

IN THE SUPREME COURT OF OHIO

ORIGINAL

IN RE: R.H., Jr., M.H., and A.H.

CASE NO. 12-0272

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

Court of Appeals Case Nos. 11-CA-010002  
11-CA-010003

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**APPELLEE, LORAIN COUNTY CHILDREN SERVICES'S, MEMORANDUM IN  
RESPONSE TO APPELLANTS' MEMORANDUM IN SUPPORT OF JURISDICTION**

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## STATEMENT OF APPELLEE'S POSITION IN OPPOSITION TO JURISDICTION

Appellee, Lorain County Children Services (hereinafter, "LCCS"), submits this memorandum to urge the Supreme Court of Ohio to decline jurisdiction of this case as the matter does not involve a matter of public or great general interest pursuant to S.Ct. Prac. R. 2.1(A)(3).

Appellants' Memorandum in Support of Jurisdiction asserts that this case is a case of public and great general interest because the decision of the Ninth District purportedly "erodes the sanctity of the rights of all parents."

Appellants assert two propositions as a basis to request review of this matter. The first proposition is an argument as to the findings that the trial court must make when determining that Permanent Custody is in the best interest of minor children. The second proposition is an argument as to whether a trial court may use language from Adjudicatory and Dispositional findings regarding the same children in an entry regarding Permanent Custody. Appellants do not explain how either of these arguments constitutes the broader concept of public or great general interest.

The first argument has been subject to judicial review in the Court of Appeals for the Ninth District and affirmed after review. *In re: M.B.*, 9<sup>th</sup> Dist. No. 21760, 2004-Ohio-597. Appellants cite no case law for the second argument.

The decision of the trial court fulfills the statutory requirements pursuant to Ohio Revised Code §2151.414(D) and upholds due process provisions. *In re Shaefer*, 111 Ohio St. 3d 498, 2006-Ohio-5513, 857 N.E. 2d 532. This Court previously declined to hear an appeal when a case of similar arguments were asserted. *In re: O.W. and L.G.*, 127 Ohio St. 3d 1506; 2011 Ohio 19; 939 N.E.2d 1268 (Discretionary Appeal denied).

Appellants assert that the Ninth District decision in the case *sub judice* conflicts with judgments of other courts of appeals on the same question. As pointed out in the Ninth District's decision, the cases cited by Appellants do not support this assertion. *In re: R.H., M.H., A.H.*, 9<sup>th</sup> Dist. Nos. 11CA010002, 11CA010003; 2011-Ohio-6749, ¶16. Further, Appellants fail to properly Motion for the Appeals Court to Certify the alleged Conflict pursuant to App. R. 25 and App. R. 15.

For the reasons stated above, the present case presents neither matters of public concern or great general interest necessary to invoke this Court's jurisdiction.

### **STATEMENT OF THE CASE AND FACTS**

On September 11, 2006, LCCS filed a Complaint regarding the minor children R.H., Jr. (born 10/27/2001) and M.H. (born 08/09/2004). On November 21, 2006, R.H., Jr. and M.H. were adjudicated Neglected and Dependent. The children were removed from the home and ultimately returned to Mother Joyce Hubbard and Father Randy Hubbard with a grant of Protective Supervision to LCCS. On July 23, 2007, Protective Supervision was terminated.

On August 17, 2009, LCCS filed a Motion for Further Dispositional Orders regarding R.J., Jr. and M.H. and a Complaint alleging Neglect regarding A.H. (born 09/07/2008). LCCS received Emergency Temporary Custody on this same date. On October 29, 2009, A.H. was adjudicated Neglected and Dependent and LCCS was granted Temporary Custody of all three of the minor children.

On April 2, 2010, LCCS moved for Permanent Custody of the minor children. Following a contested hearing, the trial court denied the Motion for Permanent Custody on August 13, 2010 and ordered a Six Month Extension of Temporary Custody to LCCS.

On November 17, 2010, LCCS moved for Permanent Custody of the minor children. Following a contested hearing, the trial court granted the Motion for Permanent Custody on April 27, 2011. The trial court found that the children had been in the Temporary Custody of LCCS for over 12 of the prior 22 months and that the children should not or could not be returned to the custody of Mother and Father within a reasonable time. The trial court further found that Permanent Custody was in the best interest of the minor children.

Mother and Father both appealed to the Court of Appeals for the Ninth Judicial District. Mother alleged an error of law relating to whether the evidence in the record could support a finding that the children could not be returned to the parents in a reasonable time or should not returned within a reasonable time. Father alleged two errors of law relating to whether a trial court is required to make certain findings regarding a determination of the best interests of the minor children and whether counsel was required to be appointed by the trial court for the minor children.

On December 29, 2011, the Court of Appeals for the Ninth Judicial District affirmed the decision of the trial court.

