R.C. 2111.13(A)(4). Guardians of a person are also subject to rendering accounts upon order of the probate court. R.C. 2109.302(B)(3).

{¶10} Unlike legal custodians who are no longer subject to oversight by the juvenile court, guardians remain subject to oversight and control by the probate court until the termination of the guardianship. Accordingly, a significant distinction exists between legal custodians and guardians, indicating that the legislature did not "just forg[e]t to add the term legal custodian as an exemption under [R.C. 5103.16(E)]" as the adoptive parents argue. Just as the statutory placement requirement serves to avoid surreptitious placements for adoption by individuals who may be trafficking in children, it arguably further prevents public children services agencies from bypassing the onerous burden of prosecuting a motion for permanent custody, instead seeking an award of legal custody to a third party who can then pursue adoption yet avoid the statutory requirement for adoptive placement and its corresponding investigation and approval. If the legislature wishes to forego the requirement for adoptive placement of children in legal custody as a result of dependency/neglect/abuse actions, it can amend R.C. 5103.16 accordingly. This Court, however, is not free to graft another exception upon the statute. The adoptive parents' sole assignment of error is overruled.

III.

{¶11} The adoptive parents' assignment of error is overruled. The judgment of the Lorain County Court of Common Pleas, Probate Division, is affirmed.

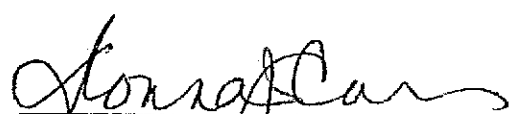
Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellants.



DONNA J. CARR
FOR THE COURT

MOORE, P. J.
DICKINSON, J.
CONCUR

APPEARANCES:

JOEL D. FRITZ, Attorney at Law, for Appellants.

JENNIFER WAHL, pro se, Appellee.

CHRISTOPHER ROBINSON, pro se, Appellee.

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO
PROBATE DIVISION

IN RE: THE ADOPTION OF
JASMINE NICHOLE SHEPHERD

CASE NO 2008AD00062

Motion to Dispense with Placement is denied.

JUDGE FRANK J HORVATH

COURT OF COMMON PLEAS
PROBATE DIV.
LORAIN COUNTY, OHIO
FRANK J. HORVATH
JUDGE

2008 NOV 26 A 10: 23

Date: 12-12-08
I Hereby Certify This To Be A True And Certified Copy Of The Original On File In This Court.
Lorain County Court Of Common Pleas, PROBATE DIVISION, Frank J. Horvath, Judge.
By: Carolyn A Brenner
DEPUTY CLERK

JOURNAL FILM 313 NO. 1411

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO
PROBATE DIVISION

IN RE: THE ADOPTION OF
JUSTINE ANDRE SHEPHERD

CASE NO 2008AD00063

Motion to Dispense with Placement is denied.

JUDGE FRANK J HORVATH

COURT OF COMMON PLEAS
PROBATE DIV.
LORAIN COUNTY, OHIO
FRANK J. HORVATH
JUDGE

2009 NOV 26 A 10 23

JOURNAL FILM 323 NO. 1412

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FILED
DOMESTIC RELATIONS
2006 OCT -6 PM 2:16
LORAIN COUNTY
JUVENILE DIVISION

LCCS-Jarrett-Davis
APA-Soto
Mo: Jennifer Wahl-C/O Lake Geauga Oak House, 796 Oak Street, Painesville, OH 44077
Fa: Christopher Robinson-C/O 316 9th Street, Elyria, OH 44035
Int.3Ps: Sue Ellen and Ray Stewart-123 Pemberton Drive, Elyria, OH 44035
GAL: Mitchell (VFC)
Attorney Robinson (for mother)

10/10/06

IN THE COURT OF COMMON PLEAS
JUVENILE DIVISION
LORAIN COUNTY, OHIO

In the Matter of:	)	Case No. 05JC10948-49
	)	
JUSTIN ROBINSON	)	
JASMINE ROBINSON	)	JUDGE DEBRA L. BOROS
	)	
Minor Children	)	MAGISTRATE'S DECISION

This matter comes on for a hearing on the 5th day of October 2006, on a Motion for Further Dispositional Orders, seeking to grant:

Legal Custody of the minor children, Justin and Jasmine Robinson, to interested third parties, Sue Ellen and Ray Stewart and the termination of the Protective Supervision previously granted to Lorain County Children Services.

