

IN THE SUPREME COURT OF OHIO

IN THE MATTER OF : Supreme Court Case No.: 2016-0353
 A.J. (d.o.b. 07/22/2014) :
 An Adjudged Neglected Child : APPEAL FROM THE
 : CRAWFORD COUNTY
 : COURT OF APPEALS - THIRD
 : APPELLATE DISTRICT
 :
 (Court of Appeals Case No. 3-15-12)

BRIEF OF APPELLANT, BRITTANY JOHNSON

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I. STATEMENT OF THE FACTS / CASE:

Annabella Marie Johnson (hereinafter “Annabella”) was born on July 22, 2014. (Transcript, Page 42, Lines 2-14) On the date of her birth Annabella’s mother, Brittany C. Johnson, was incarcerated in the Ohio penal system. Brittany C. Johnson’s anticipated release date is December of 2018. (Transcript, Page 15, Lines 9-13)

Due to the mother’s incarceration, Crawford County Department of Job and Family Services (hereinafter “CCDJFS”) filed with the Crawford County Juvenile Court a complaint claiming Annabella to be a neglected child. Contemporaneous with the filing of its complaint CCDJFS sought and obtained from the trial court an order granting it temporary custody of Annabella. The complaint filed by CCDJS also included within its body a request for CCDJFS to be awarded permanent custody of Annabella. (Complaint, July 22, 2014)

On July 22, 2014, following a Shelter Care Hearing, CCDJFS was awarded the temporary custody of Annabella. The entry specified that the award of temporary custody was for , “ . . . appropriate placement.” (Judgment Entry, July 22, 2014) CCDJFS, at mother’s request, investigated several of mother’s family members as potential placements. Mother’s aunt, Jody Johnson, a licensed teacher, was rejected by CCDJFS as a possible placement, based upon a single child welfare case involving her child from 2002 (i.e. the child was left alone in a car for some unspecified period of time). (Transcript, Page 16, Lines 19-24). No evidence was ever presented which demonstrated that Jody Johnson had ever been convicted of any criminal offence involving this incident. Nevertheless CCDJFS refused to make placement of the child with Jody Johnson.

CCDJFS ultimately placed Annabella in a foster-to-adopt foster home. CCDJFS' intention in making the foster home placement was that it was to become a permanent/adoptive home for the child. (Transcript, Page 24, Lines 4-11)

A hearing on CCDJFS' neglect complaint was held in the trial court on August 18, 2014. At that time, based upon the stipulations of the parties, the trial court determined Annabella to be in a neglected condition due to mother's incarceration. The parties requested and were granted a bifurcation of the disposition phase of the proceedings. This bifurcation was predicated upon the fact that, at the time of Annabella's birth, a father had not been established. The bifurcation allowed for genetic testing of the reputed father, Bruce K. Schultow (hereinafter "Mr. Schultow"). It also allowed for CCDJFS to initiate an interstate home study evaluation on Father. (Judgment Entry, September 16, 2014)

Genetic testing was performed on Annabella and Mr. Schultow. This testing confirmed that Mr. Schultow, a resident of the State of Pennsylvania, was Annabella's biological father (Notice of Genetic Test Results, December 19, 2014).

On October 10, 2014, the formal dispositional hearing was held in the trial court. Prior to commencement of the hearing CCDJFS withdrew its request for permanent custody. At the conclusion of the hearing Annabella was formally committed to the temporary custody of CCDJFS " . . . for appropriate foster care or relative placement." (Judgment Entry, October 20, 2014)

Following the August 18, 2014, dispositional hearing CCDJFS requested that the State of Pennsylvania commence an interstate home study of Mr. Schultow through the Interstate Compact. The study was completed and placement approved by Jewish Family Services,

the agency the State of Pennsylvania had contracted with to perform the home study. However, in January of 2015, without any attempt to make contact with the State of Pennsylvania to ascertain the status of the home study, and prior to actually receiving the results of the home study, CCDJFS closed its Interstate Compact with the State of Pennsylvania. (Transcript, Page 28, Lines 22-25; Transcript, Page 37, Lines 6-13) On January 29, 2015, CCDJFS filed in the trial court its motion for permanent custody.

On February 17, 2015, following the filing of its motion for permanent custody, CCDJFS requested and obtained from the State of Pennsylvania the approved home study on Mr. Schultow's home. (Transcript, Page 36, Lines 7-10; Page 37, Lines 4-13) Thereafter, on April 3, 2015, CCDJFS filed a motion to continue the April 13, 2014 hearing date on its permanent custody motion. The basis of said motion being CCDJFS' claim that it had “. . . *just received* the ICPC home-study evaluation for Mr. Schultow, which approved his prior place of residence.” The purpose of the continuance request was to allow for an additional home study due to father having moved from his prior/approved residence. (Motion for Continuance, April 3, 2015)

A hearing on CCDJFS' motion for permanent custody was held in the trial court on May 26, 2015. At the conclusion of the hearing the trial court granted CCDJFS' motion, terminating all parental rights, and awarding permanent custody of Annabella to CCDJFS.

II. LAW AND ARGUMENT:

Proposition of law:

Absent proof of conviction of one of the charges specified in O.A.C. 5101:2-42-18, a children services agency does not act in “good faith”/ignores the mandates of O.A.C. 5101:2-42-05 when it refuses to place a minor child in substitute care with a relative based solely upon allegations that are in excess of ten (10) years old.

The within appeal stems from the refusal by the Crawford County Department of Job and Family Services, Children Services Unit (hereinafter “CCDJFS”), to make placement of Annabella with the mother’s aunt. The stated basis for this refusal was a claimed lack of income, coupled with a child welfare case in which the maternal aunt had been involved some thirteen (13) years prior.

No investigation was conducted by CCDJFS to determine whether the aunt had ever been convicted of any crime involving this 13 year old child welfare case. Nevertheless, CCDJFS absolutely refused to make placement of Annabella with the aunt, electing instead to place Annabella in a foster to adopt home. In so doing CCDJFS ignored the most fundamental mandates established for governing its actions under Ohio. As a consequence of its failure to carry out its duties CCDJFS, and ultimately the trial court (in terminating Appellant’s parental rights) and the appellate court (in upholding the decision of the trial court), violated Appellant’s most basic right . . . the right to parent one’s own child.

Prior to the within cause the Third District Court of Appeals had the opportunity to review the status of the law involving termination of parental rights in the case of *In Re: Willis* (2002-Ohio-4942). In *Willis* the court of appeals wrote:

It is a firmly established principal of law that a parent has a fundamental right to care for and have custody of his or her child. *In re Shaeffer Children* (1993), 85 Ohio App.3d 683, 621 N.E.2d 426; citing *Santosky v. Kramer* (1982), 455 U.S. 745, 753, 102 S.Ct. 1388. This fundamental right is not lost based on a parent's temporary loss of custody. *Id* at 751-755. Indeed, the United States Supreme Court has stated, "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, " *Stanley v. Illinois* (1972), 405 U.S. 645, 651, 92 S.Ct. 1208, 1212-1213; citing *Prince v. Massachusetts* (1944), 321 U.S. 158, 166, 64 S.Ct. 438. Therefore, **the termination of parental rights is an alternative of last resort; sanctioned only when the welfare of a child necessitates such action.** See *In re Wise* (1994), 96 Ohio App.3d 619; *In re Cunningham* (1979), 59 Ohio St.2d 100.

Furthermore, "[p]ermanent termination of parental rights has been described as the 'family law equivalent of the death penalty in a criminal case.' Therefore, **parents 'must be afforded every procedural and substantive protection the law allows.'** " (Citations omitted.) *In re Hayes* (1997), 79 Ohio St.3d 46, 48, 679 N.E.2d 680, 682-683. Consequently, the right of parents to raise their children, coupled with the concomitant right of children to be raised by their parents, may not be interfered with unless the parent is unfit. *Baker v. Baker* (1996), 113 Ohio App.3d 805; citing *Quilloin v. Walcott* (1978), 434 U.S. 246, 98 S.Ct. 549.

In Re: Willis (2002-Ohio-4942 at Paragraphs 9 and 10) Emphasis added. See also *In the Matter of Michael Evans* (2001-Ohio-2302); and *In re H.M.K.* (2013-Ohio-4317) at Paragraph 39.

In the discharge of its duties a child services agency is required to act in good faith in its attempts at reunifying a family. The decision to seek termination of parental rights must be predicted upon the agency having exhausted all other remedies. Furthermore, “. . . a decision to grant permanent custody to a county children's services agency must be predicated upon a finding by the trial court that the county has made a good faith effort at achieving reunification, that the parent has been unable to provide adequate parental care and will continue to be unable to do so in the future, and that it is in the best interest of the child to permanently terminate parental rights. *In re Hederson* (1986), 30 Ohio App.3d 187, 189; *In re Vickers Children* (1983), 14 Ohio App.3d 201, 204” . . . “the agency must make a "good

faith" effort to reunify the family. *In re Evans* (Oct. 30, 2001), Allen App. No. No. 1-01-75, 2001-Ohio-2302. Good faith has been defined as an honest and purposeful effort. *In the Matter of Hermann* (Jan. 27, 1995), Miami App. No. 94 CA 12, quoting from *In re Weaver* (1992), 79 Ohio App.3d 59, 63.” *In Re Willis* (supra at Paragraph 35) Emphasis added.

In the case of *In re Weaver* (1992), 79 Ohio App.3d 59, cited by the Third District in *In re Willis* (supra), the Twelfth District Court of appeals adopted a rule of law for reviewing the actions of public child care agencies so as to ascertain whether the agency had acted in “good faith” in attempting to reunify parent and child. In its decision the *Weaver* Court wrote: “. . . a good faith effort to implement a reunification plan means **an honest, purposeful effort**, free of malice and the design to defraud or to seek an unconscionable advantage. *In re Johnson* (Nov. 21, 1988), Butler App. No. CA87-12-158, unreported, at 5, 1988 WL 124466. A lack of good faith effort is defined as importing a dishonest purpose, conscious wrongdoing or **breach of a known duty based on some ulterior motive** or ill will in the nature of fraud. Id.” *In re Weaver* supra at Pages 63-64. Emphasis added. Virtually every appellate district that has addressed the issue of, “What constitutes “good faith” in connection with a child welfare agency’s discharge of its statutory duties?”, has adopted the definition of “good faith” set forth in *Weaver* (supra). See *In re N.M.* (2016-Ohio-318 at Paragraph 54), 2nd District; *In re A.R.* (2012-Ohio-723 at Paragraph 14), 6th District; *In re Hinkley* (2006-Ohio-3827 at Paragraph 24), 5th District; *In re T.W.* (2005-Ohio-5446 at Paragrph 31), 8th District; *In re Leveck* (2003-Ohio-1269 at Paragraph 10), 3rd District.

In the case at bar an alternative to permanent custody existed from the very inception of the case in the form of Appellant’s maternal aunt, Jody Johnson. Ms. Johnson stood ready and willing to accept the care and custody of the child at issue until such time as Appellant could be in a position to resume her role as mother for this child. In refusing to

make placement with the aunt the child services agency violated the most basic of mandates established for it under the Ohio Administrative Code.

Where a parent is unable to care for his/her child, the law places upon the local child services agency the duty/responsibility to obtain appropriate substitute care for the child. The authority for a child services agency to conduct this placement is found within O.A.C. 5101:2-42-05. O.A.C. 5101:2-42-05 establishes that, primary in a search for an alternative placement, is the requirement that family members be first looked at as potential alternate placements:

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

O.A.C. 5101:2-42-05 (Emphasis added.)

O.A.C. 5101:2-42-05 goes on to read that, in selecting a substitute care setting, certain criteria must be considered by the agency. First and foremost amongst the criteria is the selection of an alternative that is the least restrictive and, which provides a “family” setting:

- (E) When the PCSA or PCPA has temporary custody of a child, it **shall select** a substitute care setting that is consistent with the best interest and special needs of the child and that meets the following criteria:
 - (1) Is considered **the least restrictive, most family-like setting available to meet the child's emotional and physical needs.**
 - (2) Is in close proximity to the home from which the child was removed or the home in which the child will be permanently placed.

- (3) Is in close proximity to the school in which the child was enrolled prior to placement.
- (4) Is designed to enhance the likelihood of achieving permanency plan goals.
- (5) Is able to provide a safe environment for the child.

O.A.C. 5101:2-42-05 (Emphasis added.)

O.A.C. 5101:2-42-05 further specifies a framework for ascertaining what placement would be the least restrictive:

- (F) The following allowable settings are listed **in order from least restrictive to most restrictive**:
- (1) **The home of a suitable relative** as defined in rule **5101:2-1-01** of the Administrative Code.
 - (2) The home of a suitable nonrelative as defined in rule **5101:2-1-01** of the Administrative Code.
 - (3) A foster home.
 - (4) An independent living arrangement, as appropriate for the child.
 - (5) A group home.
 - (6) A maternity home.
 - (7) An emergency shelter care facility.
 - (8) A children's residential center.
 - (9) A medical or educational facility.

In reviewing a relative for placement O.A.C. 5101:2-42-18 provides a “checklist” that the child services agency must follow in its efforts to approve that placement. This process includes the need to conduct background checks of the relative to ascertain that the home would be both appropriate and safe. Within O.A.C. 5101:2-42-18 there is to be found a comprehensive list of crimes that would preclude placement of the child in a relative’s home. Ms. Johnston was rejected as a placement, not because of her home conditions or, for that matter, an unwillingness to take on the responsibility for caring for the child at

issue. Rather, the testimony of the CCDJFS case worker established that Ms. Johnson was rejected due to her "lack of income" and a thirteen (13) year old child endangering case. This action was taken by CCDJFS (and ultimately affirmed by the rulings issued by the trial court and court of appeals) without any evidence being obtained/presented that Ms. Johnson had ever been convicted of any crime involving these allegations, let alone one of the crimes specified in O.A.C. 5101:2-42-18. In point of fact, the testimony of the CCDJFS' case worker made clear that CCDJFS did absolutely nothing to investigate the matter further to ascertain whether this single isolated incident in the aunt's past would in any way adversely impact upon the aunt's ability to provide care to this child in the present.

Q. Ms. Bauer, with regard to the great aunt, Jody Johnson, when did - - this child endangering case that you discussed, when did it occur?

