JUVENILE CASE LAW UPDATE (2016)

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AKRON BAR ASSOCIATION

TABLE OF CONTENTS

Appellate, Juvenile & Civil Procedure Issues

Disciplinary Counsel v. Guinn, Slip Opinion, No. 2016-Ohio-3351:

> The board found that Guinn failed to timely file appellate briefs in two cases in which he represented clients who had had their parental rights terminated. In the first case, Guinn's appellate brief was due on December 9, 2012. Two days after missing the deadline, he requested an extension of time. On December 17, the court of appeals denied his request but indicated that in the interest of justice, it would consider a brief filed immediately. Guinn, however, failed to immediately file a brief, and on January 8, 2013, the court of appeals dismissed the appeal for lack of prosecution.
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> Guinn later filed a motion for reconsideration with an appellate brief attached, but the court denied his request, noting that Guinn had failed to offer any explanation as to why a brief had not been timely filed. Months later, Guinn informed his client that he had filed an appeal but that the court had dismissed it. The client then obtained new counsel and was later able to reopen the appeal based on an ineffective-assistance-of-counsel claim.
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> The second case of neglect occurred during the same relative time period. After missing his deadline to file an appellate brief on December 16, 2012, Guinn requested an extension of time. The court granted him until January 28, 2013, to file his brief but also indicated that no further extensions would be granted. On the day of the deadline, Guinn filed a request to extend the page limit, which the court denied. On February 12, Guinn moved for an extension of time, and he filed his merit brief about a week later. The court, however, dismissed the appeal due to Guinn's failure to timely file the brief.
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> Guinn then failed to inform this client, Nicole Betts, that her appeal had been dismissed, and he also failed to refund the $1,000 retainer that he had received from her. At his disciplinary hearing, Guinn testified that he had twice attempted to send a refund check to Betts but that she had moved out of state and had not yet negotiated the check.
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> Based on this conduct, the parties stipulated and the board found that Guinn violated Prof.Cond.R. 1.1 (requiring a lawyer to provide competent representation to a client), 1.3 (requiring a lawyer to act with reasonable diligence in representing a client), 1.4 (requiring a lawyer to reasonably communicate with a client), 1.5(a) (prohibiting a lawyer from making an agreement for, charging, or collecting an illegal or clearly excessive fee), and 8.4(c) (prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation). We agree with these findings of misconduct.

In re F.B., 9th Dist. Summit No. 27762, 2016-Ohio-3434:

> Father's first assignment of error is that the trial court's March 30, 2015, order is not final and appealable. An appeal at this stage of a juvenile proceeding requires that the trial court has adjudicated the children and entered a dispositional order that placed them in the temporary custody of CSB. Following hearings before a magistrate, the children were adjudicated dependent and placed in the temporary custody of CSB. Father emphasizes that, because the initial adjudicatory and dispositional decisions were issued by a magistrate, they were not effective unless the trial court adopted those decisions and independently entered judgment.

Father further insinuates that, because the trial court set forth its independent adjudication and disposition of the children in two separate orders, its judgment is not final and appealable. Father cites no authority, nor is this Court aware of any, that requires the trial court to enter its adjudicatory and dispositional decisions in a single judgment entry.

In fact, the trial court is required to hold separate adjudicatory and dispositional hearings and, unless it finds a basis upon which to adjudicate the child, it lacks authority to proceed to a dispositional hearing. See Juv.R. 29(F); Juv.R. 34. Given the bifurcated nature of these proceedings, the adjudicatory and dispositional decisions will often be set forth in separate orders. The separate adjudicatory and dispositional orders in this case combine to make a final, appealable order. Because Father has failed to demonstrate that the adjudication and disposition of his children was not final and appealable, his assignment of error is overruled.

Next, Father argues that the trial court erred in denying his motion to dismiss the complaints as nullities. Father essentially argues that the caseworker lacked standing to file the complaints because she was not a party and had no authority to file on behalf of CSB.

Father has failed to demonstrate that the caseworker acted as a representative of CSB when she filed the complaints in this case. Instead, the record reveals that she herself was a "person" who had knowledge that the children appeared to be dependent. See R.C. 2151.27(A). The caseworker completed a form complaint, which was comprised primarily of her affidavit with facts about the children and their parents, with boxes checked for the alleged statutory bases of dependency and the interim and dispositional actions requested of the juvenile court. The caseworker filed nothing else with the trial court during this case nor did she represent the agency at any court appearances. It is not disputed that CSB was represented by a licensed attorney throughout these proceedings after the complaint was filed.

Father has failed to demonstrate that the caseworker violated R.C. 2151.27(A) by filing the complaints in this case. Consequently, the trial court did not err in failing to dismiss the complaints. Father's second assignment of error is overruled.

State ex rel. T.L.M. v. Judges of First Dist. Court of Appeals, Slip Opinion, No. 2016-Ohio-1601:

We grant relator, T.L.M., a juvenile, a peremptory writ of prohibition precluding respondents, the judges of the First District Court of Appeals, from hearing the state of Ohio's appeals of the juvenile court's orders granting T.L.M. additional confinement credit. Because the state failed to timely comply with App.R. 5(C), as required when filing a motion for leave to appeal, the court of appeals lacks jurisdiction to hear the appeals.

The state is strictly held to the requirements of App.R. 5 when appealing by leave of court.

While the state's notices of appeal and motions for leave to appeal were filed in the juvenile court on March 23, 2015, they were not filed at the court of appeals until March 24, 2015, after the deadline. The motions for leave to appeal were therefore not filed "with the court of appeals" within the 30 days permitted. Nor did the state file the notices of appeal with the trial court concurrently with the filing of the motions in the court of appeals. Rather, the state filed all the documents in the trial court, with a request that the clerk of that court file the materials in the court of appeals. The juvenile court clerk did not do so until a day after the 30–day deadline had expired.

The court of appeals never obtained jurisdiction to decide whether the state could appeal, because the state did not strictly adhere to the requirements of App.R. 5 by filing its motions in the court of appeals before the deadline. The court of appeals patently and unambiguously lacks jurisdiction to entertain the state's appeals, and we therefore grant a peremptory writ of prohibition preventing the court of appeals from proceeding.

In re Z.R., 9th Dist. Summit No. 26860, 2016-Ohio-1331:

Mother's fourth assignment of error is that the trial court erred in failing to remove the guardian ad litem in this case because he failed to fulfill his duties. Before reaching the merits of this assigned error, this Court must determine whether this aspect of the trial court's judgment is final and appealable at this time. Article IV, Section 3(B)(2) of the Ohio Constitution limits this Court's appellate jurisdiction to the review of final judgments of lower courts. Pursuant to R.C. 2505.02(B)(2), an order is final and appealable if it affects a substantial right made in a special proceeding. This dependency action is governed by a statutory scheme set forth in R.C. Chapter 2151 that was not recognized by common law. Consequently, Mother appeals from an order that was made in a special proceeding.

Unlike the adjudication, the trial court retains ongoing authority to change the guardian ad litem assigned to the case. See R.C. 2151.281. The trial court's denial of a motion to remove a guardian ad litem, in and of itself, does not affect a party's substantial right because the trial court retains authority to change that order and it can be appealed after final judgment. Therefore, the trial court's denial of Mother's motion to remove the guardian it is not appealable at this time.

In re A.L.W, 9th Dist. Summit No. 27312, 2016-Ohio-911:

Father argues that the juvenile court erred in its rulings relating to various issues. Because Father has not demonstrated that he was aggrieved, this Court declines to address his assignments of error.

As an initial matter, we note that Father has not appealed the final custodial disposition of the children. He does not argue that the juvenile court erred by terminating protective supervision and retaining the children in Mother's legal custody. He makes no argument that the final disposition was not in the best interest of the children. In addition, Father never filed a motion or otherwise proposed any particular custodial disposition. Accordingly, he seeks reversal and remand to the juvenile court to address issues ancillary to custodial disposition, not disruption of Mother's legal custody.

An appeal lies only on behalf of the party who is aggrieved by the judgment. The sole purpose of an appeal is to provide the appellant an opportunity to seek relief in the form of a correction of errors of the lower court that injuriously affected him. The test of the right to appeal lies in whether or not one is an aggrieved party - a party who has suffered some loss. The burden is on the appellant to establish that he is an aggrieved party whose rights have been adversely affected by the trial court's judgment.

In this case, Father did not initially have contact with or the ability to seek information about the children the entire time he was in prison. Moreover, he was subject to a child support order and continued to accrue arrearages during his incarceration. Over the course of the case below, however, he obtained court-ordered telephone visitation, an order of access to the children's school and medical records, and a reduction to $0 for his monthly child support obligation. Accordingly, solely as a result of the juvenile court proceedings, Father obtained parental rights and benefits he had heretofore been unable to exercise, whereas he suffered

no loss or limitations on any parental rights during the course of the litigation. Furthermore, given his incarceration throughout the duration of the case, he would not have been able to obtain custody or in-person visitation with the children. Accordingly, given the lack of disruption of the children from the home and Mother's fulfillment of her case plan objectives, it is hard to imagine how Father might have obtained any greater success in this case. Under these circumstances, this Court concludes that none of the errors complained of by Father injuriously affected him or caused him to suffer any loss, thereby negating his ability to obtain relief. In fact, Father can be said to have only realized significant benefits as a result of this case below. As Father is not an aggrieved party, no appeal lies and this Court is precluded from considering his assigned errors.

In re R.R., 9th Dist. Summit No. 27572, 2015-Ohio-5245:

Father's first assignment of error is that this Court lacks jurisdiction to hear his appeal because the trial court did not issue a final, appealable order. Specifically, he asserts that the trial court failed to rule on all of his objections to the magistrate's adjudicatory and dispositional decisions and, for that reason, the trial court's judgment is not final.

To begin with, the trial court was required to rule only on objections that the parties timely filed. Juv.R. 40(D)(4)(d). Although Father filed timely objections to the magistrate's May 21 adjudicatory decision, he filed no timely objections to the magistrate's June 30 dispositional decision. Instead, when Father filed a brief to supplement his pending objections to the adjudicatory decision, he attempted to raise objections to the magistrate's dispositional decision. Given that the term "supplement" means to make an addition to something that already exists, a party's authority to supplement objections after the transcript of the hearing is filed is necessarily limited to objections that a party has already filed with the trial court in a timely manner. Because Father filed no timely objections to the dispositional decision, the trial court was not required to address them.

Father did file timely objections to the magistrate's adjudicatory decision, some of which were not explicitly addressed by the trial court. Father does not argue the merits of his objections under this assigned error but argues only that the judgment is not final because the trial court did not explicitly rule on every objection. Pursuant to this Court's decision in *Miller*, a trial court's failure to rule on objections to a magistrate's decision will not cause this Court to dismiss an appeal from the trial court's final judgment. Because Father has failed to demonstrate that this Court lacks jurisdiction to hear his appeal, his first assignment of error is overruled.

Father's second assignment of error is that the trial court denied him due process by considering new evidence when it ruled on the objections to the magistrate's decisions. He does not dispute that the trial court was authorized by Juv.R. 40(D)(4)(d) to hear additional evidence, nor does he challenge the substantive merits of the trial court's dispositional decision. Instead, he asserts that he was not given adequate notice that the trial court would take or consider new evidence in ruling on CSB's objections to the dispositional decision.

