

ORIGINAL

IN THE SUPREME COURT OF OHIO

11-0387

IN THE MATTER OF:

D.H.

ON APPEAL FROM THE
GALLIA COUNTY
COURT OF APPEALS
4TH APPELLATE DISTRICT

CASE NO. 10CA2

MEMORANDUM IN SUPPORT OF JURISDICTION

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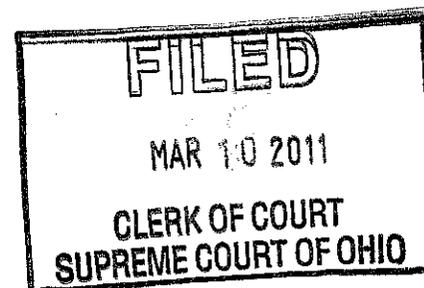


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- 1: DECISION AND JUDGMENT ENTRY in 4th District Court of Appeals Case No. 10CA2
- 2: **ENTRY** from Gallia County Juvenile Court dated February 5, 2010
- 3: DECISION AND JUDGMENT ENTRY IN 4TH District Court of Appeals Case No. 9CA11

This case is a case of great public and general interest and also has constitutional implications because it involves the question of whether or not a minority Natural Mother of a child has a constitutional and statutory right to custody of that child when she has been found to have resolved all issues that led to the taking of that child by childrens services in a dependency case.

In the case below, the child at issue was never even alleged to have been abused by the Mother and a dependency complaint was filed regarding this child based solely on allegations of abuse to an older child. The Mother was never afforded an full opportunity to comply with a case plan and thus Mother could not comply with a case plan and be reunified with her child. No full hearing was ever held in the case below and thus, Mother was never afforded the opportunity to tell her side of the story and explain that she was not even present - but rather, at work - when the alleged abuse occurred to the older child. The child has never been returned to Mother's custody.

In the first appeal, the Court of Appeals ordered the Juvenile Court to hold a hearing to determine whether or not Mother had resolved or sufficiently mitigated the issues that led to the taking of the child. The Court of Appeals ordered the Juvenile Court to order the return of the child to Mother if the Juvenile Court found that Mother had resolved or sufficiently mitigated the issues that led to the taking of the child. The Juvenile Court specifically found that Mother HAD resolved or sufficiently mitigated the issues that led to the taking of the child, but the Juvenile Court did not order the return of the child as required

by the Court of Appeals. Thus, Mother appealed a second time in an effort to convince the Court of Appeals to specifically order the Juvenile Court to comply with the Court of Appeals' order in the first appeal. Unfortunately, the second time around, the Court of Appeals rescinded its first opinion and did not require the Juvenile Court to order the return of the child to Mother's custody.

If the issue of whether or not a Mother who was never proven to have abused any of her children should have custody of her child is not an issue of great public and general interest, then there is no case that is of great public and general interest. Further, the issue of a parent's right to custody and care of their child clearly has constitutional implications.

STATEMENT OF FACTS AND STATEMENT OF THE CASE

This case has been before the 4th District Court of Appeals on two occasions to date. In both instances, the 4th District Court of Appeals reversed in part and granted relief to the Natural Mother Rosalyn Lewis Tucker (hereinafter "Mother"). However, in both prior appeals, the relief granted by the 4th District has been pyhrric in nature and has not accomplished the Mother's goal - the return of the child to her custody.

First, it should be noted that no Court has ever found that Mother was an unfit parent or that she was incapable of caring for her child, D.H. In fact, Mother has never had the opportunity to fully present her case to any Court - and this case has been going on for more than four (4) years.

To fully understand the circumstances of R.L.T. (“Mother”) and minor child D.H., we must return to and review the reason that the dependency Complaint concerning D.H. was initially filed. Mother is an African-American woman who has been gainfully employed throughout the pendency of this case. The Natural Father and his parents are Caucasian, as are all other attorneys and witnesses involved in this case. Mother had/has three children relevant to this case - K.L., D.H. and R.C. K.L. was born before D.H. Prior to the birth of D.H., K.L. was allegedly abused by A.H. (D.H.’s natural father) (“Father”) and by Mother. It is notable that the abuse apparently occurred while Mother was at work and D.H.’s father was babysitting K.L.

As a result of the alleged abuse, a dependency Complaint was filed and K.L. was taken from Mother’s custody and placed with K.L.’s paternal grandparents in Middleport, Meigs County, Ohio. As a result of the pending allegations of dependency concerning K.L., dependency cases were filed concerning D.H. and R.C. immediately upon the birth of those two younger children.

The allegations of dependency concerning K.L., D.H. and R.C. all arose as a result of the dependency case filed in relation to the alleged abuse of K.L. There has never been any allegation that D.H. or R.C. were directly abused or neglected by Mother. It should be noted that during the pendency of the K.L. dependency case, K.L.’s paternal grandparents were given temporary custody of K.L. While they had custody of K.L., they both went to the hospital and left K.L. at their riverside home with K.L.’s natural father. K.L.’s father was

negligent in watching over K.L. and K.L. wandered out the door, across the street and fell into the river. K.L. drowned in the river and Mother lost K.L. forever.

The original complaint involving D.H. (based entirely on the allegations of abuse and neglect concerning K.L.) was filed by Gallia County Children's Services (GCCS) on February 2, 2007 and temporary custody of D.H. was granted to GCCS on that day. With the consent of Mother and Father, D.H. was placed with his paternal grandparents ("grandparents") during the dependency Complaint in Gallia County. The sunset date on that Complaint came and went on February 2, 2008. However, GCCS did not file any motion(s) pursuant to *R.C. 2151.415* or *Juvenile Rule 14* to extend the temporary custody order.

Nevertheless, in violation of Mother's due process rights, the case continued for more than one year after the passing of the sunset date. Mother filed several motions and pleadings (before and after the eventual dismissal of the Complaint) in her various attempts to obtain the dismissal of the case and/or to obtain custody of D.H.

At this point, it is useful to review the timeline in this case, as noted below:

Feb 1, 2007	Birth of D.H.
Feb 2, 2007	Dependency Complaint re: D.H. filed in Gallia County (based entirely on allegations of abuse to D.H.'s older sibling, K.L.)
Feb 1, 2008	Passing of D.H. sunset date without motion for extension by GCCS
Aug 7, 2008	1st Motion to Dismiss filed by Mother
Feb 11, 2009	2nd Motion to Dismiss filed by Mother

Feb 13, 2009 **Hearing on Motions to Dismiss**

Feb 19, 2009 **Complaint for Custody filed by Grandparents in Monroe County**

Feb 20, 2009 **Dismissal of D.H. Complaint in Gallia County**

Feb 20, 2009 **Application for Writ of Habeas Corpus filed by Mother in Gallia
County**

Feb 20, 2009 **UCCJEA filed by Mother in Gallia County**

Feb 23, 2009 **Order from Monroe County granting temporary custody to
Grandparents**

Mar 4, 2009 **Hearing on Mother's Petition for Writ of Habeas Corpus in Gallia
County**

Mar 13, 2009 **Denial of Mother's Petition for Writ of Habeas Corpus in Gallia
County**

Mar 23, 2009 **Notice of Appeal filed in Appeal No. 09CA11**

Nov 6, 2009 **Decision of 4th District Court of Appeals in 09CA11**

Jan 20, 2010 **Hearing ordered by 4th District Court of Appeals in 09CA11 held
in Gallia County Juvenile Court**

Feb 5, 2010 **Juvenile Court submits Entry finding that Mother resolved or
sufficiently mitigated issues that led to taking of D.H. but did not
order return of D.H. to Mother**

Mar 4, 2010 **Notice of Appeal served in 10CA2**

Jan 25, 2011 Decision of 4th District Court of Appeals in 10CA2

As noted above, on February 20, 2009, upon motion by the State of Ohio, the Gallia County Juvenile Court dismissed the dependency Complaint in relation to D.H. However, upon motion by Mother for emergency hearing by Mother, the Gallia County Juvenile Court filed a Journal Entry on February 27, 2009 scheduling an emergency hearing regarding Mother's motion on March 4, 2009 at 2:00 p.m.

The Gallia County Juvenile Court denied Mother's **AMENDED PETITION FOR WRIT OF HABEAS CORPUS FOR CUSTODY OF MINOR CHILD D.H.** based on the Monroe County Juvenile Court's **JUDGMENT ENTRY ON PETITIONER'S EX PARTE MOTION FOR TEMPORARY CUSTODY** (attached) filed on February 23, 2009.

However, Mother asserts and has asserted that the February 23, 2009 **JUDGMENT ENTRY** from Monroe County was and is not a valid order because of lack of jurisdiction over issues related to D.H. in Monroe County.

Upon the dismissal of the Complaint in Gallia County, the grandparents refused to return D.H. to the custody of his Mother in spite of her attempts to contact the grandparents. It should be noted that the grandparents live nearly three hours away from Mother, so merely driving up to visit and/or obtain physical custody of D.H. without prior contact between the parties confirming the meeting was untenable. Rather than complying with the requirements of Ohio law and the Supreme Court in *In re Young Children, supra*, the grandparents filed a Complaint for Temporary Custody in Monroe County in an attempt to change the venue of

the issues involving D.H. - and the grandparents were successful in their attempts to convince the Monroe County Juvenile Court to assume jurisdiction over D.H. - even though the grandparents' complaint was filed BEFORE the Gallia County D.H. case was dismissed. This change in venue has been severely detrimental to Mother's interest and her ability to defend her rights in this action.

Interestingly, Mother had another child during the pendency of D.H.'s case. That child's name is R.C. and she has a different father than D.H.. R.C. was born on September 24, 2008 during the pendency of the GCCS Complaint at issue in this case. It should be noted that GCCS was so unconcerned about Mother's allegedly deficient parenting skills that GCCS did not even file a dependency complaint until October 8, 2008 - 14 days after R.C.'s birth. GCCS workers slowly realized that allowing Mother to keep custody of the new baby, R.C. would eviscerate their allegations that D.H. was dependent and would essentially require the dismissal of D.H.'s case.