A. When did it occur?

Q. Yes.

A. I believe it was January 2002.

Q. So we're talking something that's been over thirteen years ago, at this point in time?

A. Yes.

Q. The child in question, was that Ms. Johnson's own child?

A. I believe it was.

Q. Was Children's Services involved in an active case at that point in time?

A. They opened the case, which was substantiated.

Q. Beyond that, did the Agency provide any type of services to Ms. Johnson?

A. I do not know that. It was in Richland County.

Q. All right. Was the case ultimately closed?

A. Yes.

Q. Did Ms. Johnson continue to have custody of the child after closure of the case?

A. Yes.

Q. So the very basis - - the only basis that you have for denying Ms. Johnson to have this child is a thirteen year old child welfare case that was ultimately closed with Ms. Johnson retaining custody of the child, correct?

A. Yes.

Q. And she continued to raise that child, correct?

A. I assume so.

(Transcript, Page 21, Lines 22-25; Page 22, Lines 1-25; Page 23, Lines 1-5)

As the case worker's testimony continued, further evidence of the aunt's abilities, as well as the positive changes that she had made in her life in the intervening years, were brought to light. Also placed into the record was the fact that the aunt was willing and able to take custody of the child. Further brought to light was the actual underlying reason for denying placement with the aunt, that such a placement would disrupt CCDJFS' plan for the adoptive placement that it had found for the child.

Q. And at this point in time, is it not true that Jody Johnson is, in fact, a teacher licensed in the State of Ohio to teach young children?

A. That has been reported. When the home study was completed, she did not have any income.

A. All right. But that would not be the only grounds for denying her, correct? The actual grounds was the fact that she had this child endangering case?

A. Yes. A combination of those two things.

Q. And she was willing and able, at that point in time, to assume the custody of this child?

A. That's what I understand. I didn't complete the home study, but that's what I understand.

Q. So the decision to deny the home study did not come from you?

A. No.

Q. Who made the decision to deny that home study?

A. Sara Norris, the intake worker.

Q. This is the same intake worker who actually placed this child from birth in a foster-to-adopt home, correct?

A. Yes.

Q. Is it not true that, in fact, from the inception of this case, the actual thought of the Agency was that this was going to be an adoptive placement?

A. I read that in the case notes.

Q. So, in fact, that was something that was planned from inception; that this was going to be the permanency of this child, correct?

A. Based on what I read in the record, yes.

Q. So the fact that Ms. Johnson would have been a viable alternative would have altered the plan that the Agency had for permanency of this child, correct?

A. Possibly.

(Transcript, Page 23, Lines 6-25; Page 24, lines 1-16.)

Regarding the claim of “lack of income”, the testimony of the CCDJFS case worker utterly ignored the fact that CCDJFS is the very agency responsible for assisting families in need. Had placement of the child been effectuated with the maternal aunt it would have been a simple matter for the CCDJFS case worker to have worked with the aunt in the provision of assistance through CCDJFS. As such, CCDJFS could have facilitated the provision of not only “income” for the maternal aunt, but, also, a medical card and food stamps. Based upon this fact alone it is clear that the sole impediment for placement of the child with the maternal aunt was the 13 year old child welfare case that CCDJFS did absolutely nothing to investigate. The testimony presented through the CCDJFS case worker demonstrated that, not only was the rejection of the maternal aunt as a potential placement was contrary to the mandates of O.A.C. 5101:2-42-05, it demonstrated a failure on the part of the child services agency to act in good faith.

Further evidence of the lack of good faith displayed by CCDJFS is to be found in the manner in which it “worked” with the Annabella’s father, Bruce K. Schultow. The actions taken by CCDJFS, and the time that it “allowed”, from inception of the case to the filing of its motion for permanent custody, was wholly insufficient to allow Mr. Schultow the opportunity to demonstrate that he was capable at taking on the care and custody of Annabella. As such CCDJFS did not put for “. . . an honest and purposeful effort . . .” towards reunifying Annabella with her family. Rather, its actions conclusively demonstrate that it acted in direct violation of statutory mandate.

CCDJFS did not exercise good faith and reasonable case planning efforts in attempting to reunify father and child when it unilaterally terminated the interstate home-study in favor of the Annabella's foster-to-adopt placement. The testimony from the case worker substantiated that, not only did CCDJFS not allow enough time for the study to be completed (a mere six weeks), it utterly failed in following through with any affirmative contact with the State of Pennsylvania to obtain the results of the very home-study it had requested. The case worker's testimony clearly demonstrated that CCDJFS paid only minimal lip service to its mandate of reunification.

Q. As to Mr. Schultow, you had off and on phone contact with Mr. Schultow?

A. Yes, I did.

Q. And he was aware that his Pennsylvania ICPC had been completed?

A. He believed that it was completed.

Q. And he was made aware that he, in fact, passed said home study?

A. According to Mr. Schultow, yes.

Q. According to Mr. Schultow. What's that mean?

A. He's the one that said that it was completed.

Q. Don't you have records in your file that show that it has been completed and successfully approved as of February or something of this year?

A. I do. However, it's not for the location or the locations that he has lived in.

Q. Correct. But –

A. And it was not – in the end, it was not approved. Because it took so long for them to complete it and we believed that we needed permanency for the child, we closed the Interstate Compact case.

Q. You closed the Interstate Compact case –

A. Yes.

Q. – short of getting a final report back?

A. Right. We had requested and waited six weeks.

Q. Six weeks?

A. Yes.

Q. How often do you do ICPCs personally?

A. I'm the one that does them.

Q. Okay. And six weeks is just absolutely too long?

A. Well, it was about seven months, actually, you know, when it came down to it. We were trying to achieve permanency for the child.

Q. Which would have been adopting – the foster-to-adopt home?

A. Probably.

(Transcript, Page 27, Lines 24-25; Page 28, Lines 1-25; Page 29, Lines 1-13)

In addition to the lack of good faith that the case worker's testimony demonstrated, it must also be pointed out from the preceding that the case worker's math is sorely at odds with the facts of this case. The record of this case demonstrates that the case was initiated following Annabella's birth on July 22, 2014. Mr. Schultow had no case plan goals and/or objectives to work towards completing until October 10, 2014, the date that CCDJFS presented the case plan to the trial court for approval at the dispositional hearing. (Judgment Entry filed October 20, 2014). Furthermore, Mr. Schultow was not officially determined to be Annabella's father until November 18, 2014, the date when the results of the genetic testing were obtained from LabCorp. (Notice of Genetic Test Results, December 19, 2014)

O.R.C. Section 2151.353 provides for an initial period of one (1) year of case planning towards reunification of parent and child. It also allows for there to be up to two (2) extensions, each extension granted being six (6) months in length. Such extensions are to be granted if the parents can substantiate that they are making substantial progress towards completing their case plan goals and objectives. O.R.C. 2151.353(G) and (H). See also O.R.C. 2151.415(D).

The case worker for CCDJFS testified that an Interstate Compact home-study can take up to one (1) year to complete. (Transcript, Page 38, Lines 6-8) Despite this fact, CCDJFS filed its motion for permanent custody of the child a mere six (6) months after her birth and the filing of its complaint in the trial court. There was more than ample time

remaining on the initial period of temporary custody, to-wit: six (6) months, for CCDJFS (with the assistance of case planning in the State of Pennsylvania) to work with Mr. Schultow toward obtaining stable housing and employment so that he could complete his case plan goals and objectives and be reunified with his daughter. The timing of CCDJFS' filing demonstrates an impermissible rush to closure of the case at the irreversible loss of the parent-child relationship. Such action cannot be justified or tolerated under the facts of this case.

CCDJFS claimed, and the trial court accepted as accurate, that Mr. Schultow did not demonstrate stability in income or housing. However, by the case worker's own admission, CCDJFS took no steps to verify whether father did, or did not, have income. Furthermore, when CCDJFS did receive the report from the State of Pennsylvania on the interstate home study it demonstrated: i.) that Mr. Schultow did have income; ii.) that he was meeting his monthly financial obligations; and iii.) that there were more than sufficient services available to father to immediately obtain placement of Annabella, and to meet her basic/day-to-day needs.

Q. And why did Crawford County Job and Family Services pull the home study or end the home study?

A. Because our job is to have permanency for the child. The father was not following through. He wasn't –

Q. On your end though. He wasn't making contact with Crawford County, but he may have been working night and day with the Pennsylvania authorities to get them the requested referenced, to get the background check, to get the fingerprints, all of that. I mean, he successfully completed a home study, so he must have been working with the Pennsylvania authorities.

A. He may have been working on the home study. He was not doing anything in regard to his case that involves his child.

Q. Correct. The only thing would have been visitation with his daughter. There's no mental health exam that he needed. There's no parenting classes. There's no case plan services that he needed to successfully complete for Crawford County?

A. As I said, I believe he had to have stability and income. And some of the time during the case he did not have a full-time job or he was between jobs. He always worked for a temp agency. So it was –

Q. Which is income though. I mean, the temp agency, they hire you and –

A. It also shows, I believe, in the home study that his rent was eight or nine hundred dollars a month. And with working at a minimum wage job, that would be really difficult to swing with a child, and daycare, and so on.

Q. And so you have read Pennsylvania's report?

A. Yes.

Q. Thoroughly reviewed it?

A. Yes.

Q. And in that report, doesn't it reference that Mr. Schultow had free daycare available to him?

A. Possibly at an unknown location. We also didn't receive any verification of what his income actually was.

Q. Did you ever request from Mr. Schultow verification of his income?

A. No. We thought it would be part of the report from Pennsylvania.

Q. So what you're telling me is that the income problem – the income was an issue, but you took no steps to figure it out on your own? You were relying on Pennsylvania's Interstate Compact, and when it didn't come through, it must be Mr. Schultow's fault?

A. I wasn't trying to say who was at fault or not at fault.

Q. Okay. And so in the Pennsylvania ICPC, on the final page of Rachel Kuhr's, K-U-H-R, Kuhr's record, it states with local case worker's assistance, Mr. Schultow could initiate services to meet her day-to-day needs, child care, medical insurance, WIC. And it appears on a day-to-day basis, she was well loved - - would be well loved and cared for. So it is the recommendation, in the opinion of the Jewish Family Services of Greater Harrisburg, that there were services and facilities in place that Mr. Johnson - - or Mr. Schultow would be able to care for his child in Pennsylvania?

A. According to her report.

(Transcript, Page 32, Lines 6-25; Page 33, Lines 1-25; Page 34, Lines 1-20)

Telling of CCDJFS' failure to act in good faith is its attempt to utilize Mr. Schultow's limited financial situation to its advantage. On the one hand CCDJFS attempted to justify its actions by saying that Mr. Schultow did not have sufficient means

to support himself and his child - utterly ignoring the fact that the report from Jewish Social Services confirmed that, with local case worker assistance, there were services/funds available on the State level that would allow Mr. Schultow the ability to care/provide for the child. (Transcript, Page 34, Lines 8-19; Page 35, Lines 7-15) On the other hand CCDJFS alleged that Mr. Schultow did not satisfy the case plan goals and objectives in that he was unable to afford the expense of coming to Ohio to visit with his daughter on a regular basis.

It must be pointed out that the record is utterly devoid of any evidence that CCDJFS did anything whatsoever to financially assist Mr. Schultow in making the trips to Ohio. When a child care agency creates a case plan goal, such as visitation, that it has good reason to believe is insurmountable from the start (due to a parent's financial inability to travel extended distances) it cannot, in turn, utilize those transportation difficulties against a parent. Such was the finding of the Third District Court of Appeals in its decision in *In the Matter of: Michael Evans* (2001-Ohio-2302), when it wrote that “. . . the agency's failure to meet its own obligations under the case plan militates against its assertion that appellant's sporadic visitation suggests a lack of commitment on her part.” In *Evans* (supra), the agency's solution to appellant's transportation issues was the suggestion that she should “take a cab.” CCDJFS, in the case at bar did not even offer that suggestion.

CCDJFS claimed, and the trial court accepted as accurate, that Mr. Schultow did not cooperate with CCDJFS. However, the facts demonstrated that Mr. Schultow was actively engaged with the Jewish Family Services in completion of the Interstate Home Study, a condition precedent to his obtaining custody of Annabella. The case worker, under

cross-examination by Mr. Schultow's counsel was forced to acknowledge that: i.) in September of 2014, Mr. Schultow had four contacts with Jewish Family Services; ii.) in October of 2014, Mr. Schultow had nine contacts with Jewish Family Services; iii.) in November of 2014, Mr. Schultow had four contacts with Jewish Family Services; iv.) in December of 2014, Mr. Schultow had three contacts with Jewish Family Services; and v.) in January of 2015, Mr. Schultow had two contacts with Jewish Family Services. The foregoing demonstrates that, far from CCDJFS' opinion that Mr. Schultow "was not working towards reunification" being accurate, Mr. Schultow was, actually, actively engaged in completing those essential things necessary for his home to be approved so that he could be reunited with Annabella. (Transcript, Page 36, Lines 2-25; Page 37, Lines 1-3) Furthermore, based upon his efforts, Mr. Schultow was able to obtain an approved home study from Jewish Social Services, a fact that CCDJFS would have been aware of had it waited for the home study to be returned BEFORE initiating an action for permanent custody of the child. (Transcript, Page 28, Lines 22-25; Page 26, Lines 1-3)

CCDJFS did not exercise good faith and reasonable case planning efforts aimed towards reunification when it terminated the interstate home-study and refused to re-start the interstate home-study process once it learned that Mr. Schultow was fully cooperating with Pennsylvania authorities.

Q. You had testified earlier that Interstate Compacts can take up to a year to complete.

A. Yes.

Q. Why was this one stopped after five months, four months?

A. I thought I already answered that. Mr. Schultow was not working on his case plan. He was not visiting his child. He was not having regular contact with the Agency. He was moving from place to place, not letting us know where he even

was. And at that point, we made a decision to close the ICPC request and move on with the case.

Q. So then later when you got the records from Pennsylvania, it would show that he was cooperating and participating with the Pennsylvania authorities. Was he given an opportunity to finish the home study, and did you reopen the home study at that point?

