

ORIGINAL

IN THE SUPREME COURT OF OHIO

14-1880

IN THE MATTER OF:

RILEY A. L. AND A.L.L.

SUPREME COURT CASE NO. _____

ON APPEAL FROM THE GREENE COUNTY COURT OF APPEALS SECOND DISTRICT

APPEALS CASE NOS. 2013-CA-46
2013-CA-50

TRIAL CASE NOS. N43082
S43380

(JUVENILE DIVISION)

MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT FATHER

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ATTORNEYS FOR APPELLEE, GREENE COUNTY CHILDREN SERVICES

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PROPOSITION OF LAW NO. III: THE OHIO STATE LOWER COURTS ERRED AND ABUSED THEIR DISCRETION BY EXCLUDING AND AFFIRMING THE EXCLUSION OF THE CHILDREN'S ATTORNEY FROM AN IN CAMERA INTERVIEW AND ORDERING THAT ONLY THE COURT "AND THE GUARDIAN AD LITEM WILL BE PRESENT." THE CHILDREN WERE NOT REPRESENTED BY COUNSEL AS IN FACT THE CHILDREN'S ATTORNEY WAS NOT PRESENT FOR THE INTERVIEW.

PROPOSITION OF LAW NO. IV: THE APPELLANTS WERE DENIED DUE PROCESS AND FAIRNESS IN THESE CIVIL PROCEEDINGS. GREENE COUNTY CHILDREN SERVICES SOLE OBJECTIVE WAS TO DENY THE PARENTS REUNIFICATION WITH THEIR THREE CHILDREN. A PLAN CERTAINLY NOT PART OF GCCS' MISSION NOR IN THE CHILDREN'S BEST INTERESTS. THIS DENIAL OF DUE PROCESS AND FAIRNESS CONTINUED THROUGHOUT THE COURT PROCEEDINGS AND IN BOTH PERMANENT CUSTODY TRIALS.

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OPINION AND FINAL ENTRY OF THE GREENE COUNTY COURT OF APPEALS SECOND APPELLATE DISTRICT; ENTERED IN THE MATTER OF: R.L. A. AND A.L. CASE NOS. 2013-CA-46 AND 2013-CA-50 FILED SEPTEMBER 15 2014.

EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION

THIS CASE PRESENTS A DISTURBING TREND WITH THE COURTS IN OHIO. SPECIFICALLY, THE LOWER COURTS ARE DOING WHATEVER THEY WANT TO, AND ARE DISREGARDING THE STATUTES, RULES, AND CASE PRECEDENT. MOREOVER, HERE THE TRIAL COURT ON REMAND DID NOT EVEN FOLLOW THE MANDATES OF THE COURT OF APPEALS. MORE SPECIFICALLY, THE APPELLANTS, FATHER AND MOTHER HEREIN; APPEALED THE JUDGMENT OF THE GREENE COUNTY COURT OF COMMON PLEAS, JUVENILE DIVISION GRANTING PERMANENT CUSTODY OF THEIR THREE CHILDREN TO GREENE COUNTY CHILDREN SERVICES (GCCS). THIS ORDER WAS AND STILL IS CONTRARY TO THE STATUTES, RULES, AND CASE PRECEDENT AND IS NOT IN THE BEST INTERESTS OF THE CHILDREN. HOWEVER, THIS CASE IS BEFORE THIS OHIO SUPREME COURT AS NOT ONLY DID THIS HAPPEN TWICE, THE SECOND TIME THE COURT OF APPEALS, CONTRARY TO ITS OWN DECISION, AFFIRMED THE TRIAL COURT. NOW, THE APPELLANT FATHER IS FACED WITH THE PROSPECT OF APPEALING PRO SE AFTER BEING DENIED APPELLATE COUNSEL AND IN JEOPARDY OF LOSING HIS CHILDREN FOREVER.

THE APPELLANT FATHER IS WITHOUT THE ASSISTANCE OF COUNSEL AT A CRITICAL STAGE OF THE PROCEEDINGS. AS A PRO SE LITIGANT, HE IS BEING DENIED MEANINGFUL AND PURPOSEFUL ACCESS TO THE COURTS IN OHIO. HERE, HE IS ASKING THIS COURT TO SEE BEYOND THE FORM (OF DENIALS); AND RULE ON THE SUBSTANCE AND MERITS OF THIS MATTER. WHILE ITS TRUE THAT BOTH THE FATHER AND MOTHER MADE MISTAKES AND WENT TO PRISON; BUT THIS IS ONLY A TEMPORARY SITUATION. THE OHIO LOWER COURTS GRANTING PERMANENT CUSTODY TO GCCS; WHOSE SOLE PURPOSE SEEMS TO BE TO BREAK UP THIS FAMILY AND HAVE THE CHILDREN ADOPTED SEPARATELY, IS NOT IN THE BEST INTERESTS OF THE CHILDREN. MOREOVER, IT SHOULD NOT BE A FURTHER CONSEQUENCE FOR A

CRIMINAL VIOLATION; REGARDLESS OF THE SENTENCE IMPOSED. THIS CONTINUED PUNISHMENT IS A SEVERE FORM OF CRUEL AND UNUSUAL PUNISHMENT; AND SHOULD NOT BE THE RESULT OF COMING TO PRISON. IN FACT, THIS RESULT IS BAD FOR BOTH THE PARENTS AND THE CHILDREN. SUCH CONSEQUENCE FLIES FLAGRANTLY AGAINST THE CONSTITUTION AND STATUTORY RIGHTS OF THE GENERAL PUBLIC. HERE, AS THE FATHER AND MOTHER ARE UNABLE TO SECURE COUNSEL (CANNOT AFFORD AS THEY ARE INCARCERATED); THEY SHOULD AT LEAST BE AFFORDED THE RIGHT TO BE HEARD, TO HAVE ACCESS TO THE COURTS TO ADDRESS THEIR CONCERNS AND RESOLVE THE DISPUTES UPON THE MERITS AND IN THE INTERESTS OF JUSTICE.

THE APPELLANT FATHER IS NOT A TRAINED ATTORNEY. HE IS PRESENTING HIS CASE AS BEST HE CAN. THEREFORE, HE IS ASKING FOR SOME LEeway. THE LAW FAVORS AN ADJUDICATION ON THE MERITS AND NOT TECHNICAL DENIALS. PLUS, IN CIVIL MATTERS (AS WELL AS CRIMINAL); THERE ARE REVISED CODES AND COURT RULES THAT CREATE PROPER REMEDIES AS A SAFEGUARD TO A PARTY'S SUBSTANTIAL RIGHTS WITHIN THE ADVERSIAL PROCESS. CIVIL RULE 52(B) IS ONE OF THESE RULES THAT ALLOW THE COURT - TRIAL AND/OR APPELLATE - TO TAKE NOTICE OF PLAIN ERRORS AND DEFECTS NOT PRESENTED PREVIOUSLY. IN THESE REGARDS, AND IN THE INTERESTS OF FAIRNESS AND JUSTICE; MEANINGFUL AND PURPOSEFUL ACCESS ALSO MEANS THAT A COURT MAY TAKE **SUA SPONTE JUDICIAL NOTICE** TO PERMIT THE APPLICATION OF THE REMEDIES LEGISLATED AS THEY WERE DESIGNED AND INTENDED. HE IS ALSO ASKING THIS COURT TO TAKE EMPATHY ON HIS UNIQUE CIRCUMSTANCES.

