

IN THE SUPREME COURT OF OHIO

**IN THE MATTER
OF B.D. AND I.D.,**

**ADAM MAY AND
HEATHER MAY,
APPELLANTS.**

CASE NO.:

**ON APPEAL FROM
DELAWARE COUNTY, OHIO,
JUVENILE DIVISION
CASE NOS.: 15-01-0056-AB
15-01-0057-AB**

**COURT OF APPEALS
DELAWARE COUNTY, OHIO,
FIFTH APPELLATE DISTRICT
CASE NOS.: 18-CAF-01-0003
18-CAF-01-0004**

MEMORANDUM IN SUPPORT OF JURISDICTION

Adam May
(614) 313-2258
Heather May
(774) 922- 0103
187 Ramshorn Rd.
Dudley, MA. 01571,
APPELLANTS, PRO SE

Katheryn Munger, Delaware County, Ohio
Assistant Prosecutor
(740) 833- 2690
140 N. Sandusky St., 3rd Floor,
Delaware, OH. 43015,
ATTORNEY FOR APPELLEE

/s Adam May

/s Heather May

TABLE OF CONTENTS

	<u>Page</u>
EXPLANATION OF WHY THIS CASE INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION AND IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST	<u>1</u>
STATEMENT OF THE CASE AND FACTS	<u>5</u>
ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW	<u>9</u>
<u>Proposition of Law No. 1:</u> Delaware County Department of Job and Family Services refused to accept a child- protection case, from the State of Kentucky, involving a sibling group of three that had been adjudicated abused/ neglected only two months prior.	<u>9</u>
<u>Proposition of Law No. 2:</u> Delaware County Department of Job and Family Services, and Delaware County, OH, Juvenile Court, did not make certain that reasonable efforts were made prior to the children's removal and placemen into foster care.	<u>10</u>
<u>Proposition of Law No. 3:</u> Delaware County Department of Job and Family Services, and Delaware County, Ohio, Juvenile Court, mistakenly decided to provide services and support to reunify biological mother and the children. Their decision was made while vital reasons existed which did not require reasonable efforts be made and only caused a re- litigation of the exact proceedings that had occurred in the State of Kentucky only one- year prior.	<u>11</u>
<u>Proposition of Law No. 4:</u> Delaware County Department of Job and Family Services, and Delaware County, Ohio, Juvenile Court, neglected to fulfill their roles in the Interstate Compact on the Placement of Children.	<u>13</u>
<u>Proposition of Law No. 5:</u> Delaware County Department of Job and Family Services dishonestly provided the receiving state with incorrect information as to the children's financial information. Delaware County, Ohio, Juvenile Court continued to allow the department to the violate ICPC.	<u>13</u>
<u>Proposition of Law No. 6:</u> Delaware County Department of Job and Family Services, and Delaware County, Ohio, Juvenile Court disregarded the children's fundamental right to permanency, ultimately permitting the children's case to linger for months while the department exercised all their efforts on actions to get rid of the children's case instead of permanent placement.	<u>14</u>
<u>Proposition of Law No. 7:</u> Delaware County, OH, Juvenile Court terminated the children's case although, pursuant the UCCJEA, KY ceded its 'Home State Jurisdiction' to the state where the children reside, OH. Delaware County, OH, Juvenile Court terminated the children's case even though the court had already accepted and exercised jurisdiction.	<u>16</u>
CONCLUSION	<u>18</u>
PROOF OF SERVICE	<u>19-20</u>
APPENDIX	<u>21</u>
Judgment Entry of Ohio Fifth District Court of Appeals (September 24, 2018)	<u>21-32</u>

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

This cause presents a substantial constitutional issue of whether children's services, in the State of OH, may punish children by denying them Equal Protection and Due Process based on matters beyond their control. It also presents the constitutional issue as to whether the governing Juvenile Court can ignore its duty, conferred upon by federal litigation, to protect the rights of all parties and ensure that decisions are made and the law is applied without bias. This cause presents the issue of great general interest as to whether the Equal Protection Clause is evenly applied among relative and non- relative caregivers, as required by law, that all persons similarly situated should be treated alike. Additionally, this cause presents a significant interest of the public as the issue is that the Juvenile Court only requires certain parties comply with the rules and regulations of the Interstate Compact on the Placement of Children (ICPC). Finally, this cause also proves that unfair barriers are placed in the path of the self-represented litigants.

In this case Delaware County Department of Job and Family Services, (DCDJFS), refused to accept the transfer of an out-of-state child protection case. The sibling group of three resided in Delaware County, OH, and had been adjudicated abused/ neglected only two months prior, which warranted the imperative need for the children to continue to receive services, support and protection. The basis for declining the case was because the biological parents did not reside in the State of OH and DCDJFS unashamedly admit this rationale. Oldham County, KY, Family Court and KY Children and Family Services, ("the Cabinet"), made several attempts to transfer the case to Delaware County, OH. On April 17, 2014, a Disposition Order was filed in Oldham County, KY, Family Court, which reports that, "the children are in need of protection," and that, "no party resides in KY, parents moved to Illinois. Since the children are currently with temporary custodians in OH, this Court will cede its 'Home State' Jurisdiction under UCCJEA to the proper court in the state of OH." DCDJFS violated the children's, and their temporary custodians' ("the Mays"), constitutional right to Equal Protection and Due Process, this will prove to cause irreparable damage.

Discriminating against the children by refusing to provide them on- going support and services was the beginning of a four year-old case that would linger and continue to be mishandled by DCDJFS and Delaware County, OH, Juvenile Court.

Three months after DCDJFS denied the children's case transfer, the case surfaced in the Delaware County, OH, Juvenile Division through a Complaint for Custody filed by biological mother. The Mays attended the hearing, *pro se*, and were certain that the complaint would be dismissed knowing that biological mother had not visited nor contacted the children for six consecutive months and refused to comply with any part of her case plan issued by KY. The complaint was not dismissed nor did the court decline jurisdiction. In fact, the court acknowledges that "jurisdiction over minor children was ceded to OH from KY since the parties and children no longer reside in KY." The court continued to hear the case and ordered the Mays to pay a guardian *ad litem* and attend mediation with biological mother.

/s Adam May

/s Heather May

At that time Mr. May's employer had already began the process of relocating the Mays to Boston, MA. The family, including the three children, planned to move immediately after the sale of their home although, an open child custody case in Delaware County, OH, posed a huge conflict regarding whether the children were able to move out of state. The Mays sought help from DCDJFS however, they could not intervene since the children "were not abused/ neglected/ nor dependent." DCDJFS provided nothing for the children, nor the Mays, no services, no support, no suggestions or guidance, even though the children now faced a risk of reentry into foster care. Federal law assures "reasonable efforts shall be made to preserve and reunify families prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home." ¹

During mediation the Mays explained the situation to the guardian *ad litem*, Mr. Randy Fuller. Understanding that these unforeseen challenges created a risk that the children would be placed into foster care, warranted protective services therefore, to ensure that the children would remain in the Mays' custody, ultimately allowed to move to MA, Mr. Fuller motioned the Juvenile Court, which initiated the instant dependency case. Within his motion he states, "[a]fter adjudication, the KY Court and the equivalent of the Department of Job and Family Services created a case plan and gave custody of the minor children to Adam and Heather May (maternal aunt and uncle). It appears from the records the KY Court tried to transfer the abuse and dependency case to Delaware County. However, the case was not properly transferred to this Court." Additionally, Mr. Fuller requests the court to grant disposition of: "(1) Delaware County Department of Job and Family Services be a party to this matter, (2) [t]emporary custody of the children to Heather and Adam May, (3) [c]ourt-ordered protective supervision by Delaware County Department of Job and Family Services for the minor children, (4) [s]uch other orders as the Court deems necessary as provided by law."

The children were not placed in the temporary custody of the Mays, as requested by Mr. Fuller, whose sole responsibility is to protect the best interests of the children, the children were placed in the temporary custody of DCDJFS, subsequently placed into foster care. The Juvenile Court and DCDJFS erroneously decided that the federal law need not apply, therefore, absolutely no reasonable efforts were made to preserve and reunify the children with the Mays resulting in a deprivation of the children's, and the Mays', constitutional right to Equal Protection and Procedural Due Process.

Subsequent to the children's placement into foster care a case plan was created by DCDJFS and adopted by the court to begin the process of reunification between the children and biological mother, even though the children had already been out of the care and custody of biological mother for twelve consecutive months. Time- limited family reunification services means the services and activities "that are provided to a child that is removed from the child's home and placed in a foster family home or a child care institution and to the parents or primary caregiver of such a child, in order to facilitate the reunification of the child safely and appropriately within a timely fashion, but only during the 15- month period that begins on the date that the child, pursuant to section 475(5)(F), is considered to have entered foster care." ²

/s Adam May

/s Heather May

¹ 42 U.S.C. § 671 (a)(15)(B)(i).