A. No.

Q. So there's been no home study completed because you guys closed it and never restarted it once you realized that he was doing what he was supposed to be doing in Pennsylvania.

A. We closed it. And since that time, he has not remained stable enough in his living environment for us to have any idea whether we would ever open another one.

(Transcript, Page 38, Lines 6-25; Page 39, Lines 1-6)

The testimony that was next elicited from the case worker demonstrated that, contrary to the assertion that she had just made regarding Mr. Schultow's lack of contact with the agency, Mr. Schultow had indeed maintained regular contact with CCDJFS, and had kept it apprised of each move that he had made during the process.

Q. But you've been able to have contact with him on and off?

A. By phone.

Q. And have you ever explained to him this is what we're looking for?

A. Yes, I have.

Q. And he gives you addresses that are valid?

A. He what?

Q. Does he give you an address where he is living?

A. Yes. He's given me five addresses.

(Transcript, Page 39, Lines 7-17)

This same testimony is directly at odds with the case worker's earlier sworn testimony that *"He didn't have any contact with the Agency from December until March. **The times that he moved in that period I don't have any knowledge of where he was living.**"* (Transcript, Page 32, Lines 2-5) Emphasis added.

The Ohio Revised Code imposes a duty on the part of children services agencies to make reasonable efforts to reunite parents with their children where the agency has removed the children from the home. R.C. 2151.419; see, also, *In re Brown*, 98 Ohio App.3d 337, 344 (3d Dist.1994). Further, the agency bears the burden of showing that it made reasonable efforts. R.C. 2151.419(A)(1). "Case plans are the tools that child protective service agencies use to facilitate the reunification of families who * * * have been temporarily separated." *In re Evans*, 3d Dist. Allen No. 1-01-75, 2001-Ohio-2302, * 3.

To that end, case plans establish individualized concerns and goals, along with the steps that the parties and the agency can take to achieve reunification. *In re Evans* at * 3. **Agencies have an affirmative duty to diligently pursue efforts to achieve the goals in the case plan.**

In re T.S. (2015-Ohio-1184 at Paragraphs 26-27) Emphasis added.

In the case at bar the testimony of the case worker established that not only did CCDJFS not act in good faith in the discharge of its statutorily mandated duties as related to Appellant, it also did not "...diligently pursue efforts to achieve the goals in the case plan, as related to Mr. Schultow..." As such, CCDJFS acted to deliberately thwart the very mandate imposed upon it by law.

II. CONCLUSION

The decision of the trial court, and as affirmed by the Court of Appeals, serves not only to ignore the clear mandates of O.A.C. 5101:2-42-05, it completely denigrates the prior holdings of this Court, and the mandate that child services agencies act in good faith in the discharge of their statutory obligations and in their attempts to maintain families as intact entities. With no proof that the maternal aunt was ever convicted of any crime, and with substantial proof that she had, in fact, substantially bettered her situation in the intervening thirteen (13) years since her involvement with Richland County Children

Services, the trial court/Court of Appeals failed to properly apply the principles of O.A.C. 5101:2-42-05 to the facts of the case at bar. As such, its decision must be reviewed and the error effectuated thereby reversed, with the decision of the trial court vacated and the matter returned thereto for further hearing.



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PROOF OF SERVICE

I hereby certify that a copy of the foregoing was duly served upon Michael J. Wiener, Esq., **Assistant Prosecuting Attorney, Crawford County Prosecutor's Office**, 112 East Mansfield Street, Suite 305, Bucyrus, Ohio 44820; Brian N. Gernert, Esq., **KENNEDY, PURDY, HOFFEL & GERNERT, LLC**, 111 West Rensselaer Street, P.O. Box 191, Bucyrus, Ohio 44820; and Jeffrey D. Zeisler, Esq., **KELLER & ZEISLER**, 659 Harding Way West, Galion, Ohio 44833, by placing a copy of same in each said attorney's mailbox maintained in the Office of the Clerk of Courts of Crawford County, Ohio this 31st day of May, 2016.



Geoffrey L. Stoll #0038520

JAN 25 2016

IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
CRAWFORD COUNTY

SHEILA LESTER
CRAWFORD COUNTY CLERK

IN RE:

A.J.

CASE NO. 3-15-12

ADJUDGED NEGLECTED CHILD.

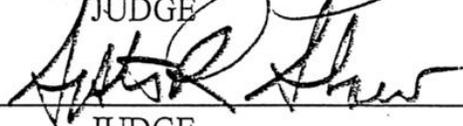
[BRITTANY C. JOHNSON –
APPELLANT].

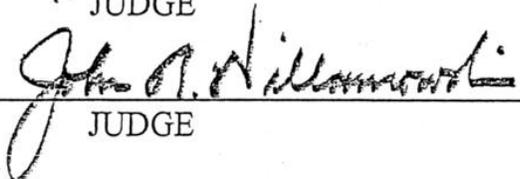
J U D G M E N T
E N T R Y

For the reasons stated in the opinion of this Court, the assignments of error are overruled and it is the judgment and order of this Court that the judgment of the trial court is affirmed with costs assessed to Appellant for which judgment is hereby rendered. The cause is hereby remanded to the trial court for execution of the judgment for costs.

It is further ordered that the Clerk of this Court certify a copy of this Court's judgment entry and opinion to the trial court as the mandate prescribed by App.R. 27; and serve a copy of this Court's judgment entry and opinion on each party to the proceedings and note the date of service in the docket. See App.R. 30.



JUDGE


JUDGE


JUDGE

DATED: January 25, 2016

JAN 25 2016

SHEILA LESTER
CRAWFORD COUNTY CLERK

IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
CRAWFORD COUNTY

IN RE:

A.J.

CASE NO. 3-15-12

ADJUDGED NEGLECTED CHILD.

[BRITTANY C. JOHNSON –
APPELLANT].

OPINION

Appeal from Crawford County Common Pleas Court
Juvenile Division
Trial Court No. F2145134

Judgment Affirmed

Date of Decision: January 25, 2016

APPEARANCES:

Geoffrey L. Stoll for Appellant, Brittany C. Johnson

Michael J. Wiener for Appellee, Crawford County JFS

Brian N. Gernert for Appellee, Brian K. Schultow

ROGERS, J.,

{¶1} Appellant, Brittany Johnson (“Brittany”), appeals the judgment of the Court of Common Pleas of Crawford County, Juvenile Division, granting permanent custody of her minor child, A.J., to the Crawford County Department of Job and Family Services (“CCDJFS”). On appeal, Brittany argues that (1) CCDJFS did not make a good faith effort to reunify parent and child and (2) the trial court’s decision was not supported by clear and convincing evidence. For the reasons that follow, we affirm the judgment of the trial court.

{¶2} On July 22, 2014, CCDJFS filed a complaint in the Court of Common Pleas of Crawford County, Juvenile Division, alleging that A.J. was a neglected child pursuant to R.C. 2151.03(A)(2). The complaint stemmed from the fact that Brittany gave birth to A.J. while serving a 4 year and 11 month prison sentence.

{¶3} Later that day, a shelter-care hearing was held, and CCDJFS was granted temporary custody of A.J.

{¶4} On August 4, 2014, A.J.’s maternal grandmother, Shari Johnson (“Shari”), and A.J.’s maternal great-grandmother, Joanna Johnson (“Joanna”), filed a motion to intervene seeking temporary custody of A.J. or, in the alternative,

visitation rights.¹ The State filed its response, claiming that both Shari and Joanna were unfit to care for A.J. In its response, the State stated that

[t]he agency ha[s] knowledge of * * * [Shari] as she previously had involvement with [CCDJFS] or its predecessor agency, the Crawford County Children's Services Board. In 1995 through Case Nos. C955578 / C955579 / C95580 / C95581, [Shari's] children were found to have been in a neglected / dependent condition. In 2011, through Case No. C2115109, [Shari's] child was found to have been in a neglected condition. [Shari] was also listed as the alleged perpetrator in additional substantiated neglect cases with the agency. Based upon the prior adjudications alone, a home-study evaluation on [Shari] would not pass.

CCDJFS did initiate a home-study evaluation of [Joanna,] at the mother's request for possible placement. Based upon the investigation conducted by the caseworker, [Joanna] did not pass the home-study evaluation as there is a registered sex-offender * * * residing in the residence, additionally [Joanna] was listed as the alleged perpetrator in a substantiated neglect case with the agency.

Related to the within proceedings, but not necessarily the home-study evaluation, [Joanna,] during a previous child-welfare proceeding, indicated that due to her health and various personal reasons, as well as her inability to take the child to various appointments, she was unable to care for said child and asked that said child be removed from her custody. Said child was thirteen (13) at the commencement of the companion case. Considering the potential specialized medical needs of [A.J.] if [Joanna] was not able to care for a thirteen (13) year old, and take her to all of her various appointments, she certainly would not be in a position to provide the necessary care for [A.J.], [an] infant.

(Docket No. 7, p. 2-3). By entry dated February 5, 2015, the trial court denied the Johnsons' motion.

¹ In the Johnsons' motion to intervene, Shari is identified as A.J.'s maternal aunt and Joanna is identified as A.J.'s maternal grandmother. In reviewing the record, it appears, in fact, that Shari is A.J.'s maternal grandmother and Joanna is A.J.'s maternal great-grandmother.

{¶5} On August 18, 2014, a hearing was held on the complaint, and the trial court found, by clear and convincing evidence, that A.J. was neglected pursuant to R.C. 2151.03(A)(2).

{¶6} The following month, CCDJFS opened a home study, through the Interstate Compact on the Placement of Children (“ICPC”), on A.J.’s father, Brian Schultow, who was living in Pennsylvania.

{¶7} On October 10, 2014, a dispositional hearing was held. Based on Schultow’s desire to be considered as a placement for A.J., CCDJFS established a case plan for Schultow setting forth the following objectives: (1) obtain and maintain a stable hazard-free residence for himself and A.J. for at least 90 days; (2) maintain income to ensure that he will be able to meet all of A.J.’s basic needs; (3) sign all requested releases of information; and (4) cooperate with CCDJFS and case plan goals. These objectives stemmed from the fact that Schultow was recently released from prison and was living in a half-way house.

{¶8} By entry dated October 20, 2014, the trial court approved and adopted CCDJFS’s case plan.

{¶9} On January 22, 2015, CCDJFS filed its semiannual administrative review report. In its report, CCDJFS stated that Schultow had made insufficient progress toward meeting his case plan objectives. The report stated, in relevant part:

[Schultow] does have employment. He does not have any cognitive or physical delays. * * * It is unclear how [Schultow] and [Brittany] view their own strength and problem areas as they have little to no contact with the agency. Worker did request an ICPC home study from Dauphin County Child and Youth in Pennsylvania for [Schultow] at his new address; worker has not yet received any results of this home study. [Schultow] did not show up for his visit with [A.J.] that was scheduled for 10/10/14 at 1pm. [Schultow] has not fully cooperated with the ICPC home study as he has not obtained a physical exam which is needed to complete the home study.

[Schultow] reports that he has an apartment; however, there has been no verification of this through ICPC in Pennsylvania. The amount of his income is unknown; therefore, it is unclear if he has sufficient income to support an infant, including daycare, while he works. [Schultow] has not fully cooperated with the ICPC parent home study. He has never met [A.J.], who will be six months old on January 22, 2015. [Schultow] scheduled two visits with his daughter in the last six months and did not attend either visit.

(Docket No. 20, p. 4).

{¶10} Based on this information, on January 29, 2015, the State filed a motion for permanent custody, pursuant to R.C. 2151.413, and a hearing was set for April 13, 2015.

{¶11} Thereafter, Brittany sent a letter to the trial court insisting that A.J.'s great-aunt, Jodi Johnson ("Jodi"), care for A.J.

{¶12} On April 3, 2015, the State filed a motion to continue. In its motion, the State explained that

[CCDJFS] just received the ICPC home study evaluation for [Schultow], which approved his prior place of residence. An additional home-study evaluation is now required of [Schultow] as

he has changed his residence since the original evaluation was completed. Furthermore, despite the demonstrated lack of commitment to [A.J.] by his failing to ever visit the child, in order to allow [Schultow] the opportunity to develop a bond with the child such that it might become appropriate to place [A.J.] with [Schultow], a short continuance is necessary herein.

(Docket No. 36, p. 1). The hearing was rescheduled for May 26, 2015.

{¶13} On May 26, 2015, A.J.'s guardian ad litem filed a report recommending that permanent custody of A.J. be awarded to CCDJFS. In support, A.J.'s guardian ad litem noted that Schultow had neither met A.J. nor been cooperative with CCDJFS.

{¶14} That same day, a permanent custody hearing was held. When Schultow failed to appear, his attorney offered the following explanation:

Obviously, I have tried to send mail to him. Most – well, all of those letters have been returned since our last hearing date. I tried at multiple addresses and was unable to get anything through to him. I have spoken to him on the telephone and kind of explained the situation. Obviously, for whatever reason, I have not been able to speak to him as of late, but I'm sure that had he been able to be here, he would have been here today.

May 26, 2015 Hrg., p. 10.

{¶15} The hearing proceeded, and the State called Sue Bauer, foster care and adoption coordinator at CCDJFS, as its sole witness.

{¶16} Bauer testified that CCDJFS obtained temporary custody of A.J. in July 2014, after Brittany gave birth to A.J. while incarcerated. She explained that,

prior to placing A.J. in foster care, CCDJFS opened a home study on several of Brittany's relatives in hope of finding a suitable relative placement for A.J.

{¶17} Bauer stated that during Joanna's home study, CCDJFS learned that a registered sex-offender was living in the home. Moreover, the living conditions were unfit for a child—Joanna's home consisted of the upper level of a beauty salon and lacked basic resources. For these reasons, Joanna was not approved as a relative placement for A.J.

{¶18} Bauer stated that during Jodi's home study, CCDJFS learned that she had been previously charged with child endangering in January 2002. Additionally, at the time of the home study, Jodi lacked income. For these reasons, Jodi was not approved as a relative placement for A.J., and ultimately, A.J. was placed in foster care.

{¶19} Bauer stated that a few months later, in September 2014, CCDJFS opened a home study on Schultow through ICPC, but by January 2015, CCDJFS had not received a finalized report from ICPC demonstrating Schultow's ability to care for A.J. According to Bauer, CCDJFS requested information from ICPC, but ICPC did not respond. As a result, CCDJFS closed Schultow's home study in late January 2015.