THERE ARE MANY QUESTIONS PRESENTED WHICH - IF THIS COURT ADDRESSES THEM - NOT ONLY AFFECT THE PUBLIC OR GREAT GENERAL INTEREST; BUT ALSO RAISES A SUBSTANTIAL CONSTITUTIONAL QUESTION. SPECIFICALLY, HERE IS IT REALLY IN THE BEST INTERESTS OF THE CHILDREN TO TAKE THEM AWAY FROM

THEIR PARENTS? IS PERMANENT CUSTODY TO GCCS IN THE BEST INTERESTS OF THESE THREE CHILDREN? REMEMBER!! GCCS HAS THE INTENTION TO HAVE THESE CHILDREN ADOPTED SEPARATELY. THEY ARE DESTROYING THE FAMILY BEYOND JUST TAKING THEM AWAY FROM THE PARENTS!! DOES THE RECORD CONTAIN COMPETENT!! CREDIBLE EVIDENCE TO SUPPORT THE GRANTING OF PERMANENT CUSTODY TO GCCS? REMEMBER, THE FIRST TIME (UNDER CASE NOS. 2012-CA-~~32~~ AND ~~33~~): THE COURT OF APPEALS SECOND APPELLATE DISTRICT HELD THAT THERE WAS A LACK OF EVIDENCE REGARDING THE BEST INTEREST DETERMINATION AS WELL AS THE LACK OF A DISCUSSION OF THE STATUTORY FACTORS!! MOREOVER THAT THE TRIAL COURT ABUSED ITS DISCRETION IN DETERMINING THAT AWARDED PERMANENT CUSTODY OF THE CHILDREN TO THE AGENCY IS IN THEIR BEST INTEREST. SEE FIRST DECISIONS!! NOTHING CHANGED. UPON REMAND, GCCS STARTED THE PROCESS ALL OVER. WHAT CHANGED? ON THESE SECOND PROCEEDINGS, WAS IT REVERSIBLE ERROR TO SUMMARILY DENY APPELLANT'S MOTION FOR LEGAL CUSTODY WITHOUT A HEARING? FURTHER!! AS OUTLINED IN HIS PROPOSITIONS OF LAW: WAS IT REVERSIBLE ERROR FOR THE OHIO LOWER COURTS TO EXCLUDE THE CHILDREN'S ATTORNEY FROM THE IN CAMERA INTERVIEW? AND LASTLY!! WAS THE APPELLANT DENIED DUE PROCESS AND FAIR PROCEEDINGS BY GCCS AND THE LOWER COURTS? THIS COURT MUST ACCEPT JURISDICTION HEREIN.

STATEMENT OF THE CASE AND FACTS

THE PROCEDURAL HISTORY OF THIS CASE HAS BEEN TORTUROUS!! MOST DISTURBING IS THE DISMISSIVE NATURE OF THE APPELLANT'S RIGHTS!! LET'S REMEMBER FURTHER THAT AMONG THE RIGHTS VIOLATED HEREIN; ARE THE RIGHTS OF A FATHER. HE IS JUST TRYING TO BE A PARENT; TO BE INVOLVED WITH HIS CHILDREN. YES, HE MADE A MISTAKE AND WENT TO PRISON FOR FIVE YEARS!! BUT AS THIS CASE HAS PROLONGED IN CONTENTION; THIS TIME IS ALMOST UP!!

THIS CASE HAS BEEN MIRED IN ERROR. THE FLAWS BEGAN WITH THE GCCS ADMINISTRATION AND PROGRESSED NEGATIVELY THROUGHOUT THE CASE. IN FACT, EVEN AFTER THE COURT OF APPEALS REMANDED THE CASE; GCCS CONTINUED TO DENY APPELLANTS CONTACT WITH THEIR CHILDREN. THEY DID NOT ALLOW CONTACT BY LETTERS, PHONE CALLS, OR VISITS. ALL WHILE WE STILL HAD LEGAL CUSTODY OF OUR CHILDREN AND FULL PARENTAL RIGHTS. THIS IS A SAD STATEMENT ON THE LEGAL SYSTEM IN GREENE COUNTY.

PLEASE NOTE THE UNITED STATES SUPREME COURT HAS RECOGNIZED THAT A PARENT'S INTEREST IN THE CARE, CUSTODY, AND CONTROL OF THEIR CHILDREN "IS PERHAPS THE OLDEST OF THE FUNDAMENTAL LIBERTY INTERESTS RECOGNIZED" BY THE COURT. **TROXEL V. GRANVILLE 530 U.S. 57 (2000)**. GREENE COUNTY AND COURTS THEREIN HAVE FORGOTTEN THIS PARAMOUNT PRINCIPLE. THEY HAVE LOST THEIR WAY AND ABUSED THEIR DISCRETION IN THE WORST INTERESTS OF THE CHILDREN. BY IGNORING THE PARENTAL RIGHTS OF APPELLANT; THEY HAVE HURT THE CHILDREN AND DESTROYED A FAMILY. THIS IS A RESULT THAT THIS COURT MUST ATTEMPT TO REMEDY.

IN REVIEW, GCCS FILED FOR PERMANENT CUSTODY OF ALL THREE CHILDREN IN DECEMBER 2011. THIS WAS DONE WITHOUT PROPER INVESTIGATION. THERE IS NO DISPUTE THAT GCCS HAS FAILED THE CHILDREN HEREIN IN MANY WAYS. HOWEVER, THE MOTION WAS GRANTED FOR ALL THREE CHILDREN BY ENTRY ON APRIL 2 2012. AT THIS POINT, GCCS TERMINATED ALL PARENTAL CONTACT. IN FACT, THEY EVEN HAD THE AUDACITY TO TELL THE CHILDREN THAT THE FINAL VISIT WAS A GOODBYE VISIT WITH THEIR PARENTS. HOW CRUEL CAN YOU BE? HOW DO YOU TELL A CHILD THAT HE CANNOT EVER SEE HIS PARENTS AGAIN? HE CAN NO LONGER WRITE OR RECEIVE LETTERS? THIS HAPPENED IN APRIL OF 2012 AND IS STILL CONTINUING. VERY SAD STATE OF AFFAIRS. THIS CERTAINLY WAS NOT IN THE BEST INTERESTS OF THE CHILDREN.

BOTH FATHER AND MOTHER APPEALED. SEE CASE NOS! 2012CA32 AND 113, DURING THE PENDENCY OF THIS APPEAL; ONCE AGAIN GCCS DISCONTINUED VISITS WITH THE CHILDREN. APPELLANT FILED A PRO SE MOTION TO RE-ESTABLISH PARENTAL VISITATION. APPELLANT COUNSEL FILED A MOTION TO STAY THE PERMANENT CUSTODY DECISION, WHICH WAS DENIED. THE JUVENILE COURT ALSO CANCELED THE HEARING ON APPELLANT'S MOTION TO RE-ESTABLISH PARENTAL VISITATION.

THE GREENE COUNTY COURT OF APPEALS SECOND APPELLATE DISTRICT REVERSED THE GRANT OF PERMANENT CUSTODY AND REMANDED THE CASES IN JANUARY OF 2013. THE COURT OF APPEALS HELD THAT IT WAS NOT IN THE BEST INTERESTS OF THE CHILDREN TO BE IN THE PERMANENT CUSTODY OF GCCS AS THERE WAS NO SUPPORT FOR THE DETERMINATION THAT SEPARATE ADOPTIONS FOR THE CHILDREN WAS BEST. IN FACT, THE COURT OF APPEALS HELD THERE WAS AN OVERALL LACK OF EVIDENCE REGARDING THE BEST INTEREST DETERMINATION AS WELL AS THE LACK OF A DISCUSSION OF THE STATUTORY FACTORS BY THE JUVENILE COURT; COUPLED WITH THE STATED WISHES OF THE OLDER CHILDREN AND THE FACT THAT ADOPTION WOULD RESULT IN THEIR SEPARATION FROM ONE ANOTHER. THUS THE COURT OF APPEALS IN THEIR ENTRY CONCLUDED THAT THE JUVENILE COURT "ABUSED ITS DISCRETION IN DETERMINING THAT AWARDED PERMANENT CUSTODY OF THE CHILDREN TO THE AGENCY IS IN THEIR BEST INTEREST!" SEE OPINION AND FINAL ENTRY. NOTHING HAS CHANGED. IF THIS CASE WOULD HAVE ENDED HERE; GCCS PLACING THE CHILDREN WITH RELATIVES OR FRIENDS AND ALLOWING CONTACT AND VISITS AGAIN FOR THE PARENTS; EVERYTHING WOULD BE FINE. BUT, THIS IS NOT WHAT HAPPENED.

