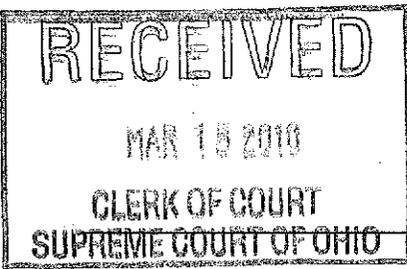


ORIGINAL

IN THE SUPREME COURT OF OHIO

IN RE: ADOPTION OF JAS :
 ADOPTION OF JNS :

Case No. 09-1695
 09-1980



On Appeal from the Lorain County
Court of Appeals, Ninth Appellate
District

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

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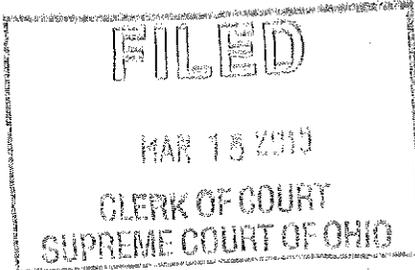


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ARGUMENT IN REPLY

Appellee's overall theme relative to her Merit Brief filed on March 1, 2010, is the fundamental rights of parents. Although parents do have fundamental rights, Appellee ignores the fact that parents, along with rights, also have duties. Appellee further asserts that the crown jewel in the General Assemblies' arsenal is R.C. 5103.16 (aka the "placement" statute). Pg. 4 of Appellee's merit brief. Appellee's assertion is misplaced. Appellant asserts that the crown jewel in any situation involving children are the children's best interests. Appellee asserts that if this Court comes to the results that Appellants and Amici claim, that it would, in fact, endanger children. Appellee ignores the fact that parents are provided the opportunity under judicial scrutiny via the juvenile court to follow a case plan in order to reunite the children with their parents. R.C. 2151.412. R.C. 2151.412(F)(1) states:

"All cases for children in temporary custody shall have the following general goals...

(F)(1)(b) to eliminate with all due speed the need for the out-of-home placement so that the child can safely return home."

The statute further goes on at subsection (G):

"The agency shall be guided by the following general priorities:...

(G)(2) If both parents of the child have abandoned the child, have relinquished custody of the child, have become incapable of supporting or caring for the child, even with reasonable assistance, or have a detrimental effect on the health, safety and best interests of the child, the child should be placed in the legal custody of a suitable member of the child's extended family...or

(G)(3) If a child described in division E(2) of this section has no suitable member of the child's extended family to accept legal custody, the child should be placed in the legal custody of a suitable non-relative who shall be made party to the proceedings after being given legal custody of the child. "

I. Fundamental Rights:

Appellee wishes for this court to believe that parents, because of their fundamental rights,

can choose to allow that right to lapse forever while ignoring their duties such as support and the privileges of reasonable visitation while perhaps never having followed the case plan for reunification. Appellee asserts that if applied correctly, the placement statute preserves the right of biological parents to retain a relationship with their children even if the children remain in the legal custody of others. Pg. 4, 5 of Appellee's Brief.

Appellant wholeheartedly disagrees. The retention of jurisdiction by the juvenile court pursuant to R.C. 2151.353(E)(1) preserves said right. However, as stated above, how long must the preservation of rights last if parents refuse to exercise their rights and do what is necessary, with the help of the juvenile court, to reunite themselves with their children? By reversing the Ninth District Court of Appeal's decision below, this Court has the opportunity to allow the process to move to the next phase of the adoption process and prove that the parents' consent is not required. It is at that phase where the parents have the opportunity to show the probate court that they have actually exercised their fundamental rights.

