IN THE SUPREME COURT OF OHIO

In The Matter Of:	)	Case Nos. 2008-1036 & 2008-1037
	)	
	)	
H.F. & R.F.	)	On Appeal from the
	)	Cuyahoga County Court of Appeals,
	)	Eighth Appellate District
	)	
	)	Court of Appeals
	)	Case Nos. 90299 & 90300

MERIT BRIEF OF APPELLEE SHEDRIC FINKLEA

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GUARDIAN AD LITEM FOR THE CHILD

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Statement of the Case

Appellee Shedric Finklea ("Appellee") is the natural father of Hassani Finklea ("H.F.") (DOB 4/2/04) and Riyan Finklea ("R.F.") (DOB 11/10/05).

On May 17, 2004, H.F. was removed from his mother's custody. On September 2, 2004, after being adjudged an abused, neglected, and dependent child, H.F. was committed to the legal custody of Appellee. Appellant Cuyahoga County Department of Children and Family Services ("Appellant") removed H.F. from Appellee's custody on February 6, 2006, because Appellee was homeless and it was alleged that he was unable to provide for H.F.'s basic needs.

R.F., born to the same mother as H.F., was removed from the mother's custody four days after her birth. A complaint alleging R.F. to be an abused, neglected, and dependent child was filed on November 14, 2005. The complaint was later dismissed and re-filed on February 14, 2006. The re-filed complaint alleged that both the mother and R.F. tested positive for cocaine at the time of R.F.'s birth. It further alleged that Appellee had failed to establish paternity and that he was not prepared to provide for the child's needs.

On February 6, 2006, Appellee filed a complaint for neglect as to H.F. which contained a prayer for temporary custody and a motion for pre-dispositional custody. The allegations in the complaint referenced the adjudication of abuse, neglect, and dependency of H.F. in 2004. The complaint further alleged that Appellee had a substance abuse problem and that he was unable to provide for H.F.'s basic needs because of his lack of a stable residence and income.

On February 15, 2006, Appellee denied the allegations in the complaint, but agreed an order awarding pre-dispositional custody to Appellant in both cases. Appellee's agreement was made with the understanding that Appellant would consider placement with Appellee's sister.

On May 17, 2006, the complaints in both cases were amended and Appellee entered admissions to the allegations in the amended complaints. Before accepting Appellee's admission, the court entered into a colloquy with Appellee and his attorney:

"THE COURT:	. . . Dad, it's the Court's understanding that you're about to enter an admission to the amended complaint?
APPELLEE:	Yes.
THE COURT:	Okay. Very good. And you've had an opportunity to review that with your attorney, is that correct?
APPELLEE:	Yes.
THE COURT:	All right. Before I can accept your admission there are certain questions that I need to ask you. No. 1, are you under the influence of any drug or alcohol?
APPELLEE:	No.
THE COURT:	Has anyone made any threats or promises in order to get you to admit here this afternoon?
APPELLEE:	No.
THE COURT:	Do you understand that by admitting to the complaint as amended that both children -- is it R.? . . .
APPELLEE:	R.
THE COURT:	R. can be found to be abused, neglected, and/or dependent, and H. could be found to be neglected. Do you understand that?
APPELLEE:	Yes.
THE COURT:	All right. Do you understand that if these two children are found to be abused, neglected, and/or dependent, the Agency is asking for what's called temporary custody? Do you understand that?

APPELLEE: Yes.

THE COURT: And do you understand that with temporary custody, if it is granted to the agency, you as a parent would be losing some of your parental rights on a temporary basis? Do you understand that?

APPELLEE: Yes.

THE COURT: Do you understand that by entering the admission today you're giving up certain rights. Those are the rights to go to trial. Do you understand that? You're giving up the right to go to trial?

APPELLEE: Yes.

THE COURT: Okay. You're giving up the right to cross-examine any witnesses, bring in your own witnesses, or testify on your own behalf? Do you understand that?

APPELLEE: (Indicating.)

THE COURT: All right. You are represented by counsel. Do you have any questions that you want to ask your attorney at this time concerning anything that's going on here? And if you do, I certainly will give you time in private to talk with your attorney. Do you have any questions?

APPELLEE: We already went through it.

THE COURT: Do you want to Miss Isquick?

MS. ISQUICK: No.

THE COURT: Oh. Did he say no?

MS. ISQUICK: Yes.

THE COURT: Oh, I'm sorry.

MS. ISQUICK: He said we already went through it.

THE COURT: Okay. Real good. All right. With that being said, as to the

amended complaint regarding R.F. Case No. 06900286, do you admit to the amended complaint or deny?

APPELLEE: I admit.

THE COURT: Okay. As to the case ending 286, the Court will find the child, R.F., to be abused, neglected, and dependent. As to the child, H., Case No. 06900231, do you admit to the amended complaint or deny?

APPELLEE: Yeah.

MS. ISQUICK: He admits.

THE COURT: You'll admit?

MS. ISQUICK: You have to say you admit.

APPELLEE: Yes I admit.

THE COURT: Okay. The Court will accept your admissions, find the admissions also to be voluntarily, intelligently, and knowingly made. The child, H.F., will be found to be a neglected child."[1]

The forgoing excerpt from the transcript of the proceedings which took place on May 17, 2006, reveals that the trial court failed to comply with the procedural safeguards set forth in *Juv. R. 29(D).* At no time did the trial court inform Appellee of his constitutional right to remain silent. The trial court also failed to fully and adequately inform Appellee of the consequences of his admissions. Indeed, the trial court actively misled Appellee. The trial court informed Appellee that "[he] as a parent would be losing some of his parental rights *on a temporary basis.*" However, the trial court failed to inform Appellee that, if the agency later decided to seek permanent custody, as it did in this case, Appellee would be losing *all* of his parental rights *on a*

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[1] Transcript of hearing conducted on May 17, 2006,., pp. 11-15.

permanent basis.

Also, on May 17, 2006, due to the nonappearance of the mother, evidence was taken as to the allegations related to the mother. Neither Appellee, nor his counsel, participated in that portion of the hearing. At the conclusion of the hearing, H.F. was found to be neglected; R.F. was found to be abused, neglected, and dependent; and both children were committed to the temporary custody of Appellee. The magistrate's decisions with regard to H.F. and R.F. were filed on June 5, 2006, and June 7, 2006, respectively. No objections to the magistrate's decisions were filed, but, then again, the magistrate's decisions were approved by the court on June 5, 2006, and June 7, 2006, respectively, allowing no time for the filing of objections.

On July 18, 2006, the trial court issued specific orders to prevail upon Appellee to abide by the terms and conditions of his drug court contract. Appellee failed to do so, and he was discharged from the drug program.

On September 12,2006, the case was remanded to the regular docket after Appellee was discharged from the drug court program.

On October 2, 2006, Appellant filed a motion to modify temporary custody to permanent custody.

On December 14, 2006, counsel was appointed to represent Appellee in connection with Appellant's motion to modify temporary custody to permanent custody.

On January 18, 2007, the trial court continued the matter to March 15, 2007.

On March 15, 2007, all parties, except the mother, were present. The trial court granted Appellant's motion to withdraw its motion to modify temporary custody to permanent custody and its motion to extend temporary custody. Appellee had completed a thirty-day in-patient drug

treatment program, but was unable to complete intensive outpatient after-care because he was recovering from a gunshot wound. Appellee eventually completed the intensive outpatient treatment program, but relapsed a month after the hearing.

On March 15, 2007, the trial court scheduled a preliminary hearing for June 21, 2007, and a dispositional hearing for July 26, 2007. It is important to note that when the trial court set those two hearing dates, permanent custody was off the table.

On May 4, 2007, Appellant re-filed a motions to modify temporary custody of H.F. and R.F. to permanent custody.

Appellee failed to appear at the preliminary hearing on June 21, 2007.

On June 29, 2007, proof of service on Appellee by publication was filed with the court in both cases. Each proof of service stated that a notice of the hearing on the motion for permanent custody had been published one time in the Daily Legal News.

On July 26, 2007, Appellee failed to appear for the dispositional hearing. His attorney made a motion for a continuance because his client's whereabouts were unknown and he sought an opportunity to locate him. The motion was denied.

Also, on July 26, 2007, the guardian ad litem filed her report with the court. She recommended that the motion to modify temporary custody to permanent custody be granted. In her presentation to the court, however, the guardian ad litem lamented that she had been "very hopeful that [Appellee] would get himself together, and at the beginning of the year it did look very promising."[2]

On July 26, 2007, a dispositional hearing was held in the Juvenile Court. Neither the

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[2] Transcript of hearing conducted on July 26, 2007, p. 31.

mother, nor Appellee appeared. The court received the report of the guardian ad litem. The only witness to testify was Michelle Oliver, a CCDCFS social worker.

By journal entries, dated August 10, 2007, the trial court awarded permanent custody of H.F. and R.F. to CCDCFS and terminated all parental rights of Appellee and the mother.