The Court, based upon the stipulations of the parties and the evidence presented, makes the following findings:

1. All parties have been duly served according to law and those expressing an interest are present for the hearing. The Court finds that relative caregivers/foster parents were notified of this hearing by regular mail/telephone contact/personal notification.

2. All parties have been advised of the nature of the proceeding and how their parental rights are affected. The parties have further been advised of their right to counsel and their right to court appointed counsel if indigent, together with the name and phone number of the court employee who can provide assistance in arranging the prompt

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appointment of counsel for any party who is indigent.

At this time, the status of representation for all parties is as follows:

Mother is represented by Attorney Robinson
Father is not present unrepresented
Sue Ellen and Ray Stewart are present unrepresented
GAL is for the child is Linda Mitchell from Voices for Children.
Lorain County Children Services is represented by an attorney.

Parties present include: APA Soto, mother, Atty. J. Robinson, LCCS Jarrett-Davis, GAL Mitchell and Sue Ellen & Ray Stewart,

3. The Court finds that the minor children, Justin and Jasmine Robinson were previously adjudicated Neglected and Dependent on January 5, 2006 and Temporary Custody was granted to interested third parties, Sue Ellen and Ray Stewart, with Protective Supervision to Lorain County Children Services.

4. Lorain County Children Services made the following reasonable efforts to prevent the removal of the children from the home, to eliminate the continued removal of the children from the home, or to make it possible for the children to return home:

1. LCCS has conducted home visits.
2. LCCS has referred mother for substance abuse treatment and in-patient treatment.
3. LCCS has referred mother for mental health counseling.
4. LCCS provided case management and case counseling.
5. LCCS has provided mother with the visitation.
6. LCCS has attempted communication with both fathers.
7. LCCS has referred Mr. Weekly for domestic violence counseling.
8. LCCS has referred all three children for counseling.
9. LCCS has referred Anthony for tutoring.
10. LCCS has paid for day-care for all three children.

5. These services do not enable the child to return home due to:

Mother had failed to make substantial progress on the case plan. LCCS continues to have concern regarding mother's substance abuse and mental health issues as well as her current lack of stable housing and employment. Mr. Robinson has failed to maintain contact with LCCS or with his children and has failed to work on the case plan in any way.

6. The Court further finds that the following problems initially caused the children to be placed outside the home:

Brandon Wahl, born 05/25/96, Anthony Wahl, born 09/21/97, Justin Robinson, born 10/06/02, and Jasmine Robinson, born 10/10/03, are the minor children of mother, Jennifer Wahl. Christopher Folley is the alleged father of Brandon, Shaun Weekly is the father of Anthony, and Christopher Robinson is the father of Justin and Jasmine. At that time, the children resided with mother. Lorain County Children Services ("LCCS") was involved with the family in August of 2004 for allegations regarding mother's depression and domestic violence between her and Mr. Robinson.

On October 8, 2005, LCCS received information that mother was admitted to Community Health Partners due to depression issues and suicidal ideations. Mother had arranged for Brandon to reside with his father and for Anthony to reside with paternal grandmother, Sandy Price. Anthony has remained with paternal grandmother since that time. Anthony did visit every other weekend with father, Shaun Weekly. However, there was concern regarding Mr. Weekly's ability to properly provide for the child on a full-time basis. Mr. Weekly had reported to LCCS that Anthony's room lacks heat and that Anthony slept at the foot of his (Mr. Weekly) bed. It had been reported to LCCS that Mr. Folley was privately seeking custody of Brandon, see case number 96JB73937. Justin and Jasmine went to reside initially with maternal aunt, Lisa Kuchta and her husband, Phillip Kuchta. Lisa and Phillip were no longer willing to care for the children, thus, Phillip made arrangements for Justin and Jasmine to reside with his sister, Sue Ellen Stewart. Justin and Jasmine were then residing with Ms. Stewart and her husband, Ray Stewart.

Mother has a history of mental health and substance abuse issues. Mother had admitted to LCCS that she did suffer from depression and had been prescribed Prozac and two other medications. Mother was unable to provide LCCS with specific information regarding the two medications. Mother had explained to LCCS that the children stress her out. Further, mother admitted to LCCS that she did use cocaine. Mother explained that she used cocaine as recently as the first week of October, 2005 and that she spent $80 dollars a week for cocaine. LCCS believed that mother had an extensive history of substance abuse.