II. Placement:

Appellee asserts at pg. 16 that nothing in R.C. 5103.16 requires children to be physically removed from a home and returned to accomplish placement. Appellee's argument is misplaced. Appellee ignores the fact that because the grant of legal custody was under the jurisdiction of the juvenile court, a legal custodian would somehow have to give up legal custody and either request that the public Children's Services Agency take back the children or the legal custodians would have to place the child back with the natural parents. This would create a legal nightmare in that legal custodians would either have the children removed into the public agencies realm and, perhaps, placed now with a family member which is the requirement of R.C. 2151.412(2) or place the children back in the home of the natural parents where the parent or parents may have

not been exercising their residual rights. The above two options may not be in the best interests of the children. The fact is that R.C. 5103.16(D) places children in a legal limbo and under Appellee's theory, the children would never be able to have their best interests determined.

III. R.C. 5103.16 is not the most important step in the adoption process:

Appellee asserts that 5103.16(D) is the most important step in the adoption process. Appellee's overall theme is that this is the case because parents have fundamental rights in regards to their children. Appellee further asserts that in situations with legal custody, parents retain residual rights. Parents residual rights include, but are not limited to, 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). Nowhere in the residual rights does it include the right for placement of adoption. Appellee asserts that 5103.16(D) could be the final wake-up call in the process for parents. Unfortunately, that final wake-up call, which Appellee asserts should last for the entire period of the child or children's minority, may not be in the best interests of the minor child or children. Natural parents are afforded opportunities to exercise their residual rights through the continuing jurisdiction of the juvenile court. This court has the opportunity to afford children, who are in the permanent legal limbo of legal custodians, having been placed there through judicial oversight, to allow legal custodians the opportunity to proceed to the second step of the adoption process, i.e: consent to adopt where natural parents can assert their rights.

Furthermore, this Court has the opportunity to allow the probate court, i.e: judicial oversight, to determine in a case-by-case basis the necessity of consent and the most important part of the process, the children's best interests. Legal custodians are charged with the permanent care of children only after a juvenile court determines that a natural parent cannot

care for the health, safety and welfare of their natural issue.

Juvenile courts provide an ample opportunity for natural parents to assert the residual rights that they retain in order to regain the fundamental rights biological parents have in the care, custody and management of their child or children. Children have the right to have some permanency that legal custody does not afford. Natural parents of children who do not exercise their residual rights afforded them (where the jurisdiction of the juvenile court is replete with judicial oversight) should not have the ultimate veto power pursuant to the least important part of the three-prong adoption process where children have been in the physical care, custody and control of the legal custodians.

CONCLUSION

Accordingly, this Court should reverse the Court of Appeals' decision.

Respectfully submitted,



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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 Walker, Appellee Christopher Robinson, c/o 316 9th Street, Elyria, Ohio, 44035, Michael R. Voorhees, Counsel for Amicus Curiae, American Academy of Adoption Attorneys, 11159 Kenwood Road, Cincinnati, Ohio 45242, and Richard Hempfling, Counsel for Amicus Curiae, Ohio Adoption Law Roundtable, 15 W. Fourth Street, Suite 100, Dayton, Ohio 45402, this 12th day of March, 2010.



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

APPENDIX

2151.412 Case plans.

(A) Each public children services agency and private child placing agency shall prepare and maintain a case plan for any child to whom the agency is providing services and to whom any of the following applies:

- (1) The agency filed a complaint pursuant to section 2151.27 of the Revised Code alleging that the child is an abused, neglected, or dependent child;
- (2) The agency has temporary or permanent custody of the child;
- (3) The child is living at home subject to an order for protective supervision;
- (4) The child is in a planned permanent living arrangement.

Except as provided by division (A)(2) of section 5103.153 of the Revised Code, a private child placing agency providing services to a child who is the subject of a voluntary permanent custody surrender agreement entered into under division (B)(2) of section 5103.15 of the Revised Code is not required to prepare and maintain a case plan for that child.

(B)(1) The director of job and family services shall adopt rules pursuant to Chapter 119. of the Revised Code setting forth the content and format of case plans required by division (A) of this section and establishing procedures for developing, implementing, and changing the case plans. The rules shall at a minimum comply with the requirements of Title IV-E of the "Social Security Act," 94 Stat. 501, 671, as amended.