Even if Father lacked adequate notice that the trial court would consider the new evidence, he raised no objection to the testimony at the hearing, nor did he request a continuance, which could have avoided any prejudice caused by a lack of notice. The trial court held the remainder of the hearing on a second day, four days later, and Father presented his own testimony about whether he had been drinking on the day that R.R. was placed in his care. Because Father has failed to demonstrate that he was denied due process during these proceedings, his second assignment of error is overruled.

In re G.D, 9th Dist. Summit No. 27855, 2015-Ohio-4669:

Father claims that his trial lawyer provided ineffective assistance of counsel because he failed to request that Father be transported to the permanent custody hearing or to make other arrangements for his participation in advance of the hearing.

Ohio courts, including this one, have recognized that parents have a constitutionally protected right to be present at permanent custody hearings, but they have also recognized that such right is not absolute if the parent is incarcerated. The fundamental requirement of due process is an opportunity to be heard at a meaningful time and in a meaningful manner. Accordingly, Father's due process right to be heard could have been satisfied by arranging for his presence at the permanent custody hearing or by an alternate method of meaningful participation.

In this case, trial counsel failed to request that Father be transported to the permanent custody hearing or to arrange for a deposition or affidavit by Father. Trial counsel did belatedly request that Father be allowed to participate by telephone. The request was not made until the morning of the hearing and resulted in Father being able to participate by telephone for part of the afternoon session of testimony. We need not reach the question of whether counsel provided Father with an opportunity to be heard in a meaningful manner, however, because Father has failed to demonstrate resultant prejudice. Prejudice is demonstrated when the appellant proves that, but for counsel's unprofessional errors, there is a reasonable probability that the result of the proceedings would have been different.

Morris v. Mottern, 48 N.E.3d 92, 2015-Ohio-4523 (9th Dist):

On June 1, 2011, Mr. Morris filed a complaint in the Medina County Court of Common Pleas, Domestic Relations Division, explaining that he was concerned about registering B.M. for kindergarten. His complaint explicitly sought to legally establish his paternity of the child and to establish or modify residential parent and legal custodian and parenting time, companionship or visitation. Mother was served with a copy of the complaint on June 23, 2011.

On July 15, 2011, Mother moved to dismiss the complaint in this case because Mr. Morris had failed to comply with the statutory requirement that the matter be filed in the county where the child resides. See R.C. 3111.381; 3109.12. Because she was the unmarried mother of B.M. and there had been no order by a court of competent jurisdiction designating another person as the residential parent and legal custodian, she argued that she was the child's sole residential parent. R.C. 3109.042. Consequently, she asserted that the child legally resided with her in Portage County and that only a Portage County administrative agency or court had statutory authority to establish a parent and child relationship between Mr. Morris and B.M. Shortly afterward, Ms. Mottern filed with the Portage County Child Support Enforcement Agency to establish a parent and child relationship between Mr. Morris and B.M. and to calculate child support.

The legal parent and child relationship between Ms. Mottern and B.M. was established by operation of law because she is his biological mother and gave birth to him. R.C. 3111.02(A). Because a man does not physically give birth to a child, establishing his legal status as the child's father is necessarily more complicated. Consequently, the Ohio General Assembly has set forth in R.C. Chapter 3111 the specific means by which a man will be legally recognized as the father of a child.

Because Ms. Mottern and Mr. Morris were not married at or near the time of B.M.'s birth, nor had they unsuccessfully attempted to marry, no presumption about Mr. Morris's paternity arose under R.C. 3111.03(A)(1) or (2). Nevertheless, Mr. Morris and Ms. Mottern had the opportunity to execute an acknowledgement of paternity at the time of B.M.'s birth in Pennsylvania or after the parties moved to Ohio, which would have been forwarded to the appropriate administrative agency in either state and, after a period of time, would have established a final administrative determination of Mr. Morris's parent and child relationship with B.M.

Although he was authorized by R.C. 3111.04 to bring an court action to establish a parent and child relationship with B.M. because he was a man alleging himself to be the child's father, he was also required to comply with the requirements of R.C. 3111.381 because there had been no prior administrative determination that he was B.M.'s father.

In other words, the R.C. Chapter 3111 requires that unmarried parents establish the father's parent and child relationship through an administrative determination "except as provided" in R.C. 3111.381(B), (C),(D), and (E). Those subsections set forth the sole means by which the mother or purported father may bypass an administrative determination and file a parentage action directly with the court (juvenile or domestic, depending on the county).

Consequently, the only procedural means through which Mr. Morris was authorized by statute to bypass an administrative determination and invoke a court's jurisdiction to determine that he had a parent and child relationship with B.M. was R.C. 3111.381(C).

Throughout the trial court proceedings, Ms. Mottern argued that, by operation of law, B.M. resided with her in Portage County. Mr. Morris responded that the evidence would prove that B.M. had been residing with him in Medina County. After rejecting Ms. Mottern's argument that B.M.'s residence was determined as a matter of law, the magistrate, and later the trial judge, considered evidence about where B.M. attended preschool and daycare and physically spent most of his time and ultimately found that the county in which the child resided was Medina County. Consequently, the trial court concluded that this action was properly filed in Medina County.

We cannot agree with Mr. Morris that B.M.'s legal residence was established by the mere fact that he spent a lot of time with him or others in Medina County because Mr. Morris had not been legally recognized as B.M.'s father, nor did he have any legal parental rights or responsibilities. On the other hand, Ms. Mottern's legal rights and responsibilities as B.M.'s mother were established by operation of law when she gave birth to him. R.C. 3109.042 then provided that an unmarried female who gives birth to a child is the sole residential parent and legal custodian of the child until a court of competent jurisdiction issues an order designating another person as the residential parent and legal custodian. It is undisputed that, at the time Mr. Morris filed this action, no court had ever designated anyone as B.M.'s residential parent.

Evidence that B.M. spent much of his time in Medina County should not have been considered to determine where he resided for purposes of R.C. Chapter 3111. Ohio law does not support the trial court's conclusion that Mr. Morris, who had not yet acquired any legal status as the father of B.M., had somehow become the child's residential parent through the parties' informal arrangements, as those arrangements were not legally binding. The trial court not only undermined Ms. Mottern's legally-established rights and responsibilities as B.M.'s sole residential parent, but also allowed Mr. Morris to circumvent the statutory procedure for establishing a parent and child relationship and allocating parental rights and responsibilities.

This Court is obligated to rule on the merits of issues properly raised on appeal and cannot ignore that the trial court committed reversible error by exercising its jurisdiction over this case. The statutorily-mandated procedures of R.C. Chapter 3111 set forth the exclusive means by which a father and child relationship can be established and reflect policy considerations that balance the interests of both parents as well as the best interest of the child. Although we are reluctant to upset an established custodial arrangement, this Court must interpret the statutory language as a matter of law, not based on the unique facts of this case. Mother's first assignment of error is sustained.

In re L.P, 9th Dist. Summit No. 27792, 2015-Ohio-4164:

Father's first assignment of error is that the trial court failed to issue a final, appealable order after the adjudicatory and dispositional hearings. The record reveals that a magistrate adjudicated the children dependent and placed them in the temporary custody of CSB and that the trial court adopted the magistrate's decisions and later overruled Father's objections. Father does not challenge the merits or validity of the adjudicatory or dispositional decisions. Instead, he argues that the trial court did not issue a final, appealable order after the adjudication and disposition of the children and, for that reason, this Court lacks jurisdiction to hear this appeal.

Any lack of finality in that prior judgment would have no bearing on this Court's appellate jurisdiction, however, because Father has not appealed from the adjudication and initial disposition of his children, nor does he attack its merits in this appeal. Instead, Father appeals from the termination of his parental rights, which has long been recognized as an order that is final and appealable by a parent. Father fails to cite legal authority, nor is this Court aware of any, to support the underlying premise of his argument that the finality of a permanent custody judgment hinges upon whether the prior adjudication and disposition of the children was final and appealable.

Although Father argues that the case plan did not become binding on the parties until June 2014, when the trial court ruled on his outstanding objections to the magistrate's adjudicatory decision, this Court is not persuaded by his argument. On January 13, 2014, the magistrate adjudicated the children dependent and, through a separate decision on January 24, 2014, the magistrate placed them in the temporary custody of CSB and adopted the case plan. The trial court adopted the magistrate's dispositional order as well as the case plan that same day.

The automatic stay provisions of Juvenile Rule 40(D)(4)(e)(i) had no application to the implementation of the case plan as adopted by the magistrate on January 24 because Father filed no objections to that decision. Although Father filed timely objections to the magistrate's January 13 decision that adjudicated the children, he filed no objections to the magistrate's separate, January 24 dispositional decision, in which the magistrate adopted the case plan. In fact, Father had agreed to the case plan prior to its adoption. The plan was also adopted by the trial court on January 24, 2014, at which point it became binding on all of the parties.

In re T.P., 9th Dist. Summit No. 27539, 2015-Ohio-3448:

Mother moved to dismiss the complaint pursuant to R.C. 2151.35(B)(1) and Juv.R. 34(A), which both provide that, after the trial court adjudicates a child as abused, neglected, or dependent, it shall not issue a dispositional order until after the court holds a separate dispositional hearing, which shall not be held more than ninety days after the date on which the complaint in the case was filed. If the trial court fails to comply with this 90–day time limitation, the statute and the rule further provide that the court, on its own motion or the motion of any party or the guardian ad litem of the child, shall dismiss the complaint without prejudice.

Although the finality analysis in criminal proceedings is under R.C. 2505.02(B)(1), rather than R.C. 2505.02(B)(2), the speedy trial cases illustrate that appellate review is not foreclosed by requiring the defendant to wait until after the final judgment. Consequently, Mother has failed to demonstrate that the trial court's denial of her motion to dismiss the complaint is a final, appealable order.

Mother also attempts to appeal the trial court's order insofar as it excused CSB from making reasonable case planning efforts to reunify her with T.P. Although this Court has not explicitly addressed whether an order granting an agency a so-called reasonable efforts bypass is a final, appealable, order, it has repeatedly held that other aspects of the case plan are not appealable prior to final judgment.

Consequently, this Court has repeatedly held that case plan terms, including the removal of a party from the case plan, do not affect the substantial rights of the parties because those issues can be appealed after the final disposition of the child. Likewise, on appeal from the final dispositional order, a parent may challenge the trial court's order that grants the agency a reasonable efforts bypass.

In re Z.R., 144 Ohio St.3d 380, 2015-Ohio-3306, 44 N.E.3d 239:

R.C. 2151.27(A)(1) provides that any person may file a complaint alleging that a child is dependent "in the juvenile court of the county in which the child has a residence or legal settlement or in which the dependency allegedly occurred. See also Juv.R. 10(A). But R.C. 2151.27 and Juv. R. 10(A) do not contain any language suggesting that a court must dismiss a dependency complaint filed in a county that does not meet either of these two criteria. Even R.C. 2151.27(D), a catchall provision providing that complaints for any other matter not addressed in the statute and over which the court has jurisdiction "shall be filed in the county in which the child who is the subject of the complaint is found or was last known to be found," does not expressly require dismissal of a complaint filed in some other venue.