Mother had a scheduled appointment at the Nord Center, October 11, 2005, yet she had not been released from the hospital. LCCS learned that mother was released on October 13, 2005, from Community Health Partners Hospital. It was reported to LCCS that mother was a patient at the Nord and has been prescribed medication for depression and anxiety. The hospital had referred mother for a drug and alcohol assessment.

It had been reported to LCCS that mother had lost her employment due to her failure to appear. Further, LCCS received a report that mother had been relying on family and friends to give her money and supplies for the children. It had been reported to LCCS that such issues had been on-going and that family and friends had assisted mother repeatedly in the past with housing and money. Further, LCCS learned that mother was being evicted from her housing, in which she has resided since July 2005. Therefore, LCCS sought and was granted Temporary Custody of Anthony to paternal grandmother Sandy Price and Temporary Custody of Justin and Jasmine to interested third parties, Sue Ellen and Ray Stewart with Protective Supervision of all three minor children to Lorain County Children

Services.
7. Since that time:

Mother has failed to make substantial progress on the case plan. Mother was accepted into the Family Drug Court program in early February 2006, however she relapsed into substance abuse in March 2006 and was subsequently terminated from Drug Court due to her failure to comply with in-patient treatment. Mother continued to abuse substances until she entered the Lake Geauga Oak House Center, an in-patient treatment facility on or about July 24, 2006. LCCS has learned that mother has recently indicated to family members that she expects to remain in this treatment facility for at least six months. LCCS has concern that although mother is currently engaged in substance abuse treatment, mother waited five months to engage herself in this treatment after her most recent relapse. Further, mother has mental health issues that LCCS continues to have concerns about. Mother has been hospitalized twice in the past year and mother has indicated to LCCS on at least two occasions that there are points that she "feels like taking her life." LCCS is unaware if mother is currently in mental health counseling. Additionally, mother failed to consistently visit the children after her relapse into drug use. Finally, mother currently lacks stable housing and has no employment at this time.

Neither father, Mr. Weekly nor Mr. Robinson has had contact with LCCS in the past six months. Neither father has indicated a willingness to work the case plan or maintained contact with their respective children.

Anthony is currently receiving counseling at Applewood and also is being tutored due to his special academic needs. Justin and Jasmine were receiving counseling, however the counseling has recently terminated due to their young ages. All three children are currently being appropriately provided for and their basic needs have consistently been met in their current placements. Anthony's paternal grandmother and step-grandfather have expressed a willingness and a desire to continue to provide for Anthony on a long-term basis and Sue Ellen and Ray Stewart have also indicted the same desire to continue to provide for Justin and Jasmine. LCCS has concerns that mother has failed to adequately address the concerns in the case plan, and both fathers have failed to work the case plan entirely. LCCS believes that these children are in need of stability and that none of the parents are able to provide this stability for the children at this time. Therefore, LCCS is seeking a grant of Legal Custody of Anthony Wahl to paternal grandmother and step-grandfather, Sandy and Leonard Price and a grant of Legal Custody of Justin and Jasmine Robinson to interested third parties, Sue Ellen and Ray Stewart.

8. By a preponderance of the evidence, the Court finds that the best interest of the children warrants the grant of Legal Custody of the minor children to interested third parties, Sue Ellen and Ray Stewart and the termination of Protective Supervision previously granted to Lorain County Children Services.

IT IS THEREFORE ORDERED that Legal Custody of Justin and Jasmine Robinson is granted

to interested third parties, Sue Ellen and Ray Stewart and the Protective Supervision previously granted to Lorain County Children Services is hereby terminated. Any future annual reviews in this matter are hereby cancelled.

An order of visitation/companionship with the children is set forth as follows:

Mother, Jennifer Wahl will visit with children (Anthony Wahl, Justin + Jasmine Robinson) once a month, for at least 4 hrs. at either Maternal grandparents home (Debbie + Richard Wahl) or Maternal aunt + uncle's (Phil + Lisa Kuchta's) home. Visits will be supervised and caregivers will be given at least a week's notice in advance. Parties are referred to Mediation through Family Divorce Services for other added arrangements.

*All other visitation shall be as agreed upon by the parties.