Therefore, GCCS filed the dependency Complaint regarding R.C. in Gallia County Juvenile Court Case No. 20083054. That Complaint was based entirely on the allegations of abuse/neglect to K.L. by Father and Mother - just as the Complaint regarding D.H. was based on the allegations of abuse/neglect to K.L. It should again be noted that there has never been any allegation that D.H. or R.C. were abused by Mother.

On October 30, 2008, Counsel for Mother negotiated an agreement with GCCS in which Mother would regain custody of R.C. with protective supervision by GCCS for a

period of three to six months. By all accounts, Mother did very well with R.C. and on April 1, 2009, Judge Powell entered a JOURNAL ENTRY (attached) dismissing the Complaint related to R.C.

Again, note that R.C. was returned to Mother's custody at the same time that the Trial Court was unwilling to order the return of D.H. to Mother's custody. If Mother was and is fit to have custody of R.C., Mother is also fit to have custody of D.H.

PROPOSITIONS OF LAW AND ARGUMENT ON APPEAL

The Court of Appeals erred in ignoring the requirements of *In re Young Children* and refusing to order the Juvenile Court to require the return of D.H. to Mother after the Juvenile Court found that Mother had resolved or sufficiently mitigated the issues which led to the taking of the child.

Mother's first appeal primarily involved her Complaint that the Gallia County Juvenile Court dismissed the dependency complaint regarding D.H. without ordering the return of D.H. to Mother's custody as per *In re Young Children* (1996), 76 Ohio St.3d 632, 669 N.E.2d 1140, 1996-Ohio-45, in which the Supreme Court of Ohio stated:

Where the original problems have been resolved or sufficiently mitigated, courts may not make further dispositional orders based on the original complaint. . . we reverse the dismissal of this case and remand to the trial court for further proceedings to determine whether the problems that led to the filing of the. . . complaint had been resolved or sufficiently mitigated . . . If these problems had been resolved or mitigated, the court should terminate the temporary custody order and release the child to his mother.

In Court of Appeals Case No. 09CA11, the 4th District Court of Appeals stated - in accord with *In re Young Children*:

... we remand the matter to the juvenile court for further proceedings to determine whether the problems that led to the filing of the February 2, 2007, complaint had been resolved or sufficiently mitigated as of February 2, 2008, when the temporary custody order would have otherwise terminated. If these problems had been resolved or mitigated, the juvenile court should journalize its findings in that regard and order the release of D.H. to R.L.T.

That decision of the 4th District Court of Appeals was EXACTLY in accordance with the law of the State of Ohio and the case was remanded to the Gallia County Juvenile Court for the Court to hold a hearing to determine whether or not Mother had resolved or sufficiently mitigated the problems that led to the taking of the D.H.

The Gallia County Juvenile Court held the hearing, took testimony from several witnesses - including the case worker from Gallia County Childrens Services - and the Juvenile Court determined that Mother HAD resolved or sufficiently mitigated the problems that led to the taking of D.H. and the Juvenile Court dismissed the dependency case involving D.H. However, the Juvenile Court did not order the return of the child to D.H. as required by the order of the Court of Appeals in Case No. 09CA11. Thus, Mother appealed the decision of the Gallia County Juvenile Court.

In that second appeal in Case No. 10CA2, the 4th District Court of Appeal ordered the dismissal of the dependency complaint (which had already been done twice by the Juvenile Court), but otherwise contradicted its order from Case No. 09CA11. In Case No. 10CA2, the 4th District stated:

And although we acknowledge that our remand instructions might be read to imply otherwise, once the juvenile court properly dismissed the

complaint, it did not have to issue an explicit order to return D.H. to Mother's custody.

With all due respect to the 4th District Court of Appeals, their order in Case No. 09CA11 was EXPLICIT in requiring the return of the child to the Mother upon the dismissal of the case. The opinion in 09CA11 could not be read to "imply" anything else - there is no room for interpretation in the statement, "the juvenile court should journalize its findings in that regard and order the release of D.H. to R.L.T."

Further, as noted above, an order releasing D.H. to the custody of Mother is the result required by the Ohio Supreme Court in *In re Young Children, supra*.

All Mother sought in her second appeal was for the 4th District Court of Appeals to order the Gallia County Juvenile Court to comply with the 4th District's order in Case No. 09CA11. However, in the second appeal in 10CA2, the Court of Appeals rescinded its prior order and denied Mother any real relief. The opinion of the 4th District Court of Appeals in 10CA2 does not comply with this Court's opinion in *In re Young Children, supra*.

Further, the 4th District's opinion in 10CA2 renders everything the Gallia County Juvenile Court did in between the two appeals to be moot, null and void. The 09CA11 opinion required the Juvenile Court to hold an extensive hearing, taking testimony from several witnesses, in order to determine whether or not Mother had resolved or sufficiently mitigated the issues which led to the taking of D.H. The Juvenile Court, the parties and three attorneys spent a significant amount of time preparing for, holding and attending that hearing and the Juvenile Court issued a ruling.

The 4th District's opinion in 10CA2 means that the hearing held by the Juvenile Court was completely pointless. The dependency complaint involving D.H. had already been dismissed prior to that hearing. No ruling by the Juvenile Court held on the issue of whether or not Mother had resolved or sufficiently mitigated the issues that led to the taking of D.H., the same result would have occurred - dismissal of the dependency complaint and Mother left without custody of D.H.

While Mother has not explicitly made a constitutional argument in this case, “[t]he fundamental liberty interest of natural parents in the care, custody, and management of their child is protected by the Fourteenth Amendment, and does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State.” *Santosky v. Kramer* (1982), 455 U.S. 745, 102 S.Ct. 1388 (U.S.N.Y.,1982). See also: *In re Adoption of Mays* (1986), 30 Ohio App.3d 195, 507 N.E.2d 453; *Troxel v. Granville* (2000), 530 U.S. 57, 120 S.Ct. 2054 (U.S.Wash.); *In re Hoffman* (2002), 97 Ohio St.3d 92, 776 N.E.2d 485; *In re Hockstok* (2002), 98 Ohio St.3d 238, 781 N.E.2d 971.

Thus, this entire case - from its inception to the present - has directly involved a substantial constitutional question. Namely, does a parent - in this case, the Natural Mother - have a fundamental liberty interest in the care, custody and management of her child even though she has lost temporary custody of the child.

It should be noted that Nina Bias, caseworker from Gallia County Childrens Services was the first witness to testify in the January 20, 2010 hearing. In the transcript, page 13,

lines 5 to 23, the following exchange occurred between Mother's Counsel and Ms. Bias (emphasis added):

Attorney Bright: If I, if I look here at the case plan it has things like Rosalyn will provide an appropriate person or persons who can provide emergency care when needed to care for the child. Rosalyn will provide supervision of the child to insure his safety during his playtime and at rest. Rosalyn will attend the parenting classes and you said she attended parenting classes. If she never had any custody rights whatsoever since the child was taken, protective supervision or anything else, how can she comply with the requirement to uh, protect the child, provide someone to supervise him, so on and so forth.

Nina Bias: No sir, she cannot.

Attorney Bright: **She never had an opportunity to comply with those portions. . .**

Nina Bias: **No sir.**

Attorney Bright: **. . . of the case plan, correct?**

Nina Bias: **No sir.**

Shortly thereafter, the testimony of Nina Bias turned to Mother's child that was born after D.H. That child was briefly taken into GCCS custody (again based only on the same previous allegations of abuse to K.L.) and was returned to Mother in a matter of weeks under protective supervision by GCCS - and the protective supervision was removed shortly thereafter. Concerning that situation, the following exchange occurred beginning at transcript Page 14, line 3 (emphasis added):

Attorney Bright: Does Rosalyn have a child born after [D.H.]?

Nina Bias: Yes sir.

Attorney Bright: Was a complaint filed on that case?

Nina Bias: No sir or yes sir.

Attorney Bright: And the child was taken from her custody, correct?

Nina Bias: Yes sir.

Attorney Bright: And returned to her. . .

Line 20:

COURT: The case was filed here in this Court from another baby and the child, **that child was returned to her?**

Nina Bias: Yes sir.

Attorney Bright: To your knowledge uh, is there any protective supervision or any services ordered in that case now or what do you know.

Nina Bias: No sir, it's closed.

Attorney Bright: It's closed. **So she has full custody rights of that child?**

Nina Bias: Yes sir.

Attorney Bright: Based on your knowledge of Rosalyn from your limited contact with her **would you have any reason to fear for [D.H.'s] safety if she was given custody of him?**

Nina Bias: No sir.

Attorney Bright: **Is it your opinion that Rosalyn is an unsuitable parent . . .?**

Page 15, Line 16:

Nina Bias: . . . No sir.

Gallia County Childrens Services (“GCCS”) was the agency which initially took all three children from Mother on three different occasions - each taking related to the alleged abuse to the oldest of the three children, K.L. Thus, GCCS is the party which is supposed to be most adverse to Mother in a dependency action. Yet, the only representative from GCCS to testify at the hearing in the Juvenile Court did not in any way testify that Mother should not have custody of D.H. According to GCCS caseworker Nina Bias, Mother never had the opportunity to fully comply with a case plan. Yet, D.H. remains with his paternal grandparents three hours from Mother - SOLELY because the paternal grandparents “forum shopped” their way into a ruling in their favor in a Court which was not involved in D.H.’s case for the first two years of the case’s existence.

CONCLUSION

A grave injustice has been accomplished in this case. An unmarried mother is the statutory custodian of a child under **R.C. § 3109.042**. Mother has not had custody of her child, D.H., since the day after he was born. Mother has never been accused of abusing D.H. Both Mother and D.H.’s father were accused of abusing K.L., but Mother was not present when the abuse occurred and D.H. was babysitting K.L. when the abuse occurred. Mother has since received the “seal of approval” from Gallia County Childrens Services in that she has been successfully parenting a child who was born after D.H. with no problems whatsoever.