{¶20} Although Bauer acknowledged that a home study can take up to one year to complete, she stated that Schultow's home study was closed because "it

took so long for [ICPC] to complete it and we needed permanency for the child.” May 26, 2015 Hrg., p. 28. She added that “[Schultow] was free to work on his case plan and visit his child and so on. He did not do that.” *Id.* at p. 30.

{¶21} Bauer admitted that shortly thereafter, in early February 2015, she received a finalized report from ICPC indicating that Schultow’s residence had been approved and that he could meet A.J.’s day-to-day needs, including food and child-care. The report showed that Schultow had numerous contacts with Jewish Social Services, the agency conducting Schultow’s home study, between September 2014 and January 2015 and concluded that “Mr. Schultow would be considered as a permanent resource for [A.J.] as long as he can show proof of residency, stability, at the time of placement.” *Id.* at p. 31. Bauer added, however, that the report failed to include verification of Schultow’s income.

{¶22} Upon receiving this report, Bauer stated that CCDJFS did not reopen Schultow’s interstate home study because “since [February 2015], [Schultow] had not remained stable enough in his living environment for us to have any idea whether we would ever open another one.” *Id.* at p. 39. In fact, Bauer added that she currently did not have a valid address for Schultow.

{¶23} Bauer stated that CCDJFS’s goal was to achieve permanency for A.J., who had been in foster care since birth. She acknowledged that from the case’s inception, CCDJFS believed that A.J. would be placed for adoption.

{¶24} According to Bauer, A.J. had bonded with her foster parents, who had been caring for her since she was three days old. She explained that

[A.J.'s] a happy baby. She's starting to crawl around and play with the dog. [A.J.'s foster parents] take her to church and to their family's functions and they have a large circle of support within their family and the church family also. * * * At a recent visit, the foster parent got up and walked around the corner to get something, and [A.J.] began to wimper [sic] and started crawling after her, because she was worried about her being out of her eyesight.

Id. at p. 19-20.

{¶25} By entry dated June 23, 2015, the trial court granted permanent custody to CCDJFS. In doing so, the trial court made the following findings:

From all the information presented, the court finds by clear and convincing evidence that the child should not or could not be placed with either parent because [Brittany] will be incarcerated and not be available to care for the child for more than eighteen months as provided in O.R.C. Sec. 2151.414(E)(12) and that [Schultow] has continuously failed to substantially remedy the conditions causing the child to be placed outside the home and has demonstrated a lack of commitment toward the child as provided in O.R.C. Sec. 2151.414(E)(1) and (4); and that this situation is not likely to improve in the near foreseeable future as provided in O.R.C. Sec. 2151.414(B)(2); that there are no suitable and appropriate family members or relatives to assume long-term placement of the child; and that considering the factors established in O.R.C. Sec. 2151.414(D) that it would be in the best interests of the child to grant permanent custody to the public child caring agency.

(Docket No. 44, p. 8).

{¶26} It is from this judgment that Brittany appeals, presenting the following assignments of error for our review.²

Assignment of Error No. I

CRAWFORD COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES DID NOT ACT IN GOOD FAITH / MAKE A GOOD FAITH EFFORT TO REUNIFY PARENT AND CHILD.

Assignment of Error No. II

CLEAR AND CONVINCING EVIDENCE DID NOT EXIST TO JUSTIFY A FINDING THAT IT WAS IN THE BEST INTEREST OF THE MINOR CHILD TO TERMINATE PARENTAL RIGHTS AND AWARD PERMANENT CUSTODY OF THE MINOR CHILD TO CRAWFORD COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES.

{¶27} Due to the nature of Brittany's assignments of error, we elect to address them out of order.

Assignment of Error No. II

{¶28} In her second assignment of error, Brittany argues that the trial court's decision to grant permanent custody of A.J. to CCDJFS was not supported by clear and convincing evidence. Specifically, Brittany argues that her parental rights were improperly terminated insofar as A.J. could have been placed with Schultow or Jodi. We disagree.

² Schultow did not file a notice of appeal in this case and is not an appellant herein. Brittany's assignments of error rest on the premise that her parental rights should not have been terminated insofar as A.J. could have been placed with either Schultow or Jodi.

{¶29} Initially, we note that “the right to raise a child is an ‘essential’ and ‘basic’ civil right.” *In re Hayes*, 79 Ohio St.3d 46, 48 (1997), citing *In re Murray*, 52 Ohio St.3d 155, 157 (1990). These rights, however, are not absolute. *In re Thomas*, 3d Dist. Hancock No. 5-03-08, 2003-Ohio-5885, ¶ 7, citing *Murray* at 157. Parental rights “are always subject to the ultimate welfare of the child, which is the polestar or controlling principle to be observed.” *In re Cunningham*, 59 Ohio St.2d 100, 106 (1979).

{¶30} After a child has been adjudicated neglected and temporary custody has been granted to a children services agency, the agency may file a motion for permanent custody under R.C. 2151.415(A)(4). *In re Esparza*, 3d Dist. Marion Nos. 9-06-25, 9-06-27, 2007-Ohio-113, ¶ 25. Under R.C. 2151.414(B)(1), before a court can terminate parental rights and award permanent custody to an agency of the state, it must find that (1) the grant of permanent custody to the agency is in the best interest of the child, and (2) any of the following apply:

- (a) The child cannot be placed with either parent within a reasonable time or should not be placed with either parent.

* * *

{¶31} In determining whether a grant of permanent custody is in the best interest of the child, R.C. 2151.414(D)(1) sets forth a non-exhaustive list of factors for the court to consider. These factors include:

- (a) The interaction and interrelationship of the child with the child's parents, siblings, relatives, foster caregivers and out-of-home providers, and any other person who may significantly affect the child;
- (b) The wishes of the child, as expressed directly by the child or through the child's guardian ad litem, with due regard for the maturity of the child;

* * *

- (d) 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;

* * *

R.C. 2151.414(D)(1)(a)-(b), (d).

{¶32} After it has been determined that a grant of permanent custody is in the best interest of the child, the court must determine whether "the child cannot be placed with either parent within a reasonable time or should not be placed with either parent." In making this determination, R.C. 2151.414(E) provides the following instruction:

If the court determines, by clear and convincing evidence * * * that one or more of the following exist as to each of the child's parents, the court *shall* enter a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent:

- (1) Following the placement of the child outside the child's home * * * the parent has failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home;

* * *

- (4) The parent has demonstrated a lack of commitment toward the child by failing to regularly support, visit, or communicate with the child when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for the child;

* * *

- (16) Any other factor the court considers relevant.

(Emphasis added.) In other words, “the trial court only needs to find one of the factors listed in (E) as to each parent before it ‘shall’ render a finding that a child cannot be placed with either parent.” *In re Matthews*, 3d Dist. Marion Nos. 9-07-28, 9-07-29, 9-07-34, 2008-Ohio-276, ¶ 26, quoting R.C. 2151.414(E).

{¶33} A permanent custody determination generally must be supported by clear and convincing evidence. *In re Hiatt*, 86 Ohio App.3d 716, 725 (4th Dist.1993).

{¶34} Clear and convincing evidence is

[t]he measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the allegations sought to be established. It is intermediate, being more than a mere preponderance, but not to the extent of such certainty as required beyond a reasonable doubt as in criminal cases. It does not mean clear and unequivocal.

In re Estate of Haynes, 25 Ohio St.3d 101, 104 (1986). When “the degree of proof required to sustain an issue must be clear and convincing, a reviewing court will examine the record to determine whether the trier of facts had sufficient evidence

before it to satisfy the requisite degree of proof.” *Cross v. Ledford*, 161 Ohio St. 469, 477 (1954). In other words, “the decision of a trier of fact relating to a motion for permanent custody of children will not be overturned, so long as the record contains competent credible evidence from which the trial court could have formed a firm belief or conviction that the essential statutory elements have been established.” *In re Robinson*, 3d. Dist. Allen No. 1-08-24, 2008-Ohio-5311, ¶ 13.

{¶35} First, we consider whether the trial court’s finding that it was in A.J.’s best interest to grant permanent custody to CCDJFS was supported by competent, credible evidence.

{¶36} Again, in making a best-interest finding, R.C. 2151.414(D)(1) provides a non-exhaustive list of factors to consider. These factors include:

- (a) The interaction and interrelationship of the child with the child's parents, siblings, relatives, foster caregivers and out-of-home providers, and any other person who may significantly affect the child;
- (b) The wishes of the child, as expressed directly by the child or through the child’s guardian ad litem, with due regard for the maturity of the child;

* * *

- (d) The child’s need for a legally secure permanent placement and whether that that type of placement can be achieved without a grant of permanent custody to the agency;

* * *

R.C. 2151.414(D)(1)(a)-(b), (d).

{¶37} Here, the trial court relied on the above-mentioned factors in finding that it would be in A.J.'s best interest to grant permanent custody to CCDJFS. In its entry, the trial court stated that

The record should reflect that the court took judicial notice that the written report of the Guardian Ad Litem, as required by O.R.C. Sec. 2151.414(C) was officially filed of record before the hearing and was taken into consideration in this decision.

* * *

There was testimony presented as to the evaluation of other family members or relatives for consideration of long-term alternative placement. Although requested, there were no names or information of any paternal family members or relatives provided to the agency for home-study evaluation. [Shari] has had previous involvement with neglect and dependency adjudication of her own children which would disqualify her from consideration. [Joanna] was found to have inadequate living space, a registered sex offender residing upstairs and during a previous child-welfare proceeding placement asked for the child to be removed from her custody due to her health and various personal problems. [Jodi] was found to have a previous child-welfare case in Richland County, a previous child endangering charge from 2002 and not employed at the time of the inquiry.

* * *

[Schultow] does not appear to be motivated or committed to completing the things necessary to be considered for placement of this child and that there is no true interpersonal parent-child relationship in existence. That it would be in the best interest of [A.J.] to provide her with a stable nurturing environment from another home and family.

(Docket No. 44, p. 7).

{¶38} It is clear that there was no interaction or interrelationship between Schultow and A.J. At the time of the permanent custody hearing, Schultow had never met A.J.; the only caregivers in A.J.'s life were her foster parents who she knew "as her parents." (Docket No. 43, p. 2). For these reasons, A.J.'s guardian ad litem recommended that permanent custody be granted to CCDJFS.

{¶39} In her brief, Brittany argues that permanency could have been achieved by placing A.J. with Jodi. Specifically, Brittany argues that CCDJFS did not investigate whether Jodi's prior charge of child endangering adversely impacted her ability to care for A.J. In response, CCDJFS argues that because Jodi was *convicted* of child endangering, she could not be approved as a relative caregiver pursuant to Ohio Adm.Code 5101:2-42-18(I).

{¶40} In considering whether a relative can be approved as a minor child's caregiver, a children services agency is guided by the requirements set forth in Ohio Adm.Code 5101:2-42-18. Under this section, a minor child generally cannot be placed in a home where any of its adult occupants have been "*convicted of or pleaded guilty to*" certain enumerated offenses, including child endangerment. (Emphasis added.) Ohio Adm.Code 5101:2-42-18(I). Additionally, where the victim of the offense is under the age of 18, the relative is barred indefinitely.

{¶41} Here, Bauer testified that Jodi was *charged* with child endangering in January 2002 and that her case was "ultimately closed"; however, the record is

silent as to whether Jodi was convicted of, or pleaded guilty to, the offense. May 26, 2015 Hrg., p. 22.

{¶42} Nonetheless, Bauer testified that Jodi's *charge* of child endangerment, as well as her lack of income, formed the basis for Jodi's rejection as a relative caregiver. Although we cannot say that Jodi was automatically excluded by application of Ohio Adm.Code 5101:2-42-18(I), Bauer's testimony established an appropriate basis for rejecting Jodi as a relative caregiver.

{¶43} With no available relative caregivers, nine-month-old A.J.'s need for permanency could only be achieved through CCDJFS or Schultow, and at the time of the permanent custody hearing, Schultow's whereabouts were unknown.

{¶44} Based on the foregoing, we find that there was competent, credible evidence to support the trial court's finding that it was in A.J.'s best interest to grant permanent custody to CCDJFS.

{¶45} Next, we consider whether there was competent, credible evidence to establish that A.J. could not be placed with either parent within a reasonable time or should not be placed with either parent pursuant to R.C. 2151.414.

{¶46} Again, in making this determination, R.C. 2151.414(E) provides that

[i]f the court determines, by clear and convincing evidence * * * that one or more of the following exist as to each of the child's parents, the court *shall* enter a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent:

- (1) Following the placement of the child outside the child's home *
* * the parent has failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home;

* * *

- (4) The parent has demonstrated a lack of commitment toward the child by failing to regularly support, visit, or communicate with the child when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for the child;

* * *

- (12) The parent is incarcerated at the time of the filing of the motion for permanent custody or the dispositional hearing of the child and will not be available to care for the child for at least eighteen months after the filing of the motion for permanent custody or the dispositional hearing.

* * *

- (16) Any other factor the court considers relevant.

(Emphasis added.)

{¶47} Pursuant to R.C. 2151.414(E)(4), the trial court found that Schultow demonstrated a lack of commitment toward A.J. As noted above, at the time of the hearing, Schultow had never met A.J., despite the fact that his case plan allowed and encouraged supervised visits. Although visits with A.J. were scheduled, Schultow never attended.

{¶48} Similarly, although given both written and verbal notice, Schultow did not attend the permanent custody hearing (or any other custody-related

proceeding) or offer an explanation as to his absence. Again, at the time of the permanent custody hearing, Schultow's whereabouts were unknown.

{¶49} In her brief, Brittany argues that Schultow's limited financial resources prevented him from traveling to Ohio to visit with A.J. and attend custody-related proceedings. However, Brittany's argument is purely speculative; the record is devoid of any indication that Schultow cited a lack of funds as a reason for not attending visits with A.J. or custody-related court proceedings. For example, in its entry adjudicating A.J. a neglected child, the trial court noted that "the reputed father likewise failed to appear due to a tooth abscess." (Docket No. 12, p. 2). Notably, even if Brittany's claim were true, there was nothing preventing Schultow from demonstrating a commitment to A.J. from Pennsylvania. See *In re Willis*, 3d Allen No. 1-02-17, 2002-Ohio-4942, ¶ 30 (recognizing active involvement where father continually wrote letters to child's foster parents and the children services agency inquiring as to child's well-being and the progression of the child-custody case).