#### **ARGUMENTS IN SUPPORT OF APPELLEE'S POSITION**

##### **Proposition of Law No. I: Trial courts must connect their factual findings in a decision terminating parental rights to the best interest factors of Ohio Revised Code § 2151.414(D)**

Appellants do not argue that it was not in the best interest of the minor children to be placed in the Permanent Custody of LCCS. Appellants do not argue that the trial court or the Ninth District did not consider Ohio Revised Code §2151.414(D) in making the determination of the best interest of the minor children. Rather, Appellants argue that the findings of the trial court

did not specifically state the connection between the enumerated factors in §2151.414(D) and the factual findings of the trial court.

This argument was also raised at the appellate court. The Ninth District held that it had only noted *in dicta* that the trial court “should” also detail its findings on each best interest factor. *In re: M.B.*, 9<sup>th</sup> Dist. No. 21760, 2004-Ohio-597 ¶ 11.

As pointed out by the Ninth District, the case law cited by Appellants does not support this argument. *In re: R.H., M.H., A.H.*, 9<sup>th</sup> Dist. Nos. 11CA010002, 11CA010003; 2011-Ohio-6749, ¶16. Appellant incorrectly relies on the decision in *In the matter of: G.N.*, 170 Ohio App. 3d 76; 2007-Ohio-126; 866 N.E. 2d 32, to support its Proposition No. 1. Appellant argues that *In the matter of: G.N.*, the appeals court reversed the trial court’s decision granting permanent custody to the Clermont DJFS, in part, because it did not indicate that it had considered whether any of the factors in R.C. 2151.414(E)(7) to (11) applied in relation to the parent and children; as R.C. 2151.414(D) required. However, the appeals court in *In re: G.N.*, actually held that the trial court’s decision was devoid of any reference to the applicable statutes. The court further held that the trial court’s decision was a loosely organized discussion of its findings without a single citation to a statutory factor, at ¶36.

Such a situation is clearly not the case in the matter *sub judice*. The trial court indicated that all required statutory factors were considered. Appellants also acknowledge that the trial court used language that indicated that the required statutory factors were considered in making the decision.

Appellants also improperly rely on *In the matter of: Kristina Cravens*, 3<sup>rd</sup> Dist. No. 4-03-48, 2004-Ohio-2356. In *In the matter of: Kristin Cravens*, the trial court made no reference to O.R.C. §2151.414. This case is also inapplicable to this matter.

This Court held in *In re: C.F. et al*, 113 Ohio St. 3d 73; 2007-Ohio-1104; 862 N.E. 2d 816, that in a best interests analysis under R.C. 2151.414(D), a court must consider “all relevant factors,” including five enumerated statutory factors...[n]o one of which is given greater or heightened significance. *Citing In re: Schaefer* at 56. In the case *sub judice* the trial court properly connected its factual findings pertaining to the best interest of the child and connected those findings to the statutory factors enumerated under R.C. 2151.414(D)(1).

For these reasons, the appeals court did not abuse its discretion in affirming the trial court’s decision to grant permanent custody of R.H., Jr., M.H, and A.H. to LCCS. The trial court properly connected its factual findings to the best interest factors of R.C. 2151.414(D)(1). The Appellate Court properly reviewed this evidence and determined that clear and convincing evidence supported the trial court’s permanent custody determination.

**Proposition of Law No. II: A trial court must base a decision terminating parental rights solely upon the evidence at the permanent custody hearing.**

Appellants assert no evidence that was improperly admitted at the permanent custody hearing. Appellants also assert no potentially inadmissible evidence that was improperly admitted at the permanent custody hearing.

The record demonstrates that Appellants did not challenge the admission of certified copies of prior entries regarding these children with the trial court. *In re: R.H., M.H., A.H.*, 9<sup>th</sup> Dist. Nos. 11CA010002, 11CA010003; 2011-Ohio-6749, ¶20. The record further demonstrates that the findings that Appellants take issue with did not impact the decision of the trial court, at ¶21.

Appellants cite no case law in support of this position that a trial court may not consider, or state, prior facts in the record regarding the children that are the subject of a Permanent Custody hearing in the decision granting Permanent Custody. Rather, the language of Ohio Revised Code §2151.414(D) states that the trial court "...shall consider all relevant factors..."

The trial court properly considered all relevant factors pursuant to O.R.C. §2151.414(D). For the reasons stated above, Appellants have not demonstrated any reason that the specific findings of this trial court are a matter of public concern or great general interest.

**CONCLUSION**

The trial court properly granted permanent custody of R.H, Jr., M.H, and A.H. to LCCS after considering the factors of R.C. 2151.414 and the evidence presented. For these reasons, the present case presents neither a matter of public concern or great general interest. Appellee respectfully requests that this Court decline to exercise jurisdiction over this appeal.

Respectfully Submitted,

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By:



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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the forgoing **Memorandum in Response** was served upon the following persons via First Class U.S. Mail this 1st day of March, 2012:

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