During the whole time period that Mother has not had custody of D.H., D.H. has been placed with D.H.'s paternal grandparents three hours away from Mother's residence. D.H.'s father (who likely was the one person who could have caused the abuse to K.L. which led to the D.H. dependency complaint) has had daily access to and visitation with D.H. Mother has been left three (3) hours away with very low income, questionable transportation opportunities and a relationship with D.H.'s father that can best be described as antagonistic.

Mother prays that this Court would accept this case, allow her to file a full brief, reverse the decision of the Court of Appeals and order the return of D.H. to Mother's custody.

Respectfully submitted,



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Certificate of Service

The undersigned hereby certifies that on the 9th day of March, 2011, a copy of the foregoing **MEMORANDUM IN SUPPORT OF JURISDICTION** was served upon:

Jeff Adkins
Prosecuting Attorney
18 Locust Street
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Childrens Services



Robert W. Bright (0081612)
Attorney for Natural Mother R.L.T.

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
GALLIA COUNTY

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CLERK OF COURTS
GALLIA COUNTY, OHIO
Pat Story

11 JAN 25 PM 1:19

COURT OF APPEALS

In the Matter of:

Case No. 10CA2

D.H.

DECISION AND
JUDGMENT ENTRY

APPEARANCES:

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Jeff Adkins, GALLIA COUNTY PROSECUTOR, and Pat Story, GALLIA COUNTY ASSISTANT PROSECUTOR, Gallipolis, Ohio, for appellee Gallia County Children's Services.

Harsha, P.J.

{11} R.L.T. ("Mother") appeals the judgment of the Gallia County Court of Common Pleas, Juvenile Division, entered on remand from this Court, on a dependency complaint regarding her child D.H. In her first appeal, Mother argued that the juvenile court erred when it dismissed the complaint without making certain findings. Under the erroneous assumption that D.H. had been adjudicated a dependent child, we concluded that the juvenile court could not dismiss the complaint unless it first found that the problems that led Gallia County Children's Services ("GCCS") to file the complaint had been resolved or sufficiently mitigated by a certain date.¹ We remanded the matter and instructed the juvenile court that "[i]f these problems had been resolved or mitigated, the *** court should journalize its findings in that regard and order the release of D.H. to [Mother]." *In re D.H.*, Gallia App. No. 09CA11, 2009-Ohio-6009, at ¶55. If the court found that the problems were not resolved or sufficiently mitigated, we instructed the court to make an "appropriate statutory disposition[,] i.e. a R.C. 2151.353(A)

¹ We discuss the impact of this error in Section III of this opinion.

disposition. *Id.*

{¶12} Now Mother contends that the juvenile court failed to properly follow our instructions. On remand, the court found that the problems that led GCCS to file the complaint had been resolved or sufficiently mitigated, but then it merely noted that D.H. “should have been returned” to Mother and purported to transfer “pending” issues to the Monroe County Juvenile Court (which has also been exercising jurisdiction over the child). However, the juvenile court should have dismissed the dependency complaint. Then Mother would have regained custody of D.H. by operation of law for purposes of the Gallia County proceedings. Thus, we reverse the juvenile court’s judgment and remand so that the court can properly dismiss the case.

{¶13} Mother also claims that the juvenile court erred when it “de facto” denied her various post-remand motions for custody. She essentially contends that the court erred because it did not issue an order that explicitly ordered D.H. returned to her custody. However, as we already explained, when the court issues a proper dismissal entry on our second remand, Mother will regain custody of D.H. by operation of law.

{¶14} Next, Mother contends that the juvenile court erred when it “de facto” denied a Civ.R. 60(A) and 60(B) motion she filed post-remand to contest an April 2007 judgment entry. Assuming Mother can rely on these Civil Rules in this juvenile court proceeding, it is unclear from the record whether the complained of error in the entry constitutes a clerical mistake subject to correction under Civ.R. 60(A). Moreover, even if the entry constituted a “final judgment” for purposes of Civ.R. 60(B) and the court could grant Mother relief from it after the first appeal, the court never ruled on the motion and lost jurisdiction to do so once Mother filed this appeal. Thus we have no

judgment to consider.

{15} Finally, Mother complains that the court erred when it “de facto” denied a motion for reconsideration of and relief from the juvenile court’s judgment entered on remand. Again, assuming the propriety of Mother’s reliance on the Civil Rules in this instance, the “motion for reconsideration” is a nullity under those rules. Moreover, the juvenile court did not rule on the Civ.R. 60(B) motion and lost jurisdiction to do so once Mother filed this appeal. So again, there is no judgment on this issue for us to consider.

I. Facts

{16} Mother gave birth to D.H. on February 1, 2007. The next day, GCCS filed a dependency complaint in the Gallia County Court of Common Pleas, Juvenile Division, and the juvenile court granted GCCS an ex parte emergency temporary custody order. At the next hearing on February 5, 2007, the court continued emergency temporary custody with GCCS. Then the court set the matter for an adjudication hearing on March 12, 2007.

{17} On that date, the juvenile court issued an entry titled “DISPOSITIONAL HEARING.” The court checked a box on this form entry indicating that GCCS retained temporary custody of D.H. However, the record provides no indication that an adjudication hearing occurred before the court issued this entry and contains no entry in which the court actually adjudicated D.H. as a dependent child. On April 10, 2007, the court issued an entry that terminated GCCS’s custody and placed D.H. in the “[l]egal [c]ustody” of his paternal grandparents, K.H. and G.H. Then on February 20, 2009, the juvenile court dismissed the dependency complaint on the motion of Mother and the State. However, various orders of the Monroe County Juvenile Court have apparently

prevented Mother from regaining custody of D.H.

{¶18} Mother appealed the Gallia County Juvenile Court's dismissal and its rulings in various post-dismissal proceedings. We overruled most of her assignments of error, but sustained her second and fourth assignments of error, which involved the following issues:

In her second assignment of error, R.L.T. argues that the court erred in its February 20, 2009, journal entry of dismissal by failing to include a statement of the court's determination that the "original problems that led to the filing of the complaint were resolved or sufficiently mitigated" by R.L.T. and by failing to order D.H.'s return to her. In a motion premised on Civ. R. 60(A), R.L.T. asked the court to correct its journal entry to insert that language, but the court denied this request. * * * In denying the request for that language, the juvenile court characterized similar language appearing in *In [r]e Young Children* * * *, 76 Ohio St.3d 632, 1996-Ohio-45, 669 N.E.2d 1140, as "extraneous" and unnecessary. In her fourth assignment of error, R.L.T. argues that this language is not "extraneous" and thus must be included in the dismissal.

In re D.H., supra, at ¶28.

{¶19} In analyzing these arguments, we assumed that the juvenile court had in fact adjudicated D.H. as a dependent child prior to the dismissal. We also treated the February 2, 2007 ex parte emergency temporary custody order as a post-adjudication temporary custody order under R.C. 2151.353(A) for purposes of R.C. 2151.353(F). See *In re D.H.* at ¶34. We explained that under R.C. 2151.353(F), the February 2, 2007 order terminated after one year, but the juvenile court still retained jurisdiction to make an appropriate dispositional order. *In re D.H.* at ¶34.

{¶110} We further explained that once a juvenile court adjudicates a child as an abused, neglected, or dependent child, R.C. 2151.353(A) presents six alternative orders of disposition the court may enter. *In re D.H.* at ¶40, citing *In re R.A.*, 172 Ohio App.3d 53, 2007-Ohio-2997, 872 N.E.2d 1284, at ¶28. None of those alternative orders is a

simple dismissal. *In re D.H.* at ¶140, citing *In re R.A.* at ¶128. Moreover, we explained that in *In re Young Children*, the Supreme Court of Ohio found that a juvenile court erred when it concluded that it lost jurisdiction to enter a dispositional order after the sunset date in R.C. 2151.353(F) passed. There the Supreme Court held:

Accordingly, we reverse the dismissal of this case and remand to the trial court for further proceedings to determine whether the problems that led to the filing of the * * * complaint had been resolved or sufficiently mitigated as of [the date] when the extended temporary custody order would have otherwise terminated. If these problems had been resolved or mitigated, the court should terminate the temporary custody order and release the child to his mother. If they had not, the court has discretion to make a further dispositional order pursuant to R.C. 2151.415 and our holding above.

In re D.H. at ¶30, quoting *In re Young Children* at 639.

{¶11} Based on these authorities and our assumption that D.H. had been adjudicated a dependent child, we concluded that the juvenile court could not enter a simple dismissal in D.H.'s case. We held that "the juvenile court erred when it dismissed this case without journalizing an express determination concerning whether the issues that led to the filing of the dependency complaint were resolved or sufficiently mitigated * * *." *In re D.H.* at ¶144. We remanded the matter for the juvenile court to "determine whether the problems that led to the filing of the February 2, 2007, complaint had been resolved or sufficiently mitigated as of February 2, 2008, when the temporary custody order would have otherwise terminated." *In re D.H.* at ¶155. We instructed the court that "[i]f these problems had been resolved or mitigated, the juvenile court should journalize its findings in that regard and order the release of D.H. to R.L.T. If that is not the case, the court should make an appropriate statutory disposition[,] i.e. a R.C. 2151.353(A) disposition. *In re D.H.* at ¶155.

{¶112} After a hearing, the juvenile court issued the following judgment on February 5, 2010:

1. This Court finds that problems that led to the necessity of a temporary custody order had been resolved or sufficiently mitigated as of February 2nd, 2008;
2. The Court, having made the finding that those problems had been resolved or sufficiently mitigated finds hereby Orders [sic] that D.H. should have been returned to the mother;
3. However, in a March 20[th], 2009, hearing in the Monroe County Juvenile Court * * * the mother and father agreed that the Monroe County Juvenile Court had jurisdiction (see attached entry). The mother and father also agreed at that hearing that D.H. should be in the legal custody of the grandparents * * *;
4. This Court has communicated with the Monroe County Juvenile Court and believe[s] that it is [a] more convenient forum to litigate all the custodial and visitation issues of D.H.;
5. This Court transfers all custodial issues and visitation issues pending in the Gallia County Juvenile Court to the Monroe County Juvenile Court for further disposition based on that court being the more convenient forum and the fact all parties previously agreed to jurisdiction there.