{¶50} With regard to the number of factors required to be found under R.C. 2151.414(E), "the trial court only needs to find one of the factors listed in (E) as to each parent before it 'shall' render a finding that a child cannot be placed with either parent." *In re Matthews*, 2008-Ohio-276 at ¶ 26, quoting R.C. 2151.414(E). Based on the foregoing, we find that there is competent, credible

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evidence that Schultow demonstrated a lack of commitment toward A.J. pursuant to R.C. 2151.414(E)(4), and therefore, the trial court properly concluded that A.J. could not or should not be placed with Schultow.

{¶51} Accordingly, we overrule Brittany's second assignment of error.

Assignment of Error No. I

{¶52} In her first assignment of error, Brittany argues that CCDJFS failed to make a good faith effort to reunify Schultow and A.J. We disagree.

{¶53} There are two instances in which the Revised Code imposes a duty on the part of a children services agency to make reasonable efforts to reunite a parent with their child where the agency has removed the child from the home. See R.C. 2151.419(A)(1); 2151.414(E)(1). Neither instance applies in this case.

{¶54} First, R.C. 2151.419(A)(1) provides that

at any hearing held pursuant to section 2151.28, division (E) of section 2151.31, or section 2151.314, 2151.33, or 2151.353 of the Revised Code at which the court removes a child from the child's home or continues the removal of a child from the child's home the court shall determine whether the public children services agency * * * has made *reasonable efforts to prevent the removal of the child from the child's home, to eliminate the continued removal of the child from the child's home, or to make it possible for the child to return safely home.*

(Emphasis added.)

{¶55} Here, the permanent custody hearing was not held pursuant to any of the enumerated sections in R.C. 2151.419(A)(1). Instead, the permanent custody

hearing was held pursuant to R.C. 2151.414 based on a motion made under R.C. 2151.413(A). By its plain terms, R.C. 2151.419(A) does not apply. *In re Bradley*, 3d Dist. Allen No. 1-05-56, 2006-Ohio-2367, ¶ 62; *In re Samples*, 7th Dist. Jefferson, No. 05 JE 39, 2006-Ohio-1056, ¶ 75 (“[W]e hereby hold that R.C. 2151.419(A)'s requirement of reasonable efforts to reunify is not applicable to orders granting permanent custody upon motions filed under R.C. 2151.413.”); *In re S.S.*, 10th Dist. Franklin No. 05AP-204, 2005-Ohio-4282, ¶ 16-17 (“[B]ecause R.C. 2151.419 does not apply to R.C. 2151.413 or to hearings held pursuant to R.C. 2151.414, the ‘reasonable efforts’ requirement of R.C. 2151.419(A) is inapposite to the facts and circumstances of this case.”).

{¶56} Second, R.C. 2151.414(E)(1) requires a finding that the minor child could not or should not be placed with a parent when

Following the placement of the child outside the child’s home and notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused the child to be placed outside the home, the parent has failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home.

(Emphasis added.)

{¶57} In its entry, the trial court made a finding under R.C. 2151.414(E)(1), which necessarily required that CCDJFS have made “diligent efforts” towards reunification. However, whether CCDJFS made diligent efforts towards reunification pursuant to R.C. 2151.414(E)(4) is immaterial because there was

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competent, credible evidence supporting the trial court's determination under R.C. 2151.414(E)(4). *See, e.g., In re Bradley* at ¶ 59. Again, "the trial court only needs to find one of the factors listed in (E) as to each parent before it 'shall' render a finding that a child cannot be placed with either parent." *In re Matthews*, 2008–Ohio–276 at ¶ 26, quoting R.C. 2151.414(E). Because the trial court's finding under R.C. 2151.414(E)(4) was appropriate, we need not consider whether CCDJFS complied with R.C. 2151.414(E)(1) and its diligent efforts requirement.

{¶58} Accordingly, we overrule Brittany's first assignment of error.

{¶59} Having found no error prejudicial to Brittany, in the particulars assigned and argued, we affirm the judgment of the trial court.

Judgment Affirmed

SHAW, P.J. and WILLAMOWSKI, J., concur.

/jlr

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

In the Matter of:

ANNABELLA MARIE JOHNSON,
adjudged neglected child.

Case No. F 2145134

JUDGMENT ENTRY

This matter came on to the attention of the court on May 26, 2015, for the continued hearing upon the Motion of the Crawford County Job + Family Services for Permanent Custody as provided in O.R.C. Secs. 2151.413 and 2151.414 as had been filed herein on January 29, 2015. The record should reflect that this matter had initially been scheduled for hearing on April 13, 2015, but upon the movant's request the hearing was continued until this date to allow father an opportunity to secure an updated approved Interstate Compact home-study evaluation and afford him the opportunity to demonstrate a commitment to the child. This is the written opinion of the court of the findings of fact and conclusions of law required by O.R.C. Sec. 2151.414(C).

From the record of the case file the court finds that mother was initially personally served *Summons to Appear* and a copy of the Motion, together with a written explanation of legal rights, by the Union County Sheriff's Office on February 4, 2015, and that as father's whereabouts had become unknown and his exact whereabouts could not be ascertained with reasonable diligence, he was initially served *Summons to Appear* and a summary of the Motion, together with an explanation of legal rights, by a publication in the Bucyrus Telegraph Forum newspaper on April 2, 2015, as is provided in O.R.C. Sec. 2151.29 and Juvenile Rule 16. The court further specifically finds that attached to the *Summons* delivered to the mother, and contained within the text of the publication for father, was a full written explanation of the consequences of the court granting permanent custody, as well as an explanation of all other



rights to be afforded to respondents, as is required by O.R.C. Sec. 2151.414(A). Pursuant to Civil Rule 5(B) Notice of this continued hearing date and time was served upon all parties of interest by a copy of the April 3, 2015 Judgment Entry being provided to their respective counsel of record.

The record should reflect that the court took judicial notice that the written report of the Guardian Ad Litem, as required by O.R.C. Sec. 2151.414(C) was officially filed of record before the hearing commenced and was taken into consideration in this decision.

Present for the proceedings were Susan Bauer, Case Worker for Job + Family Services; Michael J. Wiener, Assistant County Prosecutor; Geoffrey L. Stoll, court appointed counsel for mother; Brian N. Gernert, counsel for father; and Jeffrey D. Zeisler, Guardian Ad Litem. The record should reflect that the court had delayed these proceedings for approximately twenty (20) minutes to allow for the late arrival of either parent, but neither parent appeared or offered any explanation for their absence, however mother continues to be incarcerated and is not at liberty to appear. For these proceedings the court did designate Karen Starkey as the official Court Reporter, and a complete steno-type record of the proceedings was taken by the reporter.

Before proceeding to the merits of the motion the court brought to everyone's attention a certain letter of the mother that was received to the court on May 4, 2015 requesting a different court appointed attorney on the basis her present attorney is biased against her. Mr. Stoll reported that when asked he shared a realistic opinion with mother about the facts of this case but that he does not suffer any personal bias against mother that would affect his ability to effectively represent her interest. All other parties indicated there has been nothing presented that would reveal any particular bias that would prohibit Mr. Stoll from zealously representing mother's interest herein and nothing would indicate any substitute counsel could do any better. Based upon the foregoing the court took no action upon that matter.

Further, before proceeding to the merits of the motion counsel for father requested a continuance to allow an opportunity to determine why father has not appeared. The Assistant Prosecutor and Guardian Ad Litem objected to the consideration of any continuance based upon mere absence without presenting some plausible explanation as it would serve to inconvenience those who made the necessary arrangements to appear and considering his failure to appear at all the prior hearings such a continuance in and of itself would not necessarily improve any future attendance. As was noted earlier, the April 13, 2015 hearing date was continued for father's benefit, which would make this a second continuance request on his behalf. Based upon the foregoing the court must conclude that mere absence alone is not good grounds for a continuance and the same must be denied.

Then proceeding to the merits of the motion the Assistant Prosecutor advised the parties have a stipulation they wished to enter of record in this matter, specifically all parties stipulated to the introduction into evidence of Movant's Exhibit No. 1, without the necessity of any authentication. As there was no objection the court did officially admit Movant's Exhibit No. 1 into evidence in this case. Whereupon the court received sworn testimony from Susan Bauer. At the conclusion of the evidence the court received brief summations from counsel.

This case was commenced with the filing of a complaint on July 22, 2014 (the date of the child's birth) alleging the newborn infant to be neglected as mother gave birth while incarcerated upon a stated prison term of four years and eleven months, having a projected release date of May 23, 2019, and the Ohio Department of Rehabilitation and Correction does not allow raising the infant child while incarcerated. Obviously mother's situation is clearly within the provisions of O.R.C. Sec. 2151.414(E)(12) so the complaint had requested permanent custody as an original disposition. A true parent-child relationship had not been established for the reputed father, so at the adjudicatory hearing on August 18, 2014 the adjudication and disposition were bifurcated to

allow for the completion of genetic testing and to initiate an interstate compact home-study evaluation upon the reputed father. Genetic testing was completed with a result of 99.99% probability that the alleged father, Brian K. Schultow, was the biological father of the child, and, after following the procedures so provided, the true parent-child relationship was finally formally established at the hearing on April 14, 2015.

At the formal dispositional hearing on October 10, 2014 Job + Family Services withdrew the initial request for permanent custody and instead sought a disposition under O.R.C. Sec. 2151.353 as the then reputed father indicated a willingness to fully cooperate to pursue a possible placement of the child with him in Pennsylvania. A Case Plan was submitted at that hearing and approved as a further dispositional order which provided for the reputed father to establish an appropriate stable independent residence, confirm and maintain his employment, cooperate with the local Pennsylvania public child welfare agency's case management services and exercise supervised visitation with the infant child.

An Interstate Compact home-study evaluation of the reputed father had been requested of Dauphin County, Pennsylvania in September of 2014. Dauphin County apparently subcontracts the completion of those service through Jewish Social Services. Jewish Social Services was able to evaluate the reputed father's then residence but he subsequently moved from that residence prompting the process to start over. The father never provided Jewish Social Services any verification of his employment so as to establish sufficient income to support an infant, including daycare, while he works or other incidentals they had requested. At father's request several visitations were arranged, but father never showed and as of this hearing has never seen the infant child, so from this fact the court must conclude that a true interpersonal parent-child relationship does not exist.

Now as of the date of the filing of this motion renewing the request for permanent custody (January 29, 2015), the local agency had not yet received a response to the request for an interstate compact home-study evaluation and father's whereabouts had become unknown as he was no longer residing at the 3533 Rutherford Street, Harrisburg address as evidenced by the returned Notice of Hearing of December 23, 2014. However, subsequently the agency did receive a communication from Dauphin County, Pennsylvania advising father had moved from his previously evaluated address and they would be proceeding to complete another home-study evaluation of his new residence which then prompted the Assistant Prosecutor to request a continuance of the April 13, 2015 original hearing date. The caseworker testified that the father has notified them of five different addresses since his release from jail on August 3, 2014, being a period of nine months, and nothing further has been provided by Dauphin County other than to report a lack of timely full cooperation from father. The caseworker opined that from this the father has not demonstrated necessary residential stability required for the care of an infant child as was provided for in the case plan. Counsel for father argues that despite the subjective categorization of father's level of cooperation with the authorities in Pennsylvania he has otherwise been cooperative, however from the information presented it appears more the case of Jewish Social Services seeking out father rather than father seeking out them to obtain a favorable report in less than the nine months that has now elapsed for that process. All of this, taken together with his failure to attend any of the various previous hearings he has properly been notified of, and his failure to appear for visitations he had requested to be scheduled does not demonstrate a genuine commitment to be considered for placement of the child.

There was testimony presented as to the evaluation of other family members or relatives for consideration of long-term alternative placement. Although requested, there were no names or information of any paternal family members or relatives provided to the agency for home-

study evaluations. The maternal grandmother has had previous involvement with neglect and dependency adjudications of her own children which would disqualify her from consideration. The maternal great grandmother was found to have inadequate living space, a registered sex-offender residing upstairs and during a previous child-welfare proceeding placement asked for the child to be removed from her custody due to her health and various personal problems. The maternal aunt was found to have a previous child-welfare case in Richland County, a previous child endangering charge from 2002 and not employed at the time of the inquiry. Counsel for mother argued that the child endangering charge from 2002 for the maternal aunt was too remote to continue to now be relevant as a detriment. The caseworker responded that the criteria from which the evaluation was completed was from the Ohio Administrative Code for approval of alternative placements as was promulgated by the Ohio Department of Job + Family Services to assess the risk to the safety and welfare of children requiring alternative placement. The Legislature had authorized the state administrative agency responsible for overseeing Ohio's child welfare policy in all eighty-eight counties with the command to apply the known body of knowledge and empirical research to fill-in the details of the policy they had announced in the statute by administrative rule to be applicable to all local child welfare agencies. Obviously the agency was simply applying the established objective criteria to the presenting facts and those criteria do not make a distinction as to point in time for a found detrimental fact. Perhaps the administrative agency was applying the old adage that the best way to predict the future is to study what has occurred in the past.

A collateral consideration that came out in the questioning was the fact the child was placed into a foster-to-adopt placement after the Shelter Care hearing and that permanent custody was the disguised plan all along. The complaint filed herein on July 22, 2014, being the date of the child's birth, needs to be examined for the prayer for disposition as contained on the face

thereof. The fact mother was going to be giving birth was not a surprise to the agency. They had evaluated the maternal relatives before the Shelter Care hearing and found none would be appropriate according to the placement criteria, no legal father was known at that time and mother was to be incarcerated for four years and eleven months. Clearly the agency sought permanent custody from the outset, so it was not some surreptitious plan for the child to have been placed in a foster-to-adopt home.