(2) The director of job and family services shall adopt rules pursuant to Chapter 119. of the Revised Code requiring public children services agencies and private child placing agencies to maintain case plans for children and their families who are receiving services in their homes from the agencies and for whom case plans are not required by division (A) of this section. The agencies shall maintain case plans as required by those rules; however, the case plans shall not be subject to any other provision of this section except as specifically required by the rules.

(C) Each public children services agency and private child placing agency that is required by division (A) of this section to maintain a case plan shall file the case plan with the court prior to the child's adjudicatory hearing but no later than thirty days after the earlier of the date on which the complaint in the case was filed or the child was first placed into shelter care. If the agency does not have sufficient information prior to the adjudicatory hearing to complete any part of the case plan, the agency shall specify in the case plan the additional information necessary to complete each part of the case plan and the steps that will be taken to obtain that information. All parts of the case

plan shall be completed by the earlier of thirty days after the adjudicatory hearing or the date of the dispositional hearing for the child.

(D) Any agency that is required by division (A) of this section to prepare a case plan shall attempt to obtain an agreement among all parties, including, but not limited to, the parents, guardian, or custodian of the child and the guardian ad litem of the child regarding the content of the case plan. If all parties agree to the content of the case plan and the court approves it, the court shall journalize it as part of its dispositional order. If the agency cannot obtain an agreement upon the contents of the case plan or the court does not approve it, the parties shall present evidence on the contents of the case plan at the dispositional hearing. The court, based upon the evidence presented at the dispositional hearing and the best interest of the child, shall determine the contents of the case plan and journalize it as part of the dispositional order for the child.

(E)(1) All parties, including the parents, guardian, or custodian of the child, are bound by the terms of the journalized case plan. A party that fails to comply with the terms of the journalized case plan may be held in contempt of court.

(2) Any party may propose a change to a substantive part of the case plan, including, but not limited to, the child's placement and the visitation rights of any party. A party proposing a change to the case plan shall file the proposed change with the court and give notice of the proposed change in writing before the end of the day after the day of filing it to all parties and the child's guardian ad litem. All parties and the guardian ad litem shall have seven days from the date the notice is sent to object to and request a hearing on the proposed change.

(a) If it receives a timely request for a hearing, the court shall schedule a hearing pursuant to section 2151.417 of the Revised Code 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. The agency may implement the proposed change after the hearing, if the court approves it. The agency shall not implement the proposed change unless it is approved by the court.

(b) If it does not receive a timely request for a hearing, the court may approve the proposed change without a hearing. If the court approves the proposed change without a hearing, it shall journalize the case plan with the change not later than fourteen days after the change is filed with the court. If the court does not approve the proposed change to the case plan, it shall schedule a hearing to be held pursuant to section 2151.417 of the Revised Code no later than thirty days after the expiration of the fourteen-day time period and give notice of the date, time, and location of the hearing to all parties and the guardian ad litem of the child. If, despite the requirements of division (E)(2) of this section, the court neither approves and journalizes the proposed

change nor conducts a hearing, the agency may implement the proposed change not earlier than fifteen days after it is submitted to the court.

(3) If an agency has reasonable cause to believe that a child is suffering from illness or injury and is not receiving proper care and that an appropriate change in the child's case plan is necessary to prevent immediate or threatened physical or emotional harm, to believe that a child is in immediate danger from the child's surroundings and that an immediate change in the child's case plan is necessary to prevent immediate or threatened physical or emotional harm to the child, or to believe that a parent, guardian, custodian, or other member of the child's household has abused or neglected the child and that the child is in danger of immediate or threatened physical or emotional harm from that person unless the agency makes an appropriate change in the child's case plan, it may implement the change without prior agreement or a court hearing and, before the end of the next day after the change is made, give all parties, the guardian ad litem of the child, and the court notice of the change. Before the end of the third day after implementing the change in the case plan, the agency shall file a statement of the change with the court and give notice of the filing accompanied by a copy of the statement to all parties and the guardian ad litem. All parties and the guardian ad litem shall have ten days from the date the notice is sent to object to and request a hearing on the change.