{¶113} Mother appealed from this judgment before the juvenile court explicitly ruled on various post-remand motions the parties filed, including Mother's: 1.) motions for custody; 2.) Civ.R. 60(A) and 60(B) motion on the juvenile court's April 10, 2007 entry; and 3.) motion for reconsideration of and relief from the February 5, 2010 judgment.

II. Assignments of Error

{¶114} Mother assigns the following errors for our review:

1. The Juvenile Court erred in not complying with the Court of Appeals' order and *In re Young* by refusing to return the minor child to his Mother after the Juvenile Court properly found that the problems which led to the filing of the Complaint had been resolved or sufficiently mitigated.
2. The Juvenile Court erred in *de facto* denying the **NATURAL MOTHER [R.L.T.'S] MOTION FOR CUSTODY** and the related

NATURAL MOTHER [R.L.T.'S] AMENDED MOTION TO RESCIND, TERMINATE OR MODIFY THE PRIOR DISPOSITIONAL ORDER AND MOTION FOR LEGAL CUSTODY.

3. The Juvenile Court erred in *de facto* denying the **NATURAL MOTHER [R.L.T.'S] MOTION FOR RELIEF FROM JUDGMENT UNDER CIVIL RULE 60(A) AND 60(B)(5) RE: MARCH 12, 2007 DISPOSITIONAL ORDER AND MOTION TO RESCIND AND/OR TERMINATE PRIOR DISPOSITIONAL ORDER DATED MARCH 12, 2007.**
4. The Juvenile Court erred in *de facto* denying the **NATURAL MOTHER [R.L.T.'S] MOTION IN LIMINE TO EXCLUDE CERTAIN EVIDENCE AND DISCUSSION OF RELEVANT AND ADMISSIBLE EVIDENCE IN THIS CASE.**
5. The Juvenile Court erred in *de facto* denying the **NATURAL MOTHER [R.L.T.'S] MOTION FOR CUSTODY.**
6. The Juvenile Court erred in *de facto* denying the **NATURAL MOTHER [R.L.T.'S] MOTION FOR RELIEF FROM JUDGMENT UNDER CIVIL RULE 60(A) AND 60(B)(5) RE: APRIL 10, 2007 ENTRY.**
7. The Juvenile Court erred in *de facto* denying the **NATURAL MOTHER [R.L.T.'S] MOTION TO RECONSIDER AND MOTION FOR RELIEF FROM JUDGMENT UNDER CIVIL RULE 60(B)(5).**

Mother has withdrawn her third, fourth, and fifth assignments of error, so we will not address them.

III. Error in First Appeal

{¶15} Before we address the merits of this appeal, we must address an error in our decision on Mother's first appeal. In reviewing this case for a second time, we realized that the juvenile court never adjudicated D.H. as a dependent child. Thus, there appears to be no reason why the juvenile court could not enter a simple dismissal of the dependency complaint on February 20, 2009, particularly when both GCCS and Mother requested the dismissal. The court did not have to find that the problems that

led GCCS to file the complaint had been resolved or sufficiently mitigated, and Mother should have regained custody of D.H. by operation of law upon entry of the dismissal. Thus, we should have overruled Mother's second and fourth assignments of error – not sustained them and remanded for further proceedings.

{¶16} We notified the parties of this error and explained that we questioned the juvenile court's jurisdiction to follow our remand instructions and our own jurisdiction to consider the merits of the present appeal, e.g. if the court had concluded on remand that the problems that led GCCS to file the complaint had not been resolved or sufficiently mitigated, would the court have jurisdiction to enter a R.C. 2151.353(A) disposition as we instructed? Mother argued that she presumably waived any right to an adjudicatory hearing, and since none of the parties complained about the issue, she urged this Court to decide the merits of the present appeal. GCCS directed this court to our decision in *In re Nibert*, Gallia App. No. 04CA15, 2005-Ohio-2797 (per curiam). In that dependency case, the juvenile court granted GCCS' request for permanent custody of a child without first adjudicating the child as dependent. *Id.* at ¶17. We held the court erred in this regard. See *id.* at ¶¶17-19. However, we did not mention any jurisdictional problems with the permanent custody award, i.e. we did not find that the court lacked jurisdiction to issue the award in the absence of an adjudication. Instead we found that "[o]mitting the adjudicatory hearing from the process is a substantial deprivation of a parent's due process rights and renders the process fundamentally unfair." *Id.* at ¶18. Based on that holding, we conclude that while our prior decision and remand instructions to the juvenile court may have raised due process concerns, they did not create a jurisdictional problem that impacts the present appeal. In other words,

we are confronted with an error in the exercise of jurisdiction, not its absence.

{¶17} And although we recognize our error in deciding Mother's first appeal, we lack jurisdiction to alter our prior decision. None of the parties timely filed an App.R. 26(A) application for reconsideration of the decision or an appeal with the Supreme Court of Ohio. And because the time for appeal has expired, this Court may no longer exercise its inherent authority to sua sponte reconsider its own decision. See *State ex rel. LTV Steel Co. v. Gwin*, 64 Ohio St.3d 245, 249-250, 1992-Ohio-20, 594 N.E.2d 616 (per curiam). Our prior judgment is binding. See *id.* Accordingly, and with apologies to the trial court, we must proceed as if that judgment was correct and consider the merits of this appeal.

IV. Release of D.H. to Mother

{¶18} In her first assignment of error, Mother contends that the juvenile court failed to properly follow our remand instructions. After a hearing, the court found that the problems that led GCCS to file the dependency complaint had been resolved or sufficiently mitigated. But instead of dismissing the case, the Court noted that D.H. "should have been returned to [Mother]" and then transferred "all custodial issues and visitation issues" pending before it to the Monroe County Juvenile Court.

{¶19} Mother complains that the court should have ordered D.H.'s return to her. Mother also complains that the court erred when it found that she consented to jurisdiction in Monroe County and found that Monroe County was a "more convenient forum to litigate all the custodial and visitation issues of D.H." We agree that the juvenile court erred in its judgment entered on remand, but for different reasons than Mother suggests.

{¶120} Once the court concluded that the problems that led GCCS to file the complaint had been resolved or sufficiently mitigated, the court should have simply dismissed the dependency action, as it originally intended to do in February 2009. And although we acknowledge that our remand instructions might be read to imply otherwise, once the juvenile court properly dismissed the complaint, it did not have to issue an explicit order to return D.H. to Mother's custody. See *In re D.H.*, supra, at ¶¶44, 55. Mother would have been entitled to custody of D.H. for purposes of the Gallia County case by operation of law. Moreover, had the court properly dismissed the complaint, there would be no pending "custodial issues and visitation issues" for the court to transfer to the Monroe County Juvenile Court.

{¶121} Accordingly, we sustain Mother's first assignment of error. We reverse the juvenile court's February 5, 2010 judgment and remand with instructions for the court to dismiss the dependency action. And although the juvenile court need not explicitly order D.H.'s return to Mother in the dismissal entry, we encourage the court to include this language in the entry for the sake of clarity.

{¶122} However, we must stress that this decision will not have the impact Mother anticipates. From her arguments, it is apparent that Mother believes that if she obtains a favorable judgment in this case, that judgment will automatically supersede any orders the Monroe County Juvenile Court has issued regarding D.H. Even though Mother is clearly entitled to custody of D.H. for purposes of these Gallia County proceedings, that does not change the fact that the Monroe County Juvenile Court is presently exercising jurisdiction over the child and has apparently issued orders that impact her custody rights. Whether Mother can successfully challenge the Monroe County Juvenile Court's

jurisdiction to enter orders regarding D.H.'s custody is not a matter for this Court.

V. Post-Remand Motions for Custody

{123} In her second assignment of error, Mother argues that the juvenile court erred when it “de facto” denied her post-remand “Motion for Custody” and “Amended Motion to Rescind, Terminate or Modify the Prior Dispositional Order and Motion for Legal Custody.” Mother makes little effort to expound on this assignment of error aside from a statement that she “will primarily depend upon the arguments within this appeal and those motions rather than rehashing the entire argument here.” (Appellant's Br. 15.) However, the Rules of Appellate Procedure do not allow parties to incorporate by reference into their briefs arguments from other sources. *Thomas v. Vesper*, Ashland App. No. 02 COA 20, 2003-Ohio-1856, at ¶31. “Pursuant to App.R. 16, arguments are to be presented within the body of the merit brief. Therefore, we will disregard any argument not specifically and expressly addressed in the appellate briefs.” *Id.*, quoting *Willow Park Convalescent Home, Inc. v. Crestmont Cleveland Partnership*, Cuyahoga App. Nos. 81147 & 81259, 2003-Ohio-172, at ¶73.

{124} It is not clear from the record whether the juvenile court thought that it ruled on these motions when it issued the February 5, 2010 judgment entry or whether it considered these motions to be part of the pending “custodial issues and visitation issues” it purported to transfer to the Monroe County Juvenile Court. In any event, the real crux of Mother's second assignment of error is that the juvenile court erred because it did not issue an order that explicitly returned D.H. to her custody. In deciding Mother's first assignment of error, we already concluded that once the court dismisses this action, it is advisable, but not required, that the court issue an explicit order

returning D.H. to Mother. Because that result follows as a matter of law, we overrule Mother's second assignment of error.

VI. Motion for Relief from April 10, 2007 Judgment

{¶125} In her sixth assignment of error, Mother contends that the juvenile court erred when it "de facto" denied her post-remand "Motion for Relief from Judgment Under Civil Rule 60(A) and 60(B)(5) Re: April 10, 2007 Entry." In this motion, Mother argued that the juvenile court erred when it awarded the grandparents "legal custody" of D.H. in the April 2007 entry. Mother argues that the juvenile court made a clerical mistake subject to correction under Civ.R. 60(A) and meant to say that the grandparents had "temporary custody" of D.H. Alternatively, Mother argues that if the juvenile court actually intended to award the grandparents legal custody, it improperly did so, entitling her to relief from that judgment under Civ.R. 60(B). We will assume without deciding that Mother appropriately relies on these Civil Rules in this instance. See Juv.R. 1(A) (stating that the Ohio Rules of Juvenile Procedure "prescribe the procedure to be followed in all juvenile courts of this state in all proceedings coming within the jurisdiction of such courts * * *"); Juv.R. 45(B) ("If no procedure is specifically prescribed by these rules or local rule, the court shall proceed in any lawful manner not inconsistent with these rules or local rule.")