Also a consideration brought out in the questioning was the innuendo that the agency was rushing to permanent custody. Such a conclusion is not born out by the facts of the processing of this case. At the formal dispositional hearing on October 10, 2014 the agency withdrew the request for permanent custody when the reputed father reported he was interested in being considered for placement of the child and the agency had already started the Interstate Compact request for a home-study in September. Again, after this motion was filed and the matter was scheduled for a hearing on April 13, 2015, it was the agency that asked for a continuance to allow father the opportunity to complete another home-study of his new residence and establish some visitation. These facts do not suggest some pell-mell rush to conclude a permanent custody. However, despite the obvious of the foregoing, the provisions of House Bill 484 would require a "*fast-track*" for permanency for children. The provisions of House Bill 484 would require time conflicts to be resolved in favor of the interests of children.

Considering all the evidence, the court finds that mother will not be at liberty to care for the infant for quite some time, that father does not appear to be motivated or committed to completing the things necessary to be considered for placement of this child and that there is no true interpersonal parent-child relationship in existence. That it would be in the best interest of this infant child to provide her with a stable nurturing environment from another home and family.

From all the information presented, the court finds by clear and convincing evidence that the child should not or could not be placed with either parent because mother will be incarcerated and not be available to care for the child for more than eighteen months as provided in O.R.C. Sec. 2151.414(E)(12) and that father has continuously failed to substantially remedy the conditions causing the child to be placed outside the home and has demonstrated a lack of commitment toward the child as provided in O.R.C. Sec. 2151.414(E)(1) and (4); and that this situation is not likely to improve in the near foreseeable future as provided in O.R.C. Sec. 2151.414(B)(2); that there are no suitable and appropriate family members or relatives to assume long-term placement of the child; and that considering the factors established in O.R.C. Sec. 2151.414(D) that it would be in the best interests of the child to grant permanent custody to the public child caring agency.

Further, that the court has reviewed the goals and objectives of Case Plan Amendment No. 1.01 as was presented with this motion and does find the proposed services therein reasonably address the presenting situation and ought to be approved and adopted as a further dispositional order herein.

WHEREFORE, the court being fully advised in the premises, it is hereby **ORDERED**, **ADJUDGED** and **DECREED** as follows:

1. That father's request for a continuance is found not to be well taken and is denied;
2. That the Motion for Permanent Custody is found to be well taken and is sustained;
3. That the parental rights of mother, Brittany C. Johnson, and father, Brian K. Schultow, are herewith terminated and forever severed and released;
4. That the child is committed to the permanent custody of Crawford County Job + Family Services for appropriate adoptive placement;

5. That Case Plan Amendment No. 1.01, as presented with this motion, is approved and adopted as a further Dispositional Order in this case and the same is incorporated herein by reference the same as if it were fully re-written herein at length;

6. That both parents are ordered to fully cooperate in the completion of the social and medical history as provided in O.R.C. Sec. 3107.12;

7. That pursuant to Juvenile Rule 34(J) all parties are herewith notified that this is a final appealable order.

FILED
PROBATE COURT
JUVENILE COURT

JUN 23 2015

Steven D. Eckstein, Judge
CRAWFORD COUNTY OHIO



Steven D. Eckstein, Judge
Dated: June 23, 2015

CERTIFICATE OF SERVICE

Pursuant to Civil Rule 58(B), I, the undersigned Deputy Clerk of the Crawford County Juvenile Court do hereby certify that I caused a true and exact copy of the foregoing Judgment Entry to be served upon mother, Brittany C. Johnson, No. W089788, Ohio Reformatory for Women, 1479 Collins Avenue, Marysville, Ohio 43040, and upon father, Brian K. Schlutow, 426 S. Thirteenth Street, Harrisburg, Pennsylvania 17104, by depositing a copy in the regular U.S. mail, properly addressed with proper postage affixed, this 23rd day of June, 2015, and served upon counsel of record for the parties, to wit: Michael J. Wiener, Geoffrey L. Stoll, Brian N. Gernert and Jeffrey D. Zeisler, by depositing a copy of same in their respective correspondence slots in the court offices this 23rd day of June, 2015.



Deputy Clerk

cc: ~~Job~~ + Family Services
Child Support Enforcement Agency

FAMILY NAME: Johnson, Brittany		AGENCY CASE NUMBER: 11787962
CASEWORKER: Susan Bauer	AGENCY: Crawford County Department of Job and Family Services	AGENCY PHONE NUMBER: (419) 563-1570

SIGNATURES OF PARENT/GUARDIAN/CUSTODIAN, OTHER PARTIES AND AGENCY REPRESENTATIVES

NAME	RELATIONSHIP	SIGNATURE	DATE	DATE COPY OF PLAN PROVIDED
Annabella M Johnson				
Brian Schlutow				
Brittany Johnson				
Susan C Bauer	Caseworker	<i>Susan Bauer</i>	1-13-15	—
Dustin Stauffer	Supervisor	<i>Dustin Stauffer</i>	1/13/15	—
Erika Fuson				
Jeffrey D Zeisler	GAL			

Describe how the Parent/Guardian/Custodian and child(if appropriate) were given the opportunity to participate in the development of the case plan.

Neither parent was involved in the development of the case plan.

If any required person did not participate or disagreed with the case plan, state who and check the appropriate box for the reason why:

Signature Name	Unable to locate?	Not Available	Disagree	Other

If any party did not sign the case plan or disagreed with the case plan, explain below.

Note: For court-involved case, understand that once the case plan has been journalized by the court, all parties, including the parent, guardian or custodian of the child, are bound by the terms of the case plan. A party that fails to comply with the terms of the journalized case plan may be held in contempt of court.

Page 10 of 10

FAMILY NAME: Johnson, Brittany		AGENCY CASE NUMBER: 11787962
CASEWORKER: Susan Bauer	AGENCY: Crawford County Department of Job and Family Services	AGENCY PHONE NUMBER: (419) 363-1570

SIGNATURES OF PARENT/GUARDIAN/CUSTODIAN, OTHER PARTIES AND AGENCY REPRESENTATIVES

NAME	RELATIONSHIP	SIGNATURE	DATE	DATE COPY OF PLAN PROVIDED
Annabella M Johnson				
Brian Schlutow				
Brittany Johnson				
Susan C Bauer				
Dustin Stauffer				
Erika Fuson				
Jeffrey D Zeisler	GAL	<i>[Signature]</i>	1/13/15	1/13/15

Describe how the Parent/Guardian/Custodian and child(if appropriate) were given the opportunity to participate in the development of the case plan.

Neither parent was involved in the development of the case plan.

If any required person did not participate or disagreed with the case plan, state who and check the appropriate box for the reason why:

Signature Name	Unable to locate?	Not Available	Disagree	Other

If any party did not sign the case plan or disagreed with the case plan, explain below.

Note: For court-involved cases, understand that once the case plan has been journalized by the court, all parties, including the parent, guardian or custodian of the child, are bound by the terms of the case plan. A party that fails to comply with the terms of the journalized case plan may be held in contempt of court.

IN THE SUPREME COURT OF OHIO

16-0353

IN THE MATTER OF
A.J. (d.o.b. 07/22/2014)

: Supreme Court Case No.:

An Adjudged Neglected Child

: APPEAL FROM THE
: CRAWFORD COUNTY
: COURT OF APPEALS - THIRD
: APPELLATE DISTRICT

: (Court of Appeals Case No. 3-15-12)

NOTICE OF APPEAL OF APPELLANT, BRITTANY JOHNSON

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Fax. 1-419-462-5526

FILED
MAR 09 2016
CLERK OF COURT
SUPREME COURT OF OHIO

NOTICE OF APPEAL

Notice is hereby given that Appellant, Brittany C. Johnson, hereby give notice of appeal to the Supreme Court of Ohio from the judgment of the Crawford County Court of Appeals, Third Appellate District, entered in Court of Appeal's Case No. 3-15-12, on January 25, 2016.

Appellants state that the case involves both the termination of parental rights, and presents a question of public or great general interest pursuant to Article IV, Section 2(B)(2)(e) of the Ohio Constitution.



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E-mail: geoff@starkeyandstoll.com
Counsel for Brittany C. Johnson

PROOF OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal was duly served upon Michael J. Wiener, Esq., **Assistant Prosecuting Attorney, Crawford County Prosecutor's Office**, 112 East Mansfield Street, Suite 305, Bucyrus, Ohio 44820; Brian N. Gernert, Esq., **KENNEDY, PURDY, HOEFFEL & GERNERT, LLC**, 111 West Rensselaer Street, P.O. Box 191, Bucyrus, Ohio 44820; and Jeffrey D. Zeisler, Esq.,

KELLER & ZEISLER, 659 Harding Way West, Galion, Ohio 44833, by placing a copy of same in each said attorney's mailbox maintained in the Office of the Clerk of Courts of Crawford County, Ohio this 9th day of March, 2016.



Geoffrey L. Stoll #0038520

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

Ohio Administrative Code

5101:2. Division of Social Services

Chapter 5101:2-42. Substitute Care

All rules passed and filed through May 6, 2016

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

- (A) When a child cannot remain in his or her own home, the public children services agency (PCSA) or private child placing agency (PCPA) shall explore both maternal and paternal relatives regarding their willingness and ability to assume temporary custody or guardianship of the child. Unless it is not in the child's best interest, the PCSA or PCPA shall explore placement with a non-custodial parent before considering other relatives.
- (B) If a suitable relative is not available to assume temporary custody, guardianship, or placement, the PCSA or PCPA shall explore placement with a suitable nonrelative who has a relationship with the child and/or family.
- (C) The PCSA or PCPA shall only place children:
 - (1) In homes of relative or non-relatives approved by the PCSA or PCPA in accordance with rule **5101:2-42-18** of the Administrative Code.
 - (2) In substitute care settings that are licensed, certified or approved by the agency of the state having responsibility for licensing, certifying or approving facilities of the type in which the child is placed.
- (D) The PCSA or PCPA shall attempt to place siblings in the same home unless it is not in the child's or siblings' best interest.
- (E) When the PCSA or PCPA has temporary custody of a child, it shall select a substitute care setting that is consistent with the best interest and special needs of the child and that meets the following criteria:
 - (1) Is considered the least restrictive, most family-like setting available to meet the child's emotional and physical needs.
 - (2) Is in close proximity to the home from which the child was removed or the home in which the child will be permanently placed.
 - (3) Is in close proximity to the school in which the child was enrolled prior to placement.
 - (4) Is designed to enhance the likelihood of achieving permanency plan goals.
 - (5) Is able to provide a safe environment for the child.
- (F) The following allowable settings are listed in order from least restrictive to most restrictive:
 - (1) The home of a suitable relative as defined in rule **5101:2-1-01** of the Administrative Code.
 - (2) The home of a suitable nonrelative as defined in rule **5101:2-1-01** of the Administrative Code.
 - (3) A foster home.
 - (4) An independent living arrangement, as appropriate for the child.

- (5) A group home.
 - (6) A maternity home.
 - (7) An emergency shelter care facility.
 - (8) A children's residential center.
 - (9) A medical or educational facility.
- (G) For a child in the permanent custody of a PCSA or PCPA, an adoptive placement shall be considered the least restrictive setting. When selecting an adoptive placement, the agency shall follow rule **5101:2-48-16** of the Administrative Code.
- (H) Only when a PCSA or PCPA determines that a child's mental, physical or emotional needs indicate that a less-restrictive setting cannot address his or her needs, the PCSA or PCPA may place the child in a more restrictive setting.
- (I) This rule shall not contravene the placement of a child in a secure facility or other specified setting by law enforcement or any court of jurisdiction.
- (J) The PCSA or PCPA shall document the following in the child's case plan:
- (1) Educational, medical, psychological, and social information used by the agency to select a placement setting.
 - (2) How the setting constitutes a safe and appropriate placement.
 - (3) Why less-restrictive placements, if applicable, were not utilized.
- (K) The provisions of this rule do not apply to a permanent surrender agreement executed in the child's best interest by a PCPA in accordance with division (B)(2) of section **5103.15** of the Revised Code for a child less than six months of age for the purpose of adoption on the date of the execution of the agreement.
- (L) All placement activities shall be in compliance with rules 5101:2-42-18.1 and 5101:2-48-13 of the Administrative Code and 42 U.S.C. sections 671(a)(18), 674(d) and 1996b (collectively, the Multiethnic Placement Act or MEPA as in effect January 1, 1997).

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5101:2-42-18. PCSA and PCPA approval of placements with relative and nonrelative substitute caregivers.

Ohio Administrative Code

5101:2. Division of Social Services

Chapter 5101:2-42. Substitute Care

All rules passed and filed through May 6, 2016

5101:2-42-18. PCSA and PCPA approval of placements with relative and nonrelative substitute caregivers

- (A) A public children services agency (PCSA) or private child placing agency (PCPA) having custody of a child, or upon interstate request by a state with jurisdiction, may approve placement with the following substitute caregivers in accordance with rule **5101:2-42-05** of the Administrative Code if the placement is determined to be in the child's best interest and the substitute caregivers are not certified through the Ohio department of job and family services:
- (1) A relative by blood or marriage who, in accordance with sections **5103.02** and **5103.03** of the Revised Code, is exempt from certification and who is being considered as a substitute caregiver; or
 - (2) A nonrelative who has a relationship with the child and/or family and who, in accordance with section **5153.161** of the Revised Code, is approved by the court.
- (B) Prior to placing the child with the relative or nonrelative substitute caregiver, the PCSA or PCPA shall adhere to the following procedures and document its actions in approving the placement setting:
- (1) Collect identifying information (first name, last name, maiden name, aliases, social security number, address, telephone number, place of employment) on the prospective caregiver and all household members.
 - (2) Assure that a search of the statewide automated child welfare information system (SACWIS) has been completed for the prospective caregiver and adult household members pursuant to rule **5101:2-33-22** of the Administrative Code.
 - (3) Assess the safety of the home by checking on all of the following:
 - (a) Cleanliness of the home.
 - (b) Absence of hazardous conditions inside and outside.
 - (c) Storing of poisonous and otherwise dangerous or combustible materials.
 - (d) Proper heating, lighting and ventilation.
 - (e) Condition of indoor plumbing and toilet facilities.
 - (f) Installation of a working smoke alarm on each level of occupancy of the home.
 - (g) Safe storing of weapons, including firearms and ammunitions, in inoperative condition and in a secured and locked area.
 - (h) Adequacy of each child's bedding and appropriateness to his or her needs.
 - (i) Availability of a working telephone within the home or reasonable access to a working telephone for emergency situations.