² 42 U.S.C. § 629(a)(7)(A).

The decision to provide biological mother with reunification services prompted re-litigation of the exact proceedings that had occurred one year prior, in the State of KY. This decision was certainly not in the best interests of the children, this decision subjected them to additional physiological trauma and only prolonged their fundamental right to a permanent placement.

As time passed the facts of this case have been twisted and manipulated. The Mays have been accused of abandoning the children, placing the children into foster care, stating that they were no longer able to care for the children and having no stable income once they relocated to MA. If this were true, undoubtedly, Mr. Fuller would never have requested that the Juvenile Court in Delaware County, OH, place the children in the temporary custody of the Mays! The Mays have become solely responsible as to why the children were deemed dependent and placed into foster care. This is inaccurate, in fact, custody defaults to whatever was in place before the temporary order was granted. When the Mays' terminated their custody, it automatically reverted the children's custody back to biological mother. Therefore, the children were deemed dependent because biological mother neglected to comply with her case plan and correct the reason why the children were removed from her in the first place.

The children resided in a foster home, in OH, for seven months and during this time DCDJFS provided the monthly cost of care for the children, based on each of the child's needs, in the amount of \$2075.45 per child, per month. DCDJFS determined the children eligible for Title IV-E Foster Care Maintenance ("FCM").

Once the Mays settled in MA, they filed a motion in the Delaware County, OH, Court, Juvenile Division requesting reunification, (*pro se*), they attended the pretrial and learned that completion of an Interstate Compact on the Placement of Children ("ICPC") would be required for the children to be able to move to MA. An expedited ICPC, "priority placement," was initiated by DCDJFS then ordered by the Juvenile Court. At the conclusion of the child custody trial the Magistrate ordered custody of children, "remain with Delaware County Department of Job and Family Services with placement of the minor children with Heather May and Adam May, with an approved ICPC." The Mays complied with each regulation and requirement surrounding the ICPC and were certified as foster parents by MA Department of Children and Families. The children were placed with the Mays in Dudley, MA, with the protection and safeguards of the ICPC. The ICPC, Article V. (a) requires that, "[t]he sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement." ³

Upon the children's placement in MA was the very day DCDJFS decided to discontinue distribution of the children's Title IV-E FCM payments. Although, the children's placement changed, from a certified /s Adam May /s Heather May

³ APHSA, *ICPC Articles*, <https://aphsa.org>, (2018); OAC 5101:2-52-04(E)(3).

foster home in OH to a certified foster home in MA, their legal status had not. DCDJFS maintained temporary/ legal custody while the Mays solely had physical custody.

DCDJFS claim that relative foster parents are not entitled to the same foster care maintenance payments as unrelated foster parents. This claim counters the recent ruling made by the United States Court of Appeals for the Sixth Circuit.⁴ The Equal Protection Clause "is essentially a direction that all persons similarly situated should be treated alike."⁵ However, the State of OH disallows relative-caregivers the opportunity to become relative- foster parents, which violates this most fundamental understanding of the equal protection guarantee. The relative- caregivers are *identically situated* to the non- relative caregivers and were expected to comply with OH Administrative Codes relating to foster care. (Emphasis added.)

"The Title IV- E agency that holds legal responsibility as defined in rule 5101:2-47-13 of the Administrative Code for the care and placement of the child retains responsibility for the management of the foster care maintenance (FCM) case regardless of where the biological family is living or where the child is placed."⁶

The Supreme Court of the United States has issued a clear prohibition against these types of laws. Specifically, the court has made clear that states may not punish children by denying them government conferred benefits, based on matters beyond their control.⁷ Discontinuance of benefits on the basis of the child's relationship to their foster parents performs precisely this impermissible function. The Supreme Court's precedent dealing with the equal protection rights of children unequivocally establishes that states may not punish children for matters beyond their control.⁸

DCDJFS also declares that in OH there are "no relative foster care, there is only licensed foster care or unlicensed relative home." The department further asserts that, "[f]oster parents in OH are strangers to the children in their care and are paid for their care of children in the system. However, relatives are not paid a stipend to care for their nieces, nephews, and grandchildren."

Prior to the children's placement with the Mays, reasonable efforts to reunify biological mother and the children ceased and DCDJFS requested the court remove her from the children's case plan. The court granted DCDJFS two extensions of temporary custody with the thought that the department would begin the process to terminate parental rights, as there are certainly grounds to do so. MA, the receiving state through the ICPC, notified DCDJFS and the Juvenile Court that the ICPC would not close until a more permanent legal status for the children was sought. Yet the children remained in the temporary custody of DCDJFS for thirty- five consecutive months while DCDJFS neglected to complete whatever steps are necessary to finalize the permanent placement of the children. While having no compelling reason for determining that it would not be in the best interests of the children to terminate parental

/s Adam May

/s Heather May

⁴ *D.O., et al. v. Glisson*, Case No. 16-5461, (6th Cir. Jan. 27, 2017).

⁵ *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439 (1985).

⁶ OAC 5101:2-47-04 (A).

⁷ *Levy v. Louisiana*, 391 U.S. 68, 72 (1968).

⁸ Catherine Smith, *Equal Protection for Children of Same- Sex Parents*, (2013).

rights, DCDJFS absolutely refused to initiate the appropriate proceedings in order to free the children for adoption. As a result of the department allowing this case to linger the oldest child, D.D., emancipated from foster care. DCDJFS terminated their custody of D.D. and provided him with no social security card, no driver's license, no emancipation/ transitional plan, no money, no bank account, no medical records, no place to live and uncertainty as to whom his biological father is, paternity was never even established. DCDJFS sent this child, who has been abandoned by his biological parents out into the world to fail!

On December 6, 2017, upon the department's Second Motion to Terminate Custody and the Case, the Juvenile Court granted their motion. Termination of all OH orders caused a reversion to the KY orders although, this Court has clarified that the Juvenile Court operates pursuant to its exclusive original jurisdiction when it holds an adjudicatory hearing, and, if it adjudicates the child abused, neglected, or dependent, when it issues its initial dispositional order pursuant to Revised Code Section 2151.353(A).⁹ Those dispositions include protective supervision, temporary custody, legal custody, permanent custody, planned permanent living arrangement, and removing the child from the home and issuing a no contact order.¹⁰ Thereafter, the Juvenile Court's exclusive jurisdiction terminates and it continues to address ongoing issues in the case pursuant to its exercise of "continuing jurisdiction over the child."¹¹ R.C. 2151.353 (F)(1) provides that "[t]he juvenile court shall retain jurisdiction over any child for whom the court issues an order of disposition pursuant to division (A) of this section . . . until the child attains the age of eighteen years . . ." Only age or adoption terminates the continuing jurisdiction of the Juvenile Court.

It is important for this Court to clarify that rules and regulations of the ICPC do not only apply to certain parties and that the sending state may not abandon their responsibilities of the ICPC. It is crucial for this Court to review and carefully analyze whether the Juvenile Court maintains continuing jurisdiction over the children therefore, this Court should grant jurisdiction.

STATEMENT OF THE CASE AND FACTS

In January 2014, Oldham County, KY, Children's Services ("the Cabinet") received a report of abuse/ neglect against biological mother of D.M., I.M. and B.M, all residents of Oldham County, KY. The children were in Delaware County, OH, visiting their aunt and uncle, Adam and Heather May, ("the Mays"), and began to describe accounts of abuse and neglect by biological mother. Having received prior complaints, the Cabinet immediately filed a Juvenile Dependency, Neglect and Abuse Petition in Oldham County, KY, Family Court.¹² The Cabinet then contacted DCDJFS and requested they complete an evaluation of the Mays' home, followed with monthly home visits and provide supervised visitation for any scheduled visits between the biological mother and the children.

/s Adam May

/s Heather May

⁹ *State ex rel. Allen Cty.Ch. Servs. Bd. v. Mercer Cty. Common Pleas Court, Probate Div.*, 150 OH St.3d 230, 2016-OH-7382.

¹⁰ R.C. 2151.353(A)(1)-(6).

¹¹ *State ex rel. Allen Cty.Ch. Servs. Bd.*, 150 OH St.3d 230, 2016-OH-7382.

¹² Oldham Co., KY, Family Court, (Case Nos.: 14-J-00015-001, 14-J-00016-001, 14-J-00017-001).

Judge Feely, of Oldham County, KY, Family Court adjudicated the children abused/ neglected on February 28, 2014, ordering that, "the children were to remain in the temporary custody of Adam and Heather May and jurisdiction over the children ceded to OH."