Both parents are jointly and severally responsible for all medical, dental, optical, psychological, and counseling expenses for the child. They shall provide the legal custodian with appropriate medical forms and cards necessary to utilize any insurance. If no medical insurance exists at this time but becomes available, the parents are ordered to immediately notify this Court in writing.

In the event of a change of address, no matter how brief such length of stay, the relocating party is ordered to promptly advise the Juvenile Clerk of courts in writing with name, case number and the new address.

Said placement and planning shall be under the terms of the case plan previously filed with the Court, which is approved by the Court and incorporated by reference to become a part of this Court order. For the purpose of case planning, case management and testimony, all agencies including school systems, counseling centers, medical facilities and/or drug and/or alcohol treatment centers, and counselors, health care professionals and/or staff shall cooperate in supplying requested information to Lorain County Children Services including but not limited to any and all treatment, counseling and/or assessment of any parent or past or potential custodian of the children.

In accordance with Amended Substitute House Bill 591, assistance of Lorain County Child Support Enforcement Agency is herewith ordered. I, the Obligee, do hereby request the full services of the Child Support Enforcement Agency, IV-D, for the collection and enforcement of this Court order. All child support orders are hereby redirected to the new Payees named herein:

PAYEE: Sue Ellen and Ray Stewart-123 Pemberton Drive, Elyria, OH 44035

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It is further ordered that school district of the legal custodians' residence shall bear the cost of educating said minor children.

All until further order of the Court.

Michele Silva Avedondo
MAGISTRATE

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The Court, having made an independent analysis of the findings of fact, the issues and the applicable law, hereby approves and adopts the magistrate's decision and orders it be entered as judgment as a matter of record. Pursuant to Jav. R. 40 (D)(7) and based upon the findings of fact herein the Court adopts the magistrate's decision as an interim order for 28 days from the date of this entry, immediate relief being justified. Thereafter, the interim order shall automatically become final unless timely objections are filed and the Court modifies or rejects this order.

A party shall not assign as error on appeal the court's adoption of any finding of fact of conclusion of law in that decision unless the party timely and specifically objects to that finding or conclusion as required by [Civ.R.53(E)(3) [Juv.R.40(E)(3)].

Date 10/5/02

JUDGE

APPROVED BY:

Marilyn Jeanette Davis
Lorain County Children Services

Guardian Ad Litem for the Child

Attorney for Lorain County Children Services

Jennifer L. Wahl
Mother

Jeanette M. Robinson
Attorney for Mother

Father

Attorney for Father

Sue Ellen Stewart

Ray Stewart

Other

Other

I hereby certify this to be a true and certified copy of the original on file in this office.

By _____ Deputy

2151.011 Juvenile court 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.

(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 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.

(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.

(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;

(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.

(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 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 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.

Amended by 128th General Assembly ch. 7, SB 79, § 1, eff. 10/6/2009.

2151.35 Procedure for hearings in juvenile court.

(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.

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.

(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.

Effective Date: 04-03-2003

2151.353 Orders of 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)(1) of section 2151.414 of the Revised Code that the permanent commitment is in the best interest of the child. If the court grants permanent custody under this division, the court, upon the request of any party, shall file a written opinion setting forth its findings of fact and conclusions of law in relation to the proceeding.

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

(a) The child, because of physical, mental, or psychological problems or needs, is unable to function in a family-like setting and must remain in residential or institutional care now and for the foreseeable future beyond the date of the dispositional hearing held pursuant to section 2151.35 of the Revised Code.

(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)(1) 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;

(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. In resolving the motion, the court shall not order an existing temporary custody order to continue beyond two years after the date on which the complaint was filed or the child was first placed into shelter care, whichever date is earlier, regardless of whether any extensions have been previously ordered pursuant to division (D) of section 2151.415 of the Revised Code.

(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 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.

Effective Date: 01-01-2001; 04-11-2005; 09-21-2006; 2008 HB7 04-07-2009

3107.033 Home study and report rules.

Not later than June 1, 2009, the director of job and family services shall adopt rules in accordance with Chapter 119. of the Revised Code specifying both of the following:

(A) The manner in which a home study is to be conducted and the information and documents to be included in a home study report, which shall include, pursuant to section 3107.034 of the Revised Code, a summary report of a search of the uniform statewide automated child welfare information system established in section 5101.13 of the Revised Code and a report of a check of a central registry of another state if a request for a check of a central registry of another state is required under division (A) of section 3107.034 of the Revised Code. The director shall ensure that rules adopted under this section align the home study content, time period, and process with any foster care home study content, time period, and process required by rules adopted under section 5103.03 of the Revised Code.