{¶126} Under Civ.R. 60(A) "[c]lerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time on its own initiative or on the motion of any party and after such notice, if any, as the court orders." During the pendency of an appeal, after the appeal is docketed with the appellate court, such mistakes can be corrected with leave of the

appellate court. Civ.R. 60(A). Here, the juvenile court never ruled on the Civ.R. 60(A) motion, nor has anyone sought our leave to correct any clerical mistake in the entry. Moreover, as Mother's argument seems to acknowledge, is not clear from the record whether the court's use of the phrase "legal custody" instead of "temporary custody" constitutes a pure clerical error subject to correction pursuant to Civ.R. 60(A). Thus we must reject this argument.

{¶127} Under Civ.R. 60(B), "[o]n motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order or proceeding" under certain circumstances. Again, the court never ruled on Mother's motion. Even if we assume that the April 10, 2007 entry constituted a "final judgment" and that the court had jurisdiction to grant Mother "relief" from it after the first appeal, the juvenile court clearly lost any jurisdiction it had to consider the motion once Mother filed this appeal. See *State ex rel. Rogers v. Marshall*, Scioto App. No. 05CA3004, 2008-Ohio-6341, at ¶30, citing *Howard v. Catholic Social Services of Cuyahoga Cty., Inc.*, 70 Ohio St.3d 141, 147, 1994-Ohio-219, 637 N.E.2d 890 (per curiam) ("[O]nce an appeal is filed, the trial court loses jurisdiction to consider a Civ.R. 60(B) motion unless the appellate court remands the case for the purpose of granting the trial court jurisdiction to decide the motion."). Mother never asked us to remand the case so that the juvenile court could consider this motion. Thus, there is no judgment for us to evaluate. Moreover, we fail to see any benefit Mother can obtain from challenging the April 10, 2007 entry at this juncture based on our resolution of her first assignment of error. We overrule Mother's sixth assignment of error.

VII. Motion for Reconsideration of and Relief from February 5, 2010 Judgment

{¶128} In her seventh assignment of error, Mother argues that the juvenile court erred when it “de facto” denied her “Motion to Reconsider and Motion for Relief from Judgment Under Civil Rule 60(B)(5).” This motion dealt with the court’s judgment entered on remand from this court, i.e. the February 5, 2010 judgment entry. We again assume without deciding that Mother appropriately relies on the Civil Rules in this instance. See Juv.R. 1(A); Juv.R. 45(B).

{¶129} Mother makes little effort to expound on this assignment of error and vaguely refers us to other arguments in her appellate brief. Regardless, the Civil Rules do not provide for motions for reconsideration of final judgments, so Mother’s motion for reconsideration is a nullity. *Pitts v. Ohio Dept. of Transp.* (1981), 67 Ohio St.2d 378, 379-380, 423 N.E.2d 1105. Moreover, the juvenile court lost jurisdiction to consider the Civ.R. 60(B) motion once Mother filed this appeal. See *State ex rel. Rogers*, supra, at ¶130, citing *Howard*, supra, at 147. Mother never asked us to remand the case so that the juvenile court could consider this motion. Thus, there is no judgment for us to evaluate. Finally, our resolution of Mother’s first assignment of error effectively renders her Civ.R. 60(B) motion moot. We overrule this assignment of error.

VIII. Conclusion

{¶130} We overrule Mother’s second, sixth, and seventh assignments of error. Mother withdrew her third, fourth, and fifth assignments of error, so we need not address them. We sustain Mother’s first assignment of error and remand this matter to the trial court with instructions to dismiss the dependency complaint.

JUDGMENT AFFIRMED IN PART,
REVERSED IN PART,
AND CAUSE REMANDED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED IN PART AND REVERSED IN PART and that the CAUSE IS REMANDED. Appellant and Appellee shall split the costs.

The Court finds there were reasonable grounds for this appeal.

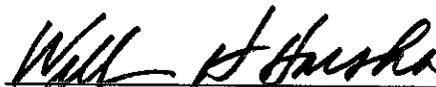
It is ordered that a special mandate issue out of this Court directing the Gallia County Common Pleas Court, Juvenile Division to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. Exceptions.

Abele, J. & McFarland, J.: Concur in Judgment and Opinion.

For the Court



William H. Harsha, Presiding Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.

COURT OF COMMON PLEAS OF GALLIA COUNTY, OHIO
JUVENILE DIVISION

FILED
FEB - 5 2010
The Hon. J. Steven Hunt, Jr.
Judge, Gallia Co., Ohio

IN THE MATTER OF D.H.

Case No. 20073010

D.O.B. 2-1-07

ENTRY

This matter came for hearing on remand from the Fourth District Court of Appeals on the 20th day of January, 2010. Present in Court were Rosalyn Lewis Tucker, the biological mother (hereinafter "mother"), along with her attorney, Robert Bright.

Also present in Court were George and Karen Hammond, paternal grandparents (hereinafter "grandparents"), along with their attorney, William B. Summers, and Anthony Hammond (hereinafter "father") and his attorney, Trenton Cleland. Also in attendance was the Gallia County Children's Services (GCCS) representative and Jeff Adkins, the Gallia County Prosecuting Attorney. Adam Salisbury, GAL/attorney for the child, was also present.

PROCEDURAL HISTORY

The children's service case in the above matter was dismissed in February of 2009 after having been pending for 2 years. The sole issue currently before this Court is to address the remand instructions of the Ohio Fourth District Court of Appeals. Their specific instructions were for this Court to have:

"further proceedings to determine whether the problems that led to the filing of the February 2nd, 2007 complaint had been resolved or sufficiently mitigated as of February 2nd, 2008, when the temporary custody order would have otherwise terminated. If these problems had been resolved or mitigated, the juvenile court should journalize its findings in that regard and order the release of D.H. to R.L.T. (mother) if that is not the case, the court should make an appropriate statutory disposition."

The above ruling by the Fourth District placed this Judge under some difficult circumstances as it was not familiar with any of the facts as

it not been involved in the case until February of 2009. To help, this Court had a hearing and reconstructed the facts from February, 2007, to February, 2008. Another challenge was the fact that the original Guardian Ad Litem (attorney John Lentos) that served in the case over the relevant time period has been disbarred and was not available to testify. The new Guardian Ad Litem, attorney Adam Salisbury, has no foundation to testify to the facts from 2007 and 2008.

RELEVANT FACTUAL FINDINGS and DECISION

As previously mentioned, this Court had a hearing for the parties to be allowed to present relevant evidence from February 2nd, 2007, to February 2nd, 2008, to help this Court make its decision consistent with the Fourth District's remand instructions. For purposes of this entry this Court will refer to that above period as the "relevant times" herein in this decision. Witnesses were sworn in and evidence was presented.

This case originated in February of 2007 when D.H. was removed from the mother's care upon a dependent complaint alleging fear of D.H. being injured. GCCS's fear stemmed from the mother and father being charged in late 2006 with criminal child abuse on an older child of the mother. Because of those facts D.H., then 2 days old, was placed in a foster home.

In April of 2007, D.H. was placed by this Court in the custody of the grandparents. The mother was living with the grandparents during this time in Monroe County, Ohio. Also, around this same time the mother pled guilty to a misdemeanor child endangerment charge. Except for that charge, the mother did not have an extensive criminal history. She also had no alcohol problems, no drug abuse issues, nor did she have any mental health issues, all of which are very common and problematic in children service cases.

Around July of 2007, the mother left Monroe County and returned back to Gallia County. After returning home, the mother had transportation difficulties and was only able to travel to Monroe County one time which was over Thanksgiving weekend of 2007 to see D.H. during the rest of the relevant times. She does claim to have seen D.H. at review hearings in Gallia County several times during the relevant times. Further, she claims to have regularly called and checked in with

the grandparents over those months. On D.H.'s first birthday the mother testified to have called the grandparents and sent a birthday card.

The grandparents position regarding the mother's parenting is that during the few months the mother resided with them that the mother did very little of the parenting such as feeding and changing diapers. In general, the grandparents dispute the mother's version of her parenting involvement. What the grandparents did or did not do was not part of the original dependent complaint so their actions are not relevant to the remand instructions. Nonetheless, this Court does believe that the grandparents have taken excellent care of the minor child.

Nina Bias, caseworker for GCCS, testified that once D.H. went to live with the grandparents in Monroe County, Ohio, that GCCS withdrew from services and monitoring D.H. and essentially had no contact with the grandparents and D.H. GCCS was not able to provide any testimony or evidence from April 9th, 2007 to February 8th, 2008.

Very important to this case was the testimony of Nina Bias who stated that she would have no reason to fear for the child if D.H. was returned to the mother. She also claimed that the mother is not "unsuitable" as a parent. She further testified that the mother had another child born after D.H. that her agency was involved in. That youngest minor child was taken and returned to the mother. Obviously, GCCS has not had any recent problems with the mother.

Frustrating to this Court is the inaction of GCCS to help reunify D.H. with his mother from 4/07 to 2/08. The GCCS's case plans filed in this case list the permanency goal as "reunification." Once D.H. was placed with the grandparents this Court is unsure what if anything GCCS did to help with the reunification.

For ten months, the mother and grandparents were left to themselves and their differing positions to try figure out what to do. According to the record the mother did attend hearings and did attempt, albeit unsuccessfully, to assert her rights when this case was pending.