On April 17, 2014, a Disposition Order was filed in Oldham County, KY, Family Court, which reports that, "the children are in need of protection" and that, "no party resides in KY, parents moved to IL. Since the children are currently with temporary custodians in OH, this Court will cede its 'Home State' Jurisdiction under UCCJEA to the proper court in the state of OH." A letter from DCDJFS to the Cabinet explained that, "[i]t was agreed that an ICPC would be completed to formalize the process," adding that they are, "inclined to close the current Courtesy Supervision Case, effective 04/17/14, as the Department cannot provide services to parents who live in another state."

The Mays were summoned into Delaware County, OH, Juvenile Division on October 10, 2014,¹³ through a Complaint for Custody filed by biological mother. Mr. May had recently accepted a new position and his employer was in the process of relocating the May family, including D.M., I.M. and B.M., to Boston, MA. They planned to move immediately after the sale of their home in OH however, the new child custody case in Delaware County, OH, posed a huge conflict whether the children were able to move out of state. The Mays contacted DCDJFS seeking their help however, no assistance was offered and hired attorney Stephanie Dailey, who filed a Motion to Dismiss the complaint. During an ordered mediation session the Mays explained the situation to the guardian *ad litem*, Mr. Randy Fuller. He motioned the court on January 14, 2015, which initiated a dependency case.¹⁴ The court did not grant temporary custody of the children to the Mays, as requested by Mr. Fuller, the children were placed into the temporary custody/ legal responsibility of DCDJFS then placed into a foster home on January 23, 2015.

The Mays filed a motion (*pro se*) requesting the children be placed with them in MA, the court accepted their motion and advised they hire an attorney to represent them through a child custody trial. They hired attorney, Douglas Warnock of Delaware County, and attended the pretrial on May 6, 2015, at which time they learned an ICPC was required in order for the children to be placed with them in MA. On June 2, 2015, Magistrate Schoenling ordered an expedited ICPC, "priority placement," and the custody trial was held on June 8, 2015, and July 2, 2015. At the conclusion of the trial, the Magistrate ordered the custody of children, "remain with Delaware County Department of Job and Family Services with placement of the minor children with Heather May and Adam May, with an approved ICPC."

During the completion of the ICPC, and prior to the children's placement, the Mays began seeking services and support that the children would be eligible to receive. The Mays contacted OH ICPC Coordinator, Heather Spencer, and on July 8, 2015, (prior to the children's placement). Mrs. Spencer emailed DCDJFS, while CC'ing the Mays, notifying the department that "[t]he sending agency shall continue to have financial responsibility for the support and maintenance of the child during the period of placement." Additionally, she informs DCDJFS that, "[t]he Mays actually are having a foster home

/s Adam May /s Heather May

¹³ *Hofmann vs. May*, Delaware Co., OH, Juv. Div., (Case Nos.: 14071593-AD, 14071594-AD).

¹⁴ *In Re. D.M., I.M., B.M.*, Delaware Co., OH, Juv. Div., (Case Nos.: 15-01-0056-AB, 15-01-0057-AB, 15-01-0058-AB).

study completed. MA ICPC informed me that all relatives must be licensed in their state, so it would technically be a foster placement initially."

The Mays complied with each regulation and requirement surrounding the ICPC and became licensed foster parents and upon completion of the ICPC, August 3, 2015, DCDJFS placed the children with the Mays in Dudley, MA. After placement DCDJFS maintained temporary/ legal responsibility of the children, while the Mays were merely the children's physical custodians. MA Department of Children and Families monitored the children's placement through monthly home visits, followed by reports sent to OH. MA Department of Children and Family Services also supervised the home with monthly safety checks and overseen the Mays' foster care license and background checks.

During the next several months significant changes developed warranting modification of the children's permanency plan, including that on December 9, 2015, biological mother received a thirty month prison sentence to the OH Reformatory for Women. She was indicted, convicted and charged by Judge Robert W. Peeler, Warren County, OH, with a level three felony, Tampering with Records, R.C. 2913.42(A)(1).¹⁵ The Mays want to ensure the best possible outcomes for the children and began to explore the possibility of adoption.

In January 2016, the Mays participated in the children's semiannual review and they clearly explain their wishes to adopt the children and their concerns with obtaining legal custody. The department filed the review with the court followed by objections filed by the Mays, (*pro se*), requesting that the court insist that DCDJFS file a petition to expedite the termination of parental rights. On January 13, 2016, DCDJFS filed a Motion For An Extension of Temporary Custody and explained that their compelling reason for not terminating parental rights is that, "[l]egal custody would preserve the right of parents to visit and pay child support." DCDJFS continues, "[t]herefore, DCDJFS will need to investigate other relatives to see whether they are interested in legal custody to see if there are alternatives to permanent custody." The Mays' objections were denied.

On February 12, 2016, the Mays' attorney filed a motion for "Stay," awaiting DCDJFS to obtain permanent custody of the children. On June 6, 2016, DCDJFS filed a Motion To Transfer the cases to MA, due to "[n]o one involved in these cases has lived in Delaware County since July 2015." DCDJFS adds that, "[t]ransferring these cases to MA may open up more possibilities for financial assistance for the Mays."

The ICPC requires the sending state forward the children's financial information to the receiving state. The children's information documents that the children are not Title IV- E eligible. However, through the Mays' exhaustion of administrative remedies they learned that in fact the children are Title IV- E eligible. Among the financial documents sent to MA is a financial agreement between the Mays and DCDJFS. Interestingly, the agreement was signed by DCDJFS and the Mays on January 16, 2015, prior to the children entering foster care, prior to the Mays filing a request for reunification and prior to the order and completion of the ICPC. On May 12, 2015, the same agreement was *re- signed* by DCDJFS' Supervisor, Ashley Keller, and used as the children's financial information sent to MA. Mrs.

/s Adam May

/s Heather May

¹⁵ *STATE OF OH vs. HOFMANN, HALANNA ANN*, Case No. 15CR31132.

Keller re- signed an agreement, without the Mays' knowledge, that the Mays signed four months prior. (Emphasis added.)

In June 2016, the Mays joined the children's second semiannual review and reiterated their concerns and wishes that the department provide the children with a more permanent placement. The children's review was filed in the court on June 30, 2016. Within a timely manner, the Mays filed objections, (*pro se*), to the department's filing of the review and explained that DCDJFS refused to provide them with vital information regarding the children's financial information and that DCDJFS abandoned their financial responsibility, as required pursuant the ICPC as well as R.C. 5103.231. The Mays point out that the department failed to comply with the Fostering Connections to Success and Increasing Adoptions Act, which sets new requirements for states to petition for termination of parental rights. The Mays requested that the Juvenile Court direct DCDJFS to correct these issues and comply with the law. Their objections were denied.

On August 7, 2017, D.M. reached the age of eighteen (18) and on August 21, 2017, he filed a Motion to Modify, (*pro se*), requesting the Juvenile Court accept a proposed Voluntary Participation Agreement, which would render a Judgment Entry continuing its jurisdiction, pursuant R.C. 2151. 353 (F)(1) which declares "[t]he court shall retain jurisdiction over a person who meets the requirements. . . and who is subject to a voluntary participation agreement that is in effect. The court shall make an entry continuing its jurisdiction under this division in the journal." R.C. 5101.1411 (A) (1) affirms that "[t]he director of job and family services shall. . . to make federal payments for foster care under Title IV-E directly to. or on behalf of. any person who meets the following requirements: (a) [t]he person has attained the age of eighteen but not attained the age of twenty- one, (b) [t]he person was in the custody of a public children services agency upon attaining the age of eighteen, (c) [t]he person signs a voluntary participation agreement, (d) [t]he person satisfies division (C) of this section." Eight days later DCDJFS filed a Motion to Terminate Custody and the Case of D.D. The following day a Judgment Entry was filed granting the department's motion and terminating the case upon attainment of age of majority.

On August 22, 2017, the Mays filed a Motion to Modify, (*pro se*), requesting the court modify the children's permanency plan due to facts arising that were unknown to the court at the time of a child custody order and that significant changes had occurred in the circumstances of the children.¹⁶ On August 29, 2017, the older children's court appointed attorney, Mr. Ross Long, filed a Motion for Permanent Custody on behalf of the children. DCDJFS immediately filed objections to his motion. August 31, 2017, DCDJFS file in the court a letter from MA ICPC Coordinator, Susan Richard, clarifying that the department is required seek a more permanent legal status for the children, explaining that the ICPC will remain open until permanency is sought.

DCDJFS filed a second motion to terminate their custody and the case and on December 6, 2017, Judge Hejmanowski filed a Judgment Entry, granting DCDJFS' motion. Upon the termination of the children's custody and case caused a reversion to the KY orders.