Just three days later, on August 13, 2007, Appellee filed appeals to the Court of Appeals, Eighth Appellate District, in both cases.

Statement of Facts

The sole witness to testify at the hearing on the motions to modify temporary custody to permanent custody was Michelle Oliver, a social worker employed by Appellant.

Oliver testified that she had been employed by Appellant since August, 2005,[3] and that she was assigned to the cases of H.F. and R.F. in January 2006, when H.F. was one and a half years old and R.F. was four months old.[4] At the time she became involved, Appellee had legal custody of H.F. and Appellant had temporary custody of R.F., who was placed with Appellee.[5]

According to Oliver, the agency's concerns with Appellee focused on his ability to provide adequate housing, his use of drugs, and his practice of leaving the children with what the agency regarded as an "inappropriate care giver," to wit: their mother, because she was still using cocaine.[6] The mother's mental health was also an issue.[7]

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3 Id., p. 6.

4 Id., p. 7.

5 Id., p. 8.

6 Id., p. 9.

7 Id., pp. 9-10.

Oliver testified that both parents were referred for a substance abuse assessment and to the Focus Program to help them get employment.[8] Appellee completed his substance abuse assessment and was recommended for intensive outpatient treatment through Recovery Resources.[9] After participating in that program for about two months, Appellee was discharged from the program.[10] Appellee later completed another assessment and was recommended for inpatient treatment.[11] He entered a 30-day inpatient treatment program at Orca House and successfully completed that program.[12] Unfortunately, upon graduation from that program, Appellee was shot in the thigh and was unable to participate in the recommended intensive outpatient follow-up program.[13] In December, 2006, after recovering from his injury, Appellant referred Appellee to Harborlight Detox and, in March, 2007, he completed that program.[14] Unfortunately, Appellee relapsed in April, 2007.[15] Prior to the relapse, Oliver believed that Appellee had remedied the problem.[16]

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8 Id., p. 10.

9 Id., p. 13

10 Id., pp. 13-14.

11 Id., p. 14.

12 Id.

13 Id.

14 Id., p.15.

15 Id.

16 Id.

According to Oliver, Appellee's whereabouts were unknown at the time of the hearing. His last known residence was at the shelter located at 2100 Lakeside Avenue, Cleveland, Ohio.[17] Nevertheless, Appellee continued to visit with the children.[18] During the period from February, 2006, through December, 2006, he visited regularly on a weekly basis.[19] There was a brief hiatus, during which Appellee was working and unable to attend visits,[20] and in March, 2007, he resumed visiting.[21]

The children's foster home -- and potential adoptive home -- seemed somewhat crowded. The foster parents have two children of their own, one adopted child, and another foster child, in addition to H.F. and R.F.[22]

Oliver testified that Appellee had been attending their semi-annual reviews and staffing meetings, although he had not attended all of them.[23]

As previously noted, the guardian ad litem tempered her recommendation of permanent custody with a note of sadness, stating that she had been "very hopeful that father Shedric would get himself together, and at the beginning of the year it did look very promising."[24] Indeed, she

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17 Id. , p.17.

18 Id., pp.17-18.

19 Id., pp.18, 30.

20 Id., p. 29.

21 Id., pp.18-19, 27.

22 Id., p. 20.

23 Id., pp.21-22.

24 Id., p. 31.

went on to say, " . . . he is a very nice gentleman. He really loves his kids, and it's so unfortunate . . . that things have turned out this way . . . "[25]

Argument

Appellant's Proposition of Law No. 1

In a juvenile court action involving a complaint for abuse/neglect/dependency and temporary custody, when the trial court issues an adjudicatory order followed by a dispositional order placing a child in temporary custody pursuant to *R.C. 2151.353(A)(2)*, those orders are final appealable orders which resolve all pending claims as to all parties pursuant to the complaint, and said orders must be appealed, if ever, within the time requirements of *App. R. 4(A)*.

A. Introduction.

Appellant's Proposition of Law No. 1, quoted above, omits one key element -- this case involves actions for abuse, neglect, and dependency which evolved into a permanent custody actions and resulted in the termination of Appellee's parental rights. Appellee respectfully submits that the Court of Appeals correctly ruled that, in such proceedings, *App. R. 4(B)(5)* authorizes an appeal of an adjudication order alternatively thirty days after the court renders a final order terminating the party's parental rights.

B. Fundamental right.

"The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State."[26]

"... the fact that someone may think that the children can be reared better by someone else is no justification for judicial interference, because, if this were the rule, there are thousands of children in this community, and in every other, whose

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[25] Id., p. 32.

[26] *Santosky v. Kramer* (1982), 455 U.S. 745, 102 S. Ct. 1388, 71 L. Ed 2d 599.

parents upon this pretense would be deprived of their custody.[27]

The parent-child relationship possesses a unique sanctity in our culture and in our law.[28] The Supreme Court of the United States has noted that the parents' interest in the care, custody, and control of their children "is perhaps the oldest of the fundamental liberty interests recognized by this Court."[29] A parent's right to raise his or her children has been characterized as an "essential . . . basic civil right."[30] As such, it "undeniably warrants . . . protection." The Supreme Court of the United States has also noted that, "[a] parent's interest in the accuracy and justice of the decision to terminate his or her parental status is, therefore, a commanding one."[31]

The integrity of the family unit has found protection in the due process clause of the Fourteenth Amendment,[32] the equal protection clause of the Fourteenth Amendment,[33] and the Ninth Amendment.[34]

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27 *In re Konneker* (1929), 30 Ohio App. 502, 165 NE 850.

28 *In re Stacy* (1999), 136 Ohio App. 3d 503, 511, 737 N.E. 2d 92; *In re Sean B.*, 170 Ohio App. 3d 557, 2007-Ohio-1189, ¶28.

29 *Troxel v. Granville* (2000), 530 U.S. 57, 65, 120 S. Ct. 2054, 147 L. Ed. 2d 49.

30 *Stanley v. Illinois* (1972), 405 U.S. 645, 92 S. Ct 1208, 31 L. Ed. 2d 551.

31 *Lassiter v. Dept. of Soc. Serv. of Durham Cty.* (1981), 452 U.S. 18, 27, 101 S. Ct. 2153, 68 L. Ed. 2d 640.

32 *Meyer v. Nebraska* (1923), 262 U.S. 390, 399, 43 S. Ct. 625, 67 L. Ed 1042.

33 *Skinner v. Oklahoma* (1942), 316 U.S. 535, 541, 63 S. Ct. 1110, 86 L. Ed. 1655.

34 *Griswold v. Connecticut* (1965), 381 U.S. 479, 496, 85 S. Ct. 1678, 14 L. Ed. 2d 510 (Goldberg, concurring).

This Court has long held that parents who are suitable persons have the "paramount" right to the custody of their minor children.[35] Permanent termination of parental rights has been described as "the family law equivalent of the death penalty in a criminal case."[36] Therefore, this Court has recognized that, in cases involving the termination of parental rights, "parents must be given every procedural and substantive protection the law allows."[37]

C. *Juv. R. 29(D)* -- Procedural and substantive safeguards to protect parents upon entering admissions in abuse, neglect, and dependency cases.

Often, admissions are entered in abuse, neglect, and dependency cases. Among the most important procedural and substantive safeguards the law provides to parents in permanent custody cases are those set forth in *Juv. R. 29(D)*. *Juv. R. 29(D)*, titled, "Adjudicatory Hearing," provides, in pertinent part:

> "(D) Initial procedure upon admission
>
> The court may refuse to accept an admission and shall not accept an admission without addressing the party personally and determining both of the following:
>
> (1) The party is making the admission voluntarily with understanding of the nature of the allegations and the consequences of the admission;
>
> (2) The party understands that by entering an admission the party is waiving the right to challenge the witnesses and evidence against the party, the right to remain silent, and to introduce evidence at the adjudicatory hearing.

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35 *In re D.A.* 113 Ohio St. 3d 88, 2007-Ohio-1105, 862 N.E. 2d 829; *In re Perales* (1977), 52 Ohio St. 2d 89, 97, 369 N.E. 2d 1047; *Clark v. Bayer* (1877), 32 Ohio St. 299, 310, 1877 Ohio LEXIS 348; *In re Muray* (1990), 52 Ohio St. 3d 155, 157, 556 N.E. 2d 1169.

36 *In re Smith* (1991), 77 Ohio App. 3d 1, 16, 601 N.E. 2d 45, 54.

37 *In re Hayes* (1997), 79 Ohio St. 3d 46, 48, 679 N.E. 2d 680.

