

IN THE SUPREME COURT OF OHIO

IN RE: X.S., M.S. AND G.S.

CASE NO. 2021-0849

ON APPEAL FROM THE
MERCER COUNTY COURT OF APPEALS
THIRD APPELLATE DISTRICT
CASES NO. 10-20-09, 10-20-10 AND
10-20-11

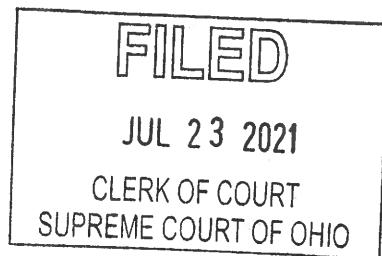
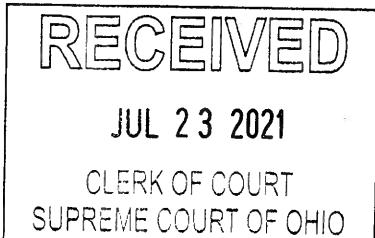
MEMORANDUM OF THE MERCER COUNTY DEPARTMENT OF JOB AND FAMILY
SERVICES IN RESPONSE TO MEMORANDUM IN SUPPORT
OF JURISDICTION OF FATHER-APPELLANT, GABRIEL SPRADLIN

Andrew J. Hinders, No. 0006254
Mercer County Assistant Prosecutor
Counsel for Appellee, Mercer County
Department of Job and Family Services
119 North Walnut Street
Celina, Ohio 45822
Telephone: (419) 586-8677
Email: andy.hinders@mercercountyohio.org

Gloria Anastacia Dicke, No. 0099001
Attorney at Law
Appellate Counsel for Mother
5 Willipie Street
Wapakoneta, Ohio 45895
Telephone: (419) 738-8171
Email: gloriadicke@jhearnlaw.com

Darin Avery, No. 0085528
Attorney at Law
Counsel for Appellant Father
105 Sturges Avenue
Mansfield, Ohio 44903
Telephone: (419) 953-4773
Email: darin.avery@gmail.com

Michael S. Sacher, No. 0007363
Attorney at Law
Guardian ad Litem
110 West Market Street
Celina, Ohio 45822
Telephone: (419) 586-5669
Email: mike.sacher@yahoo.com



Position of Appellee regarding existence of a substantial constitutional question.

This case involves no question of constitutional proportion, only procedural issues addressed by statute and questions of trial tactics are raised by Appellant's Memorandum.

Response to Appellant Father's Propositions in Support of Jurisdiction

Appellant Father's Proposition of Law I: A non-attorney not party to the case may not commence a juvenile neglect, abuse or dependency case on behalf of a public children services agency.

Appellant father proposes that only an attorney could have commenced the action he proposes to appeal to this Court. He equates the filing of a complaint alleging a child has been abused, neglected or is dependent as the practice of law, which is regulated by Ohio Revised Code Section 4705.01. However, Ohio Revised Code Section 2151.27(A)(1) states:

Subject to division (A)(2) of this section, *any person having knowledge* of a child who appears to have violated section 2151.87 of the Revised Code or to be a juvenile traffic offender or to be an unruly, abused, neglected, or dependent child *may file a sworn complaint* with respect to that child in the juvenile court of the county in which the child has a residence or legal settlement or in which the violation, unruliness, abuse, neglect, or dependency allegedly occurred.

(Emphasis added.)

That the provision of Section 2151.27 controls filing of a compliant is confirmed by Ohio Revised Code Section 1.151. This section states in full:

If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail.

Therefore, Section 2151.27, being specific to Chapter 2151, and to abused, neglected or dependent children controls, authorizes any person with knowledge of a child being abused, neglected or dependent to file a complaint in the appropriate juvenile court.

Appellant Father's Proposition of Law II: In permanent custody cases, effective counsel must request findings of fact and conclusions of law in the trial court.

The permanent custody hearing in this matter was conducted under the provisions of Ohio Revised Code Section 2151.415. Paragraph C of that section states:

If the court grants permanent custody of a child to a movant 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.

The ability to request "findings of fact and conclusions of law" rests with the parties, it is permissive with the parties, but mandatory upon the trial court if requested. Such a request was made. Counsel for the mother, in the final lines of her written closing made the request. And, the requested findings, and findings and conclusions were made by the trial court in its Judgment Entry of October 1, 2020.

In that Entry the trial court analyzed the testimony of each witness in reaching a conclusion of law. Duplicate requests by counsel for each parent would have had no effect upon the ultimate conclusion of the trial court.

Appellant Father's Proposition of Law III: Temporary removal of children from their parents impairs a fundamental right of the parents, and any such infringement must strictly follow the prescriptions of the Revised Code.

This proposition, while fundamentally sound, ignores the facts of the case.

On July 3, 2020, a complaint was filed regarding all three children of the Appellant Father. This was the second complaint as stated in trial record. In the first case the children were placed in the temporary custody of the Appellee, and remained so at the time of the filing of the second complaint.