/s Adam May

/s Heather May

¹⁶ R.C. 3109.04 (E)(1).

On January 5, 2018, the Mays filed a Notice of Appeal in the Fifth District of Appeals, (*pro se*), and their appeal was denied on September 24, 2018. Within ten (10) days the Mays filed an Application for Reconsideration, (*pro se*), upon filing with this Court they have not received a decision.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law No. 1: DCDJFS refused to accept a child-protection case, from the State of KY. The case involved a sibling group of three that had been adjudicated abused/ neglected/ dependent only two months prior, refusal to provide on-going services and support violated the children's, and their caregivers, constitutional right to Equal Protection and Due Process.

DCDJFS notified the State of KY of their refusal to accept the children's case transfer explaining that "[i]t was agreed that an ICPC would be completed to formalize the process," and that "[g]iven that our Juvenile Court Judge would need to accept certification from KY, DCCS is inclined to close the current Courtesy Supervision case, effective 04/ 17/ 2014, as the Department cannot provide services to parents who live in another state."

The reason for rejecting the case transfer is flawed, KY never "agreed" to complete an ICPC because an ICPC was not needed. Essentially, an ICPC would mean that KY is requesting that the children be placed in the State of OH however, the children were already in OH, through an Emergency Placement. The ICPC, Reg. No. 4, declares that "[i]f a child is brought into the receiving state by an approved placement resource for a period of ninety days or less and remains with the approved placement resource, approval of the receiving state is not required." On April 17, 2014, KY ceded its jurisdiction to OH and at that time the children had not been in OH for more than ninety days.

DCDJFS claim they cannot provide services to parents who live in another state, this explains that in order to have an open child- protection case in Delaware County, OH, requires that a biological parent be present. This requirement completely conflicts with Congress, which mandates that each state plan focuses on services and its implementation "to improve child outcomes."¹⁷

The Juvenile Court claims that the, "case was never effectuated by KY," to the contrary, according to the records KY made several attempts to transfer the case to OH. KY's efforts to transfer the case was to ensure that the children receive on- going services, support and protection. KY did, in fact, attempt to transfer the children's case to OH, DCDJFS rejected it.

One of DCDJFS' duties is to "[c]ooperate with, make its services available to, and act as the agent of persons, courts, the department of job and family services, the department of health, and other organizations within and outside the state, in matters relating to the welfare of children, except that the public children services agency . . . or visitation rights."¹⁸

The choice not to accept the children's case transfer from KY was irrational, unfounded and violated their constitutional right to Equal Protection and Due Process.

/s Adam May

/s Heather May

¹⁷ 42 U.S.C. § 622 (a)(4)(A).

¹⁸ R.C. 5153.16 (A)(12).

Proposition of Law No. 2: Delaware County Department of Job and Family Services, and Delaware County, OH, Juvenile Court, did not make certain that reasonable efforts were made prior to the children's removal and placement into foster care.

Subsequent to learning that the court would not be dismissing the complaint the Mays sought help and guidance from DCDJFS however, they declined to intervene despite the children's risk of foster care
/s Heather May

reentry. This conflicts with Congress' requirements that a state "is operating, to the satisfaction of the Secretary — a pre- placement preventive services program designed to help children at risk of foster care placement remain safely with their families." ¹⁹

The Mays did not just decide one day to terminate their custody of the children to only put themselves through an emotional scarring roller coaster, the tedious ICPC process, two full days of a child custody trial, twenty eight months of being monitored by MA Children and Family Services while having to comply with Ohio's foster care rules and regulations overseen by DCDJFS as they slowly sink into debt with attorney fees mounting up to over \$60,000. No person would knowingly subject themselves to any of this!

There is a reason that the children's GAL requested that the court order DCDJFS to become a party to the case and requested the court grant temporary custody of the children to the Mays! It is because DCDJFS refused to help and the Mays' desire for the children to move to MA was well known.

DCDJFS claim that the Mays reported to Mr. Fuller, "that they were no longer able to care for the children." If this were true, undoubtedly, he would never have requested that the court place the children in the temporary custody of the Mays. The court claim that the Mays' income would be "uncertain" once they move to MA again, if this were true, undoubtedly, Mr. Fuller would never have requested that the children be placed in the temporary custody of the Mays! The fact is, Mr. May's salary was documented in the job offer he signed with his employer!

DCDJFS also state that the Mays abandoned the children and this is why they were deemed dependent, this too, is not correct. In fact, the Mays' termination of custody automatically reverted the children's custody back to biological mother. Therefore, it was biological mother's admission to dependency which ultimately had determined the children dependant.

Established in 1997, ASFA clearly established juvenile and family court judges' role as the gatekeepers of our nation's foster care system." ²⁰ Congress's main purpose in involving judges in the oversight of child protection cases was to, "ensure that the social service agency was doing its job: that children were not removed from their family unless they were endangered, that the agency provided reasonable efforts to prevent removal, reasonable efforts to help parents reunify with their children, and reasonable efforts to achieve permanency for the child." ²¹

The court is to, "[d]etermine whether there is clear and convincing evidence to support a determination that the child is abused, neglected and/ or dependent," ²² additionally, "[i]f the child is adjudicated dependent, the court's written findings of fact and conclusions of law shall specify the

/s Adam May /s Heather May

¹⁹ 42 U.S.C. § 622 (a)(8)(A)(iv).

²⁰ NCJFCJ, *Enhanced Resource Guidelines*, <http://www.ncjfcj.org.>, (pg. 8, 2016).

²¹ *Id* at pg. 25.

²² R.C. 2151. 04; Juv. R. 29(E)(4).

existence of any danger to the child and any underlying family problems that form the basis of the court's determination." ²³

The court states that the children were adjudicated dependent based on the signed rights sheets and the testimony provided. These facts, upon which the court based its decision to remove three children from their home and place in foster care, are absurd. A court that is required to make a determination
/s Heather May

"shall issue written findings of fact setting forth the reasons supporting its determination. . . it shall briefly describe in the findings of fact the relevant services provided by the agency to the family of the child and why those services did not prevent the removal of the child from the child's home or enable the child to return safely home." ²⁴ The court did not make such a finding in this case and provided absolutely no findings of fact in which supported its determination, specifically, which services DCDJFS provided to the children, and the Mays, and why those services did not prevent the removal of the children from their home or enable the child to return safely to the home. ²⁵

Federal law requires "a judicial determination to the effect that continuation in the home from which removed would be contrary to the welfare of the child and that reasonable efforts. . . child have been made." ²⁶ This would be impossible for the court to determine because the children remained in the Mays' home for an additional eight days subsequent to the order granting DCDJFS temporary custody.

Proposition of Law No. 3: Delaware County Department of Job and Family Services, and Delaware County, OH, Juvenile Court, mistakenly decided to provide services and support to reunify biological mother and the children. Their decision was made while vital circumstances existed which did not require reasonable efforts be made, only causing a re-litigation of the exact proceedings that had occurred in the State of KY only one- year prior.

"Early assessment and case planning is vital, the court must adequately assess the strengths and needs of children and families. Early assessment may determine that reunification is not in the best interest of the child, prompting States to seek alternate routes to permanency for some children." ²⁷

In the Judgment Entry the court states that "[h]ere, the children were removed by a state agency, but in a prior case in another state. Thus, the court- ordered removal of the children from the custody of their parents in KY renders the removal involuntary and means that the parents in this matter have a right to a reunification plan." Within the same Judgment Entry the court declares that the court "then removed the children from Mr. and Mrs. May, and placed the children in the temporary custody of the Department." When deciding who has a right to reunification plan why does the court reference the children's removal that occurred a year prior, in KY, while a more recent "removal" from the Mays exist?

/s Adam May /s Heather May

²³ R.C. 2151.28 (L).

²⁴ R.C. 2151.419 (B)(1).

²⁵ *In re J.G.*, 2014- OH- 2570.

²⁶ 42 U.S.C. § 672 (a)(2)(A)(ii); R.C. 2151.419 (B)(1); see *In re G.M.*, 2014-OH-1595, see also, *In the Matter of S.W.*, 2008-OH-1194.

²⁷ Children's Bureau & HHS, *Family Reunification*, <https://www.childwelfare.gov.>, (2005).