* * * "

Juv. R. 29(D) focuses on the party giving up his or her rights, not the party's attorney. As one court explained in the context of a delinquency proceeding:

> "This rule places an affirmative duty upon the juvenile court. Prior to actually accepting an admission, the juvenile court must personally address the actual party before the court and determine that that party, and not merely the attorney, understands the nature of the allegations and the consequences of entering an admission. Furthermore, the test for the accused delinquent's understanding of the charges is subjective, rather than objective, in that it is not sufficient that a hypothetical reasonable party would understand. The person actually before the court must do so."[38]

The standards for appellate review of claims alleging a failure to comply with *Juv. R. 29(D)* are well-established. Where it is alleged that the trial court failed to properly address the non-constitutional rights of the party, the appellate court will review the record to determine whether the trial court substantially complied with *Juv. R. 29(D)*. The trial court's failure to substantially comply with *Juv.. R. 29(D)* constitutes prejudicial error that requires reversal of the adjudication and allowing the party to plead anew. Where a constitutional right is involved, the law requires "strict compliance" with *Juv.. R. 29(D)* and the failure of the trial court to advise a parent of a constitutional right is, per se, prejudicial.[39] Further, when a constitutional right is involved, a trial court's failure to comply with *Juv. R. 29(D)* has been found to constitute plain error.[40]

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38 *In re Beechler* (1996), 115 Ohio App. 3d 567, 685 N.E. 2d 1257, 1259.

39 *In re Onion*, (1998), 128 Ohio App. 3d 498, 715 N.E. 2d 604.

40 *In re M.C.*, Cuyahoga App. Nos. 85054, 85108, 2005-Ohio-1916, ¶16; *In re A. A.*, Cuyahoga App. No. 85002, 2005-Ohio-2618, ¶28; *In re S.G. & M.G.*, Cuyahoga App. No. 84228, 2005-Ohio-1163, ¶24; *In re Elliot*, Washington App. Nos. 03CA65 & 66, 2004-Ohio-2770, ¶15; *In re Aldridge*, Ross App. No. 02CA2661, 2002-Ohio-5988, at ¶16; *In re A.D.*, Cuyahoga App.

D. Failure of the trial court to safeguard the constitutional rights of Appellee as required by *Juv. R. 29(D).*

In the present case, the Court of Appeals found multiple failures by the trial court to comply with *Juv. R. 29(D)* during the adjudicatory stage of the proceedings. The trial court failed to fully and adequately inform Appellant of the consequences of his admissions, resulting in a denial of due process of law. The Court of Appeals found:

> "Most critically, the trial court failed to inform S.F. that he was giving up rights that not only applied to the adjudicatory and dispositional hearing, but more importantly to the final dispositional hearing, resulting in termination of parental rights. S.F. responded affirmatively to the following questions of the magistrate:
>
> > "THE COURT: Do you understand that if these two children are found to be abused, neglected, or dependent, the Agency is asking for what's called temporary custody?
> >
> > THE COURT: And do you understand that with temporary custody, if it's granted to the Agency, you as a parent would be losing some of your parental rights?
>
> S.F. was not told that by entering the admissions the trial court would not only make a determination with respect to the adjudicatory status of the children and temporary custody, but that those findings could be used against S.F. at a later time if the agency sought permanent custody of the children, which is exactly what happened when S.F. relapsed and experienced difficulties stemming from the relapse."[41]

Based upon the forgoing excerpt from the transcript of the proceedings in the juvenile court, the Court of Appeals found that the magistrate failed to substantially comply with the

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No. 87510, 2006-Ohio-6036, ¶24-28, discretionary appeal not allowed by *In re A.D.*, 113 Ohio St. 3d 1444, 2007-Ohio-1266.

[41] *In re H.F. & R.F.*, Cuyahoga App. Nos. 90299 & 90300, 176 Ohio App. 3d 106, 2008-Ohio-1627, ¶¶40-41.

requirements of *Juv. R. 29(D)*[42]. Indeed, the magistrate actively misled Appellee. The magistrate informed Appellee that "[he] as a parent would be losing *some* of his parental rights *on a temporary basis*." The court failed to inform Appellee that, if the agency later decided to seek permanent custody, as it did in this case, Appellee would be losing *all* of his parental rights *on a permanent basis*!

The Court of Appeals further found that the magistrate failed to advise Appellee of all of the constitutional rights he would be giving up by entering an admission, including the right to remain silent. as required by *Juv. R. 29(D)*.[43] The Court of Appeals concluded, " . . . it cannot be said that his admissions to the amended complaints were voluntarily and knowingly entered. We agree with S.F.'s contention that the trial court accepted his admissions in violation of *Juv. R. 29(D)*, requiring a reversal of the adjudication in order to permit him to plead anew."[44]

E. Court of Appeals ruling that Appellee's appeal was timely filed pursuant to *App. R. 4(B)(5)*.

In the Court of Appeals, the State urged the Court to disregard the flagrant violations of Appellee's constitutional rights which occurred at the adjudicatory proceedings, claiming that his notice of appeal was filed too late for the court to consider any assignment of error related to those proceedings. The State argued that the adjudication order was a final appealable order and that, if Appellee wished to seek review of any matter related to the adjudication, he should have been filed a notice of appeal within thirty days of the adjudication order. Hence, the State asked

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42 Id., at ¶¶1, 41-42.

43 Id., at ¶¶42, 45.

44 Id., ¶45.

the Court of Appeals to dispose of Appellee's weighty claims on a procedural technicality, rather than the merits.

In support of that position, Appellant cited this Court's decision in *In re Murray*,[45] which held that an adjudication order accompanied by an award of temporary custody is a final appealable order. Ironically, in *Murray*, the agency had argued that a parent could *not* file an appeal from an adjudication order accompanied by a temporary custody order because it was *not* a final appealable order. In *Murray*, a decision upholding the rights of parents in juvenile court custody cases, this Court in held that an adjudication order accompanied by an award of temporary custody is a final appealable order, thereby entitling a parent to pursue an immediate appeal from such an order. The holding in *Murray* was in keeping with this Court's commitment to provide parents with "every procedural and substantive protection the law allows."[46] If the Court had ruled otherwise, parents who had lost temporary custody of their child would have been unable to obtain appellate review of the action taken by the trial court. Appellant now seeks to use that decision, which opened the door for appellate review in juvenile court custody cases, to limit a parent's ability to seek appellate review where the parent's rights were violated at the adjudicatory hearing in permanent custody cases like this one.

Citing three of its prior decisions on the issue presented by this appeal,[47] the Court of Appeals held that *App. R. 4(B)(5)* provides an exception to *App. R. 4(A)*, and authorizes an appeal

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45 Supra..

46 *In re Hayes*, supra.

47 *In re A.C.*, Cuyahoga App. No. 84830, 160 Ohio App. 3d 457, 2005-Ohio-1742, 827 N.E. 2d 824; *In re S.G. and M.G.*, supra; *In re A.D.*, supra.

of an adjudication order alternatively thirty days after the court renders a final order on all issues in the case.[48]

F. *App. R. 4(B)(5)* provides an exception to *App. R. 4(A)*, and authorizes an appeal of an adjudication order alternatively thirty days after the court renders a final order on all issues in the case.

App. R. 4(A) requires that a notice of appeal must be filed within thirty days of the judgment or order from which the appeal is taken. However, one of several important exceptions to *App. R. 4(A)* is set forth in *App. R. 4(B)(5)*, which provides:

> "(5) Partial final judgment or order. If an appeal is permitted from a judgment or order entered in a case in which the trial court has not disposed of all claims as to the parties, other than a judgment or order entered under Civ. R. 54(B), a party may file a notice of appeal within thirty days from the entry of the judgment or order appealed or the judgment or order that disposes of the remaining claims. Division (A) of this rule applies to a judgment or border entered under Civ. R. 54(B)."

The staff notes to *App. R. 4(B)(5)* help explain the reasons for giving a party an option to file an instant appeal or to wait until the case is complete:

> "After studying the matter, the Committee concluded that a party should have the option to appeal a partial final judgment or order either immediately or at the end of the entire case. Without that option, a party who wants to appeal a partial final judgment or order and who is in doubt about whether it meets the test of finality set forth in *Amato* will be forced to take an immediate appeal to protect its right to appeal. It will then be up to the court of appeals to decide whether the partial judgment or order meets the test of *Amato.* Many unnecessary appeals may result. On the other hand, a party who is unaware of the *Amato* and *Dayton Women's Health Care Center,* decisions may not seek to appeal a partial final judgment or order until the final judgment is entered, and that is too late. Neither result is desirable. For this reason, the rule is amended to give the party the option to appeal immediately or at the end of the case."

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[48] *In re H.F. & R.F.*, supra, ¶¶31,32.

In the present case, the Court of Appeals construed the exception set forth in *App. R. 4(B)(5)* to permit a parent to appeal an adjudicatory ruling either thirty days after the ruling is made or thirty days after the court enters the final dispositional order.[49] In its sole Proposition of Law, Appellant challenges this interpretation of *App. R. 4(B)(5)*.