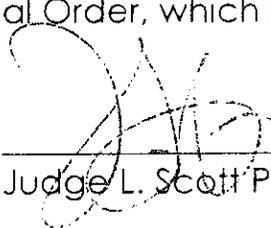
In conclusion, this Court after careful deliberation of the Fourth District Appellate Court's decision in this case and a thorough review of

the pleadings, all relevant legal authority, and all the evidence this Court renders the following decision:

1. This Court finds that problems that led to the necessity of a temporary custody order had been resolved or sufficiently mitigated as of February 2nd, 2008;
2. The Court, having made the finding that those problems had been resolved or sufficiently mitigated finds hereby Orders that D.H. should have been returned to the mother;
3. However, in a March 20th, 2009, hearing in the Monroe County Juvenile Court (Case #2009JCV4437) the mother and father agreed that the Monroe County Juvenile Court had jurisdiction (see attached entry). The mother and father also agreed at that hearing that D.H. should be in the legal custody of the grandparents (George and Karen Hammond);
4. This Court has communicated with the Monroe County Juvenile Court and believe that it is more convenient forum to litigate all the custodial and visitation issues of D.H.;
5. This Court transfers all custodial issues and visitation issues pending in the Gallia County Juvenile Court to the Monroe County Juvenile Court for further disposition based on that court being the more convenient forum and the fact all parties previously agreed to jurisdiction there.

So Ordered.

This is a judgment or final Order, which may be appealed.



Judge L. Scott Powell, by assignment

cc: Parents
Grandparents
Counsel of Record
GCCS/Gallia Prosecutor
Monroe County Juvenile Court

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
GALLIA COUNTY

In the Matter of: : Case No. 09CA11
D. H. : DECISION AND JUDGMENT ENTRY
: **Released 11/6/09**

APPEARANCES:

Robert W. Bright, Story Law Office, Pomeroy, Ohio, for appellant.

Jeff Adkins, Gallia County Prosecuting Attorney, Gallipolis, Ohio, for appellee.

Harsha, J.

{¶1} R.L.T. appeals from the judgment of the Gallia County Juvenile Court dismissing a dependency complaint and denying habeas corpus relief. The court granted temporary custody of a minor child, D.H., to Gallia County Child Services (GCCS). Later, the court placed D.H. with his grandparents who reside in Monroe County. After the temporary custody order expired, the appellant R.L.T., who is D.H.'s natural mother, moved to dismiss the complaint. The court granted the dismissal without issuing any dispositional findings or ordering that D.H. be returned to his mother. Seeking a return of the custody of her child, R.L.T. subsequently filed a petition for a writ of habeas corpus, which the juvenile court denied. D.H. remains in the custody of his grandparents, under a different custody order issued by the Juvenile Court in Monroe County, Ohio.

{¶2} Initially, R.L.T. asserts that she has suffered a loss of due process because she has been denied her natural right to custody of her child. Because she is appealing an order that granted her motion to dismiss the agency's complaint, we find

that we are unable to provide any additional remedy under this assignment of error.

Thus, we deny that aspect of her appeal.

{¶3} R.L.T. also contends the juvenile court could not dismiss the complaint without issuing a finding concerning whether the original problems that led to the findings of dependency were resolved or sufficiently mitigated by R.L.T. and without ordering D.H.'s return to her. Based upon the Supreme Court of Ohio's recent analysis of the juvenile court's statutory obligation, we agree and remand the matter to the Gallia County Juvenile Court to make an appropriate statutory disposition.

{¶4} Finally, R.L.T. asserts error in the juvenile court's refusal to grant her a writ of habeas corpus for custody of the minor child. However, we affirm the juvenile court's denial of habeas corpus relief as that extraordinary method of relief is not available to R.L.T. who had an adequate remedy in the ordinary course of law by way of intervening and appealing the order of the Monroe County Court.

I. FACTS

{¶5} D.H. was born on February 1, 2007. The next day, GCCS filed a complaint seeking temporary custody of D.H. in the Juvenile Court Division of the Gallia County Court of Common Pleas. The complaint alleged that D.H. was a dependent child by virtue of the prior death of another of R.L.T.'s children, i.e., that D.H. was in danger of harm because of his environment and its related history. See R.C. 2151.04(D). That same day, the court awarded GCCS temporary custody of D.H. After adopting a case plan for the continued care and possible future reunification of D.H. with his parents, the court found that A.H. was his father. Then the court granted legal

custody of D.H. to his paternal grandparents, who live in Monroe County, Ohio. They have retained custody of D.H. and have raised him there since April of 2007.

{¶16} On August 7, 2008, R.L.T. submitted her first motion to dismiss the agency's complaint or, in the alternative, for the juvenile court to make a dispositional order. In that motion, R.L.T. argued that the one year sunset date for an award of temporary custody had passed but that the juvenile court still had jurisdiction to make a dispositional order. R.L.T. asked the court to either dismiss the dependency case or enter a dispositional order finding that she had resolved the problems that led to the complaint. The court never ruled on the motion to dismiss.

{¶17} Eventually, the court set a final custody hearing for October 6, 2008. This hearing date was continued until December 15, 2008, at the request of the prosecuting attorney for Gallia County. The hearing date was again continued until January 22, 2009, at R.L.T.'s request. The case was yet again continued at the request of the Gallia County prosecutor. This last delay was the result of the disbarment of D.H.'s guardian ad litem. After he was replaced, the final custody hearing was set for February 13, 2009.

{¶18} On February 10, 2009, R.L.T. filed a renewed motion to dismiss the case. In that motion, R.L.T. asked the court to find that the original problems that led to the filing of the complaint had been resolved or sufficiently mitigated and that D.H. should be returned to her care. On February 11, 2009, a magistrate converted the February 13 hearing from a final dispositional hearing to one on "pending pre-trial motions and final pretrial."

{¶9} Our record does not include a transcript of the hearing that occurred on February 13, 2009, but it appears from the court's subsequent journal entry that the Gallia County Prosecutor also moved to dismiss the dependency case at that time.

{¶10} On February 19, 2009, D.H.'s grandparents filed a complaint for custody in the Monroe County Juvenile Court. On February 23, 2009, that court issued an order granting temporary custody of D.H. to his grandparents.

{¶11} In the interim, on February 20, 2009, the Gallia County Juvenile Court dismissed the Gallia County dependency complaint. The journal entry did not contain any findings concerning whether the original conditions that led to the complaint had been resolved or sufficiently mitigated. Neither did the journal entry order that the child be returned to R.L.T. This same day, R.L.T. filed a verified complaint in the Gallia County Juvenile Court for a writ of habeas corpus for the custody of D.H.

{¶12} R.L.T. also filed a motion for relief under Civil Rule 60(A) asking the juvenile court to correct "clerical errors" in the February 20, 2009, journal entry that dismissed the case. R.L.T. argued that the court erred by failing to include a finding that the original problems that led to the complaint were resolved or sufficiently mitigated by R.L.T. and for failing to order the return of D.H. to her.

{¶13} At a hearing on her petition for habeas corpus, R.L.T. argued she was entitled to the writ because Monroe County did not have jurisdiction to issue a custody order regarding D.H. She contended that the grandparents prematurely filed their custody petition in Monroe County, a day before Gallia County dismissed its dependency complaint. Because the complaint was technically still pending, she argued that Monroe County could not establish jurisdiction to determine custody.

However, the Gallia County Juvenile Court denied the writ. The court found that Monroe County had assumed jurisdiction and issued a lawful custody order on the 23rd and D.H. was not being “unlawfully detained.” The court recommended that R.L.T. attack the validity of the custody order in Monroe County, and if she were able to get the Monroe case dismissed she should renew her writ in Gallia County.

{¶14} In the journal entry denying habeas corpus, the court incorrectly listed two dates. First, the court stated that the Gallia County case was dismissed on February 13, 2009. The case had in fact been dismissed on February 20, 2009. Further, the court found that R.L.T. filed her petition for a writ of habeas corpus on February 26, 2009. She actually filed her petition on February 20, 2009.

{¶15} In addressing the Civ. R. 60(A) motion, the court stated that the journal entry properly dismissed the case and R.L.T.’s requested language concerning resolution or mitigation and the return of custody was “extraneous.” The court found that, under R.C. 3109.042, the custody of the child reverted to R.L.T. by operation of law upon dismissal of the complaint. The court stated “[w]ith no other orders pending at that time, the mother had the lawful right after the dismissal to retrieve her child under that same statutory authority. However, after the Monroe County Juvenile Court’s Orders she lost that authority.”

{¶16} R.L.T. filed a second motion for relief under Civ.R. 60(A), asking the juvenile court to correct the entry to accurately reflect the dates mentioned above. The juvenile court issued an amended entry, acknowledging that the dates in the March 13 entry were incorrect and incorporating the time-stamped dates of those documents by

reference. The court further found that the corrected dates had no “impact or bearing to the decision of this Court in denying the writ of habeas corpus.”

II. ASSIGNMENTS OF ERROR

{¶17} 1. THE JUVENILE COURT’S REFUSAL TO DISMISS THE COMPLAINT IN THIS MATTER FOR MORE THAN TWO YEARS FROM THE DATE OF THE FILING OF THE COMPLAINT VIOLATED THE DUE PROCESS RIGHTS OF THE NATURAL MOTHER R.L.T. AND THE JUVENILE COURT’S CONTINUED REFUSAL TO ACT IS CONTINUING TO VIOLATE THE DUE PROCESS RIGHTS OF THE NATURAL MOTHER R.L.T.

{¶18} 2. THE JUVENILE COURT ERRED IN THE FEBRUARY 20, 2009 JOURNAL ENTRY BY FAILING TO INCLUDE IN THAT JOURNAL ENTRY A STATEMENT OF THE COURT’S DETERMINATION THAT THE ORIGINAL PROBLEMS WHICH LED TO THE FILING OF THE COMPLAINT WERE RESOLVED OR SUFFICIENTLY MITIGATED BY THE NATURAL MOTHER R.L.T. AND BY FAILING TO STATE THAT THE MINOR CHILD D.H. SHOULD BE RETURNED TO HIS NATURAL MOTHER R.L.T.

{¶19} 3. THE JUVENILE COURT ERRED IN THE MARCH 13, 2009 ENTRY IN DENYING THE NATURAL MOTHER R.L.T.’S MOTION FOR RELIEF UNDER CIVIL RULE 60(A) AND FOR THE COURT TO AMEND/CORRECT [THE] COURT’S JOURNAL ENTRY.