The term 'time- limited family reunification services' means the services and activities that are provided to a child that is removed from the child's home and placed in a foster family home and to the parents or primary caregiver of such a child, in order to facilitate the reunification of the child safely and appropriately within a timely fashion, but "only during the 15- month period that begins on the date that the child, pursuant to section 475(5)(F), is considered to have entered foster care." ²⁸ To clarify "a child shall be considered to have entered foster care on the earlier of the date of the first judicial finding that the child has been subjected to child abuse or neglect." ²⁹

The children had been in an out- of- home care, while residing with the Mays, for twelve consecutive months, which was eleven months subsequent to the first judicial finding that the children had been subjected to child abuse or neglect. Along with Oldham County, KY, Family Court's finding of abuse/ neglect remains a very specific case plan in efforts to reunify biological mother and the children however, for twelve months she failed to substantially remedy any of the conditions that caused the children to be removed and placed outside the child's home. Between February 2014- February 2015, she was arrested for retail theft/ false representation, driving under the influence of alcohol, driving under the influence of drugs, criminal damage to property, operating a motor vehicle without consent, driving on a suspended/ revoked license and on September 25, 2014, she overdosed on heroin.

In January 2015, the Mays provided DCDJFS with documentation to validate each of these incidences however, the following month DCDJFS created a case plan that focused on reunification between biological mother and the children, which was later adopted by the court.

Although, DCDJFS closed the courtesy supervision for any scheduled visits between biological mother and the children, the department remained the only outlet biological mother had in order to schedule a visit with the children. The department's last scheduled visit was on April 14, 2014, thereafter, absolutely no inquiries about visiting the children were made by biological mother. She abandoned the children for over six consecutive months, which is documented by DCDJFS.

Federal law provides that reasonable efforts "shall not be required to be made with respect to a parent of a child if a court of competent jurisdiction has determined that— the parent has subjected the child to aggravated circumstances, (as defined in State law, which definition may. . . abuse)." ³⁰ On March 19, 2014, in Oldham County, KY, ³¹ biological mother was convicted of Second Degree Wanton Endangerment, ³² Fourth Degree Assault Domestic Violence ³³ and Endangering the Welfare of a Minor.³⁴

/s Adam May

/s Heather May

²⁸ 42 U.S.C. § 629 (a)(7)(A).

²⁹ 42 U.S.C. § 675 (5)(F).

³⁰ 42 U.S.C. § 671(a)(15)(D).

³¹ *Commonwealth -VS- Halanna Hofmann*, Oldham Co. KY, Case No. 14-F-00057, (Feb. 24. 2014).

³² R.C. 2903.11 (A)(2).

³³ R.C. 2903.13 (A).

³⁴ R.C. 2151.419 (A)(2)(a).

"If the judge makes a determination that reasonable efforts to reunify the family are not required due to aggravated circumstances as defined by state law, the judge must set a permanency hearing within 30 days." ³⁵ Also, "[w]ithin 60 days after a child has been determined to be abandoned, the agency must file a petition to terminate parental rights." ³⁶ Furthermore, "where there is a determination that the parent has been convicted of one of the felonies listed above, the agency must file a petition to terminate parental rights within 60 days of that judicial determination." ³⁷

The Juvenile Court erroneously adopted a case plan which was a repeat of the proceedings that had already occurred in the Commonwealth of KY one year prior. The court's implementation of the case plan subjected the children to additional, unwarranted trauma which was certainly not in the best interests of the children!

Proposition of Law No. 4: Delaware County Department of Job and Family Services, and Delaware County, OH, Juvenile Court neglected to fulfill their roles in the Interstate Compact on the Placement of Children.

"The ICPC is a compact that has been adopted by every state in the country and is legally binding on all states that adopt it." ³⁸ "The ICPC was created to prevent states from "dumping" their financial responsibility to care for a child in foster care on another state." ³⁹

The Mays filed went through a state hearing ⁴⁰ and administrative appeal, ⁴¹ filed for a judicial review, ⁴² (*pro se*) and another administrative appeal was held. In May 2017, the Mays filed a complaint for a Writ of Mandamus, (*pro se*), in the OH Supreme Court, seeking receipt of foster care payments, which was ultimately dismissed.

Proposition of Law No. 5: Delaware County Department of Job and Family Services dishonestly provided the receiving state incorrect information as to the children's financial information. Delaware County, OH, Juvenile Court continued to allow the department to violate the children's, and the Mays', constitutional right to Equal Protection and Due Process.

The primary objectives of the Title IV- E foster care maintenance program are: "(1) [t]o reduce the number of children removed from their own homes for placement in substitute care, (2) [t]o improve the quality of care provided to children placed in substitute care, (3) [t]o return children from substitute care to their own homes as soon as possible and (4) [t]o facilitate the adoption of or other permanent placement for those children who cannot return to their own homes." ⁴³

/s Adam May

/s Heather May

³⁵ 45 C.F.R. § 1356.21(h)(2).

³⁶ 45 C.F.R. § 1356.21(i)(ii).

³⁷ 45 C.F.R. § 1356.21(i)(iii).

³⁸ *Guide to the Interstate Compact on the Placement of Children*, <http://www.aphsa.org>, (last visited November 3, 2018).

³⁹ *In re Shaida W.*, 649 N.E.2d 1179, 1182 (N.Y. 1995); *Guide to the Interstate Compact on the Placement of Children*.

⁴⁰ *ODJFS v. Heather May*, ODJFS Bur. St. Hearings, Case Nos. 3080621, 3080622, 3080623, (Apr. 1, 2016).

⁴¹ *ODJFS v. Heather May*, ODJFS Bur. St. Hearings, Ad. App, Case Nos. 3080621, 3080622, 3080622; (Apr. 18, 2016).

⁴² *ODJFS v. Heather May*, Frkln. Co., Case Nos. 16-CV-004864, 16-CV-004866, 16-CV-004903; (Nov. 22, 2016).

⁴³ OAC 5101:2-47-01 (A).

"The Title IV- E agency having responsibility for the placement and care of the child shall: [e]nsure the proper administration of funds, allocated or reimbursed." ⁴⁴ Additionally, "[t]he Title IV- E agency that holds legal responsibility. . . case regardless of where the biological family is living or where the child is placed." ⁴⁵

Proposition of Law No. 6: Delaware County Department of Job and Family Services, and Delaware County, OH, Juvenile Court disregarded the children's fundamental right to permanency, ultimately permitting the children's case to linger for months while the department exercised all their efforts on actions to get rid of the children's case instead of permanent placement.

Legal custody, in OH, is meant in nature to be permanent, however "[t]he important distinction is that an award of legal custody of a child does not divest parents of their residual parental rights, privileges, and responsibilities." ⁴⁶ In the future, then, in this case, any of the biological parents may petition the court for a modification of custody. "A grant of legal custody is not permanent custody." ⁴⁷ "An award of legal custody of a child does not divest parents of their residual parental rights, privileges, and responsibilities." ⁴⁸

"Federal law requires the court to ensure that the most appropriate permanency plan for the child is in place." ⁴⁹ Federal law also mandates "[i]f the child's permanency goal is no longer reunification, the focus will be on the agency's efforts to finalize the concurrent plan as the new permanency plan." ⁵⁰

"The case plan goal, or permanency plan, must be re-evaluated and determined at a permanency hearing to be held within 12 months of the date the child entered care." ⁵¹ Additionally, "[i]f the court determines that a child has been abandoned or that reasonable efforts to return the child home are not required, a permanency hearing must be held within 30 days, ⁵² and the agency must file a petition to terminate parental rights within 60 days, absent compelling reasons not to file." ⁵³

"In the case of a child who has been in foster care under the responsibility of the State for 15 of the most recent 22 months, the State shall file a petition to terminate the parental rights of the child's parents (or, if such a petition has been filed by another party, seek to be joined as a party to the petition)." ⁵⁴

/s Adam May

/s Heather May

⁴⁴ OAC 5101:2-47-01 (C)(1).

⁴⁵ OAC 5101:2-47-04 (A).

⁴⁶ *In re Hockstok*, 98 OH St.3d 238, 2002-OH-7208, 781 N.E.2d 971.

⁴⁷ *In re C.R.*, 108 OH St.3d 369, 2006-OH-1191, 843 N.E.2d 1188.

⁴⁸ *In re C.R.*, 108 OH St.3d 369, 2006-OH-1191.

⁴⁹ C.F.R. § 1355.20.

⁵⁰ NCJFCJ, *Enhanced Resource Guidelines*, <http://www.ncjfcj.org>, (pg. 272, 2016).

⁵¹ 42 U.S.C. § 675 (5)(B).

⁵² 42 U.S.C. § 671(a)(15)(E); 45 C.F.R. § 1356.21(h)(2).

⁵³ 45 C.F.R. § 1356.21(i)(ii), and (iii).

⁵⁴ 42 U.S.C. § 675 (5)(E)

On August 29, 2017, Mr. Ross Long, the older children's court- appointed attorney, filed a Motion for Permanent Custody to initiate the proceedings to terminate parental rights, as requested by the children. The Juvenile Court denied the motion stating the children lack standing to file such a motion.