(B) A procedure under which a person whose application for adoption has been denied as a result of a search of the uniform statewide automated child welfare information system established in section 5101.13 of the Revised Code as part of the home study may appeal the denial to the agency that employed the assessor who filed the report.

Effective Date: 07-01-2000; 09-21-2006; 2008 SB163 08-14-2008; 2008 HB7 04-07-2009

3107.034 Search report to include abuse/neglect information.

(A) Whenever a prospective adoptive parent or a person eighteen years of age or older who resides with a prospective adoptive parent has resided in another state within the five-year period immediately prior to the date on which a criminal records check is requested for the person under division (A) of section 2151.86 of the Revised Code, the administrative director of an agency, or attorney, who arranges the adoption for the prospective adoptive parent shall request a check of the central registry of abuse and neglect of this state from the department of job and family services regarding the prospective adoptive parent or the person eighteen years of age or older who resides with the prospective adoptive parent to enable the agency or attorney to check any child abuse and neglect registry maintained by that other state. The administrative director or attorney shall make the request and shall review the results of the check before a final decree of adoption or an interlocutory order of adoption making the person an adoptive parent may be made. Information received pursuant to the request shall be considered for purposes of this chapter as if it were a summary report required under section 3107.033 of the Revised Code. The department of job and family services shall comply with any request to check the central registry that is similar to the request described in this division and that is received from any other state.

(B) The summary report of a search of the uniform statewide automated child welfare information system established in section 5101.13 of the Revised Code that is required under section 3107.033 of the Revised Code shall contain, if applicable, a chronological list of abuse and neglect determinations or allegations of which the person seeking to adopt is subject and in regards to which a public children services agency has done one of the following:

(1) Determined that abuse or neglect occurred;

(2) Initiated an investigation, and the investigation is ongoing;

(3) Initiated an investigation and the agency was unable to determine whether abuse or neglect occurred.

(C) The summary report required under section 3107.033 of the Revised Code shall not contain any of the following:

(1) An abuse and neglect determination of which the person seeking to adopt is subject and in regards to which a public children services agency determined that abuse or neglect did not occur;

(2) Information or reports the dissemination of which is prohibited by, or interferes with eligibility under, the "Child Abuse Prevention and Treatment Act," 88 Stat. 4 (1974), 42 U.S.C. 5101 et seq., as amended;

(3) The name of the person who or entity that made, or participated in the making of, the report of abuse or neglect.

(D)(1) An application for adoption may be denied based on a summary report containing the information described under division (B)(1) of this section, when considered within the totality of the circumstances. An application that is denied may be appealed using the procedure adopted pursuant to division (B) of section 3107.033 of the Revised Code.

(2) An application for adoption shall not be denied solely based on a summary report containing the information described under division (B)(2) or (3) of this section.

Effective Date: 09-21-2006; 2008 SB163 08-14-2008

3107.05 Contents of petition.

(A) A petition for adoption shall be prepared and filed according to the procedure for commencing an action under the Rules of Civil Procedure. It shall include the following information:

(1) The date and place of birth of the person to be adopted, if known;

(2) The name of the person to be adopted, if known;

(3) The name to be used for the person to be adopted;

(4) The date of placement of a minor and the name of the person placing the minor;

(5) The full name, age, place, and duration of residence of the petitioner;

(6) The marital status of the petitioner, including the date and place of marriage, if married;

(7) The relationship to the petitioner of the person to be adopted;

(8) That the petitioner has facilities and resources suitable to provide for the nurture and care of the person to be adopted, and that it is the desire of the petitioner to establish the relationship of parent and child with the person to be adopted;

(9) A description and estimate of value of all property of the person to be adopted;

(10) The name and address, if known, of any person whose consent to the adoption is required, but who has not consented, and facts that explain the lack of the consent normally required to the adoption.

(B) A certified copy of the birth certificate of the person to be adopted, if available, and ordinary copies of the required consents, and relinquishments of consents, if any, shall be filed with the clerk.