{¶20} 4. THE JUVENILE COURT ERRED IN THE MARCH 13, 2009 ENTRY IN FINDING THAT THE REQUIREMENTS OF *IN RE YOUNG CHILDREN* (1996), 76 OHIO ST.3D 632, 669 N.E.2D 1140 ARE “EXTRANEOUS LANGUAGE.”

{¶21} 5. THE JUVENILE COURT ERRED IN THE MARCH 13, 2009 ENTRY IN DENYING THE NATURAL MOTHER'S AMENDED PETITION FOR WRIT OF HABEAS CORPUS FOR CUSTODY OF MINOR CHILD D.H.

{¶22} 6. THE JUVENILE COURT ERRED IN FINDING THAT THE CORRECT DATE OF FILING OF THE APPELLANT'S WRIT OF HABEAS CORPUS AND THE CORRECT DATE OF THE DISMISSAL OF THE COMPLAINT HAD NO IMPACT OR BEARING ON THE COURT'S PRIOR DENIAL OF THE APPELLANT'S WRIT OF HABEAS CORPUS.

{¶23} 7. THE JUVENILE COURT ERRED IN THE MARCH 13, 2009 ENTRY IN FINDING THAT THE MONROE COUNTY JUVENILE COURT HAS JURISDICTION OVER THIS MATTER.

III. DUE PROCESS CLAIMS

{¶24} In her first assignment of error, R.L.T. argues that the trial court denied her right of due process by failing to dismiss the agency's complaint after the sunset provisions of R.C. 2151.353(F) had passed. R.C. 2151.353(F) states:

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.

{¶25} We do not believe the mother's first assignment of error raises an issue we can address in our role as an appellate court. Section 3(B)(2), Article IV of the Ohio

Constitution provides courts of appeal have appellate jurisdiction as may be provided by law. Under R.C. 2501.02 courts of appeal “have jurisdiction upon an appeal on questions of law to review, affirm, modify, set aside, or reverse judgments or final orders * * *.” Likewise, App.R. 12(A) provides that in deciding an appeal, a court of appeals shall:

(1) Review and *affirm, modify, or reverse* the judgment or final order appealed;

* * *

{¶26} Here, the order or judgment that R.L.T. appeals is the dismissal of the agency's complaint by an entry dated February 20, 2009. Our role in reviewing that judgment is limited by the provisions of App.R. 12(A) to affirming, modifying or reversing that judgment. Yet, R.L.T. seemingly asks this court for a declaration that the delayed dismissal violated her right to due process. We decline to address the contentions of the first assignment of error, which reads more like a complaint for declaratory judgment or a writ of procedendo than an assignment of error. Furthermore, because R.L.T. did not seek a writ of procedendo, her due process arguments are unavailing. See *State of Ohio, ex rel. Scioto Co. Enforcement Agency v. Adams*, Scioto App. No. 98CA2617, 1999 WL 597257, at *10.

{¶27} We will address the substance and form of the dismissal entry below, however.

IV. DISMISSAL OF JUVENILE CASE

{¶28} To aid in our review of this issue, we address R.L.T.'s second and fourth assignments of error together. In her second assignment of error, R.L.T. argues that the court erred in its February 20, 2009, journal entry of dismissal by failing to include a

statement of the court's determination that the "original problems that led to the filing of the complaint were resolved or sufficiently mitigated" by R.L.T. and by failing to order D.H.'s return to her. In a motion premised on Civ. R. 60(A), R.L.T. asked the court to correct its journal entry to insert that language, but the court denied this request. The propriety of that denial is addressed in the next section of this opinion. In denying the request for that language, the juvenile court characterized similar language appearing in *In Re Young Children* (1996), 76 Ohio St.3d 632, 1996-Ohio-45, 669 N.E.2d 1140, as "extraneous" and unnecessary. In her fourth assignment of error, R.L.T. argues that this language is not "extraneous" and thus must be included in the dismissal. Because both assignments of error concern whether the "*In re Young Children*" language creates an affirmative duty on the trial court, we analyze them together under a de novo standard of review.

{¶29} *In re Young Children* held that the passing of the statutory one-year time period or "sunset date" found in R.C. 2151.353(F) does not divest juvenile courts of jurisdiction to enter dispositional orders. *Id.* at syllabus. The court noted that a temporary order terminates upon the passing of the sunset date unless the agency files a motion for a dispositional order under R.C. 2151.415(A) no later than thirty days prior to termination. But the jurisdiction of the court continues. *Id.* at 637. Based upon the language of R.C. 2151.353(D)(1), which provides for a retention of jurisdiction until the child is eighteen or adopted, the court retains jurisdiction to make dispositional orders notwithstanding the termination of its temporary order. *Id.*

{¶30} The Supreme Court went on to reverse the juvenile court's dismissal of the complaint, which was based upon a lack of jurisdiction. In doing so, the court noted:

Accordingly, we reverse the dismissal of this case and remand to the trial court for further proceedings to determine whether the problems that led to the filing of the February 8, 1993 complaint had been resolved or sufficiently mitigated as of July 8, 1994, when the extended temporary custody order would have otherwise terminated. If these problems had been resolved or mitigated, the court should terminate the temporary custody order and release the child to his mother. If they had not, the court has discretion to make a further dispositional order pursuant to R.C. 2151.415 and our holding above.

Id. at 639.

{¶31} R.L.T. argues that on the basis of *In re Young Children*, the juvenile court was required to make a dispositional finding in its dismissal entry that the original problems that led to the filing of the dependency case were resolved or sufficiently mitigated by R.L.T. Furthermore, R.L.T. argues that the juvenile court should have expressly ordered that D.H. be returned to her. The juvenile court's response was that the requested language was "extraneous" because once the dependency case was dismissed, R.L.T. became the statutory custodian by operation of law. In effect, implicit in its dismissal was the finding that the problems that led to the original complaint had been resolved, and furthermore, R.L.T. had acquired the right to the child, barring any other unresolved custody orders.

{¶32} We continue our analysis with review of the relevant statutes. R.C. 2151.353 lists the available dispositions after a finding of abuse, neglect, or dependency. It provides:

- (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

- (4) Commit the child to the permanent custody of a public children services agency or private child placing agency, if the court determines in accordance with division (E) of section 2151.414 of the Revised Code that the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent and determines in accordance with division (D) of section 2151.414 of the Revised Code that the permanent commitment is in the best interest of the child

- (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:

- (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, or 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.

{¶33} Furthermore, R.C. 2151.353 addresses the continuing jurisdiction of courts that issue orders of disposition under that section and the so-called "sunset" provision relevant to temporary custody orders:

(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 ***

(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.

{¶34} Here, the initial custody order was granted on February 2, 2007. But GCCS did not file a motion for a dispositional order under R.C. 2151.415 (such a motion could have extended the temporary custody order up until February 2, 2009. R.C. 2151.353(F)). Thus, we hold that the sunset provision of R.C. 2151.353(F) terminated the temporary order as of February 2, 2008.¹ On that date, R.L.T had the right to seek custody of D.H., although she was not vested automatically with the right to immediate custody of the child. See *Holloway v. Clermont County Dep't of Human Servs.*, 80 Ohio St.3d 128, 130, 1997-Ohio-131, 684 N.E.2d 1217. This is because the passing of the sunset date does not divest the trial court from making appropriate dispositional orders. Id.

{¶35} We look now to the question of whether a simple dismissal of the case was appropriate. The Third District Court of Appeals addressed this very issue in *In re R.A.*, 172 Ohio App.3d 53, 2007-Ohio-2997, 872 N.E.2d 1284. That case involved a series of transfers of a dependency case between the Departments of Job and Family Services in Mercer and Van Wert County. Id. at ¶¶2-12. The repeated transfers were

¹ We use this opportunity to clarify a statement we made in *In the Matter of A.W.*, Hocking App. No. 07CA14, 2008-Ohio-718. In that case we stated that "a temporary custody order *does not* terminate automatically upon the passage of the sunset date." Id. at ¶9 (emphasis added.) Standing alone, that statement is inaccurate. But in *A.W.*, the child placing agency filed a motion pursuant to R.C. 2151.415. When a motion is filed under R.C. 2151.415, a temporary custody order does not terminate but continues until the court issues a dispositional finding permitted by that code section. See R.C. 2151.353(F). We clarify here that the statement in *A.W.* was intended to apply only to the situation where a motion is filed or pending under R.C. 2151.415, unlike the case here, where no motion was filed.

caused by an itinerant father who variously resided in each county. *Id.* The original complaint for dependency occurred in Mercer County on March 28, 2005. *Id.* at ¶2. As the father moved between counties, the agencies responded by transferring the case to the juvenile court of the other county.

¶36 The last transfer was attempted by Van Wert County Department of Job and Family Services (VWCJFS) on October 17, 2006. But Mercer County refused to accept the transfer because it found that the residence of the children was in Van Wert County.

¶37 On January 31, 2007, VWCJFS moved to dismiss the case in the Van Wert County Juvenile Court because none of the parties lived in Van Wert County and the children no longer were at an immediate risk as they were teenagers. *Id.* at ¶11. Van Wert County granted the motion and dismissed the case. *Id.* at ¶12. On appeal, Mercer County Department of Job and Family Services (MCJFS) asserted that the juvenile court abused its discretion by dismissing the case without issuing a statutory disposition of the children. *Id.* at ¶13.

¶38 VWCJFS argued that dismissal was proper because the complaint was originally filed in Mercer County in March of 2005 and under R.C. 2151.353(F), the temporary custody order would have expired a year later, in March of 2006. *Id.* at ¶20. VWCJFS indicated they had not filed any motion under R.C. 2151.415 that would have extended the temporary custody order. *Id.*

¶39 The Third District disagreed. It held that Van Wert County could not properly dismiss the case “based simply upon the expiration of the temporary custody order.” *Id.* at ¶25. The court held that under *In re Young Children*, Van Wert County

Juvenile Court retained jurisdiction over the children, who had been adjudicated dependent, and had the authority to make further dispositional orders because there had been no determination that the problems that led to the original custody order had been resolved. *Id.* at ¶26. The court then examined whether a “simple dismissal” was a proper disposition of the case.