IN FACT, UPON REMAND THE JUVENILE COURT ENTERED AN ORDER ON JANUARY 8 2013 AGAIN PLACING THE CHILDREN IN GCCS TEMPORARY CUSTODY;

AND ORDERED GCCS TO LOCATE ALTERNATIVE PLACEMENT. HOWEVER, FIFTEEN DAYS LATER GCCS AGAIN FILED FOR PERMANENT CUSTODY. NO REAL EFFORTS TO FIND ALTERNATIVE PLACEMENT OR RE-UNIFY THE FAMILY WERE EVER MADE. GCCS WAS PREJUDICED FROM THE VERY START AGAINST THE APPELLANT FATHER AND MOTHER. THE PARENTS COULD DO NOTHING RIGHT IN THEIR EYES.

APPELLANT FATHER FILED PRO SE MOTIONS FOR PLACEMENT WITH FAMILY FRIENDS (THE TROYER FAMILY) AND TO COMPEL DISCOVERY. BOTH MOTIONS WERE DENIED. APPELLANT FATHER APPEALED BUT IT WAS DISMISSED FOR LACK OF A FINAL APPEALABLE ORDER. THE JUVENILE COURT FILED A SUPPLEMENTAL ORDER ON APRIL 4, 2013. IN THIS ORDER THE REASONS FOR OVERRULING THE PLACEMENT WITH THE TROYERS WAS THE LACK OF VALID LICENCED PLACEMENT AND APPROVED HOME STUDY IN GREENE COUNTY; ALONG WITH A VERY WEAK RULING THAT THE PARENTS FAILED TO TIMELY APPEAL THE TEMPORARY CUSTODY. AGAIN, NOTE THE VERY SHORT TIME PERIOD. WHAT FAILURE?

THE SECOND PERMANENT CUSTODY TRIAL WAS A FARCE. ON JULY 18, 2013, IT WAS A GREATLY ONE-SIDED AFFAIR IN FAVOR OF GCCS. WHILE THE COURT CONDUCTED AN IN CAMERA INTERVIEW WITH R. IN APRIL 2013, THE RESULTS WERE SEALED AND THE CHILDREN'S ATTORNEY WAS EXCLUDED. THE GUARDIAN AD LITEM RECOMMENDED THAT PERMANENT CUSTODY BE GRANTED TO GCCS SO THAT THE CHILDREN COULD REMAIN WITH THEIR FOSTER FAMILIES. (DESPITE THE FACT EVERYONE KNEW THAT GCCS INTENTION WAS FOR SEPARATE ADOPTIONS). NO ONE REALLY CARED ABOUT FAMILY REUNIFICATION OR WHAT THE CHILDREN WANTED. EACH PARENT TESTIFIED AGAINST PERMANENT CUSTODY TO GCCS. IN ITS AUGUST 1, 2013, JUDGMENT ENTRY THE JUVENILE COURT CONCLUDED THAT GRANTING PERMANENT CUSTODY TO GCCS WAS IN THE CHILDREN'S BEST INTEREST. AS FURTHER DISCUSSED AND ARGUED HEREIN, THIS DETERMINATION WAS IN ERROR.

BOTH FATHER AND MOTHER APPEALED (AGAIN) TO THE GREENE COUNTY COURT OF APPEALS SECOND APPELLATE DISTRICT FROM THE JUVENILE COURT'S AUGUST 2013 JUDGMENTS IN SEPARATE BRIEFS. APPELLANT FATHER ARGUED THE TRIAL COURT ABUSED ITS DISCRETION IN CONCLUDING THAT THE AWARD OF PERMANENT CUSTODY TO GCCS WAS IN THE CHILDREN'S BEST INTERESTS. IN FACT, EXTENDING TEMPORARY CUSTODY OR PLACEMENT WITH THE TROYERS WAS BEST. FURTHER, THE IN CAMERA INTERVIEW WAS IMPROPER AND EXCLUDED WRONGLY R.L.'S ATTORNEY. THE MOTHER ARGUED THAT THE JUVENILE COURT FAILED TO PROPERLY WEIGH THE BEST INTEREST FACTORS SET FORTH IN ORC SECTION 2154.17(E) AND THAT ITS DECISION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE. ALL ASSIGNMENTS OF ERROR WERE DENIED AND SUMARILY DISMISSED IN ERROR. SEE FILED STAMPED OPINION AND FINAL ENTRY DATED SEPTEMBER 15 2014 IN THE APPENDIX. THIS ERRONEOUS DECISION IS THE BASIS FOR THE INSTANT APPEAL. THE OBVIOUS ERRORS AND DEFECTS ARE THE REASONS THIS COURT SHOULD ACCEPT JURISDICTION AND GRANT REVIEW ON THE MERITS.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

PROPOSITION OF LAW NO. I: THE OHIO STATE LOWER COURTS ERRED AND ABUSED THEIR DISCRETION BY AWARDING OR AFFIRMING PERMANENT CUSTODY TO GREENE COUNTY CHILDREN SERVICES; AND NOT TO THE PARENTS, AS SUCH DISPOSITION WAS NOT IN THE CHILDREN'S BEST INTEREST AND WAS NOT SUPPORTED BY CLEAR AND CONVINCING EVIDENCE OR SUPPORTED BY THE GREATER WEIGHT OF CREDIBLE EVIDENCE.

APPELLANT FATHER WILL AGAIN START BY STATING "NOTHING CHANGED." REMEMBER, AFTER THE FIRST APPEAL THE GREENE COUNTY COURT OF APPEALS REVERSED THE GRANT OF PERMANENT CUSTODY TO GCCS. MOREOVER, IN ITS ENTRY THE COURT OF APPEALS HELD THAT THE JUVENILE COURT "ABUSED ITS DISCRETION IN DETERMINING THAT AWARDING PERMANENT CUSTODY OF THE CHILDREN TO THE AGENCY IS IN THEIR BEST INTEREST." NOTHING CHANGED.

THE LOWER COURTS DETERMINATIONS ARE NOT BASED OR SUPPORTED BY CLEAR AND CONVINCING EVIDENCE OR SUPPORTED BY THE GREATER WEIGHT OF CREDIBLE EVIDENCE. HERE, THERE WAS A PLAN TO REUNIFY THE FAMILY. IT WAS IGNORED. MOREOVER, BOTH PARENTS TESTIFIED THAT THEIR SENTENCES WERE SUBJECT TO EIGHTY PERCENT REDUCTION. THIS EVIDENCE WAS NOT OPPOSED BY GCCS. MOTHER IS ELIGIBLE TO BE RELEASED AS EARLY AS AUGUST 2014 AND FATHER BY MAY 2015. IN LIGHT OF THE BEST INTEREST OF THE CHILDREN, THIS CERTAINLY WAS A REASONABLE AMOUNT OF TIME TO RE-UNIFY THE FAMILY. PLUS, UNTIL THE PARENTS RELEASE; THE APPELLANT FATHER REQUESTED PLACEMENT OF THE CHILDREN (TOGETHER) WITH FAMILY FRIENDS ALLEN AND DORA TROYER. IT WAS ERROR TO NOT GRANT THEM TEMPORARY CUSTODY. PURSUANT TO THEIR OWN RULES AND REGULATIONS, GCCS MAY NEED AN APPROVED HOME STUDY PRIOR TO PLACEMENT, BUT THE COURT MAY GRANT LEGAL CUSTODY WITHOUT AN APPROVED AGENCY HOME STUDY, IN THE BEST INTEREST OF THE CHILDREN. IT WAS AGAINST REASON TO PRECLUDE WITHOUT MORE. AGAIN, PREJUDICIAL AGAINST THE PARENTS AND THEIR PLAN. CERTAINLY, THERE WAS NOT ENOUGH EVIDENCE TO DETERMINE THAT PERMANENT CUSTODY TO GCCS WAS IN CHILDREN'S BEST INTEREST.