This Court has long recognized that in construing the Ohio Rules of Appellate Procedure, the law favors and protects the right of appeal and that a liberal construction of the rules is required in order to promote the objects of the Appellate Procedure Act and to assist the parties in obtaining justice.[50] "The legislative purpose throughout the act was obviously to liberalize the procedure upon appeals and to prevent technicalities from being fatal to substantive rights.[51] As Judge Karpinski, of the Court of Appeals, Eighth Appellate District, observed:

> "An examination of the prior decisions of this court reveals that this court has consistently adhered to the policy of exercising all proper means to prevent the loss of valuable rights when the validity of a notice of appeal is challenged solely on technical, procedural grounds."[52]

In construing *App. R. 4(B)(5)* in the present case, this Court should also bear in mind its longstanding commitment to give parents in permanent custody actions "every procedural and substantive protection the law allows."[53]

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49 *In re H.F. & R.F.*, supra, ¶¶30-32.

50 *In re Guardianship of Love* (1969), 19 Ohio St. 2d 111, 115, 249 N.E. 2d 794; *Maritime Manufacturers, Inc. v. Hi-Skipper Marina, et al* (1982), 70 Ohio St. 2d 257, 436 N.E. 2d 1034; and *State v. Berndt* (1987), 29 Ohio St. 3d 3, 504 N.E. 2d 712.

51 *Maritime Manufacturers, Inc.* supra, at 258, quoting *Couk v. Ocean Accident & Guar. Corp., Ltd. (1941), 138 Ohio St. 110, 115.*

52 *State v. Beal,* Cuyahoga App. No. 79567, 2002-Ohio-4054, ¶42.

53 *In re Hayes,* supra, at 48.

Abuse, neglect, and dependency proceedings are, in many ways, *sui generis*. The pleadings and procedures in such cases differ greatly from those in civil and criminal cases. The orders authorized by the Ohio Revised Code in abuse, neglect, and dependency proceedings do not always fit neatly into the traditional categories of final and non-final orders.[54] In the present case, on May 17, 2006, judgments were entered in which H.F. was adjudged a neglected child and R.F. was adjudged an abused, neglected, and dependent child. Temporary custody of both children was awarded to Appellant.

However, the order of adjudication, coupled with a commitment to the temporary custody of Appellant, did not dispose of all matters in the case --- not by any stretch of the imagination. The case remained open on the court's docket and the law contemplated and required further proceedings and further action by all parties. *Ohio Rev. Code §2151.353(D)* required the court to journalize a case plan for the children. *Ohio Rev. Code §2151.353(E)(1)* required the court to retain jurisdiction over the children. *Ohio Rev. Code §2151.36* required the court to issue an order for the support of the children. *Ohio Rev. Code §2151.412* required Appellee to prepare and maintain a case plan for the children; attempt to obtain the agreement of the parties, including the parents and the guardian ad litem as to the content of the case plan; and file same with the court. (If the agency is unable to obtain the agreement of all parties with respect to the content of the case plan, *Ohio Rev. Code §2151.412(D)* requires the agency to submit the plan to the court for a determination of the contents of the case plan.) *Ohio Rev. Code §2151.412* further provides that all parties are bound by the journalized case plan and may be held in contempt of

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[54] See, *G.L.S. v. Department of Children and Families* (1998) 724 So. 2d 1181, 1183, 1998 Fla. LEXIS 2575.

court if they fail to comply with it. *Ohio Rev. Code §2151.416* requires Appellant to conduct semiannual administrative reviews of case plans, with a summary of each such review to be filed with the court. On July 18, 2006, two months *after* the adjudication order was entered, the trial court issued specific orders to prevail upon Appellee to abide by the terms and conditions of his drug court contract. Thereafter, the trial court continued to monitor his participation in the drug court program. Further, *Ohio Rev. Code §2151.38* provides that, subject to sections 2151.353, 2151.412 to 2151.421, all dispositional orders are temporary in nature and subject to modification. Last, but certainly not least, *Ohio Rev. Code §2151.353(B)* provides that an adjudication of abuse, neglect, or dependency authorizes the trial court to entertain a motion to convert temporary custody to permanent custody, as was done in this case.

What this means, in the context of *App. R. 4(B)(5)*, is that the orders of adjudication, coupled with the award of temporary custody, did *not* dispose of all matters as to all parties. In a very real sense, the orders of adjudication and the accompanying award of temporary custody, "[remained] tentative and subject to revision until a final judgment [was] entered which adjudicate[d] all claims and the rights and liabilities of all parties."[55] Therefore, pursuant to *App. R. 4(B)(5)*, Appellee could file his notice of appeal either within thirty days after the order of adjudication was entered or within thirty days after the final order awarding permanent custody to Appellant.

This construction of *App. R. 4(B)(5)* is clearly consistent with the policy of protecting the right of appeal and preventing technicalities from being fatal to substantive rights. It also delivers

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[55] *Ohio Appellate Practice*, 2007 Ed., §2:22, p. 45, quoted in Appellant's Merit Brief, at p. 4.

on the promise of giving parents facing termination of their parental rights ". . . every procedural and substantive protection the law allows."[56]

The holding of the Court of Appeals in this case is absolutely consistent with this Court's decision in *In re Murray*.[57] In *Murray,* the issue was whether an adjudication accompanied by an award of temporary custody is a final appealable order under *Ohio Rev. Code §2505.02.* In *Murray*, this Court concluded that such an order "affects a substantial right in an action which in effect determines the action and prevents judgment," and, therefore, constitutes a final appealable order. Without the right to appeal at that juncture, a parent would have no recourse to alter the remedy granted to the State. Appealing that temporary loss of custody later at the dispositional hearing could not restore the lost custody for the interim time period, the time between the adjudicatory hearing and the dispositional hearing.

In *In re Borntregger*,[58] the Court of Appeals of Ohio, Eleventh Appellate District, stated that *App. R. 4(B)(5)* "would most certainly be applicable to juvenile cases" and added the following comments on this Court's decision in *In re Murray*:

> "We believe that the Supreme Court of Ohio's intention was to be lenient in allowing parents who have had children removed from their home the right to immediately appeal. The decision was in favor of a parent's right to bring an appeal. We do not believe that it was the court's intention to preclude an appeal if, as in this case, the appeal was not brought within thirty days of an arguably "final" order."[59]

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56 *In re Smith* (1991), supra, at 54.

57 Supra.

58 Geauga App. No. 2001-G-2379, 2002-Ohio-6468.

59 Id., at ¶25.

The holding in *Murray* that an adjudication accompanied by an award of temporary custody is a final appealable order is completely compatible with the holding of the Court of Appeals in this case because *App. R. 4(B)(5)* presupposes the existence of an earlier alternative for perfecting an appeal. Consistent with *App. R. 4(B)(5),* the holding of the Court of Appeals merely authorizes a later alternative for perfecting the appeal.

The Court of Appeals of Cuyahoga County is not the only appellate district in this State to authorize the appeal of an adjudication order alternatively thirty days after the court renders a final order in the case. In *In re Fordyce*,[60] the Court of Appeals of Ohio, Twelfth Appellate District, reversed the decision of the trial court, which terminated the mother's parental rights, where the trial court failed to comply with *Juv. R. 29(D)* and the appeal had not been filed within thirty days of the adjudication order. See also, *In re Kidd*,[61] (recognizing that, under *App. R. 4(B)(5)*, an exception is made and the court of appeals was not precluded from considering claims of errors related to a detention hearing when the notice of appeal is filed within thirty days of the final order in the case.[62]) and *In re Adoption of Ebin*,[63] (holding that, even though a finding that consent to adoption is not required is a final appealable order, it is considered a partial final judgment which is appealable alternatively thirty days after the court renders a final order on all issues in the case.[64])

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60 Butler App. No. CA96-09-193, 1997 Ohio App. LEXIS 4272.

61 Lake App. No. 2001-L-039, 2002 Ohio 7264.

62 Id., ¶22.

63 (1998), Marion App. No. 9-97-64, 126 Ohio App. 3d 774, 711 N.E. 2d 319.

64 Id., at 776.

Other states are divided on the issue. The better reasoned cases authorize a later alternative for perfecting an appeal. In *G.L.S. v. Department of Children and Families*,[65] the Supreme Court of Florida held that an order of adjudication could be challenged upon appeal from a later dispositional order. The Supreme Court of Florida reasoned that adjudication orders should be treated as "partial final judgments" which could be reviewed after the adjudicatory ruling or on appeal from the final dispositional order. The Supreme Court of Nebraska reached the same conclusion in *In re Interest of Mainor T. and Estela T.*[66] The Supreme Court of Nebraska stated, "[The right to due process of law] is of such importance that a parent's failure to appeal from an adjudication order, dispositional order, or other final, appealable order leading to the termination of parental rights will not preclude this court from reviewing the entire proceeding for a denial of due process in an appeal from a termination order.

A review of the case law in permanent custody cases reveals that very few appeals are actually taken from adjudication orders. Why is that so? Are there inherent disincentives and obstacles to the filing of such appeals? Is the opportunity for such appeals in reality little more than an illusion?

