

Released 10/27/00 - Please attach to Judge Evans' opinion.

IN RE AUSTIN KINCAID - Lawrence App. No. 00CA03

Harsha, J., concurring:

I join in reversing our prior pronouncements in Stackhouse, supra and Reynolds, supra in favor of the rule established by In re Ciara, supra and In re Lewis Children (August 2, 1999), Stark App. No. 98-CA-00316, unreported. Accordingly, I agree that the first assignment of error is meritless. But, I would expressly affirm that portion of the trial court's judgment that terminates the appellant's parental rights.

Furthermore, in light of the trial court's plain error in awarding permanent custody to the agency without addressing the father's parental rights, I would vacate that award. In order to prevent a manifest injustice should the agency proceed with adoption proceedings under the court's existing award, it must be reversed even though I do not agree that a court must terminate both parents' rights contemporaneously. This matter should be remanded with instructions to continue temporary custody with the agency until the father's rights have been addressed. In other words, while the court cannot award permanent custody to the agency without addressing the father's rights, that fact does not require the appellant's rights to be relitigated. Her parental rights have been properly terminated.