HOWEVER, THIS PREJUDICE WAS APPARENT DURING THE WHOLE GCCS ADMINISTRATION. GCCS DID NOT PROVIDE THE CHILDREN OR EITHER PARENT REGULAR CONTACT (BY PHONE, MAIL, OR IN PERSON) DURING THE PARENTS INCARCERATION, PRIOR TO THE SECOND PERMANENT CUSTODY TRIAL; APPELLANT WAS LAST GIVEN A VISIT IN APRIL OF 2012. APPELLANT FATHER MADE NUMEROUS REQUESTS TO GCCS AND THE LOWER COURTS FOR VISITS. ALL WERE IGNORED. AGAIN, EVEN AFTER THE REMAND THE JUVENILE COURT DID NOT GRANT PARENTAL VISITS AND HELD THE MOTION IN ABEYANCE PENDING THE PERMANENT CUSTODY TRIAL. THIS WAS IN FURTHER ERROR. CERTAINLY, NOT SUPPORTED BY THE EVIDENCE.

QUITE SIMPLY, APPELLANT FATHER ARGUES THAT THE JUVENILE COURT AND THE GREENE COUNTY COURT OF APPEALS ERRED BY GRANTING OR AFFIRMING THE GRANT OF PERMANENT CUSTODY OF HIS CHILDREN TO GCCS. MOREOVER, NOT IN THE BEST INTEREST OF HIS CHILDREN AND NOT SUPPORTED BY CLEAR AND CONVINCING EVIDENCE. AS DISCUSSED, THE APPELLANTS VIABLE AND REASONABLE ALTERNATIVES WERE IGNORED. SUCH AMOUNTS TO AN ABUSE OF DISCRETION AND REVERSIBLE ERROR. IN THIS REGARD, NEITHER COURT FULLY CONSIDERED THE PARENTAL RIGHTS OF THE APPELLANTS. AGAIN, SUCH IS IN CONTRAST TO THE HOLDINGS OF THE UNITED STATES SUPREME COURT. SEE AGAIN **TROXEL V. GRANVILLE** 530 U.S. 57 (2000). HERE, THE OHIO LOWER COURTS VIOLATED THE FUNDAMENTAL LIBERTY INTERESTS OF APPELLANT FATHER. IN FACT, REGARDLESS HOW THE COURTS FELT ABOUT BOTH MOTHER AND FATHER; THEIR INTERESTS IN THE CARE, CUSTODY, AND CONTROL OF THEIR CHILDREN, SHOULD HAVE BEEN RECOGNIZED. ALL THEIR SUGGESTIONS WERE DISREGARDED.

THE APPELLANT FATHER IS ASKING THIS COURT TO NOTE THAT ORC SECTION **2151.414** REQUIRES THE COURTS TO FIND BY CLEAR AND CONVINCING EVIDENCE THAT THE GRANTING OF PERMANENT CUSTODY IS IN THE BEST INTEREST OF THE CHILDREN. SEE IN RE U.C. 2011 OHIO 2066 (2011). THIS WAS NOT DONE HERE. THE COURT OF APPEALS (AS IT PROPERLY DID THE FIRST TIME) CAN OVERTURN THE JUVENILE COURT'S DECISION TO GRANT PERMANENT CUSTODY ON EVIDENTIARY GROUNDS IF THE RECORD FAILS TO CONTAIN COMPETENT CREDIBLE EVIDENCE." IN RE FORREST S. 100 OHIO APPL 3D 388 (1995). THIS MUST BE DONE BY CLEAR AND CONVINCING EVIDENCE BEFORE A COURT TERMINES PARENTAL RIGHTS, WHILE IT WAS IGNORED; THERE WAS ALOT OF CONFLICTING EVIDENCE AND NOTE AGAIN THAT GCCS HAMBERED THE PARENT-CHILD RELATIONSHIP; BY IMPROPERLY NOT ALLOWING CONTACT, WHICH NEGATIVELY AFFECTED THE BOND WITH THE PARENTS AND THE TESTIMONY RECEIVED AT TRIAL; NOT CLEAR AND CONVINCINGLY PROVEN.

SEE MILLER V. GREENE COUNTY CHILDREN'S BOARD ¶62 OHIO APP. 5D 416 (2005). A DECISION IS AN ABUSE OF DISCRETION WHEN ITS DECISION IS "UNREASONABLE ARBITRARY OR UNCONSCIONABLE." BLAKEMORE V. BLAKEMORE 5 OHIO ST. 3D 217, 219 (1984). THIS OHIO SUPREME COURT MUST SEE MERIT TO THIS FIRST PROPOSITION OF LAW AND GRANT JURISDICTION FOR REVIEW.

REMEMBER, MOST DISTURBINGLY THE OHIO LOWER COURTS ARE NOT PROPERLY WEIGHING THE STATUTORY FACTORS. SEE ORC SECTION 215.414. ONE OF THESE BEING THE WISHES OF THE CHILDREN. AS IT WAS UNDISPUTED THAT R.L. IN PARTICULAR IS BONDED WITH AND WANTS TO LIVE WITH HIS PARENTS THAT CANNOT OCCUR IF PERMANENT CUSTODY IS GRANTED TO GCCS. ALL I WANTS TO LIVE WITH R.L. AND IT WOULD BE DETERMENTAL TO SEPARATE THE BOYS. SEPARATION COULD OCCUR IF PERMANENT CUSTODY IS GRANTED. THE BOYS ARE NOT IN A POTENTIAL ADOPTIVE PLACEMENT AND MAINTENANCE OF THEIR CURRENT PLACEMENT DOES NOT REQUIRE PERMANENT CUSTODY; NOR SEVERANCE OF THEIR LEGAL RELATIONSHIP WITH THEIR PARENTS. FUTURE PLACEMENT WITH PARENTS IS THE ONLY OPTION WHICH WOULD PERMIT THE THREE SIBLINGS TO BE RAISED TOGETHER. PERMANENT CUSTODY WOULD PRECLUDE SUCH PLACEMENT; AND TERMINATE THE RELATIONSHIP BETWEEN THE THREE SIBLINGS. THE LOWER COURTS DETERMINATIONS WERE NOT IN THE BEST INTERESTS OF THE CHILDREN AS IT WAS NOT SUPPORTED BY CREDIBLE EVIDENCE OR EVEN SUPPORTED BY THE GREATER WEIGH OF COMPETENT EVIDENCE. THESE DETERMINATIONS WERE A CLEAR ABUSE OF DISCRETION AND MUST BE REVERSED BY THIS COURT. THUS, THIS CASE MUST BE GRANTED JURISDICTION AND REVIEWED ON THE MERITS.