The only place the prospect of dismissing a complaint explicitly appears in R.C. 2151.27 is in subsection (F), which governs consideration of a complaint alleging that a child is an unruly child. R.C. 2151.27(F). Even there, the statute provides only that "the court may dismiss the complaint" if the child completes a diversion program. (Emphasis added.) Id. Given that dismissal is expressly contemplated elsewhere in R.C. 2151.27, the failure to couch the venue provisions of subsection (A)(1) in mandatory terms or to mention dismissal in that subsection strongly indicates that venue is not a jurisdictional requirement in the context of a dependency complaint.

It is clear from the foregoing statutes and rules governing the administration of Ohio's juvenile courts that the venue provisions included in R.C. 2151.27 and reflected in Juv.R. 10 are directory rather than mandatory. Thus, the failure to satisfy the venue provisions of R.C. 2151.27(A)(1) in a dependency complaint would not remove a juvenile court's jurisdiction over the case, and dismissal would not be proper on those grounds.

Our conclusion is consistent with the general practice of ensuring wide discretion for juvenile courts. 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. See R.C. 2151.01(A).

In re E.R., 9th Dist. Summit No. 27608, 2015-Ohio-2621:

The juvenile court adjudicated E.R. delinquent for committing felonious assault, defacing identification marks of a firearm, theft, possessing criminal tools, and criminal damaging. The court also found E.R. to be an unruly child by reason of a curfew violation. The court committed E.R. to the custody of the Ohio Department of Youth Services for a minimum term of 1 year to a maximum term of age 21 on the felonious assault count.

E.R. appeals raising two assignments of error for our review.

Preliminarily, this Court must determine whether it has jurisdiction over this matter. It is rudimentary that a finding of delinquency by a juvenile court, unaccompanied by any disposition thereof, is not a final appealable order. When an order adjudicates a child delinquent on multiple counts, but does not contain a disposition for all of the counts, it is not a final and appealable order.

In the instant matter, E.R. was adjudicated delinquent on five counts. A disposition, however, was only entered on the felonious assault count. The order appealed from is not a final, appealable order because it does not dispose of all the counts. Consequently, this Court is without jurisdiction and must dismiss this appeal.

In re G.M., 9th Dist. Wayne No. 14AP0040, 2015-Ohio-582:

Mother argues that the trial court violated Juvenile Rule 34(A) because it held the dispositional hearing immediately after the adjudicatory hearing without her consent.

Although CSB argues on appeal that Mother had notice that the adjudicatory and dispositional hearing would be held on the same day, the record reflects otherwise. The parties were summoned to appear for the hearing on adjudication and disposition "on Wednesday, September 3, 2014 at 8:30 am and Thursday, September 4, 2014 at 8:30 am." The notice could be read to mean that the hearings would be held on two separate days, as required by Juvenile Rule 34(A), and did not serve to notify the parties that both hearings would be held on September 3.

The circumstances of this case are similar to those in *In re W.C.*, in which the trial court conducted the adjudicatory and dispositional hearings on the same day without the consent of the parties. The father was not present at the hearing and the trial court permitted his court-appointed counsel to withdraw. In addition to other errors in the proceedings, because the trial court did not obtain the father's consent before proceeding immediately to disposition, the dispositional order of temporary custody was reversed. We agree that, based on the facts of that case, proceeding immediately to the hearing on disposition after the adjudicatory hearing, without first obtaining consent, violated Juvenile Rule 34(A) and hence, constituted reversible error.

Although this case involves circumstances similar to those in *In re W.C.*, CSB argues that Mother cannot complain about the trial court conducting both hearings on the same day without her explicit consent because she failed to preserve this issue for appellate review by failing to timely raise it in the trial court, and/or she implicitly consented to proceeding to disposition immediately after adjudication. We disagree.

The doctrine of waiver or forfeiture should not apply here because Mother was not present at the hearing and/or represented by counsel and had no opportunity to raise an objection when the trial court proceeded to hold the dispositional hearing on the same day. Even if she voluntarily chose not to appear for the adjudicatory hearing, which she had notice would be held on September 3, 2014, she had no opportunity to decide whether to appear for disposition because she had no prior notice that the trial court would conduct the dispositional hearing that same day.

Furthermore, a juvenile court's initial dispositional order in an abuse, neglect, and/or dependency case, typically places the child in the temporary custody of the agency, which does not terminate parental rights. In this case, the trial court's failure to comply with the consent requirement of Juvenile Rule 34(A) had far more significant implications on Mother's due process and parental rights because the dispositional hearing resulted in the termination of Mother's parental rights. This Court has repeatedly held that termination of parental rights is "the family law equivalent of the death penalty" and, for that reason, parents "must be afforded every procedural and substantive protection the law allows."

In re T.D.J., 8th Dist. Cuyahoga No. 100972, 2014-Ohio-5684:

Civ.R. 45(A)(3) provides:

> A party on whose behalf a subpoena is issued under division (A)(1)(b)(ii), (iii), (iv), (v), or (vi) of this rule shall serve prompt written notice, including a copy of the subpoena, on all other parties as provided in Civ.R. 5. If the issuing attorney modifies a subpoena issued under division (A)(1)(b)(ii), (iii), (iv), (v), or (vi) of this rule in any way, the issuing attorney shall give prompt written notice of the modification, including a copy of the subpoena as modified, to all other parties.

The Staff Notes accompanying the 2005 amendment to the rule state:

> The notice requirement of amended Civ.R. 45(A)(3), like its counterpart in Rule 45(b)(1), Federal Rules of Civil Procedure, is intended "to afford other parties an opportunity to object to the production or inspection, or to serve a demand for additional documents or things." Advisory Committee's Note to 1991 Amendments to the Federal Rules of Civil Procedure.

Civ.R. 45(A)(3) does not require mother to serve notice of subpoenas to father for the witnesses appearing only to testify at trial. Therefore, the trial court erred in granting father's motion to exclude all of mother's witnesses at trial. This was obviously prejudicial because it precluded mother from introducing any testimony except her own.

In re D.E., 9th Dist. Summit No. 27368, 2014-Ohio-5333:

Mother argues that while R.C. 3107.15(A)(1) terminated her parental rights, R.C. 3107.15(A)(2) created a sibling relationship. Assuming without deciding that Mother has a sibling relationship with the Children, this does not create a legal right within Civ.R. 24(A), requiring the court to allow her to intervene as of right.

Juv.R. 2(Y) defines necessary parties to a custody action. According to the rule, necessary parties are "a child who is the subject of a juvenile court proceeding, the child's spouse, if any, the child's parent or parents, or if the parent of a child is a child, the parent of that parent, in appropriate cases, the child's custodian, guardian, or guardian ad litem, the state, and any other person specifically designated by the court." Juv.R. 2(Y). The rule does not include a sibling.

To the extent that Mother argues she should have been permitted to intervene because she stood in loco parentis, we cannot, based on the record before us, conclude that the court abused its discretion. A status of in loco parentis exists when a person undertakes the care and control of another in the absence of such supervision by the child's natural parents.

In re C.T., 9th Dist. Medina No. 14CA0007-M, 2014-Ohio-4267:

In his two assignments of error, C.T. challenges the court's order requiring him to submit to a toxicology screening. Because the magistrate's decision did not comply with Juv.R. 40(D)(3), we do not reach the merits of C.T.'s arguments. Instead, we reverse and remand the case to provide C.T. with an opportunity to file timely objections.

There is an important distinction between magistrate's orders and decisions. Compare Juv.R. 40(D)(2) with Juv.R. 40(D)(3). A magistrate has the authority to enter "orders without judicial approval if necessary to regulate the proceedings and if not dispositive of a claim or defense of a party." Juv.R. 40(D)(2)(a)(i).

A party contesting a magistrate's order must file a motion to set it aside within 10 days. Juv.R. 40(D)(2)(b). This motion to set aside, however, does not stay the effectiveness of the magistrate's order - the party must seek a separate stay.

Magistrate decisions, on the other hand, are not effective unless adopted by the court. Juv.R. 40(D)(4)(a). A magistrate's entry of adjudication is a decision, not an order. Additionally, a magistrate's entry of disposition, see e.g., R.C. 2152.19, is a decision because it is not intended to regulate the proceedings. See Juv.R. 40(D)(2)(a)(i). Pursuant to Juv.R. 40(D)(3)(a)(iii), a magistrate's decision shall be in writing, and identified as a magistrate's decision in the caption. Further, the magistrate's decision must conspicuously indicate that a party shall not assign as error on appeal the court's adoption of any factional finding or legal conclusion unless the party timely and specifically objects to that factual finding or legal conclusion as required by Juv.R. 40(D)(3)(b). Juv.R. 40(D)(3)(a)(iii).

This case emphasizes the common confusion between a magistrate's order and decision. According to the rules, a magistrate's decision must be labeled as such and the parties must be given conspicuous notice of the consequences of failing to file timely objections. Juv.R. 40(D)(3)(a)(iii). This Court has previously held that it is reversible error for the court to incorrectly label a magistrate's decision as an order when the court also fails to provide notice that the parties must file objections within fourteen days. When an entry is mislabeled as both a magistrate's order and decision and provides no guidance on whether a motion to set aside or objections are proper, the parties, in effect, have been given no notice at all.

Because C.T. was not given "conspicuous notice" of his right to file objections to the magistrate's June 7, 2013 decision, we reverse and remand the matter to the trial court for the magistrate to prepare a decision that complies with Juv.R. 40(D)(3), giving the parties an opportunity to file timely objections.

In re L.F., 9th Dist. Summit No. 27218, 2014-Ohio-3800:

Because CSB filed an objection to the magistrate's factual finding that Father did not pose a threat to L.F. as a sex offender, it was required to support its objection with a transcript of the hearing. Juv.R. 40(D)(3)(b)(iii) requires that an objection to a factual finding be supported by a transcript of all the evidence submitted to the magistrate relevant to that finding. Although Juv.R. 40 does not set forth a time for filing the praecipe, nor do the local rules, given the 14-day frame for filing objections under Juv.R. 40(D)(3)(b) and the requirement that the objection to a factual finding be supported by a transcript, it is only reasonable to assume that the praecipe should be filed within the 14-day objection period. Moreover, because CSB's objection was to a magistrate's adjudicatory decision to dismiss the complaint in a dependency case, Loc.R. 3.03(G) of the Court of Common Pleas of Summit County, Juvenile Division, requires the court reporter to prepare and provide copies of the transcript to the party requesting the transcript within fourteen days of the filing of the praecipe. The 14-day time period may be extended by the trial court only for good cause shown. Loc.R. 3.03(G). Consequently, absent leave of court to extend these two 14–day time periods, a transcript of the magistrate's adjudicatory decision should be filed within 28 days of the magistrate's decision.

In re S.R., 9th Dist. Summit No. 27209, 2014-Ohio-2749:

> Father asserts that, although the permanent custody motion was served on him via certified mail at his correct address, because CSB did not first obtain leave of court to serve him via certified mail, service failed to satisfy the requirements of R.C. 2151.29. Although CSB apparently shared Father's belief that leave of court was required to serve the motion via certified mail, both parties apparently ignored the third sentence of R.C. 2151.29, which explicitly applies to the facts of this case: If the person to be served is without the state but the person's address is known, service of the summons may be made by certified mail. Because Father resided outside the state of Ohio, at an address known by CSB, service via certified mail was permitted without leave of court.
>
> When read within the context of the entire paragraph, it is apparent that the first two sentences of R.C. 2151.29 apply to the manner in which service must be made upon someone who is believed to reside within the state of Ohio. The third sentence, which applies to service upon someone who resides outside the state of Ohio, implicitly recognizes that personal or residence service on someone outside the state will often be impracticable. Thus, it omits any requirement that the trial court make a finding to that effect and/or grant leave before service by certified mail is permitted.