OH Supreme Court requires that "[u]pon a request to extend an order of protective supervision the court must determine, by clear and convincing evidence, whether the extension of the temporary custody is in the child's best interest, if there has been significant progress on the case plan of the child, and if there is reasonable cause to believe the child will be reunified with one of the parents or otherwise permanently placed during the period of the extension." ⁵⁵

The trial court granted DCDJFS two extensions of temporary custody however, the department accomplished no progress on the case plan. The court granted the extensions with the expectation that DCDJFS would initiate the termination of parental rights. To the contrary, within the two extensions, twelve months, DCDJFS filed an oral motion to transfer the case to MA, filed their first motion to terminate their temporary custody of the children and the case and upon the oldest child's eighteenth birthday the department motion to terminated custody of him and his case.

In the department's first motion requesting an extension of temporary custody, they explain that "MA is denying discharge for legal custody because the Mays say they want permanent custody instead of legal custody." DCDJFS continues, "[o]ne item that the statute tells us to consider is the child's need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency. O.R.C. 2151.414 (D). Therefore, DCDJFS will need to investigate other relatives to see whether they are interested in legal custody to see if there are alternatives to permanent custody. Legal custody would preserve the right of parents to visit and pay child support."

If this is the department's compelling reason not to seek the termination of parental rights, it's *definitely not very compelling!* DCDJFS explain that the statute mandates the department to consider the child's need for a legally secure placement and whether it can be achieved without permanent custody to the department however, the department answers their own question. DCDJFS placed the children with the Mays, as it is in the children's best interest, and the children's permanency plan is with the Mays and the Mays wish to adopt therefore, instead of allowing this case to linger for an unjust amount of time and exerting all efforts to dispose of the case and evade federal law, DCDJFS should have initiated the termination of parental rights!

"Although R.C. 2151.412(G) and 2151.414(D) provide guidelines for an agency to consider in placing a child, the statutes do not require the agency to award custody to a relative rather than to the agency." ⁵⁶

/s Adam May

/s Heather May

⁵⁵ R.C. 2151.415(D); OH. Sup. Ct., *Dependency Benchcards*, <https://www.supremecourt.ohio.gov.>, (2015).

⁵⁶ Quoting *In re Keaton*, 2004-OH-6210, see *In re P.P.*, Mont. App. Case No. 19582, 2003-OH-1051; *In re Branstetter* (May 18, 2001), Mont. App. Case No. 18539; *In re Dixon* (Nov. 29, 1991), Lucas App. Case No. L-91-021.

"Relatives seeking the placement of the child are not afforded the same presumptive rights that a natural parent receives as a matter of law, and the willingness of a relative to care for the child does not alter the statutory factors to be considered in granting permanent custody." ⁵⁷ "The child's best interests are served by the child being placed in a permanent situation that fosters growth, stability, and security."⁵⁸ "Therefore, courts are not required to favor a relative if, after considering all the factors, it is in the child's best interest for the agency to be granted permanent custody." ⁵⁹

Upon their second motion for an extension of temporary custody, filed July 2016, DCDJFS was fully aware that the State of MA requires a more permanent legal status for the children and will not close the ICPC until permanency is sought. Upon their second motion the department was fully aware that the Mays wished to adopt and did not want legal custody, hence the filing of the first extension. However, *six months* after their first extension of temporary custody was granted, DCDJFS continues to recommend legal custody to the Mays and assert that they do not recommend terminating parental rights and then motion the court for *yet another extension of temporary custody!* Why did DCDJFS motion the Juvenile Court for another six month extension of temporary custody with absolutely no intent on terminating parental rights? Why did Delaware County, OH, Juvenile Court grant the department a second extension of temporary custody after the department made known their intention not to initiate the proceedings to terminate parental rights?

Proposition of Law No. 7: Delaware County, OH, Juvenile Court terminated the children's case although, pursuant the UCCJEA KY ceded its 'Home State Jurisdiction' to the state where the children resided, OH. Delaware County, OH, Juvenile Court terminated the children's case even though the Juvenile Court had already accepted and exercised jurisdiction.

Passing of statutory time period in the Juvenile court, pursuant to R.C. 2151.353 (F), "does not divest juvenile courts of jurisdiction to enter dispositional orders," ⁶⁰ "A court of this state may not modify a child custody determination made by a court of another state unless the court of this state has jurisdiction to make an initial determination under division (A)(1) or (2) of section 3127.15 of the Revised Code and one of the following applies: [t]he court of the other state determines that it no longer has exclusive, continuing jurisdiction under section 3127.16 of the Revised Code or a similar statute of the other state or that a court of this state would be a more convenient forum under section 3127.21 of the Revised Code or a similar statute of the other state. The court of this state or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state." ⁶¹ Biological mother resides in Cincinnati, OH, address unknown. Therefore, the Juvenile Court "shall maintain exclusive continuing jurisdiction over determination until the court or a
/s Adam May /s Heather May

⁵⁷ Quoting *In re Keaton*, 2004-OH-6210, see *In re Dyal* 2001-OH-2383; *In re Jefferson* (Oct. 25, 2000), Summit App. Case Nos. 20092, 20110; *In re Davis* (Oct. 12, 2000), Cuyahoga App. Case No. 77124.

⁵⁸ Quoting *In re Keaton*, 2004-OH-6210, see *In re Adoption of Ridenour* (1991), 61 OH St.3d 319, 324, 574 N.E.2d 1055.

⁵⁹ Quoting *In re Keaton*, 2004-OH-6210, see *In re Dyal*, Hocking App. Case No. 01CA11, 2001-OH-2383; see also *In re Lewis*, Athens App. Case No. 01CA20, 2001-OH-2618; *In re Wilkenson*, (Oct 12, 2001), Hamilton App. Case Nos. C-010402, C-010408; *In re Knight* (March 22, 2000), Lorain App. Case Nos. 98CA72589, 98CA726698.

⁶⁰ *In re Young Children*, 76 OH St.3d 632 (1996).

⁶¹ R.C. 3127.17 (A); R.C. 3127.17 (B).

court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this state." ⁶²

For a court of this state to have the authority to modify a custodial order from another state, it must have jurisdictional basis for initial custody determination. For a court to make an initial determination in a child custody proceeding one of the following must apply: "(1) [t]his state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state, (2) [a] court of another state does not have jurisdiction under division (A)(1) of this section or a court of the home state of the child has declined to exercise jurisdiction on the basis that this state is the more appropriate forum under section 3127.21 or 3127.22 of the Revised Code, or a similar statute of the other state, and both of the following are the case: (a) [t]he child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence, (b) [s]ubstantial evidence is available in this state concerning the child's care, protection, training, and personal relationships." ⁶³

In 2007, the OH Supreme Court held that based on statute, a modification of the designation of residential parent and legal custodian of a child requires a determination that a "change in circumstances" has occurred, as well as finding that the modification is in the child's best interest. Besides the considerable amount of time that has passed, the Mays, and the children, have experienced a significant amount of change in circumstance, including biological mother receiving a thirty- month prison sentence in Warren County, OH. The Mays notified the court of this important piece of information and relentlessly requested a modification in the children's permanency plan however, absolutely nothing was changed. The Mays began to realize that because they are not attorneys, they are of no importance and neither are their thoughts, opinions or wishes!

"Our conclusion is consistent with the general practice of ensuring wide discretion for juvenile courts," Chief Justice O'Connor wrote. "Requiring juvenile courts to dismiss complaints filed in an improper venue is inconsistent with the latitude typically granted to those courts and with the General Assembly's intention in creating juvenile courts. "Failure to recognize and allow for the sometimes transient patterns of people involved with our state's children services bureaus cannot be the result the General Assembly intended for R.C. 2151.27(A)(1), as it would directly undermine the juvenile court system's ability to protect children," she continued. "In the context of R.C. Chapter 2151 as a whole, as well as the purposes behind the creation of the juvenile court system, we conclude that the venue directives contained in R.C. 2151.27(A)(1) are not jurisdictional requirements and that it is within a juvenile court's sound discretion to remedy an alleged venue defect by transferring a case to a proper venue." ⁶⁴

/s Adam May

/s Heather May

⁶² R.C. 3127.16.

⁶³ R.C. 3127.15

⁶⁴ *Id.*

CONCLUSION

This case involves three different states, Kentucky, Ohio and Massachusetts and has become very hard to distinguish among the laws of the different states. The Mays began filing pro se due to owing their attorney, Mr. Douglas Warnock, a substantial amount of money. Mr. Warnock quickly became uninterested in continued services for the Mays due to the amount they already owe him, understandably. However, the Mays have researched the federal laws and state laws surrounding this case and knows that DCDJFS and the governing court has made decisions that are/were in the best interests of the children. The Mays respectfully request this Court accept jurisdiction so they can receive the proper closure for themselves, as well as for the children. Thank you.