PROPOSITION OF LAW NO. II: THE OHIO STATE LOWER COURTS ERRED AND ABUSED THEIR DISCRETION BY OVERRULING AND AFFIRMING THE TRIAL COURT'S DECISION TO DENY THE APPELLANTS JANUARY ~~30~~ ~~2013~~ MOTION TO PLACE THE CHILDREN WITH THE TROYERS; AND IT WAS ALSO ERROR AND AN ABUSE OF DISCRETION TO AWARD PERMANENT CUSTODY TO GCCS WITHOUT AN EVIDENTIARY HEARING ON THE MOTION.

APPELLANT FATHER'S JANUARY ~~30~~ ~~2013~~ MOTION FOR PLACEMENT OF HIS CHILDREN ALL TOGETHER WITH ALLEN AND DORA TROYER WAS IN EFFECT A MOTION FOR THE MODIFICATION OF A DISPOSITIONAL ORDER. SUCH WAS DENIED IN ERROR AND SUCH REQUEST WAS PROPER UNDER THE STATUTE. SEE ORC SECTION ~~03110415~~ ~~3111.415~~. THE JUVENILE COURT ABUSED ITS DISCRETION BY NOT EVEN GIVING IT CONSIDERATION AND SAYING IT WAS UNTIMELY. THE COURT OF APPEALS ERRED IN AFFIRMING THIS IMPROPER DETERMINATION. HERE, THE TROYERS WERE INTERESTED INDIVIDUALS WHO SHOULD HAVE BEEN RECOGNIZED FOR LEGAL CUSTODY. AT THE VERY LEAST, AN EVIDENTIARY HEARING SHOULD HAVE BEEN HELD. HOWEVER, THE JUVENILE COURT SIMPLY SUMARILY OVERRULED WITHOUT A HEARING AND THE COURT OF APPEALS AFFIRMED. THIS IS CLEAR ERROR.

LASTLY, PLEASE NOTE THAT IN OVERTURNING THE PRIOR PERMANENT CUSTODY ORDER THE COURT OF APPEALS HELD THAT IT WAS NOT IN THE CHILDREN BEST INTERESTS. AGAIN, NOTHING HAS CHANGED. FURTHER THE COURT OF APPEALS NOTED THAT UNLESS PLACED TOGETHER WITH A RELATIVE; THE CHILDREN WOULD BE SEPARATED BY ADOPTION. HOWEVER, AS REQUESTED HERE BY APPELLANT FATHER; PLACING THE CHILDREN IN THE LEGAL CUSTODY OF AN INTERESTED PARTY SUCH AS THE TROYERS, WOULD AVOID PERMANENT CUSTODY AND SEPARATE PLACEMENTS FOR THE CHILDREN. IT WAS ERROR AND AN ABUSE OF DISCRETION TO DENY THE MOTION WITHOUT A HEARING AND FULLY CONSIDERING ALL THE STATUTORY FACTORS.

PROPOSITION OF LAW NO. III: THE OHIO STATE LOWER COURTS ERRED AND ABUSED THEIR DISCRETION BY EXCLUDING AND AFFIRMING THE EXCLUSION OF THE CHILDREN'S ATTORNEY FROM AN IN CAMERA INTERVIEW AND ORDERING THAT ONLY THE COURT "AND THE GUARDIAN AD LITEM WILL BE PRESENT." THE CHILDREN WERE NOT REPRESENTED BY COUNSEL AS IN FACT THE CHILDREN'S ATTORNEY WAS NOT PRESENT FOR THE INTERVIEW.

HERE, THE GREENE COUNTY JUVENILE COURT APPOINTED COUNSEL FOR THE CHILDREN. MOREOVER, R.L. WANTED TO LIVE WITH HIS PARENTS, BUT, THE GUARDIAN AD LITEM RECOMMENDED PERMANENT CUSTODY WITH GCCS. THE CHILDREN'S ATTORNEY REQUESTED AN IN CAMERA OF R.L. ONLY PURSUANT TO ORC SECTION 31.09.04(B)(2)(c). WHEN GRANTING SAID REQUEST THE COURT HOWEVER ONLY ALLOWED THE GUARDIAN AD LITEM TO BE PRESENT; HE PURPOSELY EXCLUDED THE CHILDREN'S ATTORNEY. THIS WAS IN ERROR.

PLEASE ALSO NOTE THAT ORC SECTION 2151.13.2 PROVIDES THAT A CHILD IS ENTITLED TO REPRESENTATION BY LEGAL COUNSEL AT ALL STAGES OF THE PROCEEDINGS. THUS, NOT ONLY WAS IT REQUIRED UNDER THE IN CAMERA RULES; THAT THE CHILD'S ATTORNEY BE PRESENT, THE CHILD AND ALL INTERESTED PARTYS WERE ENTITLED TO HAVE SAID ATTORNEY PRESENT TO PROTECT HIS RIGHTS. THIS WAS EVEN MORE NEEDED AS A CONFLICT HAD ALREADY BEEN DETERMINED; AS THE GUARDIAN AD LITEM WAS IN FAVOR OF PLACEMENT WITH GCCS. THIS MUST BE REVIEWED BY THIS COURT; AS THIS WAS A CLEAR ABUSE OF DISCRETION AND TANTAMOUNT TO DENIAL OF THE RIGHT TO COUNSEL. HERE, IT ALSO WAS VERY PREJUDICIAL TO APPELLANT FATHER; ONLY THE GUARDIAN AD LITEM VIEWPOINTS WERE ADVANCED DURING THESE PROCEEDINGS.

PROPOSITION OF LAW NO. IV: THE APPELLANTS WERE DENIED DUE PROCESS AND FAIRNESS IN THESE CIVIL PROCEEDINGS. GCCS SOLE OBJECTIVE WAS TO DENY THE PARENTS REUNIFICATION WITH THEIR THREE CHILDREN. A PLAN CERTAINLY NOT PART OF GCCS MISSION NOR IN THE CHILDREN'S BEST INTERESTS. THIS DENIAL OF DUE PROCESS AND FAIRNESS CONTINUED THROUGHOUT THE COURT PROCEEDINGS AND IN BOTH PERMANENT CUSTODY TRIALS.

THE APPELLANT FATHER CONTENDS THAT HE AND HIS WIFE HAVE BEEN DENIED DUE PROCESS AND FAIRNESS IN THESE CIVIL PROCEEDINGS. THIS HAS BEEN DISCUSSED IN GREATER DETAIL IN PREVIOUS PROPOSITIONS OF LAW. AT THE VERY BEGINNING, GCCS WAS PREJUDICED AGAINST THE PARENTS HEREIN. IN FACT, EVEN AFTER THE REMAND BOTH GCCS AND THE JUVENILE COURT DENIED THE PARENTS FURTHER CONTACT WITH THEIR CHILDREN. MOREOVER, ALL THEIR INPUT, MOTIONS, AND SUGGESTIONS FOR PLACEMENT WERE IGNORED. THEY DID NOT ANY DUE PROCESS, FAIRNESS OR CONSIDERATION. DUE PROCESS REQUIRES AN OPPORTUNITY TO BE HEARD. ARMSTRONG V. ARMSTRONG 480 U.S. 505 (1987). THESE DENIALS WERE CONTINUED WHEN THE COURT OF APPEALS AFFIRMED THE GRANT OF PERMANENT CUSTODY TO GCCS.

CONCLUSION

WHEREFORE, FOR ALL THE ABOVE STATED REASONS, THE APPELLANT FATHER PRAYS THIS COURT TO ACCEPT JURISDICTION AND REVIEW THIS CASE ON THE MERITS; AND ALL OTHER PROPER RELIEF IN THE PREMISES.