King v. Careton, 9th Dist. Lorain No. 13CA010374, 2013-Ohio-5781:

> Contempt of court consists of both a finding of contempt and the imposition of a penalty or sanction. Until the penalty or sanction is imposed by the court, the order is not a final, appealable order. The mere adjudication of contempt is not final until a sanction is imposed.

In re J.S., 2nd Dist. Clark No. 2013CA48, 2013-Ohio-5756:

> Gov. Bar. VII(2)(A)(1) defines the unauthorized practice of law as "the rendering of legal services for another by any person not admitted to practice in Ohio." And Sup.R. 48(D), related specifically to guardians ad litem, states that a non-attorney guardian ad litem must avoid engaging in conduct that constitutes the unauthorized practice of law, be vigilant in performing the guardian ad litem's duties and request that the court appoint legal counsel, or otherwise employ the services of an attorney, to undertake appropriate legal actions on behalf of the guardian ad litem in the case. Sup.R. 48(D)(5). Considering these rules, we share Father's concern that the questioning by the guardian ad litem in this case was inappropriate and constituted the unauthorized practice of law.
>
> In the larger context of the case, however, we are unpersuaded that Father suffered any prejudice as a result of the guardian ad litem's questioning of witnesses. The testimony elicited by the guardian ad litem was largely duplicative of other testimony, he did not question every witness, and his questioning was relatively short. Moreover, the trial court frequently required the guardian ad litem to rephrase his questions insofar as they were confusing or leading.
>
> We note that none of the participants at the hearing objected to the guardian ad litem's manner of participation, including his questioning of witnesses. We express no opinion as to whether such a failure to object would constitute a waiver of the error, in circumstances where the non-attorney's questioning were not harmless.

In re R.P., 9th Dist. Summit No. 26836, 2013-Ohio-5728:

> Through the eighth and ninth assignments of error, Father argues that the trial court erred in awarding party status to the Atheys.
>
> During pre-trial arguments, the question arose of whether the Atheys were parties to the present action since their earlier status as legal custodians was vacated by a decision of this Court. During the ensuing discussion, the trial court stated: "[T]he fact that their legal status has been vacated by the Court of Appeals does not vacate the fact that for the first five years of this child's life when they had to go to the doctor, when she had to have a decision made as to where she went to school, any decision that was made for the health and well-being of this child was made by the Atheys." On that basis, the trial court concluded that the Atheys had stood in loco parentis and were entitled to party status. Father asserts error in that the Atheys did not file a motion to intervene, as required by Civ.R. 24(C); nor did they do so in a timely fashion, as required by Civ.R. 6(C).
>
> Even assuming the trial court erred in granting party status to the Atheys, Father must also demonstrate that the error was prejudicial to his rights. A prejudicial error is defined as one which affects or presumptively affects the final results of the trial. Father has failed to demonstrate that he was prejudiced by the order granting party status to the Atheys.

In re M.T.B., 9th Dist. Summit No. 26866, 2013-Ohio-4998:

> Juv.R. 40 does not require that a trial court conduct two separate levels of review of a magistrate's decision. Specifically, there is no requirement that the trial court conduct a pre-objection review of the magistrate's decision. Juv.R. 40(D)(4)(b) authorizes the trial court to adopt or reject a magistrate's decision whether or not objections are filed. Juv.R. 40(D)(4)(e)(i) further provides that the court "may enter a judgment either during the fourteen days permitted by Juv.R. 40(D)(3)(b)(i) for the filing of objections to a magistrate's decision or after the fourteen days have expired." As the 2006 Staff Notes to Juv.R. 40(D) emphasize, Juv.R. 40(D)(4)(e)(i) "permits," but does not require, the trial court to enter judgment during the 14-day objection period. In other words, it was not necessary that the trial court issue a pre-objection order on the magistrate's decision.

In re Z.H., 995 N.E.2d 295, 2013-Ohio-3904 (9th Dist):

> In his first assignment of error, Father asserts that the trial court lacked personal jurisdiction to proceed because of defective service. Inter alia, he claims that the inclusion of only the child's initials in the posted notice failed to provide realistic notice and failed to meet the standards of due process. For that reason, he contends that the trial court proceedings were rendered void. CSB, on the other hand, contends that the use of the child's initials was sufficient in that it is consistent with the practice of providing some degree of privacy to children in cases involving abuse, neglect, and dependency.

This Court first determines that the use of the child's initials does not comport with the requirements of Juv.R. 16(A) to include "the name of the first party on each side" in a posting document. "Initials" are not the same as a "name," particularly in the context of providing notice. Further, it is not reasonable to believe that a father would recognize the initials of a child he had never met or perhaps even knew to exist. This Court concludes, therefore, that the use of the initials of this infant was insufficient to accomplish notice reasonably calculated, under these circumstances, to actually inform interested parties of the pendency of this action.

Wintrow v. Baxter-Wintrow, 9th Dist. Summit No. 26439, 2013-Ohio-919:

Because of on-going changes in family dynamics, domestic relations cases are frequently subjected to post-decree motions. The case law is well developed regarding the facts a movant must prove in order to obtain a modification of orders relating to issues involving custody, visitation, and child support. The mere filing of a motion to modify does not guarantee success, but it does entitle the movant to the opportunity to be heard. Tracie was deprived of that opportunity when the trial court did not consider the merits of her motions. In this case, because Tracie was accorded no opportunity to be heard on her motions scheduled for hearing, the trial court erred when it denied, and in fact dismissed, her outstanding motions.

Forster v. De Young, 9th Dist. Summit No. 26467, 2013-Ohio-679:

Father's argument is essentially that he was denied his procedural due process rights because he was not aware that the May 25, 2010 hearing would encompass Mother's motion to modify child support. Due process requires that a party receive reasonable notice of judicial proceedings and a reasonable opportunity to be heard. The inquiry at to what process is due depends on the facts of each case. Thus, we review the record to determine whether Father received sufficient notice of the subject matter actually addressed at the hearing.

There is no question that Father received notice that a hearing would take place on May 25, 2010. The hearing was prompted by Father's motion to hold Mother in contempt for interfering with his parenting time. The record reflects that the trial court originally set the hearing for April 8, 2010. The order scheduling the hearing was entitled "Order to Appear and Show Cause" and specifically indicated that Mother was to appear at the hearing to show cause why she should not be held in contempt. Although the court granted several continuances of the hearing before ultimately scheduling it for May 25th, none of the court's orders indicated that additional issues or motions would be addressed at the hearing. Interestingly, when Mother filed a motion for a continuance on May 7, 2010, she specifically requested not only that the court continue the hearing, but also that the court's order include "the motions that will be heard that day." The court continued the hearing until May 25th, but never set forth the motions that would be heard that day. A review of all the court's orders regarding the hearing leads one to the logical conclusion that the only motion that would be addressed at the May 25th hearing was Father's motion to hold Mother in contempt.

The trial court determined that the magistrate acted within her discretion in hearing Mother's motion to modify child support at the May 25th hearing because the motion was still outstanding and a magistrate "has broad discretion to deal with pending motions in the most expeditious and judicially economical manner possible." The court's handling of Mother's motion to modify child support was hardly expeditious. Mother had filed her motion on July 28, 2009, almost ten months before the contempt hearing. Moreover, a court's discretion in managing its docket does not override the parties' due process rights. Had the court wanted to address the motion to modify at the contempt hearing, it need only have given the parties reasonable notice that it would be doing so. Based upon the court's filed orders, there was no reason for either party to know that the magistrate intended to address Mother's nearly ten-month old motion at the contempt hearing. Father specifically informed the magistrate at the hearing that he was not prepared to address the motion to modify because he was not aware the magistrate intended to hear it that day. Further, neither party even had current financial documents bearing upon the issue of child support with them at the hearing. The record supports the conclusion that Father did not receive sufficient notice of the subject matter actually addressed at the hearing. Accordingly, Father was denied his procedural due process rights. His first assignment of error is sustained on that basis.

In re A.M, 9th Dist. Summit No. 26141, 2012-Ohio-1024:

When a motion for permanent custody is filed, R.C. 2151.414 requires the court to schedule a hearing and to notify all parties of the filing of the motion and of the hearing, in accordance with section 2151.29 of the Revised Code. The notice requirement of R.C. 2151.414(A) ensures that the juvenile court has personal jurisdiction over the parents. Unlike subject matter jurisdiction, the issue of personal jurisdiction is forfeited without timely objection. Whether the alleged fathers were properly served, therefore, raises an issue of personal, rather than subject matter jurisdiction. Ordinarily such an issue would be personal to them, and Mother may not raise it. In general, an appealing party may complain of an error committed against a non-appealing party when the error is prejudicial to the rights of the appealing party. More particularly, an appellant-mother may challenge an alleged service error regarding a nonappealing party only when she has demonstrated that she herself has been prejudiced by the alleged error.

At the end of the day, assuming unperfected service and also assuming no waiver of the issue, Mother must nevertheless demonstrate that she herself has been prejudiced by the alleged error. This Court has previously held that a mere assertion that a purported father was not properly served is an insufficient basis on which to award standing to the appellant-mother to raise such error. It is necessary, instead, for the appealing party to demonstrate that she was "actually prejudiced" by the alleged error before she may assert it on her own behalf; otherwise she lacks standing to raise the issue. Therefore, in order to establish standing, Mother was required to demonstrate that the alleged failure to perfect timely service upon Jason W. resulted in actual prejudice to her. We conclude that she has not done so.

In re L.B, 9th Dist. Summit No. 26034, 2012-Ohio-905:

The right of a parent to the custody of his or her child is one of the oldest fundamental liberty interests recognized by American courts. Deprivation of custody, even temporarily, infringes on a parent's fundamental interest in the custody of his or her child. For this reason, due process concerns are of paramount importance with respect to parental custody matters.

This Court has previously noted the importance of the manner of service being reflected in the record. If a process server is used, the server must endorse the fact of accomplished or failed service. Furthermore, whether service is accomplished by personal service, residence service, certified mail, registered mail, or express mail, the rule requires the clerk to make an appropriate entry on the appearance docket demonstrating either that service has been accomplished or that the attempted service has failed. Proper service may be presumed only where the civil rules regarding service are followed.

Each child in this case was assigned an individual case number, but it appears that the children's files were consolidated for the purposes of the court proceedings. Thus, the record on appeal is a single file with three separate dockets. However, it appears that, in this instance, the consolidated file created deficiencies with respect to recording whether service was accomplished as to each child.

The clerk of courts did not note that service on Ms. Franklin had been accomplished or failed on any of the dockets. Thus, there was a failure to comply with Civ.R. 4.1 with respect to the manner in which recordation of service must be demonstrated in the record. With respect to the youngest child, a copy of the summons was filed with the clerk. However, no summons was filed with the clerk with respect to the other two children. The process server signed the summons filed under the youngest child's case, indicating that he had served the summons on Ms. Franklin by "personally delivering to her a true copy thereof. The summons is typed to indicate that it refers to the youngest child's case, listing her initials and case number at the top. However, next to the youngest child's initials, the initials of the eldest child and A.F. have been handwritten. Similarly, the older children's case numbers have been written in next to the youngest child's case number.