(a) If it receives a timely request for a hearing, the court shall schedule a hearing pursuant to section 2151.417 of the Revised Code 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. The agency shall continue to administer the case plan with the change after the hearing, if the court approves the change. If the court does not approve the change, the court shall make appropriate changes to the case plan and shall journalize the case plan.

(b) If it does not receive a timely request for a hearing, the court may approve the change without a hearing. If the court approves the change without a hearing, it shall journalize the case plan with the change within fourteen days after receipt of the change. If the court does not approve the change to the case plan, it shall schedule a hearing under section 2151.417 of the Revised Code to be held no later than thirty days after the expiration of the fourteen-day time period and give notice of the date, time, and location of the hearing to all parties and the guardian ad litem of the child.

(F)(1) All case plans for children in temporary custody shall have the following general goals:

(a) Consistent with the best interest and special needs of the child, to achieve a safe out-of-home placement in the least restrictive, most family-like setting available and in

close proximity to the home from which the child was removed or the home in which the child will be permanently placed;

(b) To eliminate with all due speed the need for the out-of-home placement so that the child can safely return home.

(2) The director of job and family services shall adopt rules pursuant to Chapter 119. of the Revised Code setting forth the general goals of case plans for children subject to dispositional orders for protective supervision, a planned permanent living arrangement, or permanent custody.

(G) In the agency's development of a case plan and the court's review of the case plan, the child's health and safety shall be the paramount concern. The agency and the court shall be guided by the following general priorities:

(1) A child who is residing with or can be placed with the child's parents within a reasonable time should remain in their legal custody even if an order of protective supervision is required for a reasonable period of time;

(2) If both parents of the child have abandoned the child, have relinquished custody of the child, have become incapable of supporting or caring for the child even with reasonable assistance, or have a detrimental effect on the health, safety, and best interest of the child, the child should be placed in the legal custody of a suitable member of the child's extended family;

(3) If a child described in division (G)(2) of this section has no suitable member of the child's extended family to accept legal custody, the child should be placed in the legal custody of a suitable nonrelative who shall be made a party to the proceedings after being given legal custody of the child;

(4) If the child has no suitable member of the child's extended family to accept legal custody of the child and no suitable nonrelative is available to accept legal custody of the child and, if the child temporarily cannot or should not be placed with the child's parents, guardian, or custodian, the child should be placed in the temporary custody of a public children services agency or a private child placing agency;

(5) If the child cannot be placed with either of the child's parents within a reasonable period of time or should not be placed with either, if no suitable member of the child's extended family or suitable nonrelative is available to accept legal custody of the child, and if the agency has a reasonable expectation of placing the child for adoption, the child should be committed to the permanent custody of the public children services agency or private child placing agency;

(6) If the child is to be placed for adoption or foster care, the placement shall not be delayed or denied on the basis of the child's or adoptive or foster family's race, color, or national origin.

(H) The case plan for a child in temporary custody shall include at a minimum the following requirements if the child is or has been the victim of abuse or neglect or if the child witnessed the commission in the child's household of abuse or neglect against a sibling of the child, a parent of the child, or any other person in the child's household:

(1) A requirement that the child's parents, guardian, or custodian participate in mandatory counseling;

(2) A requirement that the child's parents, guardian, or custodian participate in any supportive services that are required by or provided pursuant to the child's case plan.

(I) A case plan may include, as a supplement, a plan for locating a permanent family placement. The supplement shall not be considered part of the case plan for purposes of division (D) of this section.

Effective Date: 07-01-2000