RESPECTFULLY SUBMITTED,



ROBERT LEWIS
CCI #A611-749
P.O. BOX 8500
CHILLICOTHE OHIO 45601

CERTIFICATE OF SERVICE

THE UNDERSIGNED DOES HEREBY CERTIFY THAT A COPY OF THE FOREGOING WAS SERVED UPON COUNSEL FOR APPELLEE BRITTANY M. HENSLEY GREENE COUNTY PROSECUTING ATTORNEY 64 GREENE STREET XENIA OHIO 45385 BY REGULAR U.S. MAIL SERVICE ON THIS 27th DAY OF OCTOBER 2014.



ROBERT LEWIS

FILED

2014 SEP 15 AM 11:03

COURT OF APPEALS
GREENE COUNTY
CLERK OF COURTS

IN THE COURT OF APPEALS FOR GREENE COUNTY, OHIO

IN THE MATTER OF:

R.L., A.L. and A.L.

C.A. CASE NOS. 2013-CA-46
and 2013-CA-50

T.C. NOS. N43082 and S43380

FINAL ENTRY

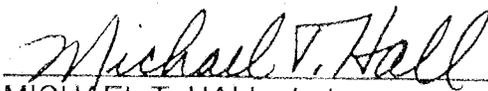
Pursuant to the opinion of this court rendered on the 12th day of September 2014,
the judgment of the trial court is affirmed.

Costs to be paid as stated in App.R. 24.

Pursuant to Ohio App.R. 30(A), it is hereby ordered that the Clerk of the Greene
County Court of Appeals shall immediately serve notice of this judgment upon all parties and
make a note in the docket of the mailing.


JEFFREY E. FROELICH, Presiding Judge


MIKE FAIN, Judge


MICHAEL T. HALL, Judge

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FILED

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COURT OF APPEALS
GREENE COUNTY
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IN THE COURT OF APPEALS FOR GREENE COUNTY, OHIO

IN THE MATTER OF:

R.L., A.L. and A.L.

C.A. CASE NOS. 2013-CA-46
and 2013-CA-50

T.C. NOS. N43082 and S43380

(Juvenile appeal from
Common Pleas Court)

OPINION

Rendered on the 12th day of September, 2014.

STEPHEN K. HALLER, Atty. Reg. No. 0009172, by BRITTANY M. HENSLEY, Atty. Reg. No. 0086269, Greene County Prosecuting Attorney's Office, 61 Greene Street, Xenia, Ohio 45385

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Attorney for Appellant, Mother

FROELICH, P.J.

14-09-1816

{¶ 1} Father and Mother appeal from judgments of the Greene County Court of Common Pleas, Juvenile Division, which granted permanent custody of their children, R.L., A.L.1, and A.L.2, to Greene County Children Services ("GCCS"). For the following reasons, the judgments of the trial court will be affirmed.

{¶ 2} In May 2011, GCCS filed a complaint alleging that Mother and Father's two sons, R.L. (born March 2, 2000) and A.L.1 (born November 20, 2007), were neglected and dependent children; they were placed in the temporary custody of GCCS. The complaint alleged that the children exhibited poor hygiene, that their medical ailments went untreated, and that R.L.'s attendance at school was poor. In July 2011, R.L. and A.L.1 were adjudicated abused, neglected, and dependent. That same month, Mother and Father were each convicted of Illegal Manufacture of Drugs and Illegal Assembly or Possession of Chemicals for the Manufacture of Drugs, related to the operation of a methamphetamine lab in their family residence. Mother was also convicted of Possession of Controlled Substances. Mother was sentenced to a four-year prison term, and Father was sentenced to a five-year prison term. While incarcerated, Mother gave birth to the parties' third child, a daughter, A.L.2 (born September 10, 2011). A.L.2 was immediately placed in the temporary custody of GCCS and was adjudicated dependent on January 12, 2012.

{¶ 3} In January 2012, GCCS filed a motion for permanent custody of the children, which was granted. Mother and Father appealed. Noting that the trial court's judgment did not discuss any of the statutory factors related to the children's best interest and that the two older children were bonded and would be separated for adoption, which those children did not want, we concluded that the trial court had abused its discretion in determining that awarding permanent custody to GCCS was in their best interest. *In re R.L., A.L., and A.L.*,

2d Dist. Greene Nos. 2012CA32 and 2012CA33, 2012-Ohio-6049, ¶ 23. We reversed and remanded for further proceedings. *Id.* at ¶ 49.

{¶ 4} In January 2013, GCCS filed another motion for permanent custody of the children. The parents remained incarcerated at that time and had sought placement of the children with friends or relatives. The court conducted an in-camera interview with R.L. in April 2013 and a hearing on GCCS's motion in July 2013.

{¶ 5} In its August 1, 2013 judgment entry, the trial court concluded that granting permanent custody was in the children's best interest, that they had been in the temporary custody of GCCS for 12 or more months of the previous 22-month period, and that the children could not be placed with their parents within a reasonable period of time. The trial court also found that GCCS had investigated more than 15 possible placements recommended by the parents, but that none was appropriate and/or the individuals involved either were uninterested in becoming involved or had been unresponsive to GCCS's contacts. The court noted that the foster family with which R.L. and A.L.1 lived was willing to keep them indefinitely, which would satisfy the boys' desire to stay together, but the family was not interested in adoption. A.L.2, who had never lived with or closely bonded with her brothers, had been placed in a different foster home, and that foster family was interested in adopting her. The children did not meet the requirements for a planned permanent living arrangement, and temporary custody could not be extended. The guardian ad litem recommended that permanent custody be granted to GCCS so that the children could remain with their foster families. The trial court granted permanent custody of the three children to GCCS.

{¶ 6} Father and Mother appeal from the trial court's August 2013 judgments, which

granted permanent custody of the three children to GCCS. The parents have filed separate briefs. Father raises four assignments of error. He argues that the trial court abused its discretion in concluding that the best interest of the children was served by an award of permanent custody; he asserts that temporary custody should have been extended. He also contends that R.L.'s attorney was improperly excluded from the court's in camera interview with the child and that he (Father) was denied due process. (Case No. 2013 CA 46.) Mother raises two assignments of error, in which she contends that the trial court failed to properly weigh the best interest factors set forth in R.C. 2151.414(E) and that its decision was against the manifest weight of the evidence. (Case No. 2013 CA 50.) Due to the similarity of these arguments, we will address them together.

{¶ 7} R.C. 2151.414(B)(1) establishes a two-part test for courts to apply when determining whether to grant a motion for permanent custody to a public services agency. The statute requires the court to find, by clear and convincing evidence, that: (1) granting permanent custody of the child to the agency is in the best interest of the child; and (2) either the child (a) cannot be placed with either parent within a reasonable period of time or should not be placed with either parent if any one of the factors in R.C. 2151.414(E) is present; (b) is abandoned; (c) is orphaned and no relatives are able to take permanent custody of the child; or (d) has been in the temporary custody of one or more public or private children services agencies for twelve or more months of a consecutive twenty-two month period. R.C. 2151.414(B)(1); *In re S.J.*, 2d Dist. Montgomery No. 25550, 2013-Ohio-2935, ¶ 14, citing *In re K.M.*, 8th Dist. Cuyahoga No. 98545, 2012-Ohio-6010, ¶ 8.

{¶ 8} In this case, there is no dispute that the children had been in the custody of GCCS for 12 or more months of a consecutive 22-month period when GCCS's second

motion for permanent custody was filed. R.L. and A.L.1 had been in GCCS's custody for 27 months at the time of the court's judgment, and A.L.2 had been in its custody for 23 months. Father's brief points out that, by virtue of the trial court's original order granting permanent custody to GCCS, and our subsequent reversal of that order on appeal, the children arguably spent part of the time included in the trial court's calculations in GCCS's *permanent* custody, rather than its temporary custody. Under the facts of this case, however, we find this distinction to be of little, if any, significance. Whether in GCCS's temporary or permanent custody, the children were indisputably in the type of legal limbo contemplated by R.C. 2151.414(B)(1) for twelve or more months of a consecutive 22-month period preceding the trial court's judgment. The children remained with their foster families, rather than with their parents, during the parents' previous appeal.