Ms. Franklin concedes that service was accomplished with regard to her youngest child. She argues that the summons on file in the youngest child's case fails to sufficiently establish that the process server served her regarding A.F. and her eldest child. It is unknown when the document was altered, and the handwritten additions are not initialed or marked in any way to identify who made the handwritten additions. Furthermore, the body of the summons is written in the singular, referring to "the above-named juvenile" and "the above-named child." Clearly, the summons in the record was intended solely to refer to the youngest child. This makes the handwritten alterations all the more troubling as it renders the summons internally inconsistent.

Based upon the record in this case, we cannot conclude that CSB was entitled to the presumption that service had been completed regarding the eldest child and A.F. Accordingly, the trial court lacked the authority to proceed on the adjudication of those children. Although service was accomplished as to the youngest child, we nonetheless find it appropriate to vacate the judgment in its entirety. The focus of the dependency allegations was upon the events pertaining to A.F. and there was very little mention of the youngest child in the record. Given that the trial court did not have authority to proceed to hear evidence relative to A.F. and the eldest child, and the factual allegations surrounding A.F. are inextricably entwined with and form the basis for seeking an adjudication of dependency as to all of the children, we conclude that the judgment as to the youngest child cannot stand since it would essentially render immaterial our determination that the trial court lacked authority to proceed.

Evidentiary Issues

In re I.T., 9th Dist. Summit No. 27513, 2016-Ohio-555:

> The party seeking to admit the business records must provide the appropriate foundation for admission which indicates that the witness possesses a working knowledge of the specific record-keeping system that produced the document. The witness must be familiar with the operation of the business and with the circumstances of the preparation, maintenance, and retrieval of the record in order to reasonably testify on the basis of this knowledge that the record is what it purports to be, and was made in the ordinary course of business.

In re G.D, 9th Dist. Summit No. 27855, 2015-Ohio-4669:

> Father claims the trial court erred in admitting into evidence CSB Exhibit 1, a document proffered to establish a criminal conviction of Father by the State of Florida. Father does not dispute that the proffered document is a certified copy of a judgment of conviction, but rather claims that CSB failed to provide sufficient evidence to identify Father as the offender in CSB Exhibit 1.
>
> R.C. 2945.75(B)(1) is often utilized to enhance the degree of a current conviction based on the existence of a previous crime perpetrated by the same person. The Ohio Supreme Court has explained that R.C. 2945.75(B)(1) reflects one of the possible methods for proving the existence of a criminal conviction beyond a reasonable doubt. The burden of proof necessary to support a judgment for permanent custody to a children services agency, however, is not "beyond a reasonable doubt", but rather "clear and convincing." See R.C. 2151.414(B)(1). Consequently, we are bound only to review the record of the permanent custody case before us to determine whether there is clear and convincing evidence that Father is the same person identified in the judgment entry admitted into evidence as CSB Exhibit 1.
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> Based on this record, we have no difficulty in concluding that the evidence clearly and convincingly establishes that Father is the same person that was convicted of five felony counts involving sexual offenses against young children in Florida and who is sentenced to a lengthy prison term in that state.

In re M.P., 9th Dist. Lorain No. 14CA010693, 2015-Ohio-4417, ¶17:

> Before admitting a child's statement under Evid.R. 803(4), the trial court should consider the circumstances surrounding the child's statement to the treatment provider. It was not disputed that M.P. had multiple mental health diagnoses that were so severe and unstable that she was in a residential treatment facility and was often placed in physical restraints because she posed a threat to herself and/or others. Even after her visits with Mother were terminated, M.P.'s mental health had not stabilized. Doctors continued to adjust her psychiatric medications, she continued to have behavioral outbursts that sometimes required that she be physically restrained, and she remained institutionalized.

In addition to testimony of the counselors, other witnesses testified about the children's out-of-court statements. None of that testimony fell within a recognized exception to the rule against hearsay evidence. LCCS incorrectly argued at the hearing and again on appeal that the testimony of the guardian ad litem about what the children told him fell within an exception to the hearsay rule. This Court has explicitly recognized that the report and testimony of the guardian ad litem may include out-of-court statements of people interviewed, given the unique role of the guardian ad litem to investigate the circumstances and parties in the case and to provide a recommendation to the trial court about the best interests of the children.

The intended purpose of the guardian ad litem gathering that information, however, is not to offer evidence to the court of the facts that she gathered but to explain the basis for her recommendation. In other words, when a guardian ad litem relays what a person told her, it is not for the purpose of establishing the truth of the matters relayed. Rather, it is for the purpose of describing the investigatory process of the guardian ad litem and the matters which may have influenced her opinion as to the best interests of a child.

Unless those out-of-court statements fall within a recognized exception to the hearsay rule, they are not admissible "for the purpose of establishing the truth of the matters relayed. Consequently, as there is no suggestion that the children's out-of-court statements to the guardian ad litem fell within an exception to the hearsay rule, the trial court erred in allowing his testimony about what the children told him about being abused and/or inappropriately disciplined in Mother's home.

In re L.P., 9th Dist. Summit No. 27792, 2015-Ohio-4164:

This Court reviews the propriety of the caseworker's testimony only insofar as she gave her opinion about the best interests of the children and testified about their wishes, despite Father's objections to that testimony. This Court has held that only the guardian ad litem is authorized to testify to the trial court about the best interest of the children and their wishes. In both *A.K.* and *Smith*, however, this Court found reversible error because the trial court specifically considered the caseworker's testimony about the child's best interests and/or wishes in lieu of considering that evidence directly from a guardian ad litem, who is charged with bringing that evidence before the court. In *A.K.*, a legal custody case, no guardian ad litem had been appointed to represent the children's wishes and in Smith, the trial court disregarded the conflicting testimony of the guardian ad litem.

In re M.P., 9th Dist. Lorain No. 14CA010678, 2015-Ohio-2226, ¶17:

A court may take judicial notice of proceedings in the immediate case before it, but may not take judicial notice of proceedings in other cases even though between the same parties and even though the same judge presided. The rationale for this rule is that an appellate court cannot review the propriety of the trial court's reliance on such prior proceedings when that record is not before the appellate court. This court's review is necessarily limited to the record on appeal.

Regarding the reference in the complaint to "frequent referrals since 2009," we emphasize that referrals are not evidence of abuse, dependency, or neglect, and, in and of themselves, are nothing more than "anonymous allegations." A children services agency must produce proper evidence of a family's involvement with the agency at the hearing. The mere existence of anonymous referrals is not substantive evidence of the truth of such referrals. Here, the reference in the complaint to "frequent referrals" merely supports a conclusion that LCCS had a familiarity with the family.

State ex rel. DeWine v. 333 Joseph, L.L.C., 3rd Dist. Marion No. 9-13-71, 2014-Ohio-5090:

> The rules of evidence provide several alternative methods to authenticate documents. Testimony of witness with knowledge that a matter is what it is claimed to be is one of the examples of satisfying the authentication requirement. Evid.R. 901(B)(1). We have previously noted that Evid.R. 901 would appear to be concerned with original documents, not copies. But additionally, Sattler had no knowledge of who prepared the Director's Orders, admitting that he did not prepare them and testifying only that someone came up with the idea of a Unilateral Order. He did not testify that the photocopy presented to the trial court was a true and accurate copy of the October 31, 2012 Director's Orders. The State's attempt to authenticate the photocopy of a certified photocopy of what purports to be the original Director's Orders through Sattler's testimony can be summarized by his inconclusive statement that he would have reviewed the document and his admission that the trial court has to rely upon the photocopy of the prior certification for the authenticity of the Director's Orders. The State did not establish that Sattler had knowledge about the authenticity of the document, which appears to be a photocopy of a certified photocopy of what purports to be the original Director's Orders.
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> On appeal, the State defends the trial court's decision by arguing that the Director's Orders are "self-authenticating" as "domestic public documents" and as such, they do not need extrinsic evidence of authenticity. Under Evid.R. 902, a domestic public document not under seal is self-authenticating if it is
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> > a document purporting to bear the signature in the official capacity of an officer or employee of any entity included in paragraph (1) hereof, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.
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> Evid.R. 902(2). The State asserts that the "certification" that appears on Exhibit 6 satisfies the requirement above. Yet, we are only presented with a photocopy of the certification and the illegible signature on that "certification" cannot be found to be of a public officer having a seal and having official duties in the district or political subdivision. Furthermore, this certification does not state that the signer of the Director's Orders has the official capacity and that the signature is genuine.
>
> The State cites Evid.R. 1005, suggesting that a photocopy of a certification satisfies the certification requirement of Evid.E. 902. Here, it seems that the State wants to use a photocopy of the certification to prove that the same copy of the certification is authentic. Evid.R. 1005 states that
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> > the contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilations in any form if otherwise admissible, may be proved by copy, certified as correct in accordance with Rule 902, Civ. R. 44, Crim. R. 27 or testified to be correct by a witness who has compared it with the original.
>
> Evid.R. 1005. This rule allows for admission of a copy if requirements of authentication are satisfied. The State has not established that Exhibit 6, which appears to be a photocopy of a certified photocopy of the purported Director's Orders, was "certified as correct," as required by Evid.R. 1005. Therefore, this rule does not serve to allow for admissibility of Exhibit 6.

In re L.F., 9th Dist. Summit No. 27218, 2014-Ohio-3800:

Juv.R. 32(A), titled "Social history and physical or mental examination: availability before adjudication," provides that the court may order and utilize a social history or physical or mental examination at any time after the filing of a complaint if a material allegation of a neglect, dependency, or abused child complaint relates to matters that a history or examination may clarify. Juv.R. 32(A)(3). Juv.R. 32(B) further provides that until there has been an adjudication that the child who is the subject of the proceedings is dependent, no social history, physical examination or mental examination shall be ordered except as authorized under subdivision (A). Thus, prior to the December 2012 adjudicatory proceedings, the magistrate had the authority to issue an order for such an examination, had CSB made such a request. Juv.R. 40(D)(2)(a)(iii)(L).

Had CSB followed the procedure set forth in Juv.R. 32(A)(3), and the trial court had agreed to order such an assessment, that evidence would have been submitted at the original adjudicatory hearing, months before it was eventually considered, thus ensuring the right to have the adjudication in a timely manner. The Juv.R. 32 procedure also would have protected the parents' rights to have this issue determined by the court in a meaningful manner. For example, Father would have had the opportunity to litigate whether a supplemental assessment was needed, given that CSB already had an evaluation performed by the specialist from the APA, and whether he had the right to obtain his own, independent evaluation.

Moreover, compliance with Juv.R. 32(A) would have resulted in a court-ordered assessment that would have been admissible at the adjudicatory hearing. Because Father voluntarily obtained the supplemental assessment, his communications with the psychologist(s) who prepared the assessment were privileged and inadmissible at the adjudicatory hearing. R.C. 4732.19 provides that the confidential relations and communications between a licensed psychologist and client are placed upon the same basis as those between physician and patient under R.C. 2317.02(B). Through those two statutory provisions, a psychologist shall not testify about communications with his client pertaining to treatment or diagnosis except as otherwise provided under one of the enumerated exceptions set forth in R.C. 2317.02(B), none of which apply here. The only exception of potential relevance here is R.C. 2317.02(B)(1)(b), which provides that the testimonial privilege does not apply:

> In any civil action concerning court-ordered treatment or services received by a patient, if the court-ordered treatment or services were ordered as part of a case plan journalized under section 2151.412 of the Revised Code or the court-ordered treatment or services are necessary or relevant to dependency, neglect, or abuse or temporary or permanent custody proceedings under Chapter 2151. of the Revised Code.