It may be true that the adjudication orders which are served upon counsel contain notice of the right to appeal, but do the lawyers always inform their clients of the right to appeal and do the clients comprehend any necessity for the filing of an appeal in the middle of the proceedings, when they are still hopeful of working with the agency and the court to get their children back?

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65 Supra..

66 (2004), 267 Neb. 232, 674 N.W. 2d 442.

Many litigants facing termination of their parental rights are poorly educated, even illiterate, and indigent. They rely upon underpaid, over-worked court-appointed lawyers. Often, the litigants are not informed of the opportunity to appeal the adjudication order, not to mention the possible necessity of filing an appeal within thirty days of the adjudication.

This problem is compounded by the Ohio Rules of Juvenile Procedure. The Ohio Rules of Juvenile Procedure do *not* require the court to inform a parent, upon the acceptance of his admission, that he has a right to appeal the adjudication order.[67] It seems rather disingenuous for Appellee to maintain that a parent's failure to file a notice of appeal within thirty days of the adjudication order should operate to deprive the parent of his right to appellate review of due process violations when court rules do not require juvenile court judges to advise the parent of his right to appeal such orders.[68]

Juvenile court judges are entrusted with enormous discretion in permanent custody cases. Parents are loath to do anything that might adversely impact the ultimate outcome of the proceedings which remain active and ongoing. Challenging the propriety or fairness of the proceedings is the furthest thing from their minds when the adjudication order is entered..

Parents in juvenile court proceedings are anxious to get their children back as soon as possible. They might very well believe that the filing of an appeal immediately after the

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67 Cf., *Crim . R. 32(B).*

68 *Juv. R. 34*, titled, "Dispositional hearing," provides, in pertinent part:

> "(J) Advisement of rights after hearing
>
> At the conclusion of the hearing, the court shall advise the child of the child's right to record expungement and, where any part of the proceeding is contested, advise the parties of their right to appeal."

adjudication would prolong the foster care *status quo* and would, therefore, be counterproductive.

These forces create disincentives and obstacles to the filing of appeals by the parents after an adjudication order is entered. The existence of these forces is a matter of great consequence because it raises a serious question as to whether, as a practical matter, the availability of an appeal from an adjudication order is sufficient to guarantee that due process is afforded at the adjudicatory stage of the proceedings. It strongly suggests that, if we really care about the quality of justice administered by juvenile courts in the most important of its cases and if we really care about the due process rights of litigants in juvenile court, review of the entire proceeding should be allowed in an appeal from an award of permanent custody.

Even if one were to characterize Appellee's challenge to the adjudicatory proceedings as a delayed appeal, that should not constitute fatal condemnation. While this Court has recognized that the termination of parental rights is "the family law equivalent of the death penalty"[69] and that "parents must be given every procedural and substantive protection the law allows,"[70] it is important to step back, take measure, and consider whether the law is living up to its promises.

App. R. 5(A) expressly authorizes delayed appeals in criminal proceedings, delinquency proceedings, and even in serious youthful offender proceedings. If the termination of parental rights is, indeed, "the family law equivalent of the death penalty" and parents are to be given "every procedural and substantive protection the law allows," why not permit parents in their appeal from an order awarding permanent custody to the State to challenge irregularities occurring during the adjudicatory proceedings which led to the award of permanent custody?

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69 *In re Smith*, supra.

70 *In re Hayes*, supra.

If this Court grants the relief requested by Appellant, there would be little or no appellate review of juvenile court proceedings where important constitutional rights are relinquished in permanent custody cases. The absence of such review would have the deleterious effect of causing judges to pay less attention to the dictates of *Juv. 29(D)*, when they so desperately need to be paying more attention to the requirements of the rule. The interests of expediency and finality might be served by such a ruling, but it would come at great cost to the interests of liberty and due process of law.

The conflicting decisions by our appellate courts on this issue merely confirms the need for a definitive ruling on this issue, as this Court recognized when it accepted jurisdiction in this case.

Appellant's reliance on various Ohio appellate court decisions is misplaced. The cases relied upon by Appellant simply cite this Court's decision in the *Murray* case, which is not dispositive of the issue presented by this appeal. Those cases contain absolutely no discussion or analysis of *App R. 4B)(5)*.[71]

Appellant argues that, "the reviewing court's erroneous application of *App. R. 4(B)(5)* to dispositional orders issued by juvenile court actually serves to frustrate the best interests of the

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[71] See e.g. *In re P.N.M.*, Adams App. Nos. 07CA841 & 07CA842, 2007-Ohio-4976, at ¶¶39-40; *In re C.G.*, Preble App. NOs. CA2007-03-005 & CA2007-03-006, 2007-Ohio-4361, at ¶¶11-12; *In re A.L.*, Franklin App. Nos. 07AP638 & 07AP647, 2008-Ohio-800, at ¶43; *In re Calvert Children*, Guernsey App. Nos. 05-CA-19 & 05-CA-20, 2005-Ohio-5653, at ¶¶28-29 (no reference to *In re Murray*); *In re Shaeffer Children* (1993), 85 Ohio App 3d 683, 694, 621 N.E. 2d 426; *Ackerman v. Lucas Cty. Children Serv. Bd.* (1989), 49 Ohio App. 3d 14, 16, 550 N.E. 2d 549 (pre-*In re Murray*); *In re J.F.*, Summit App. No. 23492, 2007-Ohio-1945, at ¶22; and *In re Nice*, 141 Ohio App 3d 445, 452, 2001-Ohio-3214, 751 N.E. 2d 552.

child by indefinitely delaying the child's attainment of permanency."[72] This argument is without merit. The Court of Appeals' interpretation of *App. R. 4(B)(5)* does not "indefinitely delay" anything. No one is questioning the right of a parent to file an appeal from an award of permanent custody. The decision of the Court of Appeals merely authorizes a parent in such appeals to seek review of irregularities related to the adjudication which is the foundation for the award for permanent custody. It is interesting to note that a similar argument was among those advanced by the agency in *In re Murray*. However, in *Murray*, this Court ruled that, "while these are relevant considerations, we deem them outweighed by the rights of parents who have been deprived of the custody of children to appellate review to determine if such deprivation meets the requirements justifying such deprivation."[73]

Conclusion

For the forgoing reasons, the Court should affirm the decision of the Court of Appeals, Eighth Appellate District.

Respectfully submitted,

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72 Appellant's Merit Brief, pp. 7-8.

73 *In re Murray*, supra, at 159.

Certificate of Service

A true copy of the foregoing assignments of error and brief was sent by ordinary U.S. mail to Joseph Young, Assistant Prosecuting Attorney, Cuyahoga County, Department of Family Services, 4261 Fulton Parkway, Cleveland, Ohio 44144, and to Carla L Golubovic, P.O. Box 29127, Parma, Ohio 44129, this _____ day of August, 2008.

_____
JONATHAN N. GARVER

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AMENDMENT IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not

But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ORC Ann. 2151.353 (2008)

§ 2151.353. 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 [2151.41.4] of the Revised Code that the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent and determines in accordance with division (D) of section 2151.414 [2151.41.4] 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.

(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) of section 2151.414 [2151.41.4] 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, is unwilling to accept or unable to adapt to a permanent placement, and is in an agency program preparing the child for independent living.

(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 [2151.03.1] 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) 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 [2151.41.4] of the Revised Code.

(C) 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.

(D) 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 [2151.41.2] of the Revised Code.

(E) (1) The court shall retain jurisdiction over any child for whom the court issues an order of disposition pursuant to division (A) of this section or pursuant to section 2151.414 [2151.41.4] or 2151.415 [2151.41.5] 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 [2151.41.4] or 2151.415 [2151.41.5] 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 [2151.41.4] or 2151.415 [2151.41.5] 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.

(F) Any temporary custody order issued pursuant to division (A) of this section shall terminate one year after the earlier of the date on which the complaint in the case was filed or the child was first placed into shelter care, except that, upon the filing of a motion pursuant to section 2151.415 [2151.41.5] of the Revised Code, the temporary custody order shall continue and not terminate until the court issues a dispositional order under that section.

(G) (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 (G)(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 (G)(1) of this section with respect to extending or terminating the order.

(3) If a court grants an extension pursuant to division (G)(2) of this section, the court shall terminate the order for protective supervision at the end of the extension.

(H) 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 [2151.41.9] of the Revised Code and includes in the dispositional order the findings of fact required by that section.

(I) 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.

(J) 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.*

History:

133 v H 320 (Eff 11-19-69); 136 v H 85 (Eff 11-28-75); 138 v H 695 (Eff 10-24-80); 139 v H 440 (Eff 11-23-81); 141 v H 428 (Eff 12-23-86); 142 v S 89 (Eff 1-1-89); 145 v H 152 (Eff 7-1-93); 146 v H 274 (Eff 8-8-96); 146 v H 419 (Eff 9-18-96); 146 v H 265 (Eff 3-3-97); 147 v H 484 (Eff 3-18-99); 148 v H 471 (Eff 7-1-2000); 148 v H 448 (Eff 10-5-2000); 148 v H 332. Eff 1-1-2001; 150 v S 185, § 1, eff. 4-11-05; 151 v S 238, § 1, eff. 9-21-06.