Effective Date: 01-01-1977

3107.06 Consent to adoption.

Unless consent is not required under section 3107.07 of the Revised Code, a petition to adopt a minor may be granted only if written consent to the adoption has been executed by all of the following:

(A) The mother of the minor;

(B) The father of the minor, if any of the following apply:

(1) The minor was conceived or born while the father was married to the mother;

(2) The minor is his child by adoption;

(3) Prior to the date the petition was filed, it was determined by a court proceeding pursuant to sections 3111.01 to 3111.18 of the Revised Code, a court proceeding in another state, an administrative proceeding pursuant to sections 3111.38 to 3111.54 of the Revised Code, or an administrative proceeding in another state that he has a parent and child relationship with the minor;

(4) He acknowledged paternity of the child and that acknowledgment has become final pursuant to section 2151.232, 3111.25, or 3111.821 of the Revised Code.

(C) The putative father of the minor;

(D) Any person or agency having permanent custody of the minor or authorized by court order to consent;

(E) The minor, if more than twelve years of age, unless the court, finding that it is in the best interest of the minor, determines that the minor's consent is not required.

Effective Date: 03-22-2001; 2008 HB7 04-07-2009

3107.07 Consent unnecessary.

Consent to adoption is not required of any of the following:

(A) A parent of a minor, when it is alleged in the adoption petition and the court , after proper service of notice and hearing, finds by clear and convincing evidence that the parent has failed without justifiable cause to provide more than de minimis contact with the minor or to provide for the maintenance and support of the minor as required by law or judicial decree for a period of at least one year immediately preceding either the filing of the adoption petition or the placement of the minor in the home of the petitioner.

(B) The putative father of a minor if either of the following applies:

(1) The putative father fails to register as the minor's putative father with the putative father registry established under section 3107.062 of the Revised Code not later than thirty days after the minor's birth;

(2) The court finds, after proper service of notice and hearing, that any of the following are the case:

(a) The putative father is not the father of the minor;

(b) The putative father has willfully abandoned or failed to care for and support the minor;

(c) The putative father has willfully abandoned the mother of the minor during her pregnancy and up to the time of her surrender of the minor, or the minor's placement in the home of the petitioner, whichever occurs first.

(C) Except as provided in section 3107.071 of the Revised Code, a parent who has entered into a voluntary permanent custody surrender agreement under division (B) of section 5103.15 of the Revised Code;

(D) A parent whose parental rights have been terminated by order of a juvenile court under Chapter 2151. of the Revised Code;

(E) A parent who is married to the petitioner and supports the adoption;

(F) The father, or putative father, of a minor if the minor is conceived as the result of the commission of rape by the father or putative father and the father or putative father is convicted of or pleads guilty to the commission of that offense. As used in this division, "rape" means a violation of section 2907.02 of the Revised Code or a similar law of another state.

(G) A legal guardian or guardian ad litem of a parent judicially declared incompetent in a separate court proceeding who has failed to respond in writing to a request for consent, for a period of thirty days, or who, after examination of the written reasons for withholding consent, is found by the court to be withholding consent unreasonably;

(H) Any legal guardian or lawful custodian of the person to be adopted, other than a parent, who has failed to respond in writing to a request for consent, for a period of thirty days, or who, after examination of the written reasons for withholding consent, is found by the court to be withholding consent unreasonably;

(I) The spouse of the person to be adopted, if the failure of the spouse to consent to the adoption is found by the court to be by reason of prolonged unexplained absence, unavailability, incapacity, or circumstances that make it impossible or unreasonably difficult to obtain the consent or refusal of the spouse;

(J) Any parent, legal guardian, or other lawful custodian in a foreign country, if the person to be adopted has been released for adoption pursuant to the laws of the country in which the person resides and the release of such person is in a form that satisfies the requirements of the immigration and naturalization service of the United States department of justice for purposes of immigration to the United States pursuant to section 101(b)(1)(F) of the "Immigration and Nationality Act," 75 Stat. 650 (1961), 8 U.S.C. 1101(b)(1)(F), as amended or reenacted.

(K) Except as provided in divisions (G) and (H) of this section, a juvenile court, agency, or person given notice of the petition pursuant to division (A)(1) of section 3107.11 of the Revised Code that fails to file an objection to the petition within fourteen days after proof is filed pursuant to division (B) of that section that the notice was given;

(L) Any guardian, custodian, or other party who has temporary custody of the child.