{¶ 9} Mother argues in her brief that the court failed to adequately consider the potential of her early release from prison, possibly as early as August 2014, and that it therefore erred in concluding that the children could not be placed with her within a reasonable period of time.

{¶ 10} Pursuant to R.C. 2051.414(B)(1), the trial court was required to determine whether a grant of permanent custody was in the best interest of the children and **one** of the other listed conditions; having found that the children had been in the temporary custody of GCCS for 12 or more months of a consecutive 22-month period, the court was not required also to consider whether the children could be placed with either parent within a reasonable period of time (although the court did so in this case). The court's finding that the children had been in the temporary custody of GCSS for the requisite time, coupled with its finding that the grant of permanent custody was in the children's best interest, as

discussed below, was a sufficient basis for its grant of permanent custody.

{¶ 11} Moreover, we addressed Mother's argument about the likelihood of reunification within a reasonable time in the previous appeal, noting that certified copies of the judgment entries of conviction from the parents' criminal cases had been offered into evidence. We stated: "A review of the documents clearly indicates that four years of Mother's sentence is mandatory pursuant to R.C. 2929.13(F) and that five years of Father's sentence is likewise mandatory. Thus, any argument that either party might obtain an earlier judicial release is without merit." *In re R.L., A.L., and A.L.*, 2d Dist. Greene Nos. 2012CA32 and 2012CA33, 2012-Ohio-6049, ¶ 11.

{¶ 12} With respect to the best interest of a child, R.C. 2151.414(D) directs the trial court to consider all relevant factors, including but not limited to: (1) the interaction and interrelationship of the child with the child's parents, relatives, foster parents and any other person who may significantly affect the child; (2) the wishes of the child; (3) the custodial history of the child, including whether the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for 12 or more months of a consecutive 22-month period; (4) the child's need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency; and (5) whether any of the factors in R.C. 2151.414(E)(7) through (11) are applicable. R.C. 2151.414(D); *In re S.J.* at ¶ 15. The factors set forth in R.C. 2151.414(E)(7) through (11) include the parents' convictions of specific crimes, the parents' repeated withholding of food or medical treatment without justification, placing the child at risk of harm two or more times due to drug or alcohol abuse and rejecting treatment under a case plan, and abandoning the child.

{¶ 13} With respect to these factors, the trial court found that all three children were bonded with their foster families and that they had “not retained a significant or positive relationship with their parents due to the parents’ incarceration.” The record indicated that, although the foster parents of R.L. and A.L.1 were not interested in adoption, they were very open to a long-term or indefinite placement; A.L.2’s foster family was interested in adopting her. The court observed that the children had been “in a state of flux without a permanent solution for more than two (2) years” and that they had no interaction with extended family members. R.L. and A.L.1 had also had minimal interaction and had little bond with A.L.2, with whom they had never lived. It was very important to R.L. and A.L.1 that they stay together, and their foster care arrangement provided this option. The trial court found that, if the children were placed for adoption separately, R.L. was old enough to refuse to consent,¹ which the court found “could easily” happen if A.L.1 were not included. More than fifteen potential placements recommended by the parents were investigated by GCCS, but none was appropriate and/or willing to take the children; some of these recommendations involved relatives living in other countries who had never met the children.

{¶ 14} The guardian ad litem’s report indicated that both parents have extensive criminal histories beyond the offenses for which they were imprisoned at the time of the hearing, and R.L. had been abandoned at birth and lived in foster care for the first year of his life. Mother and Father operated a methamphetamine lab in their home, where the

¹Pursuant to R.C. 3107.06(E), a minor over the age of twelve must consent to his or her adoption, unless the court, finding that it is in the best interest of the minor, determines that the minor’s consent is not required.

children "lived amongst this illegal activity and were exposed to an extremely hazardous environment." The guardian ad litem described a complete lack of parental supervision and care, constant exposure to strangers in their home, and a lack of structure and boundaries. The guardian ad litem also expressed her belief that the "seeds of ethnic, racial, and law enforcement prejudices were deliberately and proudly sown" by Father into R.L. and A.L.1. Based on the guardian ad litem's report and recommendation, the court concluded that the children were "in desperate need emotionally for a permanent and secure placement."

{¶ 15} This conclusion gained further support from the testimony of GCCS caseworkers at the hearing. These witnesses testified that R.L. and A.L.1 had made great progress in their social, emotional, and intellectual development since being placed in their foster home. R.L. was doing well in school, and numerous disruptive behaviors that had been present in the early months of his placement with the foster family had significantly diminished or disappeared. During this time, the boys had also developed close relationships with their foster parents and foster siblings. The boys, particularly R.L., came to appreciate the structure and values provided in the foster home, as compared with his parents' home. A.L.2 was on track developmentally and well-adjusted to her foster home.

{¶ 16} During an in camera interview with the judge, R.L. indicated his view that he and his siblings were paying for his parents' mistakes, that he was glad his parents were getting help in prison, and that he wanted to stay with his foster family (and with A.L.1) if he could not have his parents back. The guardian ad litem stated in her report that A.L.1 "just wants to be wherever R.L. is," and that A.L.2 is too young to communicate her wishes.

{¶ 17} Based on the evidence presented about the older children's lives and developmental progress in foster care, their chaotic lives with their parents, the realistic

possibility of long-term placements of all three children with their foster families, and the parents' prioritization of drug manufacture and use over the needs and safety of their children, the trial court reasonably concluded, by clear and convincing evidence, that the best interest of the children was served by granting permanent custody to GCCS.

{¶ 18} Both parents also assert that the trial court's conclusion that the children could not be placed with family members or friends was against the manifest weight of the evidence. They base this argument on their views that GCCS did not sufficiently investigate alternate placements, where "the consequences are so final and important." We addressed this argument in their prior appeal:

A review of the record demonstrates that the agency caseworkers made many attempts to find an alternate placement for the children. The agency sent letters regarding the matter to six individuals and couples for whom they did not have a telephone numbers. The letters not only asked whether the addressees were interested in taking the children, but also inquired as to whether they knew of anyone else willing to do so. Of those six, none of the letters were returned and only one person contacted the agency. That person stated they she and her husband were afraid to get involved. She would not leave her contact information and never had any more contact with the agency.

The agency also was supplied telephone numbers for another six individuals and/or couples. Five of those did not want to take the children. One person was left a voice message, but never contacted the agency. The agency also did home studies on two separate family friends whose names

were supplied by Mother and Father. However, those persons were not able to pass the home studies. There is also evidence that the agency caseworkers attempted to locate possible relatives using computer and file searches. * * *

In re R.L., A.L., and A.L., 2d Dist. Greene Nos. 2012CA32 and 2012CA33, 2012-Ohio-6049, ¶ 43-44.

{¶ 19} After the previous appeal and remand, the parents suggested an additional possible placement for the children, the Troyer family, who lived in Holmes County and was, according to the parents, considering taking the children. GCCS investigated this possible placement, but the caseworker testified that “the facility that the family was with was not licensed and that, if I remember correctly, I want to say there was an illegal organization.” The caseworker did not elaborate on this characterization or on other details of the investigation, but she testified that GCCS concluded that the Troyers were “not a viable option for placement.” Father’s motion for placement of the children with the Troyers also acknowledged that the family “wasn’t properly licensed.”