ORC Ann. 2151.36 (2008)

§ 2151.36. Support of child

Except as provided in section 2151.361 [2151.36.1] of the Revised Code, when a child has been committed as provided by this chapter or Chapter 2152. of the Revised Code, the juvenile court shall issue an order pursuant to Chapters 3119., 3121., 3123., and 3125. of the Revised Code requiring that the parent, guardian, or person charged with the child's support pay for the care, support, maintenance, and education of the child. The juvenile court shall order that the parents, guardian, or person pay for the expenses involved in providing orthopedic, medical, or surgical treatment for, or for special care of, the child, enter a judgment for the amount due, and enforce the judgment by execution as in the court of common pleas.

Any expenses incurred for the care, support, maintenance, education, orthopedic, medical, or surgical treatment, and special care of a child who has a legal settlement in another county shall be at the expense of the county of legal settlement if the consent of the juvenile judge of the county of legal settlement is first obtained. When the consent is obtained, the board of county commissioners of the county in which the child has a legal settlement shall reimburse the committing court for the expenses out of its general fund. If the department of job and family services considers it to be in the best interest of any delinquent, dependent, unruly, abused, or neglected child who has a legal settlement in a foreign state or country that the child be returned to the state or country of legal settlement, the juvenile court may commit the child to the department for the child's return to that state or country.

Any expenses ordered by the court for the care, support, maintenance, education, orthopedic, medical, or surgical treatment, or special care of a dependent, neglected, abused, unruly, or delinquent child or of a juvenile traffic offender under this chapter or Chapter 2152. of the Revised Code, except the part of the expense that may be paid by the state or federal government or paid by the parents, guardians, or person charged with the child's support pursuant to this section, shall be paid from the county treasury upon specifically itemized vouchers, certified to by the judge. The court shall not be responsible for any expenses resulting from the commitment of children to any home, public children services agency, private child placing agency, or other institution, association, or agency, unless the court authorized the expenses at the time of commitment.

History:

GC § 1639-34; 117 v 520; 119 v 731; 121 v 557; Bureau of Code Revision, 10-1-53; 133 v S 49 (Eff 8-13-69); 133 v H 320 (Eff 11-19-69); 136 v H 85 (Eff 11-28-75); 141 v H 428 (Eff 12-23-86); 142 v S 89 (Eff 1-1-89); 146 v H 274 (Eff 8-8-96); 148 v H 471 (Eff 7-1-2000); 148 v S 180 (Eff 3-22-2001); 148 v S 179, § 3 (Eff 1-1-2002); 149 v S 27, §§ 1, 3. Eff 3-15-2002.*

ORC Ann. 2151.38 (2008)

§ 2151.38. Duration of dispositional order

Subject to sections 2151.353 [2151.35.3] and 2151.412 [2151.41.2] to 2151.421 [2151.42.1] of the Revised Code, and any other provision of law that specifies a different duration for a dispositional order, all dispositional orders made by the court under this chapter shall be temporary and shall continue for a period that is designated by the court in its order, until terminated or modified by the court or until the child attains twenty-one years of age.

History:

GC § 1639-35; 117 v 520; 121 v 557; Bureau of Code Revision, 10-1-53; 130 v 625 (Eff 10-7-63); 133 v S 49 (Eff 8-13-69); 133 v H 320 (Eff 11-19-69); 138 v H 695 (Eff 10-24-80); 139 v H 1 (Eff 8-5-81); 139 v H 440 (Eff 11-23-81); 140 v H 291 (Eff 7-1-83); 141 v H 428 (Eff 12-23-86); 142 v S 89 (Eff 1-1-89); 144 v S 241 (Eff 4-9-93); 145 v H 152 (Eff 7-1-93); 145 v H 715 (Eff 7-22-94); 145 v H 314 (Eff 9-29-94); 146 v H 1 (Eff 1-1-96); 146 v H 124 (Eff 3-31-97); 147 v H 1 (Eff 7-1-98); 147 v H 526 (Eff 9-1-98); 148 v H 3 (Eff 11-22-99); 148 v S 179, § 3 (Eff 1-1-2002); 149 v H 393. Eff 7-5-2002.

ORC Ann. 2151.412 (2008)

§ 2151.412. Case plan for each child; changes; priorities

(A) Each public children services agency and private child placing agency shall prepare and maintain a case plan for any child to whom the agency is providing services and to whom any of the following applies:

(1) The agency filed a complaint pursuant to section 2151.27 of the Revised Code alleging that the child is an abused, neglected, or dependent child;

(2) The agency has temporary or permanent custody of the child;

(3) The child is living at home subject to an order for protective supervision;

(4) The child is in a planned permanent living arrangement.

Except as provided by division (A)(2) of section 5103.153 [5103.15.3] of the Revised Code, a private child placing agency providing services to a child who is the subject of a voluntary permanent custody surrender agreement entered into under division (B)(2) of section 5103.15 of the Revised Code is not required to prepare and maintain a case plan for that child.

(B) (1) The director of job and family services shall adopt rules pursuant to Chapter 119. of the Revised Code setting forth the content and format of case plans required by division (A) of this section and establishing procedures for developing, implementing, and changing the case plans. The rules shall at a minimum comply with the requirements of Title IV-E of the "Social Security Act," 94 Stat. 501, 42 U.S.C. 671 (1980), as amended.

(2) The director of job and family services shall adopt rules pursuant to Chapter 119. of the Revised Code requiring public children services agencies and private child placing agencies to maintain case plans for children and their families who are receiving services in their homes from the agencies and for whom case plans are not required by division (A) of this section. The agencies shall maintain case plans as required by those rules; however, the case plans shall not be subject to any other provision of this section except as specifically required by the rules.

(C) Each public children services agency and private child placing agency that is required by division (A) of this section to maintain a case plan shall file the case plan with the court prior to the child's adjudicatory hearing but no later than thirty days after the earlier of the date on which the complaint in the case was filed or the child was first placed into shelter care. If the agency does not have sufficient information prior to the adjudicatory hearing to complete any part of the case plan, the agency shall specify in the case plan the additional information necessary to complete each part of the case plan and the steps that will be taken to obtain that information. All parts of the case plan shall be completed by the earlier of thirty days after the adjudicatory hearing or the date of the dispositional hearing for the child.

(D) Any agency that is required by division (A) of this section to prepare a case plan shall attempt to obtain an agreement among all parties, including, but not limited to, the parents, guardian, or custodian of the child and the guardian ad litem of the child regarding the content of the case plan. If all parties agree to the content of the case plan and the court approves it, the court shall journalize it as part of its dispositional order. If the agency cannot obtain an agreement upon the contents of the case plan or the court does not approve it, the parties shall present evidence on the contents of the case plan at the dispositional hearing. The court, based upon the evidence presented at the dispositional hearing and the best

interest of the child, shall determine the contents of the case plan and journalize it as part of the dispositional order for the child.

(E) (1) All parties, including the parents, guardian, or custodian of the child, are bound by the terms of the journalized case plan. A party that fails to comply with the terms of the journalized case plan may be held in contempt of court.

(2) Any party may propose a change to a substantive part of the case plan, including, but not limited to, the child's placement and the visitation rights of any party. A party proposing a change to the case plan shall file the proposed change with the court and give notice of the proposed change in writing before the end of the day after the day of filing it to all parties and the child's guardian ad litem. All parties and the guardian ad litem shall have seven days from the date the notice is sent to object to and request a hearing on the proposed change.

(a) If it receives a timely request for a hearing, the court shall schedule a hearing pursuant to section 2151.417 [2151.41.7] of the Revised Code 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. The agency may implement the proposed change after the hearing, if the court approves it. The agency shall not implement the proposed change unless it is approved by the court.

(b) If it does not receive a timely request for a hearing, the court may approve the proposed change without a hearing. If the court approves the proposed change without a hearing, it shall journalize the case plan with the change not later than fourteen days after the change is filed with the court. If the court does not approve the proposed change to the case plan, it shall schedule a hearing to be held pursuant to section 2151.417 [2151.41.7] of the Revised Code no later than thirty days after the expiration of the fourteen-day time period and give notice of the date, time, and location of the hearing to all parties and the guardian ad litem of the child. If, despite the requirements of division (E)(2) of this section, the court neither approves and journalizes the proposed change nor conducts a hearing, the agency may implement the proposed change not earlier than fifteen days after it is submitted to the court.