Effective Date: 10-29-1999; 2008 HB7 04-07-2009

5103.16 Certification reguired before associations and institutions may accept temporary or permanent custody of child.

(A) Except as otherwise provided in this section, no child shall be placed or accepted for placement under any written or oral agreement or understanding that transfers or surrenders the legal rights, powers, or duties of the legal parent, parents, or guardian of the child into the temporary or permanent custody of any association or institution that is not certified by the department of job and family services under section 5103.03 of the Revised Code, without the written consent of the office in the department that oversees the interstate compact for placement of children established under section 5103.20 of the Revised Code or the interstate compact on the placement of children established under section 5103.23 of the Revised Code, as applicable, or by a commitment of a juvenile court, or by a commitment of a probate court as provided in this section. A child may be placed temporarily without written consent or court commitment with persons related by blood or marriage or in a legally licensed boarding home.

(B)(1) Associations and institutions certified under section 5103.03 of the Revised Code for the purpose of placing children in free foster homes or for legal adoption shall keep a record of the temporary and permanent surrenders of children. This record shall be available for separate statistics, which shall include a copy of an official birth record and all information concerning the social, mental, and medical history of the children that will aid in an intelligent disposition of the children in case that becomes necessary because the parents or guardians fail or are unable to reassume custody.

(2) No child placed on a temporary surrender with an association or institution shall be placed permanently in a foster home or for legal adoption. All surrendered children who are placed permanently in foster homes or for adoption shall have been permanently surrendered, and a copy of the permanent surrender shall be a part of the separate record kept by the association or institution.

(C) Any agreement or understanding to transfer or surrender the legal rights, powers, or duties of the legal parent or parents and place a child with a person seeking to adopt the child under this section shall be construed to contain a promise by the person seeking to adopt the child to pay the expenses listed in divisions (C)(1), (2), and (4) of section 3107.055 of the Revised Code and, if the person seeking to adopt the child refuses to accept placement of the child, to pay the temporary costs of routine maintenance and medical care for the child in a hospital, foster home, or other

appropriate place for up to thirty days or until other custody is established for the child, as provided by law, whichever is less.

(D) No child shall be placed or received for adoption or with intent to adopt unless placement is made by a public children services agency, an institution or association that is certified by the department of job and family services under section 5103.03 of the Revised Code to place children for adoption, or custodians in another state or foreign country, or unless all of the following criteria are met:

(1) Prior to the placement and receiving of the child, the parent or parents of the child personally have applied to, and appeared before, the probate court of the county in which the parent or parents reside, or in which the person seeking to adopt the child resides, for approval of the proposed placement specified in the application and have signed and filed with the court a written statement showing that the parent or parents are aware of their right to contest the decree of adoption subject to the limitations of section 3107.16 of the Revised Code;

(2) The court ordered an independent home study of the proposed placement to be conducted as provided in section 3107.031 of the Revised Code, and after completion of the home study, the court determined that the proposed placement is in the best interest of the child;

(3) The court has approved of record the proposed placement.

In determining whether a custodian has authority to place children for adoption under the laws of a foreign country, the probate court shall determine whether the child has been released for adoption pursuant to the laws of the country in which the child resides, and if the release is in a form that satisfies the requirements of the immigration and naturalization service of the United States department of justice for purposes of immigration to this country pursuant to section 101(b)(1)(F) of the "Immigration and Nationality Act," 75 Stat. 650 (1961), 8 U.S.C. 1101 (b)(1)(F), as amended or reenacted.

If the parent or parents of the child are deceased or have abandoned the child, as determined under division (A) of section 3107.07 of the Revised Code, the application for approval of the proposed adoptive placement may be brought by the relative seeking to adopt the child, or by the department, board, or organization not otherwise having legal authority to place the orphaned or abandoned child for adoption, but having legal custody of the orphaned or abandoned child, in the probate court of the county in which the child is a resident, or in which the department, board, or organization is located, or where the person or persons with whom the child is to be placed reside. Unless the parent, parents, or guardian of the person of the child personally have appeared before

the court and applied for approval of the placement, notice of the hearing on the application shall be served on the parent, parents, or guardian.