/s Adam May

/s Heather May

CERTIFICATE OF SERVICE

I, **ADAM MAY**, certify that a copy of the foregoing Notice of Appeal was sent, by ordinary United States mail, to the following parties on this 9th day of November 2018:

Delaware County Department of Job and Family Services at 140 N. Sandusky St. Delaware, OH. 43015,

Katheryn Munger, Attorney for DCDJFS, at 140 N. Sandusky St., 3rd Floor, Delaware, OH. 43015,

Louis Palau, Attorney for Mother, at 2 W. Winter St. Delaware, OH. 43015,

O. Ross Long, Attorney for the Children, at 125 N. Sandusky St. Delaware, OH. 43015,

Pamella Lammon, Guardian *ad Litem*, at 103 N. Union St. Delaware, OH. 43015.

Respectfully submitted,

/s Adam May

Adam Lee May
187 Ramshorn Road
Dudley, MA. 01571
mayemc2@yahoo.com
(614) 313-2258

CERTIFICATE OF SERVICE

I, **HEATHER MAY**, certify that a copy of the foregoing Notice of Appeal was sent, by ordinary United States mail, to the following parties on this 9th day of November 2018:

Delaware County Department of Job and Family Services at 140 N. Sandusky St. Delaware, OH. 43015,

Katheryn Munger, Attorney for DCDJFS, at 140 N. Sandusky St., 3rd Floor, Delaware, OH. 43015,

Louis Palau, Attorney for Mother, at 2 W. Winter St. Delaware, OH. 43015,

O. Ross Long, Attorney for the Children, at 125 N. Sandusky St. Delaware, OH. 43015,

Pamella Lammon, Guardian *ad Litem*, at 103 N. Union St. Delaware, OH. 43015.

Respectfully submitted,

/s Heather May

Heather Mercedes May
187 Ramshorn Road
Dudley, MA. 01571
may.heather@yahoo.com
(774) 922-0103

COURT OF APPEALS
DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN THE MATTER OF:

B.D. AND I.D.

JUDGES:

Hon. John W. Wise, P.J.

Hon. W. Scott Gwin, J.

Hon. Earle E. Wise, Jr., J.

Case Nos. 18 CAF 01 0003 ✓

18 CAF 01 0004

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Court of Common
Pleas, Juvenile Division, Case Nos.
15-01-0056-AB and 15-01-0057-AB

JUDGMENT:

Affirmed

DATE OF JUDGMENT:

APPEARANCES:

For Appellants

HEATHER AND ADAM MAY, Pros Se
187 Ramshorn Road
Dudley, MA 01571

For Mother

LOIS PALAU
2 West Winter Street
Delaware, OH 43015

For Children

O. ROSS LONG
125 North Sandusky Street
Delaware, OH 43081

For Appellee

KATHERYN L. MUNGER
140 North Sandusky Street
3rd Floor
Delaware, OH 43015

Guardian Ad Litem

PAMELLA LAMMON
103 North Union Street
Suite B
P.O. Box 387
Delaware, OH 43081

CLERK OF COURTS
DELAWARE COUNTY, OHIO
COURT OF APPEALS
FILED
2018 SEP 27 AM 9:44

Court of Appeals
Delaware Co., Ohio
I hereby certify the within be a true
copy of the original on file in this office.
Natalie Pravel, Clerk of Courts
By PM Line Deputy

/s Adam May

/s Heather May

Wise, Earle, J.

{¶ 1} Appellants, Heather and Adam May, appeal the December 6, 2017 judgment entries of the Court of Common Pleas of Delaware County, Ohio, Juvenile Division, terminating the cases. Appellee is the Delaware County Department of Job and Family Services.

FACTS AND PROCEDURAL HISTORY

{¶ 2} On April 17, 2014, a Kentucky court granted "permanent legal custody" of B.D. born March 28, 2010, and I.D. born September 17, 2001, to their maternal aunt and uncle, appellants herein. At the time, appellants resided in Ohio and the children and their mother resided in Kentucky. Thereafter, mother moved to Illinois. Because none of the parties no longer resided in Kentucky, Kentucky ceded jurisdiction to Ohio; however, the cases were never properly certified to Ohio.

{¶ 3} In July 2014, mother filed custody cases in the juvenile court in Delaware County, Ohio (Case Nos. 14071592-AD and 14071593-AD).

{¶ 4} On January 14, 2015, the children's guardian ad litem filed complaints in the juvenile court in Delaware County, Ohio, alleging the children to be dependent children (Case Nos. 15-01-0056-AB and 15-01-0057-AB).¹ These cases are the subject of these appeals. The complaints alleged appellants were planning a move to Massachusetts and were unsure whether they would retain custody of the children. The complaints sought court ordered protective supervision by appellee and temporary custody of the children to appellants.

¹The filings in each case are identical. A third case for a third child was filed but later dismissed because the child reached the age of majority (Case No. 15-01-0058-AB).

/s Adam May

/s Heather May

{¶ 5} A shelter care hearing was held before a magistrate on January 15, 2015. By decision filed January 30, 2015, the magistrate indicated the children's mother and appellants were present. Appellants admitted to dependency and temporary custody of the children was given to appellee. The trial court approved and adopted the magistrate's decision. The children were placed in foster care.

{¶ 6} At some point, appellants moved to Massachusetts as planned; proceedings continued in Ohio.

{¶ 7} A hearing before a magistrate was held on March 4, 2015. By decision filed March 6, 2015, the magistrate indicated the children's mother and appellants were present. Mother admitted to dependency and appellants requested reunification with the children. The children were adjudicated dependent and ordered to remain in appellee's temporary custody (foster care). The trial court approved and adopted the magistrate's decision.

{¶ 8} Hearings on appellants' request for reunification were held before a magistrate on June 8, and July 2, 2015. Pursuant to a notice by appellee filed August 6, 2015, the initial ICPC (Interstate Compact on the Placement of Children) from Massachusetts was approved and appellee had placed the children with appellants in Massachusetts on August 3, 2015. By decision filed August 27, 2015, the magistrate indicated the children's mother and appellants were present at the hearings. After outlining the testimony from a number of witnesses, the magistrate ordered that the children remain in appellee's temporary custody with placement to appellants in Massachusetts. The ICPC home study of appellants' home was to be completed and approved. The magistrate further ordered that Massachusetts shall supervise and

/s Adam May

/s Heather May

oversee the placement of the children, and Ohio would retain jurisdiction until such time as Massachusetts formally notifies appellee that it agrees to and approves of legal custody to appellants, at which time appellee may terminate the cases. The trial court approved and adopted the magistrate's decision.

{¶ 9} All parties filed objections. Appellants filed additional objections to appellee's semi-annual review reports, as well as administrative appeals in Franklin County, Ohio.

{¶ 10} On February 12, 2016, appellants filed a motion to stay the proceedings on legal custody. Appellants argued circumstances have changed since the hearings because of issues arising from the definition of "legal custody" in Ohio relative to the law in Massachusetts, financial assistance might be available to the children if the disposition was permanent in nature, mother of the children was sentenced to thirty months in prison on a felony offense, Massachusetts has not approved the ICPC home study or discharged the case, and appellants' future employment and income were uncertain. On August 9, 2016, all issues were stayed to give the parties an opportunity to work on the complicated legalities of the situation.

{¶ 11} On November 1, 2016, appellee filed a motion to terminate its temporary custody and terminate the cases because there was no longer a protective need. A hearing on all pending matters was held on December 19, 2016. The trial court was informed that appellants had filed a writ of prohibition with the Supreme Court of Ohio, asking the court to prohibit the trial court from ruling on the motion to terminate. By judgment entry filed same date, the trial court continued appellee's temporary custody of the children with placement to appellants.

/s Adam May

/s Heather May

{¶ 12} On April 24, 2017, an entry was filed by the Supreme Court of Ohio dismissing appellants' writ.

{¶ 13} On July 3, 2017, appellee filed a second motion to terminate the cases pursuant to R.C. 2151.415 as the children have been in its temporary custody for two years.

{¶ 14} On July 14, 2017, the trial court filed a judgment entry ruling on all the objections filed to the magistrate's August 27, 2015 decision and the semi-annual reviews. Some were granted, some were denied, and some were rendered moot. The trial court agreed once appellee was granted legal custody, it had the sole authority to determine placement; therefore, the magistrate erred in designating a specific placement for the children (appellants) and the trial court vacated the order. The trial court also found the magistrate failed to include findings on best interests and reasonable efforts in its written decision, so the trial court entered the findings. The trial court denied appellee's first motion to terminate the cases and ordered a hearing on the second motion to terminate.