As explained already, the trial court had not ordered Father to undergo the supplemental assessment. Because the court had not yet journalized a case plan and CSB failed to obtain a court-ordered assessment under Juv.R. 32(A)(3), the supplemental assessment voluntarily obtained by Father was not admissible at the adjudicatory hearing, absent any suggestion in the record that Father gave express consent that the testimony be admitted at the hearing. See R.C. 2317.02(B)(1)(a)(i). Therefore, L.F. was adjudicated a dependent child based on evidence that was not properly before the trial court.

State v. Jordan, 9th Dist. Summit No. 27005, 2014-Ohio-2857:

> Over the defense's objection, the lead investigating officer, Deputy Elisha Menefee, testified that, during questioning, Ms. Jordan's niece stated that it was Ms. Jordan who made her push the shopping cart out of the store's entrance. There is no dispute that the State did not produce the niece as a witness at trial. Accordingly, Ms. Jordan did not have an opportunity to cross-examine her niece on the content of her statement to Deputy Menefee.
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> The State argues that the niece's statement was not hearsay as the statement was not offered to prove the truth of the matter asserted, but rather to explain the officers' conduct during the course of the investigation. Evidence Rule 801(C) defines hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Statements that are offered into evidence to explain an officer's conduct while investigating a crime are not, however, hearsay. The Ohio Supreme Court has recognized that, "in order for testimony offered to explain police conduct to be admissible as nonhearsay, the conduct to be explained should be relevant, equivocal, and contemporaneous with the statements; the probative value of statements must not be substantially outweighed by the danger of unfair prejudice; and the statements cannot connect the accused with the crime charged.

State v. Stover, 9th Dist. Wayne No. 13CA0035, 2014-Ohio-2572:

> Hearsay is not admissible as substantive evidence simply because the declarant is available to be cross-examined on the prior statement. Evid.R. 801(D)(1) provides that a prior statement is not hearsay if the declarant testifies at trial or hearing and is subject to cross-examination concerning the statement, and the statement is inconsistent with the declarant's testimony, and was given under oath subject to cross-examination by the party against whom the statement is offered and subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition.
>
> Assuming the written statement transcribed by Officer Seiler was attributable to Johnson, it was not made under oath and was not subject to cross-examination at the time it was made. Because the written statement is an out of court statement that is being offered for the truth of the matter asserted, it is hearsay and inadmissible unless an exception to the hearsay rule applies. See Evid.R. 802.
>
> On appeal, the State argues that Johnson's statement was admissible as an excited utterance. Evid.R. 803(2) permits the admission of "an out of court statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition." The Ohio Supreme Court has identified four conditions necessary to qualify as an excited utterance. Those conditions are:
>
> > (a) that there was some occurrence startling enough to produce a nervous excitement in the declarant, which was sufficient to still his reflective faculties and thereby make his statements and declarations the unreflective and sincere expression of his actual impressions and beliefs, and thus render his statement or declaration spontaneous and unreflective,

(b) that the statement or declaration, even if not strictly contemporaneous with its exciting cause, was made before there had been time for such nervous excitement to lose a domination over his reflective faculties, so that such domination continued to remain sufficient to make his statements and declarations the unreflective and sincere expression of his actual impressions and beliefs,

(c) that the statement or declaration related to such startling occurrence or the circumstances of such startling occurrence, and

(d) that the declarant had an opportunity to observe personally the matters asserted in his statement or declaration.

While the amount of time between the startling event and the statement is not dispositive as to whether the statement may be an excited utterance, it is a factor to be considered. The question is whether Johnson made her statement "before there had been time for such nervous excitement to lose a domination over her reflective faculties." The State, as the party seeking to admit the evidence, had the burden to prove that the statement was made while Johnson was still under the stress of the event.

PNC Bank National Assoc. v. West, 9th Dist. Wayne No. 12CA0061, 2014-Ohio-161:

Attached to its second motion for summary judgment, PNC attached a sworn affidavit of Dorothy Thomas, a mortgage officer with PNC. Thomas averred that she was competent to testify about the matters contained in the affidavit. Thomas attested that in 2005, National City Mortgage Co. changed its name to National City Mortgage, Inc. In 2007, National City Mortgage, Inc. merged into National City Real Estate Services, L.L.C. In 2009, "National City Bank, along with its wholly owned subsidiary National City Real Estate Services, LLC merged with and into PNC Bank, National Association." Thomas incorporated various documents attached to her affidavit to support her assertions.

The Wests objected to the supporting documents in their memorandum in opposition. Now, on appeal, the Wests argue that the court erred in considering the documents attached to Thomas' affidavit when ruling on the bank's motion for summary judgment because the documents were not original copies. In support of their argument, the Wests cite *Bank of America, N.A. v. Miller*, 194 Ohio App.3d 307, 2011-Ohio-1403 (2nd Dist.). In *Miller*, the court reviewed its decision in *Congress Park Business Ctr. L.L.C. v. Nitelites, Inc.*, 2nd Dist. No. 21262, 2007-Ohio-4200. In that case, one of the parties submitted "a copy of a certificate of incorporation bearing the signature of the Ohio Secretary of State, made under his seal." The Second District concluded that the document, despite being a copy, qualified as a self-authenticating document under Evid.R. 902(1) as a document under seal. However, the court held that the copy of the certified certificate was not admissible because there was no supporting testimony of a witness that compared it to the original, pursuant to Evid.R. 1005. Evid.R. 1005, in relevant part, states that "the contents of an official record may be proved by copy, certified as correct in accordance with Rule 902 or testified to be correct by a witness who has compared it with the original."

The certificates from the Secretary of State attached to PNC's second motion for summary judgment were photocopies. These photocopies were not certified as correct in accordance with Evid.R. 902 and Thomas did not testify that she compared the photocopies with the originals. See Evid.R. 902(1) and 1005. Therefore, these documents were not properly before the trial court when ruling on PNC's motion for summary judgment.

Similarly, the letters from the Comptroller of the Currency and the certificate of PNC's Secretary were not admissible as business records under Evid.R. 803(6) and 902(10). "To qualify for admission under Evid.R. 803(6), a business record must manifest four essential elements: (i) the record must be one regularly recorded in a regularly conducted activity; (ii) it must have been entered by a person with knowledge of the act, event or condition; (iii) it must have been recorded at or near the time of the transaction; and (iv) a foundation must be laid by the custodian of the record or by some other qualified witness." Thomas' affidavit fails to establish that the letters from the Comptroller of the Currency and the certificate of PNC's Secretary met any of the four requirements of Evid.R. 803(6). Further, to the extent that the corporate documents attached to the Secretary of State's Certificates could be considered business records, the records were inadmissible for the same reason, i.e., Thomas' affidavit is deficient in establishing the foundational requirements of Evid.R. 803(6).

In re R.E.A., 8th Dist. Cuyahoga No. 99652, 2014-Ohio-110:

In *State v. Boston*, 46 Ohio St.3d 108, 128, 545 N.E.2d 1220 (1989), the Ohio Supreme Court held that an expert's opinion testimony on whether there was sexual abuse would aid jurors in making their decision and is, therefore, admissible pursuant to Evid.R. 702 and 704. However, despite the admissibility of such evidence, an expert may not testify as to the expert's opinion of the veracity of the statements of a child declarant. When a trial court permits an expert to render an opinion as to the victim's veracity, the admission of this testimony is not only improper - it is egregious, prejudicial and constitutes reversible error. The court reasoned that such an opinion constitutes a litmus test of the victim's credibility, which infringes upon the factfinder's responsibility to make their own assessment of the veracity of witnesses.

Because there was no evidence of sex abuse independent of S.L.'s statements, counsel should have objected to the admission of the doctor's testimony. Counsel did object to the doctor's testimony as hearsay, but offered no objection when the doctor offered his opinion testimony. Counsel's failure to do so was prejudicial to R.A.'s defense because the entire case hinged on S.L.'s credibility. There was no eyewitness testimony or physical evidence of the abuse. Accordingly, we sustain R.A.'s third assigned error and reverse and remand the matter for a new trial.

In re R.P., 9th Dist. Summit No. 26836, 2013-Ohio-5728:

While Crim.R. 16(A) provides that once discovery is initiated by demand of the defendant, all parties have a continuing duty to supplement their disclosures. Juv.R. 24 contains no similar provision. Instead, Juv.R. 24(B) provides that where a person has failed to comply with an order issued pursuant to Juv.R. 24, the court may grant a continuance, prohibit the introduction of the evidence, or enter such other order as it deems just. Accordingly, a party seeking current information must either repeat its request or move for an order compelling discovery pursuant to Juv.R. 24(B). Father has not indicated that he repeated his request or that he sought a motion to compel from the trial court. Nor did he request a continuance on this basis. Accordingly, Father has not established that he is entitled to the remedies of Juv.R. 24(B).

In re C.H., 9th Dist. Wayne No. 12CA0055, 2013-Ohio-633:

Juv.R. 34(I) specifically states that the rules of evidence shall apply in a hearing on a motion for permanent custody. Thus, hearsay is inadmissible in such a proceeding unless it falls within a recognized exception to the hearsay rule.

In re E.A., 9th Dist. Medina No. 12CA0059-M, 2012-Ohio-5925:

> Although the mother did raise objections to the admission of the uncertified hospital records and case plan documents, Job and Family Services had already questioned its witnesses extensively about the content of those documents, without any objection from the mother. In fact, during her cross-examination of some of the agency's witnesses, the mother elicited additional testimony about the hearsay content of those case plans and hospital records. The admission of the documents themselves, even if erroneous, does not constitute grounds for reversal because the substance of the documents had already been admitted through other evidence.

State v. Hazel, 2nd Dist. Clark No. 2011CA16, 2012-Ohio-835:

> Hearsay is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Evid.R. 801(C). Hearsay is generally not admissible. Evid.R. 802. But there are numerous exceptions to the hearsay rule, including the following: "Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment." Evid.R. 803(4). Such statements are deemed to be trustworthy and admissible because "the effectiveness of the treatment depends upon the accuracy of information given to the physician [so] the declarant is motivated to tell the truth."
>
> In this case, however, Sheets repeatedly asserted that she was not injured and did not want treatment. As such, the rationale that her statements were truthful because her treatment depended upon the accuracy of the statements did not apply. In other words, because Sheets repeatedly stated that she did not want to be treated and had not suffered any injury, we cannot conclude that her statements were made for the purpose of medical diagnosis and treatment. It is the declarant's belief regarding whether her statement will be used for medical diagnosis or treatment and will affect her well-being that is crucial to the reliability of the statement. Regardless of the doctor's belief regarding the purpose of a declarant's statement, what really counts is what the patient thinks is relevant. Whether a medical professional believes the purpose of the statement is relevant to medical treatment or diagnosis is irrelevant.