The consent to placement, surrender, or adoption executed by a minor parent before a judge of the probate court or an authorized deputy or referee of the court, whether executed within or outside the confines of the court, is as valid as though executed by an adult. A consent given as above before an employee of a children services agency that is licensed as provided by law, is equally effective, if the consent also is accompanied by an affidavit executed by the witnessing employee or employees to the effect that the legal rights of the parents have been fully explained to the parents, prior to the execution of any consent, and that the action was done after the birth of the child.

If the court approves a placement, the prospective adoptive parent with whom the child is placed has care, custody, and control of the child pending further order of the court.

(E) This section does not apply to an adoption by a stepparent, a grandparent, or a guardian.

Effective Date: 07-01-2000; 09-21-2006; 2008 HB214 05-14-2008; 2008 SB163 08-14-2008

5101:2-42-05 Selection of a placement setting.

(A) When a child cannot remain in his or her own home, the public children services agency (PCSA) or private child placing agency (PCPA) shall explore both maternal and paternal relatives regarding their willingness and ability to assume temporary custody or guardianship of the child. Unless it is not in the child's best interest, the PCSA or PCPA shall explore placement with a non-custodial parent before considering other relatives.

(B) If a suitable relative is not available to assume temporary custody or guardianship, the PCSA or PCPA shall explore placement with a suitable nonrelative who has a relationship with the child and/or family.

(C) The PCSA or PCPA shall only place children in substitute care settings that are licensed, certified or approved by the agency of the state having responsibility for licensing, certifying or approving facilities of the type in which the child is placed or in homes of relatives or nonrelatives approved by the PCSA or PCPA in accordance with rule 5101:2-42-18 of the Administrative Code.

(D) The PCSA or PCPA shall attempt to place siblings in the same home unless it is not in the child's or siblings' best interest.

(E) When the PCSA or PCPA has temporary custody of a child, it shall select a substitute care setting that is consistent with the best interest and special needs of the child and that meets the following criteria:

(1) Is considered the least restrictive, most family-like setting available to meet the child's emotional and physical needs.

(2) Is in close proximity to the home from which the child was removed or the home in which the child will be permanently placed.

(3) Is in close proximity to the school in which the child was enrolled prior to placement.

(4) Is designed to enhance the likelihood of achieving permanency plan goals.

(5) Is able to provide a safe environment for the child.

(F) The following allowable settings are listed in order from least restrictive to most restrictive:

(1) The home of a suitable relative as defined in rule 5101:2-1-01 of the Administrative Code.

(2) The home of a suitable nonrelative as defined in rule 5101:2-1-01 of the Administrative Code.

(3) A foster home.

(4) An independent living arrangement, as appropriate for the child.

(5) A group home.

(6) A maternity home.

(7) An emergency shelter care facility.

(8) A children's residential center.

(9) A medical or educational facility.

(G) For a child in the permanent custody of a PCSA or PCPA, an adoptive placement shall be considered the least restrictive setting. When selecting an adoptive placement, the agency shall follow rule 5101:2-48-16 of the Administrative Code.

(H) Only when a PCSA or PCPA determines that a child's mental, physical or emotional needs indicate that a less-restrictive setting cannot address his or her needs, the PCSA or PCPA may place the child in a more restrictive setting.

(I) This rule shall not contravene the placement of a child in a secure facility or other specified setting by law enforcement or any court of jurisdiction.

(J) The PCSA or PCPA shall document the following in the child's case plan:

(1) Educational, medical, psychological, and social information used by the agency to select a placement setting.

(2) How the setting constitutes a safe and appropriate placement.

(3) Why less-restrictive placements, if applicable, were not utilized.

(K) The above provisions of this rule do not apply to a permanent surrender agreement executed in the child's best interest by a PCPA in accordance with division (B)(2) of section 5103.15 of the Revised Code for a child less than six months of age for the purpose of adoption on the date of the execution of the agreement.

(L) All placement activities shall be in compliance with rules 5101:2-42-18.1 and 5101:2-48-13 of the Administrative Code and 42 U.S.C. sections 622(b)(9), 671(a)(18), 674

(d) and 1996b (collectively, the Multiethnic Placement Act or MEPA as in effect January 1, 1997).

Effective: 12/19/2008

R.C. 119.032 review dates: 08/14/2008 and 12/01/2013

Promulgated Under: 119.03

Statutory Authority: 5103.03, 5153.16

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