- (4) Provide the prospective caregiver with known information regarding educational, medical, child care, and special needs of the child including information on how to access support services to meet the needs of the child.
 - (5) Provide the prospective caregiver with the following information:
 - (a) How to apply for Ohio works first (OWF) child-only financial assistance and medicaid coverage.
 - (b) How to apply for certification as a foster caregiver.
 - (c) The requirements for foster caregiver certification.
 - (d) The difference in payment between an OWF child-only payment and the foster care per diem.
 - (e) The difference (if any) in the eligibility for supportive services.
 - (6) Assess the prospective caregiver's ability and willingness to provide care and supervision of the child and to provide a safe and appropriate placement for the child.
 - (7) Require all adults in the home to identify prior PCSA or children services agency (CSA) involvement. When involvement with another PCSA or CSA is indicated or suspected, secure the necessary releases of information and initiate requests for information from the other PCSAs or CSAs.
 - (8) Submit fingerprints for the prospective relative or nonrelative caregiver and all adults residing within the home according to the requirements of the bureau of criminal identification and investigation (BCII). Information on how to obtain a criminal records check can be found at www.webcheck4.ag.state.oh.us. The agency shall request that BCII include information from the federal bureau of investigation (FBI) in the criminal records check. The required criminal records check must be completed prior to an agency approving the prospective relative or nonrelative placement.
 - (9) Require the prospective caregiver to submit written notification if a person at least twelve years of age but less than eighteen years of age residing within the home of the prospective caregiver has been convicted of or plead guilty to any offenses described in section **5103.0319** of the Revised Code, or has been adjudicated to be a delinquent child for committing an act that if committed by an adult would have constituted such a violation.
- (C) If a child must be removed from his or her home immediately in accordance with rules **5101:2-39-01** and **5101:2-39-03** of the Administrative Code, the PCSA or PCPA may place the child with the prospective relative or nonrelative substitute caregiver, if there are no known safety concerns, and initiate the assessments required by paragraph (B) of this rule no later than the next business day. All activities required by paragraph (B) of this rule shall be completed no later than five days from the date the child was placed.
 - (D) The PCSA or PCPA shall complete either the JFS 01447 "Assessment of Relative or Nonrelative Substitute Caregiver" (rev. 2/2014) or an alternative form designed by the agency that includes all of the information on the JFS 01447.
 - (E) The PCSA or PCPA shall approve or deny the relative or nonrelative placement and provide him or her with written notification of the approval or denial no later than thirty days from the date that the assessment was initiated, or the child was placed, whichever comes first.
 - (F) The PCSA or PCPA shall not approve the placement if the relative or nonrelative or other adult residing within the home has a felony conviction for spousal abuse, rape, sexual assault, or homicide.
 - (G) The PCSA or PCPA may deny the placement if the relative or nonrelative had his or her parental rights involuntarily terminated.
 - (H) The PCSA or PCPA shall not approve the placement if the relative or nonrelative or other adults residing within the home have been convicted of or pleaded guilty to any offense listed in paragraph (I)(1) of this rule unless the agency finds and documents that person has met all of the following conditions:

- (1) Except as provided in paragraph (H)(3) of this rule, where the offense was a misdemeanor, or would have been a misdemeanor if conviction had occurred under the current criminal code, at least three years have elapsed from the date the person was fully discharged from any imprisonment or probation arising from the conviction. A person who has had his record of misdemeanor conviction sealed by a court pursuant to section **2953.32** of the Revised Code shall be considered to have met this condition.
 - (2) Except as provided in paragraph (H)(3) of this rule, where the offense was a felony, at least ten years have elapsed since the person was fully discharged from imprisonment or probation.
 - (3) The victim of the offense was not one of the following:
 - (a) A person under the age of eighteen.
 - (b) A functionally impaired person as defined in section **2903.10** of the Revised Code.
 - (c) A mentally retarded person as defined in section **5123.01** of the Revised Code.
 - (d) A developmentally disabled person as defined in section **5123.01** of the Revised Code.
 - (e) A person with a mental illness as defined in section **5122.01** of the Revised Code.
 - (f) A person sixty years of age or older.
 - (4) The person's approval as a relative or nonrelative caregiver or the person's residency in the relative or nonrelative caregiver's household will not jeopardize in any way the health, safety or welfare of the children the agency serves. The following factors shall be considered in determining the person's approval as a relative or nonrelative caregiver or the person's residency in the relative or nonrelative caregiver's household.
 - (a) The person's age at the time of the offense.
 - (b) The nature and seriousness of the offense.
 - (c) The circumstances under which the offense was committed.
 - (d) The degree of participation of the person involved in the offense.
 - (e) The time elapsed since the person was fully discharged from imprisonment or probation.
 - (f) The likelihood that the circumstance leading to the offense will recur.
 - (g) Whether the person is a repeat offender.
 - (h) The person's employment record.
 - (i) The person's efforts at rehabilitation and the results of those efforts.
 - (j) Whether any criminal proceedings are pending against the person.
 - (k) Whether the person has been convicted of or pleaded guilty to a felony contained in the Revised Code that is not listed in paragraph (l) of this rule, if the felony bears a direct and substantial relationship to being a relative or nonrelative caregiver or adult member of the caregiver's household.
 - (l) Any other factors the agency considers relevant.
- (I) Except as provided in paragraph (H) of this rule, a relative or nonrelative caregiver or other adult residing in the home shall not have been convicted of or pleaded guilty to, any of the following offenses:

- (1) A violation of section **959.13, 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13,**

2903.15, 2903.16, 2903.21, 2903.211, 2903.22, 2903.34, 2905.01, 2905.02, 2905.05, 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321 (2907.32.1), 2907.322 (2907.32.2), 2907.323 (2907.32.3), 2909.02, 2909.22, 2909.23, 2909.24, 2909.03, 2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 2913.49, 2917.01, 2917.02, 2919.22, 2919.24, 2919.25, 2923.12, 2923.13, 2923.161 (2923.16.1), 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, 2927.12, or 3716.11 of the Revised Code, a violation of section **2905.04** of the Revised Code as it existed prior to July 1, 1996, a violation of section **2919.23** of the Revised Code that would have been a violation of section **2905.04** of the Revised Code as it existed prior to July 1, 1996, had the violation been committed prior to that date, a violation of section **2925.11** of the Revised Code that is not a minor drug possession offense, two or more violations of section **4511.19** of the Revised Code or the equivalent violation from any other state committed within the three years immediately preceding the submission of the application or petition that is the basis of the request, or felonious sexual penetration in violation of former section **2907.12** of the Revised Code as listed in appendix A to this rule.

- (2) A violation of an existing or former law of this state, any other state, or the United States that is substantially equivalent to any of the offenses listed in paragraphs (I)(1) and (I)(2) of this rule.
- (J) If the PCSA or PCPA disapproves of a court ordered placement of a child, it shall notify the court in writing of its findings and recommend a suitable substitute care placement. The PCSA or PCPA shall continue to notify the court in writing of its findings and recommended substitute care placement at least every six months.
- (K) The PCSA or PCPA shall maintain documentation, in the case record, of all assessments and findings required by this rule that are used in approving or disapproving the placement.
- (L) On an annual basis, the PCSA or PCPA shall complete a home assessment to assure that the placement continues to meet the requirements of this rule for approval of the placement.
- (1) If there are any new adults in the home, the agency shall conduct background checks on the new adult(s) pursuant to paragraphs (B)(2) and (B)(8) of this rule.
- (2) If the relative or nonrelative caregiver(s) have moved to a new address, the agency shall ensure that the home meets the requirements listed in paragraph (B)(3) of this rule.
- (M) Nothing in this rule removes the PCSA's responsibility for conducting parent assessments when a child reunifies with the parent from which the child was removed or when a child is being placed with a non-custodial or non-residential parent in accordance with rules **5101:2-37-01, 5101:2-37-02, and 5101:2-37-04** of the Administrative Code.

[Click to view Appendix](#)

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§ 2151.353. Orders of disposition of abused, neglected or dependent child.

Archive

Ohio Statutes

Title 21. COURTS - PROBATE - JUVENILE

Chapter 2151. JUVENILE COURT

Current with legislation signed by the Governor as of 4/5/2016

§ 2151.353. Orders of disposition of abused, neglected or dependent child

- (A) If a child is adjudicated an abused, neglected, or dependent child, the court may make any of the following orders of disposition:
- (1) Place the child in protective supervision;
 - (2) Commit the child to the temporary custody of a public children services agency, a private child placing agency, either parent, a relative residing within or outside the state, or a probation officer for placement in a certified foster home, or in any other home approved by the court;
 - (3) Award legal custody of the child to either parent or to any other person who, prior to the dispositional hearing, files a motion requesting legal custody of the child or is identified as a proposed legal custodian in a complaint or motion filed prior to the dispositional hearing by any party to the proceedings. A person identified in a complaint or motion filed by a party to the proceedings as a proposed legal custodian shall be awarded legal custody of the child only if the person identified signs a statement of understanding for legal custody that contains at least the following provisions:
 - (a) That it is the intent of the person to become the legal custodian of the child and the person is able to assume legal responsibility for the care and supervision of the child;
 - (b) That the person understands that legal custody of the child in question is intended to be permanent in nature and that the person will be responsible as the custodian for the child until the child reaches the age of majority. Responsibility as custodian for the child shall continue beyond the age of majority if, at the time the child reaches the age of majority, the child is pursuing a diploma granted by the board of education or other governing authority, successful completion of the curriculum of any high school, successful completion of an individualized education program developed for the student by any high school, or an age and schooling certificate. Responsibility beyond the age of majority shall terminate when the child ceases to continuously pursue such an education, completes such an education, or is excused from such an education under standards adopted by the state board of education, whichever occurs first.
 - (c) That the parents of the child have residual parental rights, privileges, and responsibilities, including, but not limited to, the privilege of reasonable visitation, consent to adoption, the privilege to determine the child's religious affiliation, and the responsibility for support;
 - (d) That the person understands that the person must be present in court for the dispositional hearing in order to affirm the person's intention to become legal custodian, to affirm that the person understands the effect of the custodianship before the court, and to answer any questions that the court or any parties to the case may have.
 - (4) Commit the child to the permanent custody of a public children services agency or private child placing agency, if the court determines in accordance with division (E) of section 2151.414 of the Revised Code that the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent and determines in accordance with division (D)(1) of section 2151.414 of the Revised Code that the permanent commitment is in the best interest of the child. If the court grants permanent custody under this division, the court, upon the request of any

party, shall file a written opinion setting forth its findings of fact and conclusions of law in relation to the proceeding.

- (5) Place the child in a planned permanent living arrangement with a public children services agency or private child placing agency, if a public children services agency or private child placing agency requests the court to place the child in a planned permanent living arrangement and if the court finds, by clear and convincing evidence, that a planned permanent living arrangement is in the best interest of the child and that one of the following exists:
 - (a) The child, because of physical, mental, or psychological problems or needs, is unable to function in a family-like setting and must remain in residential or institutional care now and for the foreseeable future beyond the date of the dispositional hearing held pursuant to section 2151.35 of the Revised Code.
 - (b) The child is sixteen years of age or older, the parents of the child have significant physical, mental, or psychological problems and are unable to care for the child because of those problems, adoption is not in the best interest of the child, as determined in accordance with division (D)(1) of section 2151.414 of the Revised Code, and the child retains a significant and positive relationship with a parent or relative.
 - (c) The child is sixteen years of age or older, has been counseled on the permanent placement options available to the child, and is unwilling to accept or unable to adapt to a permanent placement.
 - (6) Order the removal from the child's home until further order of the court of the person who committed abuse as described in section 2151.031 of the Revised Code against the child, who caused or allowed the child to suffer neglect as described in section 2151.03 of the Revised Code, or who is the parent, guardian, or custodian of a child who is adjudicated a dependent child and order any person not to have contact with the child or the child's siblings.
- (B)
- (1) When making a determination on whether to place a child in a planned permanent living arrangement pursuant to division (A)(5)(b) or (c) of this section, the court shall consider all relevant information that has been presented to the court, including information gathered from the child, the child's guardian ad litem, and the public children services agency or private child placing agency.
 - (2) A child who is placed in a planned permanent living arrangement pursuant to division (A)(5)(b) or (c) of this section shall be placed in an independent living setting or in a family setting in which the caregiver has been provided by the agency that has custody of the child with a notice that addresses the following:
 - (a) The caregiver understands that the planned permanent living arrangement is intended to be permanent in nature and that the caregiver will provide a stable placement for the child through the child's emancipation or until the court releases the child from the custody of the agency, whichever occurs first.
 - (b) The caregiver is expected to actively participate in the youth's independent living case plan, attend agency team meetings and court hearings as appropriate, complete training, as provided in division (B) of section 5103.035 of the Revised Code, related to providing the child independent living services, and assist in the child's transition into adulthood.
 - (3) The department of job and family services shall develop a model notice to be provided by an agency that has custody of a child to a caregiver under division (B)(2) of this section. The agency may modify the model notice to apply to the needs of the agency.
- (C) No order for permanent custody or temporary custody of a child or the placement of a child in a planned permanent living arrangement shall be made pursuant to this section unless the complaint alleging the abuse, neglect, or dependency contains a prayer requesting permanent custody, temporary custody, or the placement of the child in a planned permanent living arrangement as desired, the summons served on the parents of the child contains as is appropriate a full explanation that the granting of an order for permanent custody permanently divests them of their parental rights, a full explanation that an adjudication that the child is an abused, neglected, or dependent child may result in an order of temporary custody that will cause the removal of the child from their legal custody until the court terminates the order of temporary custody or

permanently divests the parents of their parental rights, or a full explanation that the granting of an order for a planned permanent living arrangement will result in the removal of the child from their legal custody if any of the conditions listed in divisions (A)(5)(a) to (c) of this section are found to exist, and the summons served on the parents contains a full explanation of their right to be represented by counsel and to have counsel appointed pursuant to Chapter 120. of the Revised Code if they are indigent.

If after making disposition as authorized by division (A)(2) of this section, a motion is filed that requests permanent custody of the child, the court may grant permanent custody of the child to the movant in accordance with section 2151.414 of the Revised Code.