{¶ 15} On July 31, 2017, appellants withdrew their request for legal custody because Massachusetts would not approve the ICPC because an award of "legal custody" was not permanent in nature. Appellants desired a more permanent placement such as adoption. Appellants argued appellee was legally obligated to file a motion for permanent custody.

{¶ 16} On August 23, 2017, appellants filed a proposal to review and modify the case plan. Appellants wanted the case plan permanency goal modified from permanent placement with relative to permanent custody to appellee.

/s Adam May

/s Heather May

{¶ 17} On August 29, 2017, counsel for the children filed a motion for permanent custody to appellee. By judgment entry filed September 7, 2017, the trial court denied the motion, concluding that only appellee or a guardian ad litem could file such a motion. After giving the parties sufficient time, neither appellee nor the guardian ad litem filed a motion for permanent custody.

{¶ 18} By judgment entry filed December 6, 2017, the trial court granted appellee's second motion to terminate the cases. The trial court found it was in the children's best interests to remain in the physical custody of appellants; however, the trial court concluded it did not have a viable legal option under Ohio law to make such an order. Therefore, the trial court terminated the cases in their entirety.

{¶ 19} Appellants filed an appeal in each case and this matter is now before this court for consideration. The assignments of error are identical in each case:

I

{¶ 20} "THE TRIAL COURT ERRED BY NOT ENSURING CONSTITUTIONALLY ADEQUATE DUE PROCESS AND PROCEDURAL DUE PROCESS."

II

{¶ 21} "THE TRIAL COURT ERRED BY NOT ENFORCING THE RULES AND REGULATIONS OF THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN."

III

{¶ 22} "THE TRIAL COURT ERRED BY FAILING TO PROTECT THE CHILDREN'S AND THE MAYS' CONSTITUTIONAL RIGHT TO EQUAL PROTECTION."

/s Adam May

/s Heather May

IV

{¶ 23} "THE TRIAL COURT ERRED BY NOT CONFIRMING THAT DCDJFS HAD TAKEN THE NECESSARY STEPS TO FINALIZE THE CHILDREN'S PERMANENCY PLAN."

I, II, III, IV

{¶ 24} At the outset, we note appellants' arguments in their brief do not logically follow the listed assignments of error or the claimed issues presented for review. We will address appellants' arguments as they relate to the appealed from judgment entries wherein the trial court granted appellee's second motion to terminate the cases.

{¶ 25} In its December 6, 2017 judgment entries terminating the cases, the trial court reviewed the procedural history of the cases, the interplay of Kentucky, Ohio, and Massachusetts law, the dispositional and termination options in Ohio dependency actions, and the best interests of the children. The trial court found the best interests of the children would be to remain with appellants. The trial court went on to ask and conclude the following:

How, then, may this Court effectuate their continued placement with Mr. and Mrs. May? The Court may not grant further extensions of temporary custody in these matters. The decisions and positions of the parties, the terms of the ICPC and the incongruous language used in the custody statutes of the three states at issue in these convoluted cases have forced this Court into having one, and only one, possible order at this

/s Adam May

/s Heather May

junction that would permit the children to remain in the care and 'permanent custody' of Mr. and Mrs. May.

If the Court may not extend and may not reunify, may not make a new legal custody order, and the parties who could file for permanent custody will not do so, the Court is left with only one available procedural option that retains placement and custody that is in the best interests of the children.

IX. Conclusion

It is in the best interests of [B.] and [I.D.] that they remain in the physical and legal custody of their aunt and uncle, Mr. and Mrs. May. Because this Court has no viable legal option under Ohio law to make a new order to that effect, and because termination of all Ohio orders will cause a reversion to the Kentucky order of 'permanent custody' – an order that would require a showing of a change in circumstances in order for the children to later be removed from the home of Mr. and Mrs. May pursuant to R.C. 3109.04(E), an order terminating these cases in their entirety is in the best interests of the children in this matter.

{¶ 26} In their appellate brief, appellants make broad generalizations and sweeping claims of due process and equal protection violations, citing federal statutes and United States Supreme Court cases. Appellants cite large portions of statutes and laws with very little argument as to how it pertains to their cases and the trial court's decision to terminate the cases. It is difficult to ascertain exactly what appellants are

/s Adam May

/s Heather May

challenging. We note any due process and equal protection arguments made on behalf of the children are moot as the children are represented by counsel and are not parties to these appeals.

{¶ 27} First, appellants appear to be arguing the trial court did not expend reasonable efforts to prevent the removal of the children from their home and facilitate reunification.

{¶ 28} Prior to the commencement of the Ohio proceedings, the children had been in appellants' custody for approximately twelve months pursuant to a court order out of Kentucky. At the time of the Kentucky proceedings, appellants resided in Ohio and the children's mother lived in Kentucky. At some point, mother moved to Illinois. Because none of the parties lived in Kentucky, the Kentucky court terminated the cases.

{¶ 29} On January 14, 2015, the children's guardian ad litem in Ohio filed complaints alleging the children to be dependent because appellants were moving to Massachusetts and according to the complaints, appellants "have vacillated as to whether they will retain custody of the minor children." During the shelter care hearing held on January 15, 2015, appellants admitted the children were dependent. See Magistrate's Decision filed January 30, 2015. As a result, the children were placed in appellee's temporary custody and entered foster care.

{¶ 30} The reason the children were removed from appellants' home was due to their own actions. Less than two months later, appellants attended a hearing on March 4, 2015, and requested reunification with the children. After the initial ICPC from Massachusetts was approved, appellee placed the children with appellants in

/s Adam May

/s Heather May

Massachusetts on August 3, 2015, where the children apparently remain to this day. Any arguments relative to removal and reunification are moot.

{¶ 31} Secondly, appellants appear to make arguments regarding foster care maintenance payments. These are issues they raised in administrative appeals they filed in Ohio which are not the subject of the judgment entries appealed from.

{¶ 32} Thirdly, appellants argue permanency under R.C. 2151.415(D). Appellants argue the children did not receive permanency hearings in July 2016 and 2017 pursuant to R.C. 2151.417(C) and Juv.R. 36 and 38(B). In their appellate brief at 34, appellants cite R.C. 2151.417(G)(4) in support. Said section obligates a trial court to conduct review hearings and "determine what actions are required" "[i]f the child is in permanent custody." Appellee recommended legal custody and did not seek permanent custody, finding compelling reasons that permanent custody was not in the children's best interests for the reasons set forth in its reply to counsel for the minor children's memorandum in opposition filed August 25, 2017. Appellee did not file a motion for permanent custody consistent with the dictates of R.C. 2151.413(D). R.C. 2151.417(G)(4) does not apply in this case. Administrative review hearings and review hearings before a magistrate were conducted on March 31, May 6, and July 13, 2015, January 8, May 23, July 1, and December 19, 2016, and January 3, and June 30, 2017. Appellee filed its second motion to terminate the cases on July 3, 2017 because the children had been in its temporary custody for two years. We do not find the trial court failed to conduct the required review hearings.

{¶ 33} Appellants do not appear to argue any specific findings or decisions made by the trial court in its December 6, 2017 judgment entries granting appellee's second

/s Adam May

/s Heather May

motion to terminate the cases. The trial court conducted a thorough analysis of its options under Ohio law and we do not find any error in the trial court's decision to terminate the cases. The children had been in appellee's temporary custody for over two years and appellee had no intention of moving for permanent custody. Appellants are now in the exact same position as they were prior to the dependency action that they caused, i.e., "permanent legal custodians" of the children pursuant to the Kentucky order. Furthermore, as noted by the trial court in its judgment entry at 15: "An Ohio Court has no authority to alter the custodial order of another state unless that order has been validly transferred to it, and the order from Kentucky granting 'permanent custody' to Mr. and Mrs. May was never subject to an ICPC action and, thus, never certified to Ohio."

{¶ 34} Upon review, we find the trial court did not err in granting appellee's second motion to terminate the cases.

{¶ 35} Assignments of Error I, II, III, and IV are denied.

/s Adam May

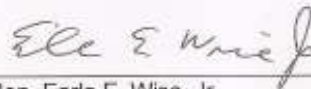
/s Heather May

{¶ 36} The judgment of the Court of Common Pleas of Delaware County, Ohio,
Juvenile Division is hereby affirmed.

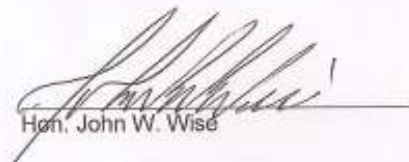
By Wise, Earle, J.

Wise, John, P.J. and

Gwin, J. concur.



Hon. Earle E. Wise, Jr.



Hon. John W. Wise



Hon. W. Scott Gwin

EEW/db 95

/s Adam May

/s Heather May