{¶40} The court observed that R.C. 2151.353(A) presents six alternative orders of disposition that a court may enter on behalf of a child adjudicated abused, neglected, or dependent. *Id.* at ¶28. None of the alternative orders is a simple dismissal. *Id.* Thus, the court held that Van Wert County Juvenile Court erred in dismissing the case without entering a proper statutory disposition. *Id.* at ¶29.

{¶41} We find this reasoning persuasive. The legislature created Chapter 2151 of the Revised Code with the intent that it be “liberally interpreted and construed *** [t]o provide for the care, protection, and mental and physical development of children” and “[t]o provide judicial procedures *** in which the parties are assured of a fair hearing, and their constitutional and other legal rights are recognized and enforced.” R.C. 2151.01.

{¶42} To properly effectuate this legislative intent, before a juvenile court dismisses a complaint after finding a child dependent, it should expressly find that any problems that led to the necessity of temporary custody have been resolved or sufficiently mitigated. Both R.C. 2151.353 and *In re Young Children* compel such a requirement.

{¶43} If the court finds that those problems have not been resolved or sufficiently mitigated, then it has the power to make a further dispositional order under R.C.

2151.415. *In re Young Children*, 76 Ohio St.3d at 639. If the court finds those problems are resolved, it should order that the child be returned to the parent or appropriate legal custodian. *Id.* A simple dismissal is not in the best interest of the child and it is not within those six permissible dispositional orders as set forth by the legislature in R.C. 2151.353.

{¶44} Therefore, we hold that the juvenile court erred when it dismissed this case without journalizing an express determination concerning whether the issues that led to the filing of the dependency complaint were resolved or sufficiently mitigated by R.L.T. If they were, the court should have expressed that the child be returned to R.L.T. The language of the Supreme Court of Ohio in *In re Young Children*, is not “extraneous” and it must be addressed expressly by the termination entry.

V. DENIAL OF CIV.R. 60(A) MOTION TO CORRECT “CLERICAL ERRORS”

{¶45} In her third assignment of error, R.L.T. argues that the juvenile court erred when it denied her motion for relief under Civ.R. 60(A). R.L.T. claimed that the juvenile court made a clerical error in the journal entry by failing to include the “resolved or sufficiently mitigated” language of *In re Young Children* and for failing to order the child be returned to her.

{¶46} Our standard of review concerning a trial court’s decision to correct clerical mistakes under Civ.R. 60(A) is abuse of discretion. *Bobb Forest Products, Inc. v. Morbank Industries, Inc.*, 151 Ohio App.3d 63, 77, 2002-Ohio-5370, 783 N.E.2d 560, citing *State ex rel. Litty v. Leskovyansky* (1996), 77 Ohio St.3d 97, 100, 671 N.E.2d 236, superseded by rule on other grounds. An abuse of discretion connotes more than an error of law or judgment; it implies that the trial court acted unreasonably, arbitrarily, or

unconscionably. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140.

{¶147} “Civ.R. 60(A) permits a trial court, in its discretion, to correct clerical mistakes which are apparent on the record, but does not authorize a trial court to make substantive changes in judgments.” *Leskovyansky* at 100, citing *Londrico v. Delores C. Knowlton, Inc.* (1993), 88 Ohio App.3d 282, 285, 623 N.E.2d 723. “The term ‘clerical mistake’ refers to a mistake or omission, mechanical in nature and apparent on the record *which does not involve a legal decision or judgment.*” *Id.*, citing *Londrico*, 88 Ohio App.3d at 285; *Dentsply Internatl., Inc. v. Kostas* (1985), 26 Ohio App.3d 116, 118, 498 N.E.2d 1079 (Emphasis added). The distinction between clerical mistakes, which are subject to correction under Civ.R. 60(A), and substantive mistakes, which are not, is that the former consist of “blunders in execution” and the latter consist of “instances where the court changes its mind, either because it made a legal or factual mistake in making its original determination, or because, on second thought, it has decided to exercise its discretion in a different manner.” *Londrico*, 88 Ohio App.3d at 285, citing *Kuehn v. Kuehn* (1988), 55 Ohio App.3d 245, 247, 564 N.E.2d 97.

{¶148} The juvenile court did not abuse its discretion in denying the requested relief under Civ. R. 60(A). R.L.T.’s requested changes are not available under that rule. First, the “resolved or sufficiently mitigated” language, if added, would constitute an additional finding of fact by the juvenile court. Such an addition is substantive. Second, the requested order commanding that the child be returned to the mother is unquestionably substantive. Moreover, R.L.T.’s Civ. R. 60(A) motion is supported by a memorandum of *law*, urging the juvenile court to make these additions to its journal

entry on the basis of *In re Young Children*. R.L.T. writes “[u]pon the dismissal of this case by this Court, the Court was and is required to make a finding that the original problems which led to the filing of the complaint have been resolved or sufficiently mitigated and release the child to his mother. See *In re Young Children . . .*” Thus, R.L.T. was arguing for the court to correct the journal entry not because of a clerical or mechanical error but because of an alleged legal mistake. Thus, under Civ. R. 60(A), the court would not have been permitted to make these changes even if it had agreed with R.L.T.’s legal analysis. Accordingly, the court properly rejected the requested changes because they were not available under Civ.R. 60(A). This assignment of error is meritless.

VI. DENIAL OF HABEAS CORPUS RELIEF

{¶49} R.L.T.’s fifth, sixth, and seventh assignments of error collectively challenge the juvenile court’s decision to deny habeas corpus relief. In her sixth assignment of error, R.L.T. challenges the juvenile court’s findings that the filing date of the petition for habeas corpus and the correct filing date of the juvenile court’s dismissal had no impact on the court’s denial of the writ of habeas corpus. In her seventh assignment of error, R.L.T. challenges the juvenile court’s finding that the Monroe County Juvenile Court has jurisdiction over custody of D.H. Because the juvenile court properly denied habeas corpus relief on separate legal grounds other than those challenged here, we will only address R.L.T.’s fifth assignment of error. Our standard of review of a denial of a writ of habeas corpus is *de novo*. *State ex rel. Scott Edwards* (Oct. 28, 1996), Ross App. No. 96CA2210, 1996 WL 628597, at *1.

{¶50} By statute, the juvenile court has exclusive original jurisdiction over habeas corpus actions involving the custody of a child. R.C. 2151.23(A)(3). R.C. 2725.01 establishes who is entitled to a writ of habeas corpus. A person may obtain a writ if they prove that they are (1) “entitled to the custody of another”; and (2) that they are being “unlawfully deprived” of that custody.

{¶51} A writ of habeas corpus is an extraordinary remedy, permitted only when there is no other adequate remedy in the ordinary course of law. *State ex rel. Mowen v. Mowen*, 119 Ohio St.3d 462, 464, 2008-Ohio-4759, 895 N.E.2d 163; see, also, *In Matter of Rose* (Sept. 26, 1986), Ross App. No. 1248, 1986 WL 11151, at *3. “[I]n order for there to be an adequate remedy at law, a remedy must be complete, beneficial, and speedy.” *Marich v. Knox County Dept. of Human Serv.* (1989), 45 Ohio St.3d 163, 165, 543 N.E.2d 776.

{¶52} R.L.T. argues that the court should have issued the writ because she established: 1) that she was entitled to custody of D.H. and 2) that the Monroe County court did not have jurisdiction to enter its custody order, i.e., she was unlawfully deprived of D.H. We cannot agree because R.L.T. had an adequate remedy of law to obtain custody of D.H.

{¶53} At the time of the March 4, 2009, hearing, Monroe County had already assumed jurisdiction over D.H. and had issued an ex parte temporary custody order in favor of the grandparents. During the March 4 hearing in Gallia County, R.L.T. revealed that she had already filed a motion to vacate the Monroe County ex parte order and that she also had moved to continue a hearing in that case as she was unable to attend because of previous work obligations. Counsel for R.L.T. told the Gallia County

Juvenile Court that he was “confident that I’m going to get that case dismissed.” Thus, R.L.T. acknowledged that she had a viable legal remedy to obtaining custody of D.H. by challenging the Monroe ex parte custody order. Furthermore, she was responsible for any initial delay in resolving the Monroe County custody case. Accordingly, R.L.T., as of the time of the March 4 hearing on the writ, had a complete and beneficial remedy at law.

{¶154} R.L.T. also argues that the juvenile court erred in finding that the correct filing dates of the writ of habeas corpus and the dismissal of the present case and that Monroe County had jurisdiction over D.H.’s custody had no bearing on the court’s decision to deny the writ of habeas corpus. Because we find that the writ of habeas corpus was properly denied by the trial court on separate grounds, it is not necessary to address those assignments of error.

VII. CONCLUSION

{¶155} Accordingly, we hold that R.L.T.’s first assignment of error is meritless. Our role as an appellate court does not permit us to afford her the relief she seeks for the alleged due process violations. But we find merit in R.L.T.’s assignments of error concerning the juvenile court’s dismissal of the dependency complaint. And we remand the matter to the juvenile court for further proceedings to determine whether the problems that led to the filing of the February 2, 2007, complaint had been resolved or sufficiently mitigated as of February 2, 2008, when the temporary custody order would have otherwise terminated. If these problems had been resolved or mitigated, the juvenile court should journalize its findings in that regard and order the release of D.H. to R.L.T. If that is not the case, the court should make an appropriate statutory

disposition. Finally, we hold that the trial court properly denied habeas corpus relief because R.L.T. possessed an adequate remedy in the ordinary course of law, i.e., an appeal of the Monroe County Juvenile Court's order.

JUDGMENT AFFIRMED IN PART,
REVERSED IN PART,
AND CAUSE REMANDED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED IN PART AND REVERSED IN PART and that the CAUSE IS REMANDED. Appellant and Appellee shall split the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Gallia County Common Pleas Court, Juvenile Division, to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. Exceptions.

Abele, J. & McFarland, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
William H. Harsha, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.