In re O.H., 9th Dist. Summit No. 25761, 2011-Ohio-5632:

> Because Mother's attorney withdrew her initial objection to the magistrate's decision regarding alcohol abuse, we do not specifically address that issue, but consider only whether CSB has appropriately demonstrated that Mother's conduct had an adverse impact on O.H. sufficient to warrant the State in assuming the child's guardianship. Nevertheless, because Mother's conduct is implicitly relevant to the remaining discussion, we note that CSB offered no evidence from "a medical or osteopathic physician, psychologist, or any health care professional who has been specifically trained or is experienced in providing treatment for or diagnosing alcoholism" or "evidence of excessive work absences attributed to alcohol abuse, repeated citations for driving while under the influence of alcohol, or prior criminal offenses directly attributed to alcohol abuse" to establish alcohol abuse or alcoholism. Furthermore, the agency presented no medical evidence that either of Mother's hospitalizations was alcohol-related or that it is likely that Mother may be hospitalized again. Ms. Wilcox, an intake social worker, conceded that she exceeded her authority in recommending treatment for Mother because she is not a drug and alcohol counselor. In addition, Ms. Wilcox did not observe Mother to be intoxicated during her visits to the home,

nor did she find an empty refrigerator, a home littered with empty beer bottles, or other common indicia of alcohol abuse. Instead, Ms. Wilcox said the home was clean and appropriate. Sarah testified that she visited Mother's home two or three times a week and that Mother did not drink alcohol during those visits, nor did Mother appear to have been drinking prior to the visits.

As evidence that Mother abuses alcohol or is an alcoholic, CSB has instead relied on anecdotal symptoms reported by lay persons, a practice that may be subject to misinterpretation and could suggest an incorrect diagnosis. In reaching its conclusion that O.H. was adversely impacted by Mother's conduct, the trial court relied on a statement by Ms. Wilcox in which she reported that O.H. said she went to Sarah's home to get away from fighting, yelling, and drinking in Mother's home. This statement was erroneously admitted over an objection on the grounds of hearsay.

The statement was first reported by Ms. Wilcox as a direct quote from O.H. and was stricken by the magistrate upon an objection by Mother's attorney on hearsay grounds. The magistrate subsequently allowed virtually the same statement, albeit in the form of an indirect quotation, on the theory that it was part of Ms. Wilcox's investigation and upon the grounds that the investigator is permitted to explain what she has learned from O.H. as long as she does not use the child's exact words. Mother's attorney again objected, asserting that this is "just a different phraseology for hearsay statements." The magistrate refused to strike the statement. Mother has argued on appeal that the admission of this testimony was erroneous and prejudicial.

The rules of evidence strictly apply to adjudicatory hearings. Accordingly, hearsay is not admissible in an adjudicatory hearing unless the statement falls within a recognized exception to the hearsay rule. Evid.R. 802.

Ms. Wilcox did not personally observe any yelling, fighting, or drinking in the home and could not testify to them of her own personal knowledge. See Evid.R. 602. Rather, she testified to what she claims O.H. told her in the course of her investigation. There are evidentiary limits on the manner in which an investigator may testify regarding his or her investigation, however, and the trial court's interpretation in this case is too broad.

An investigator may testify to what he or she has learned in the course of an investigation, provided the testimony does not include an out-of-court statement. In such a case, the testimony does not contain hearsay and is not subject to a hearsay challenge.

The testimony at issue here, however, did contain an out-of-court statement. Where the investigator's testimony includes an out-of-court statement, the statement may be admitted to explain the investigator's conduct in the course of an investigation or the further steps of the investigator, but may not be admitted for the truth of the matter asserted. See Evid.R. 801(C).

In this case, the investigator's testimony included an out-of-court statement, and that statement was offered for the truth of the matter asserted, i.e., to establish that Mother's conduct had an adverse impact on O.H., a necessary component of the charge of dependency. Where the facts to be proven at trial and the substantive content of an out-of-court statement coincide, it can be presumed that the proponent is offering the statement for its truth. Accordingly, we conclude that the out-of-court statement was admitted for the truth of the matter asserted, and that allowing the statement was error. The statement should have been excluded as hearsay.

In re C.S., 9th Dist. Summit No. 25344, 2010-Ohio-4463:

> Evid.R. 703 provides: "The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by him or admitted in evidence at the hearing." Thus, the rule requires that the facts or data upon which an expert bases an opinion must be either perceived by the expert or admitted into evidence at the hearing. The Ohio Supreme Court has explained that it is sufficient if the expert relies entirely or "in major part" on facts or data perceived by him. On the other hand, an expert may not testify to an opinion where the expert has relied in major part on records that have not been admitted into evidence. In that situation, the expert would be placing significant reliance on unsubstantiated hearsay that is beyond the court's ability to evaluate.

Abuse, Neglect, & Dependency Issues

In re R.R., 9th Dist. Summit No. 27572, 2015-Ohio-5245:

> Father's final assignment of error is that the trial court failed to comply with the requirements of R.C. 2151.419(A)(1) in its adjudicatory and dispositional decisions. The trial court continued R.R.'s removal from the home on an emergency basis when it adjudicated the child and placed him in the temporary custody of CSB after sustaining CSB's objections and entering its independent dispositional decision. Therefore, it was required to find that CSB had made reasonable reunification efforts and to explain the factual basis for those findings. Father asserts that the trial court committed reversible error by failing to make the requisite findings.
>
> First, we must emphasize that this assigned error is unrelated to the evidence supporting the trial court's adjudicatory and dispositional decisions. Instead, it pertains to a separate requirement during these proceedings that, if a child is properly removed from the home or remains outside the home, the agency must demonstrate that it is making reasonable efforts to facilitate the return of the child to his home or the custody of a relative. In other words, a deficiency in the reunification efforts of the agency does not undermine the substantive merits of the trial court's adjudication or disposition of the child.
>
> This statutory requirement is imposed upon the agency and the trial court to ensure that the agency is properly working toward reunifying the child with his family. Because the trial court's adjudication and disposition order continued R.R.'s removal from his home, R.C. 2151.419(A)(1) required CSB to prove, and the trial court to explicitly find, that CSB had made reasonable efforts to prevent the removal of the child from the child's home, to eliminate the continued removal of the child from the child's home, or to make it possible for the child to return safely home. The trial court did not make such a finding in this case. Moreover, R.C. 2151.419(B)(1) also requires that when making those required reasonable efforts findings, the court shall issue written findings of fact setting forth the reasons supporting its determination. Specifically, it must briefly describe in its 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.
>
> Although CSB argues that these findings were implicit in its judgment, this Court has previously rejected that argument. Based on the evidence before the trial court, its failure to articulate a finding of reasonable efforts, as well as its failure to set forth the factual basis for that finding as set forth in R.C. 2151.419(B)(1), constituted reversible error. Father's third assignment of error is sustained.

State v. Jordan, 9th Dist. Summit No. 27005, 2014-Ohio-2857:

> Ms. Jordan was convicted of violating Revised Code Section 2919.22, which provides in part that no person, who is the parent of a child under eighteen years of age shall create a substantial risk to the health or safety of the child, by violating a duty of care, protection or support. A "substantial risk" is defined as a "strong possibility, as contrasted with a remote or significant possibility, that a certain result may occur or that certain circumstances may exist." R.C. 2901.01(A)(8).
>
> The State argues that Ms. Jordan violated her duty of care to her child by risking arrest when she participated in the shoplifting offense.
>
> Neither Deputy Menefee nor the other deputies testified that the child's physical safety was ever at risk during the crime itself. There was no evidence that the child was in distress, neglected or abandoned at any time during or after the theft or Ms. Jordan's complicity therein. While we cannot condone Ms. Jordan's actions, which occurred in the presence of her four-month-old infant and utilized the baby's supplies to conceal stolen merchandise, we conclude that the connection between the risk of potential placement with Children's Services and the existence of a substantial risk to the child's health and safety is too tenuous and speculative to support Ms. Jordan's conviction for child endangering. There was no evidence that Ms. Jordan's actions during the complicity in theft constituted a substantial risk to the health or safety of her child. Deputy Menefee's testimony demonstrated that the risk that the child would be placed in the custody of Children's Services was speculative as that determination was made by that agency rather than by the investigating deputies. Her testimony revealed that being arrested does not automatically result in Children's Services taking custody of the child; it just means that a referral is made to the agency. Further, the potential for a parent's arrest cannot form the sole basis for a finding of substantial risk. *See State v. Allen*, 140 Ohio App.3d 322, 325 (1st Dist.2000) (concluding that father's arrest, while leaving seven-year old home alone for two minutes while he walked down the street to borrow butter, was an unexpected intervening event which did not demonstrate that he acted recklessly or created a substantial risk to the child.).

In re D.T., 9th Dist. Lorain No. 13CA010451, 2014-Ohio-2332:

> A "neglected child" under R.C. 2151.03(A)(2) is any child who lacks adequate parental care because of the faults or habits of the child's parents, guardian, or custodian. A "dependent child" is defined in R.C. 2151.04(B) as a child who lacks adequate parental care by reason of the mental or physical condition of the child's parents, guardian, or custodian.
>
> LCCS presented ample evidence that Mother had mental health problems that hampered her ability to provide her children with a suitable home, and that she refused to obtain a mental health assessment or engage in any treatment. Based on the evidence presented at the hearing, the trial court could reasonably conclude that D.T. and J.T. were neglected and dependent children under R.C. 2151.03(A)(2) and 2151.04(B).

In re M.T.B., 9th Dist. Summit No. 26866, 2013-Ohio-4998:

> R.C. 2151.419(A)(1) requires the trial court to make a reasonable efforts determination after the enumerated hearings only if the court removes a child from the child's home or continues the removal of a child from the child's home. The dispositional order did not continue the removal of the children from Mother's home because it ordered that they be returned to her legal custody under an order of protective supervision. Because the trial court's dispositional order did not continue the children's prior removal from the home, the trial court was not required to make reasonable efforts findings under R.C. 2151.419(B)(1).
>
> The temporary absence of L.M. and the older P.S. from Mother's home had no bearing on whether they were dependent under R.C. 2151.04(C) under the facts of this case and Mother has cited no authority to convince us otherwise. There is no language in the statute to require that the children actually be present in their home at a particular moment to authorize an agency to establish that they are dependent under R.C. 2151.04(C). Given that investigations of unsafe and unsanitary homes will often occur when one or more of the children is at school or otherwise absent from the home, it would be unreasonable to construe R.C. 2151.04(C) to require that the agency wait for children to return to an unsafe environment before it had authority to intervene to protect them.

In re J.G., 9th Dist. Wayne No. 12CA0037, 2013-Ohio-417:

> R.C. 2151.419(B)(1) requires the trial court to make explicit findings to support its reasonable efforts determinations after each of the hearings set forth in R.C. 2151.419(A)(1). More recently, several other appellate districts have held that R.C. 2151.419(B)(1) requires the trial court to set forth explicit findings and that its failure to do so constitutes reversible error.
>
> CSB argues that this Court should affirm the trial court's decision, despite its failure to make the requisite findings, because the evidence at both hearings supported the trial court's reasonable efforts determination. A trial court's failure to make the requisite findings not only disregards a clear legislative directive contained in the statute, it also undermines an obvious purpose of making the required findings, which is to facilitate appellate review of the trial court's reasonable efforts determination. Even when this Court must examine the record, it does so with a different focus than the trial court. As an appellate court, this Court's role is to "review" the factual findings of the trial court, not to make factual findings in the first instance.
>
> This Court agrees with the prevailing case law that R.C. 2151.419(B)(1), by its clear and explicit terms, requires the trial court to support its reasonable efforts determinations by articulating the services provided by the agency that were relevant to that determination and why those services failed to enable a reunification of the family.
>
> Through his fifth assignment of error, Father challenges a requirement of the case plan that he undergo a substance abuse assessment and follow any resulting treatment recommendations. This Court will not reach the merits of this assignment of error because it is without jurisdiction over that aspect of the trial court's order.