(3) If an agency has reasonable cause to believe that a child is suffering from illness or injury and is not receiving proper care and that an appropriate change in the child's case plan is necessary to prevent immediate or threatened physical or emotional harm, to believe that a child is in immediate danger from the child's surroundings and that an immediate change in the child's case plan is necessary to prevent immediate or threatened physical or emotional harm to the child, or to believe that a parent, guardian, custodian, or other member of the child's household has abused or neglected the child and that the child is in danger of immediate or threatened physical or emotional harm from that person unless the agency makes an appropriate change in the child's case plan, it may implement the change without prior agreement or a court hearing and, before the end of the next day after the change is made, give all parties, the guardian ad litem of the child, and the court notice of the change. Before the end of the third day after implementing the change in the case plan, the agency shall file a statement of the change with the court and give notice of the filing accompanied by a copy of the statement to all parties and the guardian ad litem. All parties and the guardian ad litem shall have ten days from the date the notice is sent to object to and request a hearing on the change.

(a) If it receives a timely request for a hearing, the court shall schedule a hearing pursuant to section 2151.417 [2151.41.7] of the Revised Code 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. The agency shall continue to administer the case plan with the change after the hearing, if the court approves the change. If the court does not approve the change, the court shall make appropriate changes

to the case plan and shall journalize the case plan.

(b) If it does not receive a timely request for a hearing, the court may approve the change without a hearing. If the court approves the change without a hearing, it shall journalize the case plan with the change within fourteen days after receipt of the change. If the court does not approve the change to the case plan, it shall schedule a hearing under section 2151.417 [2151.41.7] of the Revised Code to be held no later than thirty days after the expiration of the fourteen-day time period and give notice of the date, time, and location of the hearing to all parties and the guardian ad litem of the child.

(F) (1) All case plans for children in temporary custody shall have the following general goals:

(a) Consistent with the best interest and special needs of the child, to achieve a safe out-of-home placement in the least restrictive, most family-like setting available and in close proximity to the home from which the child was removed or the home in which the child will be permanently placed;

(b) To eliminate with all due speed the need for the out-of-home placement so that the child can safely return home.

(2) The director of job and family services shall adopt rules pursuant to Chapter 119. of the Revised Code setting forth the general goals of case plans for children subject to dispositional orders for protective supervision, a planned permanent living arrangement, or permanent custody.

(G) In the agency's development of a case plan and the court's review of the case plan, the child's health and safety shall be the paramount concern. The agency and the court shall be guided by the following general priorities:

(1) A child who is residing with or can be placed with the child's parents within a reasonable time should remain in their legal custody even if an order of protective supervision is required for a reasonable period of time;

(2) If both parents of the child have abandoned the child, have relinquished custody of the child, have become incapable of supporting or caring for the child even with reasonable assistance, or have a detrimental effect on the health, safety, and best interest of the child, the child should be placed in the legal custody of a suitable member of the child's extended family;

(3) If a child described in division (G)(2) of this section has no suitable member of the child's extended family to accept legal custody, the child should be placed in the legal custody of a suitable nonrelative who shall be made a party to the proceedings after being given legal custody of the child;

(4) If the child has no suitable member of the child's extended family to accept legal custody of the child and no suitable nonrelative is available to accept legal custody of the child and, if the child temporarily cannot or should not be placed with the child's parents, guardian, or custodian, the child should be placed in the temporary custody of a public children services agency or a private child placing agency;

(5) If the child cannot be placed with either of the child's parents within a reasonable period of time or should not be placed with either, if no suitable member of the child's extended family or suitable nonrelative is available to accept legal custody of the child, and if the agency has a reasonable expectation of placing the child for adoption, the child should be committed to the permanent custody of the public children services agency or private child

placing agency;

(6) If the child is to be placed for adoption or foster care, the placement shall not be delayed or denied on the basis of the child's or adoptive or foster family's race, color, or national origin.

(H) The case plan for a child in temporary custody shall include at a minimum the following requirements if the child is or has been the victim of abuse or neglect or if the child witnessed the commission in the child's household of abuse or neglect against a sibling of the child, a parent of the child, or any other person in the child's household:

(1) A requirement that the child's parents, guardian, or custodian participate in mandatory counseling;

(2) A requirement that the child's parents, guardian, or custodian participate in any supportive services that are required by or provided pursuant to the child's case plan.

(I) A case plan may include, as a supplement, a plan for locating a permanent family placement. The supplement shall not be considered part of the case plan for purposes of division (D) of this section.

History:

142 v H 403 (Eff 1-1-89); 146 v H 274 (Eff 8-8-96); 146 v H 419 (Eff 9-18-96); 147 v H 484 (Eff 3-18-99); 148 v H 471. Eff 7-1-2000.

ORC Ann. 2151.416 (2008)

§ 2151.416. Administrative reviews of case plan; annual report

(A) Each agency that is required by section 2151.412 [2151.41.2] of the Revised Code to prepare a case plan for a child shall complete a semiannual administrative review of the case plan no later than six months after the earlier of the date on which the complaint in the case was filed or the child was first placed in shelter care. After the first administrative review, the agency shall complete semiannual administrative reviews no later than every six months. If the court issues an order pursuant to section 2151.414 [2151.41.4] or 2151.415 [2151.41.5] of the Revised Code, the agency shall complete an administrative review no later than six months after the court's order and continue to complete administrative reviews no later than every six months after the first review, except that the court hearing held pursuant to section 2151.417 [2151.41.7] of the Revised Code may take the place of any administrative review that would otherwise be held at the time of the court hearing. When conducting a review, the child's health and safety shall be the paramount concern.

(B) Each administrative review required by division (A) of this section shall be conducted by a review panel of at least three persons, including, but not limited to, both of the following:

(1) A caseworker with day-to-day responsibility for, or familiarity with, the management of the child's case plan;

(2) A person who is not responsible for the management of the child's case plan or for the delivery of services to the child or the parents, guardian, or custodian of the child.

(C) Each semiannual administrative review shall include, but not be limited to, a joint meeting by the review panel with the parents, guardian, or custodian of the child, the guardian ad litem of the child, and the child's foster care provider and shall include an opportunity for those persons to submit any written materials to be included in the case record of the child. If a parent, guardian, custodian, guardian ad litem, or foster care provider of the child cannot be located after reasonable efforts to do so or declines to participate in the administrative review after being contacted, the agency does not have to include them in the joint meeting.

(D) The agency shall prepare a written summary of the semiannual administrative review that shall include, but not be limited to, all of the following:

(1) A conclusion regarding the safety and appropriateness of the child's foster care placement;

(2) The extent of the compliance with the case plan of all parties;

(3) The extent of progress that has been made toward alleviating the circumstances that required the agency to assume temporary custody of the child;

(4) An estimated date by which the child may be returned to and safely maintained in the child's home or placed for adoption or legal custody;

(5) An updated case plan that includes any changes that the agency is proposing in the case plan;

(6) The recommendation of the agency as to which agency or person should be given custodial rights over the child for the six-month period after the administrative review;

(7) The names of all persons who participated in the administrative review.

(E) The agency shall file the summary with the court no later than seven days after the completion of the administrative review. If the agency proposes a change to the case plan as a result of the administrative review, the agency shall file the proposed change with the court at the time it files the summary. The agency shall give notice of the summary and proposed change in writing before the end of the next day after filing them to all parties and the child's guardian ad litem. All parties and the guardian ad litem shall have seven days after the date the notice is sent to object to and request a hearing on the proposed change.

(1) If the court receives a timely request for a hearing, the court shall schedule a hearing pursuant to section 2151.417 [2151.41.7] of the Revised Code to be held not later than thirty days after the court receives the request. The court shall give notice of the date, time, and location of the hearing to all parties and the guardian ad litem. The agency may implement the proposed change after the hearing, if the court approves it. The agency shall not implement the proposed change unless it is approved by the court.

(2) If the court does not receive a timely request for a hearing, the court may approve the proposed change without a hearing. If the court approves the proposed change without a hearing, it shall journalize the case plan with the change not later than fourteen days after the change is filed with the court. If the court does not approve the proposed change to the case plan, it shall schedule a review hearing to be held pursuant to section 2151.417 [2151.41.7] of the Revised Code no later than thirty days after the expiration of the fourteen-day time period and give notice of the date, time, and location of the hearing to all parties and the guardian ad litem of the child. If, despite the requirements of this division and division (D) of section 2151.417 [2151.41.7] of the Revised Code, the court neither approves and journalizes the proposed change nor conducts a hearing, the agency may implement the proposed change not earlier than fifteen days after it is submitted to the court.

(F) The director of job and family services may adopt rules pursuant to Chapter 119. of the Revised Code for procedures and standard forms for conducting administrative reviews pursuant to this section.

(G) The juvenile court that receives the written summary of the administrative review, upon determining, either from the written summary, case plan, or otherwise, that the custody or care arrangement is not in the best interest of the child, may terminate the custody of an agency and place the child in the custody of another institution or association certified by the department of job and family services under section 5103.03 of the Revised Code.