That second complaint reads in part:

On or about April 8, 2017, in the County of Mercer, State of Ohio, the custodial father of the child overdosed on an illegal drug, and the custodial mother was found to have used illegal drugs. *The child was then placed in the temporary custody of the Mercer County Department of Job and Family Services, and has remained in the temporary custody of the Department, without interruption, since removal from the home.* A Case Plan was adopted as a Court Order providing services and requiring the parents to take actions to enable the child to return to the home. To the date of this Complaint the parents have failed to complete the terms of the original Case Plan or its amendments. (Trial record, Complaint, July 3, 2020.) (Emphasis added.)

The fact that the prior order of temporary custody of the children with the Department was still in effect was noted at the initial hearing of July 8, 2019, in the Judgment Entry for that hearing of July 10, 2020.

[The Court] then asked if there were any requests for temporary orders. Mr. Hinders stated that no temporary Orders were necessary, such Orders still existing in a prior case, that being Case Number 32017014. [X.S. Case Number 32017014, M.S. Case Number 32017016 and G.S. Case Number 32017017]

That order remained in effect until a dispositional hearing in the children's 2019 cases, journalized on August 22, 2019. (Trial record, Judgment Entry, August 22, 2019.)

On July 10, 2019, a pre-trial conference was conducted. Counsel for the mother and father renewed their motions from the initial hearing to dismiss the Complaint. Those motions were overruled. Then trial counsel, after consultation with their respective clients, waived the statutory thirty day time limit for adjudication and the cases were scheduled for an adjudicatory hearing on August 16, 2019. (Trial record, Judgment Entry July 22, 2019.)

On July 26, 2019 the Appellee subpoenaed eight witnesses for the adjudicatory hearing. Those subpoenas were withdrawn on August 6, 2019, and on August 13, 2019, the adjudicatory hearing was conducted. (Both as indicated by Trial record on those respective date.) The reason for withdrawal of the Department's subpoenas is apparent in the judgment entry of the hearing

of August 16, 2019, which states in part:

Mr. Hinders advised the Court that following extensive discussion among counsel, the Guardian, and the Department a proposed agreement regarding adjudication and disposition had been reached. The parents would stipulate that there are sufficient facts stated in the Complaint to sustain a finding of dependency. The Department would withdraw its motion for Permanent Custody contained in the Complaint. If the child would be found by the Court to be dependent the Department would then prepare a Case Plan for the dispositional hearing that in general terms anticipated custody of the child being placed with Ms. Thomas with Protective Supervision of the child by the Department and services to be provided to the parents by the Department.

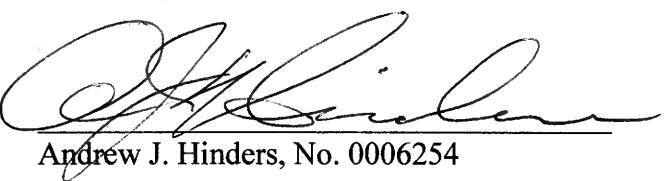
The Court reviewed this proposal with Mr. Tesno and Mr. Spradlin directly, and with Ms. Koesters and Ms. Thomas directly. Following these discussions the Court approved the agreement and found [X.S.] to be a dependent child as alleged in the Complaint. (Trial record, Judgment Entry, August 13, 2019.) [X.S. Case Number 32017014, M.S. Case Number 32017016 and G.S. Case Number 32017017]

At the dispositional hearing the determination of the trial court was to place the children with the mother, rather than the Appellant Father.

IT IS THEREFORE ORDERED, pursuant to O.R.C. 2151.353, that the child be placed in the temporary custody of his natural mother effective August 16, 2019. The Mercer County Department of Job and Family Services is granted Protective Supervision of the child. (Trial record, Judgment Entry, August 22, 2019.)

And, as the Appellant Father noted in his State of the Case and Facts the children were subsequently removed from the mother following a drug abuse incident.

Dated: July 21, 2021

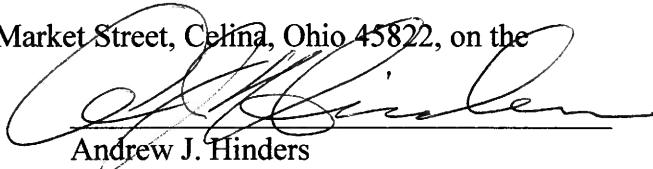


Andrew J. Hinders, No. 0006254

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing, Memorandum in Response to Memorandum in Support of Jurisdiction of Father Appellant, Gabriel Spradlin, was sent by regular United States Mail to Darin Avery, Attorney at Law, 105 Sturges Avenue, Mansfield, Ohio 44903, Gloria Anastacia Dicke, Attorney at Law, 5 Willipie Street, Wapakoneta, Ohio 45895 and

Michael S. Sacher, Attorney at Law, 110 West Market Street, Celina, Ohio 45822, on the
day of July 2021.



Andrew J. Hinders