- (D) If the court issues an order for protective supervision pursuant to division (A)(1) of this section, the court may place any reasonable restrictions upon the child, the child's parents, guardian, or custodian, or any other person, including, but not limited to, any of the following:
- (1) Order a party, within forty-eight hours after the issuance of the order, to vacate the child's home indefinitely or for a specified period of time;
 - (2) Order a party, a parent of the child, or a physical custodian of the child to prevent any particular person from having contact with the child;
 - (3) Issue an order restraining or otherwise controlling the conduct of any person which conduct would not be in the best interest of the child.
- (E) As part of its dispositional order, the court shall journalize a case plan for the child. The journalized case plan shall not be changed except as provided in section 2151.412 of the Revised Code.
- (F)
- (1) The court shall retain jurisdiction over any child for whom the court issues an order of disposition pursuant to division (A) of this section or pursuant to section 2151.414 or 2151.415 of the Revised Code until the child attains the age of eighteen years if the child is not mentally retarded, developmentally disabled, or physically impaired, the child attains the age of twenty-one years if the child is mentally retarded, developmentally disabled, or physically impaired, or the child is adopted and a final decree of adoption is issued, except that the court may retain jurisdiction over the child and continue any order of disposition under division (A) of this section or under section 2151.414 or 2151.415 of the Revised Code for a specified period of time to enable the child to graduate from high school or vocational school. The court shall make an entry continuing its jurisdiction under this division in the journal.
 - (2) Any public children services agency, any private child placing agency, the department of job and family services, or any party, other than any parent whose parental rights with respect to the child have been terminated pursuant to an order issued under division (A)(4) of this section, by filing a motion with the court, may at any time request the court to modify or terminate any order of disposition issued pursuant to division (A) of this section or section 2151.414 or 2151.415 of the Revised Code. The court shall hold a hearing upon the motion as if the hearing were the original dispositional hearing and shall give all parties to the action and the guardian ad litem notice of the hearing pursuant to the Juvenile Rules. If applicable, the court shall comply with section 2151.42 of the Revised Code.
- (G) 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.
- (H)
- (1) No later than one year after the earlier of the date the complaint in the case was filed or the child was first placed in shelter care, a party may ask the court to extend an order for protective supervision for six months or to terminate the order. A party requesting extension or termination of the order shall file a written request for the extension or termination with the court and give notice of the proposed extension or termination in writing before the end of the day after the day of filing it to all parties and the child's guardian ad litem. If a public children services agency or private child

placing agency requests termination of the order, the agency shall file a written status report setting out the facts supporting termination of the order at the time it files the request with the court. If no party requests extension or termination of the order, the court shall notify the parties that the court will extend the order for six months or terminate it and that it may do so without a hearing unless one of the parties requests a hearing. All parties and the guardian ad litem shall have seven days from the date a notice is sent pursuant to this division to object to and request a hearing on the proposed extension or termination.

- (a) If it receives a timely request for a hearing, the court shall schedule a hearing to be held no later than thirty days after the request is received by the court. The court shall give notice of the date, time, and location of the hearing to all parties and the guardian ad litem. At the hearing, the court shall determine whether extension or termination of the order is in the child's best interest. If termination is in the child's best interest, the court shall terminate the order. If extension is in the child's best interest, the court shall extend the order for six months.
 - (b) If it does not receive a timely request for a hearing, the court may extend the order for six months or terminate it without a hearing and shall journalize the order of extension or termination not later than fourteen days after receiving the request for extension or termination or after the date the court notifies the parties that it will extend or terminate the order. If the court does not extend or terminate the order, it shall schedule a hearing to be held no later than thirty days after the expiration of the applicable fourteen-day time period and give notice of the date, time, and location of the hearing to all parties and the child's guardian ad litem. At the hearing, the court shall determine whether extension or termination of the order is in the child's best interest. If termination is in the child's best interest, the court shall terminate the order. If extension is in the child's best interest, the court shall issue an order extending the order for protective supervision six months.
- (2) If the court grants an extension of the order for protective supervision pursuant to division (H)(1) of this section, a party may, prior to termination of the extension, file with the court a request for an additional extension of six months or for termination of the order. The court and the parties shall comply with division (H)(1) of this section with respect to extending or terminating the order.
 - (3) If a court grants an extension pursuant to division (H)(2) of this section, the court shall terminate the order for protective supervision at the end of the extension.
- (I) The court shall not issue a dispositional order pursuant to division (A) of this section that removes a child from the child's home unless the court complies with section 2151.419 of the Revised Code and includes in the dispositional order the findings of fact required by that section.
 - (J) If a motion or application for an order described in division (A)(6) of this section is made, the court shall not issue the order unless, prior to the issuance of the order, it provides to the person all of the following:
 - (1) Notice and a copy of the motion or application;
 - (2) The grounds for the motion or application;
 - (3) An opportunity to present evidence and witnesses at a hearing regarding the motion or application;
 - (4) An opportunity to be represented by counsel at the hearing.
 - (K) The jurisdiction of the court shall terminate one year after the date of the award or, if the court takes any further action in the matter subsequent to the award, the date of the latest further action subsequent to the award, if the court awards legal custody of a child to either of the following:
 - (1) A legal custodian who, at the time of the award of legal custody, resides in a county of this state other than the county in which the court is located;
 - (2) A legal custodian who resides in the county in which the court is located at the time of the award of legal custody, but moves to a different county of this state prior to one year after the date of the award or, if the court takes any further action in the matter subsequent to the award, one year after the date of the latest further action subsequent to the award.

The court in the county in which the legal custodian resides then shall have jurisdiction in the matter.

Cite as R.C. § 2151.353

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§ 2151.415. Motion for order of disposition upon termination of temporary custody order.

Archive

Ohio Statutes

Title 21. COURTS - PROBATE - JUVENILE

Chapter 2151. JUVENILE COURT

Current with legislation signed by the Governor as of 4/5/2016

§ 2151.415. Motion for order of disposition upon termination of temporary custody order

- (A) Except for cases in which a motion for permanent custody described in division (D)(1) of section 2151.413 of the Revised Code is required to be made, a public children services agency or private child placing agency that has been given temporary custody of a child pursuant to section 2151.353 of the Revised Code, not later than thirty days prior to the earlier of the date for the termination of the custody order pursuant to division (H) of section 2151.353 of the Revised Code or the date set at the dispositional hearing for the hearing to be held pursuant to this section, shall file a motion with the court that issued the order of disposition requesting that any of the following orders of disposition of the child be issued by the court:
- (1) An order that the child be returned home and the custody of the child's parents, guardian, or custodian without any restrictions;
 - (2) An order for protective supervision;
 - (3) An order that the child be placed in the legal custody of a relative or other interested individual;
 - (4) An order permanently terminating the parental rights of the child's parents;
 - (5) An order that the child be placed in a planned permanent living arrangement;
 - (6) In accordance with division (D) of this section, an order for the extension of temporary custody.
- (B) Upon the filing of a motion pursuant to division (A) of this section, the court shall hold a dispositional hearing on the date set at the dispositional hearing held pursuant to section 2151.35 of the Revised Code, with notice to all parties to the action in accordance with the Juvenile Rules. After the dispositional hearing or at a date after the dispositional hearing that is not later than 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, the court, in accordance with the best interest of the child as supported by the evidence presented at the dispositional hearing, shall issue an order of disposition as set forth in division (A) of this section, except that all orders for permanent custody shall be made in accordance with sections 2151.413 and 2151.414 of the Revised Code. In issuing an order of disposition under this section, the court shall comply with section 2151.42 of the Revised Code.
- (C)
- (1) If an agency pursuant to division (A) of this section requests the court to place a child into a planned permanent living arrangement, the agency shall present evidence to indicate why a planned permanent living arrangement is appropriate for the child, including, but not limited to, evidence that the agency has tried or considered all other possible dispositions for the child. A court shall not place a child in a planned permanent living arrangement, unless it finds, by clear and convincing evidence, that a planned permanent living arrangement is in the best interest of the child and that one of the following exists:
 - (a) The child, because of physical, mental, or psychological problems or needs, is unable to function in a family-like setting and must remain in residential or institutional care.
 - (b) The parents of the child have significant physical, mental, or psychological problems and are unable to care for the child because of those problems, adoption is not in the best

interest of the child, as determined in accordance with division (D)(1) of section 2151.414 of the Revised Code, and the child retains a significant and positive relationship with a parent or relative;

- (c) The child is sixteen years of age or older, has been counseled on the permanent placement options available, is unwilling to accept or unable to adapt to a permanent placement, and is in an agency program preparing for independent living.
- (2) If the court issues an order placing a child in a planned permanent living arrangement, both of the following apply:
- (a) The court shall issue a finding of fact setting forth the reasons for its finding;
- (b) The agency may make any appropriate placement for the child and shall develop a case plan for the child that is designed to assist the child in finding a permanent home outside of the home of the parents.
- (D)
- (1) If an agency pursuant to division (A) of this section requests the court to grant an extension of temporary custody for a period of up to six months, the agency shall include in the motion an explanation of the progress on the case plan of the child and of its expectations of reunifying the child with the child's family, or placing the child in a permanent placement, within the extension period. The court shall schedule a hearing on the motion, give notice of its date, time, and location to all parties and the guardian ad litem of the child, and at the hearing consider the evidence presented by the parties and the guardian ad litem. The court may extend the temporary custody order of the child for a period of up to six months, if it determines at the hearing, by clear and convincing evidence, that the extension is in the best interest of the child, there has been significant progress on the case plan of the child, and there is reasonable cause to believe that the child will be reunified with one of the parents or otherwise permanently placed within the period of extension. In determining whether to extend the temporary custody of the child pursuant to this division, the court shall comply with section 2151.42 of the Revised Code. If the court extends the temporary custody of the child pursuant to this division, upon request it shall issue findings of fact.
- (2) Prior to the end of the extension granted pursuant to division (D)(1) of this section, the agency that received the extension shall file a motion with the court requesting the issuance of one of the orders of disposition set forth in divisions (A)(1) to (5) of this section or requesting the court to extend the temporary custody order of the child for an additional period of up to six months. If the agency requests the issuance of an order of disposition under divisions (A)(1) to (5) of this section or does not file any motion prior to the expiration of the extension period, the court shall conduct a hearing in accordance with division (B) of this section and issue an appropriate order of disposition. In issuing an order of disposition, the court shall comply with section 2151.42 of the Revised Code.
- If the agency requests an additional extension of up to six months of the temporary custody order of the child, the court shall schedule and conduct a hearing in the manner set forth in division (D)(1) of this section. The court may extend the temporary custody order of the child for an additional period of up to six months if it determines at the hearing, by clear and convincing evidence, that the additional extension is in the best interest of the child, there has been substantial additional progress since the original extension of temporary custody in the case plan of the child, there has been substantial additional progress since the original extension of temporary custody toward reunifying the child with one of the parents or otherwise permanently placing the child, and there is reasonable cause to believe that the child will be reunified with one of the parents or otherwise placed in a permanent setting before the expiration of the additional extension period. In determining whether to grant an additional extension, the court shall comply with section 2151.42 of the Revised Code. If the court extends the temporary custody of the child for an additional period pursuant to this division, upon request it shall issue findings of fact.
- (3) Prior to the end of the extension of a temporary custody order granted pursuant to division (D)(2) of this section, the agency that received the extension shall file a motion with the court requesting the issuance of one of the orders of disposition set forth in divisions (A)(1) to (5) of this section. Upon the filing of the motion by the agency or, if the agency does not file the motion prior to the expiration of the extension period, upon its own motion, the court, prior to the expiration of the extension period, shall conduct a hearing in accordance with division (B) of this section and issue an appropriate order of disposition. In issuing an order of disposition, the court shall comply with

section 2151.42 of the Revised Code.

- (4) No court shall grant an agency more than two extensions of temporary custody pursuant to division (D) of this section and 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 this section.
- (E) After the issuance of an order pursuant to division (B) of this section, the court shall retain jurisdiction over the child until the child attains the age of eighteen if the child is not mentally retarded, developmentally disabled, or physically impaired, the child attains the age of twenty-one if the child is mentally retarded, developmentally disabled, or physically impaired, or the child is adopted and a final decree of adoption is issued, unless the court's jurisdiction over the child is extended pursuant to division (F) of section 2151.353 of the Revised Code.
- (F) The court, on its own motion or the motion of the agency or person with legal custody of the child, the child's guardian ad litem, or any other party to the action, may conduct a hearing with notice to all parties to determine whether any order issued pursuant to this section should be modified or terminated or whether any other dispositional order set forth in divisions (A)(1) to (5) of this section should be issued. After the hearing and consideration of all the evidence presented, the court, in accordance with the best interest of the child, may modify or terminate any order issued pursuant to this section or issue any dispositional order set forth in divisions (A)(1) to (5) of this section. In rendering a decision under this division, the court shall comply with section 2151.42 of the Revised Code.
- (G) If the court places a child in a planned permanent living arrangement with a public children services agency or a private child placing agency pursuant to this section, the agency with which the child is placed in a planned permanent living arrangement shall not remove the child from the residential placement in which the child is originally placed pursuant to the case plan for the child or in which the child is placed with court approval pursuant to this division, unless the court and the guardian ad litem are given notice of the intended removal and the court issues an order approving the removal or unless the removal is necessary to protect the child from physical or emotional harm and the agency gives the court notice of the removal and of the reasons why the removal is necessary to protect the child from physical or emotional harm immediately after the removal of the child from the prior setting.
- (H) If the hearing held under this section takes the place of an administrative review that otherwise would have been held under section 2151.416 of the Revised Code, the court at the hearing held under this section shall do all of the following in addition to any other requirements of this section:
- (1) Determine the continued necessity for and the appropriateness of the child's placement;
 - (2) Determine the extent of compliance with the child's case plan;
 - (3) Determine the extent of progress that has been made toward alleviating or mitigating the causes necessitating the child's placement in foster care;
 - (4) Project a likely date by which the child may be returned to the child's home or placed for adoption or legal guardianship;
 - (5) Approve the permanency plan for the child consistent with section 2151.417 of the Revised Code.

Cite as R.C. § 2151.415

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