History:

RC § 5103.15.1, 136 v H 156 (Eff 1-1-77); 137 v H 832 (Eff 3-13-79); 138 v H 695 (Eff 10-24-80); 141 v H 428 (Eff 12-23-86); RC § 2151.41.6, 142 v S 89 (Eff 1-1-89); 146 v H 274 (Eff 8-8-96); 146 v H 419 (Eff 9-18-96); 147 v H 484 (Eff 3-18-99); 148 v H 471. Eff 7-1-2000; 151 v H 66, § 101.01, eff. 6-30-05; 151 v S 238, § 1, eff. 9-21-06.

ORC Ann. 2505.02 (2008)

§ 2505.02. Final order

(A) As used in this section:

(1) "Substantial right" means a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect.

(2) "Special proceeding" means an action or proceeding that is specially created by statute and that prior to 1853 was not denoted as an action at law or a suit in equity.

(3) "Provisional remedy" means a proceeding ancillary to an action, including, but not limited to, a proceeding for a preliminary injunction, attachment, discovery of privileged matter, suppression of evidence, a prima-facie showing pursuant to section 2307.85 or 2307.86 of the Revised Code, a prima-facie showing pursuant to section 2307.92 of the Revised Code, or a finding made pursuant to division (A)(3) of section 2307.93 of the Revised Code.

(B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:

(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;

(2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment;

(3) An order that vacates or sets aside a judgment or grants a new trial;

(4) An order that grants or denies a provisional remedy and to which both of the following apply:

(a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.

(b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.

(5) An order that determines that an action may or may not be maintained as a class action;

(6) An order determining the constitutionality of any changes to the Revised Code made by Am. Sub. S.B. 281 of the 124th general assembly, including the amendment of sections 1751.67, 2117.06, 2305.11, 2305.15, 2305.234 [2305.23.4], 2317.02, 2317.54, 2323.56, 2711.21, 2711.22, 2711.23, 2711.24, 2743.02, 2743.43, 2919.16, 3923.63, 3923.64, 4705.15, and 5111.018 [5111.01.8], and the enactment of sections 2305.113 [2305.11.3], 2323.41, 2323.43, and 2323.55 of the Revised Code or or any changes made by Sub. S.B. 80 of the 125th general assembly, including the amendment of sections 2125.02, 2305.10, 2305.131 [2305.13.1], 2315.18, 2315.19, and 2315.21 of the Revised Code.

(7) An order in an appropriation proce[illegible] may be appealed pursuant to division (B)

(3) of section 163.09 of the Revised Code.

(C) When a court issues an order that vacates or sets aside a judgment or grants a new trial, the court, upon the request of either party, shall state in the order the grounds upon which the new trial is granted or the judgment vacated or set aside.

(D) This section applies to and governs any action, including an appeal, that is pending in any court on July 22, 1998, and all claims filed or actions commenced on or after July 22, 1998, notwithstanding any provision of any prior statute or rule of law of this state.

App R 4 Appeal as of right—when taken

(A) Time for appeal

A party shall file the notice of appeal required by App.R. 3 within thirty days of the later of entry of the judgment or order appealed or, in a civil case, service of the notice of judgment and its entry if service is not made on the party within the three day period in Rule 58(B) of the Ohio Rules of Civil Procedure.

(B) Exceptions

The following are exceptions to the appeal time period in division (A) of this rule:

(1) Multiple or cross appeals. If a notice of appeal is timely filed by a party, another party may file a notice of appeal within the appeal time period otherwise prescribed by this rule or within ten days of the filing of the first notice of appeal.

(2) Civil or juvenile post-judgment motion. In a civil case or juvenile proceeding, if a party files a timely motion for judgment under Civ.R. 50(B), a new trial under Civ.R. 59(B), vacating or modifying a judgment by an objection to a magistrate's decision under Civ.R. 53(E)(4)(c) or Rule 40(E)(4)(c) of the Ohio Rules of Juvenile Procedure, or findings of fact and conclusions of law under Civ.R. 52, the time for filing a notice of appeal begins to run as to all parties when the order disposing of the motion is entered.

(3) Criminal post-judgment motion. In a criminal case, if a party timely files a motion for arrest of judgment or a new trial for a reason other than newly discovered evidence, the time for filing a notice of appeal begins to run when the order denying the motion is entered. A motion for a new trial on the ground of newly discovered evidence made within the time for filing a motion for a new trial on other grounds extends the time for filing a notice of appeal from a judgment of conviction in the same manner as a motion on other grounds. If made after the expiration of the time for filing a motion on other grounds, the motion on the ground of newly discovered evidence does not extend the time for filing a notice of appeal.

(4) Appeal by prosecution. In an appeal by the prosecution under Crim. R. 12(K) or Juv. R. 22(F), the prosecution shall file a notice of appeal within seven days of entry of the judgment or order appealed.

(5) Partial final judgment or order. If an appeal is permitted from a judgment or order entered in a case in which the trial court has not disposed of all claims as to all parties, other than a judgment or order entered under Civ.R. 54(B), a party may file a notice of appeal within thirty days of entry of the judgment or order appealed or the judgment or order that disposes of the remaining claims. Division (A) of this rule applies to a judgment or order entered under Civ.R. 54(B).

App R 5 Appeals by leave of court

(A) Motion by defendant for delayed appeal.

(1) After the expiration of the thirty day period provided by App. R. 4(A) for the filing of a notice of appeal as of right, an appeal may be taken by a defendant with leave of the court to which the appeal is taken in the following classes of cases:

(a) Criminal proceedings;

(b) Delinquency proceedings; and

(c) Serious youthful offender proceedings.

(2) A motion for leave to appeal shall be filed with the court of appeals and shall set forth the reasons for the failure of the appellant to perfect an appeal as of right. Concurrently with the filing of the motion, the movant shall file with the clerk of the trial court a notice of appeal in the form prescribed by App. R. 3 and shall file a copy of the notice of the appeal in the court of appeals. The movant also shall furnish an additional copy of the notice of appeal and a copy of the motion for leave to appeal to the clerk of the court of appeals who shall serve the notice of appeal and the motions upon the prosecuting attorney.

(B) Motion to reopen appellate proceedings.

If a federal court grants a conditional writ of habeas corpus upon a claim that a defendant's constitutional rights were violated during state appellate proceedings terminated by a final judgment, a motion filed by the defendant or on behalf of the state to reopen the appellate proceedings may be granted by leave of the court of appeals that entered the judgment. The motion shall be filed with the clerk of the court of appeals within forty-five days after the conditional writ is granted. A certified copy of the conditional writ and any supporting opinion shall be filed with the

Crim R 32 Sentence

(A) Imposition of sentence

Sentence shall be imposed without unnecessary delay. Pending sentence, the court may commit the defendant or continue or alter the bail. At the time of imposing sentence, the court shall do all of the following:

(1) Afford counsel an opportunity to speak on behalf of the defendant and address the defendant personally and ask if he or she wishes to make a statement in his or her own behalf or present any information in mitigation of punishment.

(2) Afford the prosecuting attorney an opportunity to speak;

(3) Afford the victim the rights provided by law;

(4) In serious offenses, state its statutory findings and give reasons supporting those findings, if appropriate.

(B) Notification of right to appeal

(1) After imposing sentence in a serious offense that has gone to trial, the court shall advise the defendant that the defendant has a right to appeal the conviction.

(2) After imposing sentence in a serious offense, the court shall advise the defendant of the defendant's right, where applicable, to appeal or to seek leave to appeal the sentence imposed.

(3) If a right to appeal or a right to seek leave to appeal applies under division (B)(1) or (B)(2) of this rule, the court also shall advise the defendant of all of the following:

(a) That if the defendant is unable to pay the cost of an appeal, the defendant has the right to appeal without payment;

(b) That if the defendant is unable to obtain counsel for an appeal, counsel will be appointed without cost;

(c) That if the defendant is unable to pay the costs of documents necessary to an appeal, the documents will be provided without cost;

(d) That the defendant has a right to have a notice of appeal timely filed on his or her behalf.

Upon defendant's request, the court shall forthwith appoint counsel for appeal.

(D) Initial procedure upon entry of an admission

The court may refuse to accept an admission and shall not accept an admission without addressing the party personally and determining both of the following:

(1) The party is making the admission voluntarily with understanding of the nature of the allegations and the consequences of the admission;

(2) The party understands that by entering an admission the party is waiving the right to challenge the witnesses and evidence against the party, to remain silent, and to introduce evidence at the adjudicatory hearing.

The court may hear testimony, review documents, or make further inquiry, as it considers appropriate, or it may proceed directly to the action required by division (F) of this rule.

Juv R 34 Dispositional hearing

(J) Advisement of rights after hearing

At the conclusion of the hearing, the court shall advise the child of the child's right to record expungement and, where any part of the proceeding was contested, advise the parties of their right to appeal.

(Adopted eff. 7–1–72; amended eff. 7–1–94, 7–1–96, 7–1–02)