{¶ 20} The trial court concluded that GCCS “could only place the children in valid, licensed placements or placements approved by [GCCS] after a complete home study as required by the State”; placement with the Troyers did not satisfy either of these requirements. The record supports the court’s conclusion that the Troyers were not an appropriate placement for the children. Moreover, it is clear that Father’s desire for placement with the Troyers was focused on ensuring the parents’ ability to regain custody of the children upon Mother’s and Father’s release from prison. However, as discussed below, continued temporary custody of the children was not an option.

{¶ 21} The trial court concluded that GCCS had made reasonable efforts to find alternate placements for the children, and we agreed with this conclusion in our prior Opinion. *In re R.L., A.L., and A.L.* at ¶ 48. These efforts were unsuccessful. Subsequently, GCCS investigated an additional placement suggested by the parents, the Troyers; GCCS found that this placement was not viable, and the trial court reasonably credited this conclusion. There is no basis to conclude that GCCS did not make a reasonable effort in this regard.

{¶ 22} Father argues that the trial court should have continued temporary custody of the children, rather than granting permanent custody to GCCS. However, the language of R.C. 2151.353 and R.C. 2151.415 limits temporary custody of children in the care of a children services agency to a period of two years; a trial court does not have the authority to extend temporary custody beyond this period. *In re M.O.*, 2d Dist. Montgomery No. 25965, 2014-Ohio-3060, ¶ 13-14, citing *In re D.J.*, 2d Dist. Montgomery No. 21666, 2006-Ohio-6304, ¶ 13.

{¶ 23} Mother contends that the children's disinterest in visiting their parents in prison was insignificant and should not have been relied on by the court, because it was not clear that the children were aware of any option to visit their parents. With respect to this issue, the court found: "The children have not retained a significant or positive relationship with their parents due to the parent's incarceration and none of the children have requested to visit their parents." This finding is not referenced in the court's discussion of the children's best interest, and it does not appear to have been given significant weight in the trial court's decision. The burdensome logistics of taking three children from two foster families to visit parents at two prisons in other parts of the State is apparent, assuming such

visits are even allowed; the parents bore the responsibility for these circumstances. The trial court reasonably observed the effect of this circumstance on the children's relationships with Mother and Father, and it did not abuse its discretion in giving some consideration to the effect of this situation on the relationships involved.

{¶ 24} Father contends that the trial court erroneously "prohibited [R.L.'s] attorney from attending" R.L.'s in camera interview with the judge; only R.L., the judge, and the guardian ad litem were present. R.L.'s attorney requested that the court conduct the in camera interview; the record does not indicate that R.L.'s attorney sought to participate in the interview or objected to the court's failure to include him. Father's argument attempts to assert a right on behalf of another party, R.L., which he is not entitled to do. Moreover, Father has not asserted that he (Father) was prejudiced by R.L.'s counsel's failure to attend the interview.

{¶ 25} R.C. 2151.352 provides for a child's right to counsel in juvenile proceedings and states that "[c]ounsel must be provided for a child not represented by the child's parent, guardian, or custodian." R.L. was represented by counsel throughout the proceedings. R.L.'s attorney could have reasonably concluded that his attendance at the in camera interview was not necessary and/or would not benefit his client. R.C. 2151.352 did not compel his attendance. (The trial court permitted the parties to submit questions to the court prior to the hearing, but it is not apparent from the record whether any of them did so.) R.C. 3109.04(B)(2)(c), upon which Father relies, does not apply to juvenile court proceedings but, like R.C. 2151.352, it does not *require* the presence of the child's attorney at an in camera interview. Moreover, none of the parties objected to the trial court's conducting the in camera interview without R.L.'s attorney. Father has not demonstrated

that his rights were infringed by the court's or R.L.'s counsel's handling of R.L.'s in camera interview.²

{¶ 26} Father also argues that his due process rights were violated by 1) GCCS's failure to provide him with visitation with his children after our reversal of the trial court's previous judgment granting permanent custody to GCCS; 2) GCCS's determination "from the beginning of the case" to seek permanent custody; and 3) GCCS's pursuit of permanent custody as an additional "punishment" for the parents' criminal acts.

{¶ 27} Even if GCCS focused on permanent custody or another permanent placement of the children from the beginning of the case, as Father alleges, we cannot conclude that such focus was inappropriate or prejudicial. Father's and Mother's lengthy prison sentences made it clear to the agency early in the case that the parents would be unable to meaningfully participate in the children's upbringing and care for many years and that reunification within a reasonable time would likely not be possible.

{¶ 28} Father has cited no authority for the proposition that GCCS was required to facilitate visitation during his incarceration, nor has he addressed the trial court's implicit conclusion that such visitation was not in the children's best interests. Such a requirement would have placed a substantial burden on the agency, considering the distance at which

²On March 6, 2014, Father filed a motion with this court for leave to review the transcript of the in camera interview with R.L., which was filed with this court under seal. In a Decision and Entry filed on April 1, 2014, we overruled this motion, but we stated that the motion, as well as GCCS's memorandum in opposition, would "be considered again" when a panel of judges was assigned to the appeal. Upon more detailed review of the record, we agree with the trial court's observation that the guardian ad litem's statement of R.L.'s views on custody, to which Father has had access during these proceedings, accurately characterizes R.L.'s wishes as revealed in the transcript. As such, there is no reason to reconsider our denial of Father's motion or to permit him to review the transcript of the in camera interview with R.L.

the parents were incarcerated – at two different locations – and the placement of the children with two different foster families. Moreover, despite our reversal of the trial court’s prior judgment (because it had not discussed the statutory factors related to the children’s best interest), the court’s conclusion that resuming visitation with the parents while the court considered GCCS’s second motion for permanent custody was not in the children’s best interest was reasonable.

{¶ 29} We agree with Father that loss of permanent custody of one’s children is not an automatic consequence (or punishment) for a criminal violation, regardless of the sentence imposed. However, on this record, Father’s and Mother’s criminal activity adversely affected the children, and the trial court reasonably concluded that the children’s best interest was served by granting permanent custody to GCCS and by the permanency afforded by their foster families. Although these consequences – for the children and the parents – resulted in part from the parents’ criminal activity, they were not an additional “punishment” for that activity.

{¶ 30} Father’s argument that his due process rights were violated is without merit.

{¶ 31} Finally, Mother notes the trial court’s observation that the older boy, R.L., could refuse to consent to an adoption that did not involve A.L.1, if he and A.L.1 were placed for adoption separately. She asserts that “this internal possible inconsistency should not be allowed to stand.” She appears to suggest that R.L. might not be made aware of his option to oppose his adoption, and this might contribute to or perpetuate his separation from A.L.1. Although there may be some uncertainty in R.L.’s and A.L.1’s futures, it is clear from the record that their foster family has indicated its willingness to keep both of the boys indefinitely. The trial court seems to have been making the point that continued placement

in the foster home together was more likely to ensure that the boys remain together than any attempt at adoption, and it recognized that R.L. could withhold his consent from any adoption that did not involve both boys. Mother's argument does not suggest how the denial of permanent custody to GCCS would lessen any uncertainty in the boys' futures or increase the chances that the boys would remain together. Moreover, because there does not seem to be any intention on the part of GCCS or the foster family to place R.L. and A.L.1 for adoption, Mother's argument about how such a hypothetical adoption would unfold is speculative, at best.

{¶ 32} The trial court reasonably concluded that the best interest of the children would be served by granting permanent custody of the children to GCCS and that at least one of the statutory criteria – that the children had been in the temporary custody of GCCS for 12 of a consecutive 22-month period – had been satisfied.

{¶ 33} Mother's and Father's assignments of error are overruled.

{¶ 34} The judgments of the trial court will be affirmed.

.....
FAIN, J. and HALL, J., concur.

Copies mailed to:

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James S. Armstrong
Jay Adams
Alan Collins
Vicki Perkins
Hon. L. Reisinger
(sitting by assignment)