Pursuant to Article IV, Section 3(B)(2) of the Ohio Constitution, this court's appellate jurisdiction is limited to the review of final judgments of the trial court. Father has appealed from a final, appealable order insofar as the trial court adjudicated J.G. a dependent child and later placed him in the temporary custody of CSB. In *In re B.M.*, in which parents appealed from an adjudication and disposition and similarly attempted to challenge a case plan requirement that the mother undergo a psychological assessment, this Court concluded that it lacked jurisdiction to review that aspect of the trial court's order. Specifically, the case plan requirement did not affect the parent's substantial rights and determine the action with respect to those rights. The adjudication of dependency and disposition of temporary custody is immediately appealable pursuant to R.C. 2501.02 because the adjudication significantly affects the parent's constitutional rights and the "temporary" disposition could potentially keep the child out of the home for up to two years. Requirements of the case plan, however, do not possess the same indicia of finality. Therefore, because this Court is without jurisdiction over this interlocutory aspect of the trial court's order, it will not reach the merits of Father's fifth assignment of error.

In re C.S., 9th Dist. Summit No. 26178, 2012-Ohio-2884:

To establish dependency under R.C. 2151.04(C), evidence must be presented of conditions or environmental elements that were adverse to the normal development of the child. A finding of dependency under R.C. 2151.04(C) focuses on the condition of the child's home and whether he or she is receiving proper care and support. We have stated that a dependency finding based on a parent's use of an illegal substance or the abuse of a legal substance under either R.C. 2151.04(B) or (C) requires some evidence that the parent's supervision of her children or the environment of her children has been affected in some negative way by the behavior of the parent.

In the instant matter, there was testimony that C.S. lived in an environment in which drugs were present and in forms that would be appealing to a young child, i.e. in a McDonald's bag and/or in a cereal bar. Moreover, there was testimony that Mother left C.S., who was not yet three years old, unattended in the presence of these drugs while she slept. Notably, not only were drugs present in the home, they were accessible to a toddler; the detective found a marijuana-laced cereal bar on the coffee table in the room where C.S. was napping and pills that Mother identified as OxyContin, were found on the floor in that same room. While it is true that the testimony supports that C.S. was also sleeping at the time, Mother awoke to find C.S. ill and requiring immediate medical attention. In addition, there was testimony that Mother believed C.S. had gained access to OxyContin. We cannot say the trial court's find of dependency pursuant to R.C. 2151.04(C) is against the manifest weight of the evidence.

R.C. 2151.03(A)(2) states that a neglected child includes a child who lacks adequate parental care because of the faults or habits of the child's parents, guardian, or custodian. Adequate parental care means the provision by a child's parent or parents, guardian, or custodian of adequate food, clothing, and shelter to ensure the child's health and physical safety and the provision by a child's parent or parents of specialized services warranted by the child's physical or mental needs. R.C. 2151.011(B)(1).

In the instant matter, there was no testimony that C .S.' home, food, or clothing was inadequate. There was no testimony that the home was unsanitary, that C.S. was malnourished, or that his clothing was ill-fitting or inappropriate. Nor was there any testimony that C.S. had any special medical needs that were not being met by Mother. Accordingly, the finding that C.S. was neglected as that term has been defined by R.C. 2151.03(A)(2) and 2151.011(B)(1) is against the manifest weight of the evidence. Even if we were to agree with courts that have concluded that lack of parental supervision can constitute neglect under R.C. 2151.03(A)(2), there was no testimony evidencing that Mother frequently left C.S. unsupervised, a factor that such Courts have found important in making a finding of neglect based upon lack of supervision.

In re N.G., 9th Dist. Lorain No. 12CA010143, 2012-Ohio-2825:

The trial court's authority in dependency and neglect cases is strictly governed by a comprehensive statutory scheme set forth in R.C. Chapter 2151. On February 1, 2010, when LCCS sought removal of N.G. from Mother's home, it did not file a new dependency and neglect complaint under R.C. 2151.27(A)(1), alleging that the child was neglected and dependent, which would have authorized the juvenile court under R.C. 2151.23 and 2151.31 to remove the child from the home.

Rather than commencing a new dependency and neglect case, LCCS filed a motion in the existing 2006 case "for further dispositional orders," seeking to terminate the 2008 legal custody order and have N.G. placed in its temporary custody. N.G. had been living with Mother for over two years and had been in her full legal custody for over 19 months, but the trial court and all parties proceeded as if LCCS were seeking modification of a temporary disposition in an ongoing dependency and neglect case under R.C. 2151.353(A)(2) and R.C. 2151.42(A), which merely required a demonstration that such a disposition was in the child's best interest.

Although the trial court retained jurisdiction over N.G. after it adjudicated her a dependent and neglected child and LCCS was authorized to seek a modification or termination of the trial court's prior dispositional order "at any time," it was also necessary that any modification of the prior dispositional order comply with R.C. 2151.42 if applicable." R.C. 2151.353(E)(1) and (2). Although R.C. 2151.42(A) authorizes the trial court to modify many dispositional orders if it finds that such a modification is in the child's best interest, R.C. 2151.42(B) sets forth an additional constraint on the trial court's authority to modify or terminate orders "granting legal custody of a child to a person."

R.C. 2151.42(B) explicitly emphasizes that an order granting legal custody is intended to be permanent in nature. Consequently, it provides that the trial court "shall not" modify or terminate a legal custody order unless it first finds, based on facts that have arisen since the prior order or were unknown to the court at that time, that a change has occurred in the circumstances of the child or the person who was granted legal custody, and that modification or termination of the order is necessary to serve the best interest of the child.

Although the trial court failed to make the requisite findings that there had been a change in circumstances in this case or that termination of legal custody was "necessary" to serve the best interest of N.G., Mother was represented by counsel when she affirmatively waived this requirement by stipulating that N.G. should be removed from her home and placed in the temporary custody of LCCS. Waiver is the "intentional relinquishment or abandonment of a right" that cannot form the basis of error on appeal. Moreover, given the substantial evidence in the record that Mother was unable to care for her child because she could not control her addiction to drugs by achieving even short-term sobriety, we could not conclude that the outcome of this case would have been any different had the trial court followed the appropriate procedure in reopening this case.

In re O.H., 9th Dist. Summit No. 25761, 2011-Ohio-5632:

When a child is receiving proper care from her parents or relatives to whom the parent has entrusted the child's care, then the child is not a dependent child. The trial court concluded and CSB has argued that O.H. was harmed and, therefore, dependent because O.H. was making arrangements for her own care approximately three times a week through her periodic telephone calls to her sister. We disagree. According to Sarah, O.H. had been calling her and coming to her home off and on for nearly two years. Also, according to Sarah, O.H. did so largely because she simply enjoyed being in Sarah's home. If this qualifies as an arrangement for alternate childcare, then the "arrangement" was made long ago when O.H. initially started going over to Sarah's home. CSB has presented no evidence that Mother was not involved in creating or agreeing to such a plan at an earlier time. It is not reasonable to conclude that O.H. was making independent arrangements for her own childcare based on a dependency situation every time she went to visit her sister.

Furthermore, the *state's* interest under R.C. 2151.04 arises only if no one is meeting the obligations of care, support, and custody, which are owed by the parent. Cases which cite a need for the parent to initiate alternate childcare plans are generally neglect-based, and/or they involve very young children who are not capable of any self-care or independent expression. O.H. was ten years of age when this case began. The record reflects that she is capable of expressing herself, and it does not appear that she has made unwise choices. Furthermore, O.H. is merely spending time with her adult sister in a nearby home that has been deemed appropriate by CSB. CSB has not demonstrated that O.H. has been deprived of adequate food, clothing, or shelter in consequence of Mother's mental or physical condition. The evidence, therefore, fails to support a finding of dependency under R.C. 2151.04(B).

Assuming the record is sufficient to establish a condition of alcoholism or alcohol abuse, as we must, there is nevertheless no evidence in the record that O.H. has been adversely impacted by Mother's conduct. CSB did not introduce school records or testimony by school personnel that O.H. was having academic or attendance problems in school. Nor is there any evidence that O.H. was not being provided proper medical care, receiving proper nutrition, or being provided clean and appropriate clothing. CSB offered no evidence that O.H. had any medical, emotional, or social problems that were being neglected. There is no evidence that Mother was failing to keep appointments for O.H. or otherwise failing to provide for her child's needs.

At this juncture, the finding of dependency in this case appears to be an excessive response in light of the evidence adduced. The agency must either come up with more evidence of the dependency of O.H. or resolve its concerns regarding medical consent with a less drastic solution. The "fundamental liberty interest" of parents in the care, custody, and management of their children is not absolute. Nevertheless, the State may not intrude into the parent-child relationship absent clear and convincing evidence in accordance with applicable laws. Because CSB failed to establish dependency under either R.C. 2151.04(B) or (C), the judgment of the trial court must be reversed. Mother's two assignments of error are sustained.

In re A.W., 9th Dist. No. 25601, 2011-Ohio-4490:

R.C. 2151.04(D) provides that a dependent child is a child to whom both of the following apply:

> (1) The child is residing in a household in which a parent, guardian, custodian, or other member of the household committed an act that was the basis for an adjudication that a sibling of the child or any other child who resides in the household is an abused, neglected, or dependent child.
>
> (2) Because of the circumstances surrounding the abuse, neglect, or dependency of the sibling or other child and the other conditions in the household of the child, the child is in danger of being abused or neglected by that parent, guardian, custodian, or member of the household." R.C. 2151.04(D).

A finding of dependency under this section requires proof that both of the above provisions apply. Thus, a lack of clear and convincing evidence on either paragraph will prevent a finding of dependency under R.C. 2151.04(D). Under the first paragraph of the statute, CSB was required to prove by clear and convincing evidence that A.W. would be residing in a household in which a member of that household committed an act that was the basis of an adjudication that F.M. was an abused or dependent child. Alternatively, CSB was required to prove by clear and convincing evidence that A.W. would be residing in a household in which a member of that household committed an act that was the basis of an adjudication of abuse, neglect or dependency as to any other child residing in A.W.'s household. In this case, there is no evidence that any child who was not a sibling would be residing in A.W.'s household. Therefore, the focus of this matter is upon that portion of the statute that refers to an adjudication of abuse, neglect or dependency as to a sibling.

Mother contends that CSB did not present evidence that satisfies the requirements of R.C. 2151.04(D)(1) because F.M. is not A.W.'s sibling as Mother's parental rights to F.M. were terminated at the time of A.W.'s birth. We disagree. In examining the language of the statute, the legislature did not qualify the word "sibling" in any manner. Thus, although there may have been a legal termination of Mother's parental rights, this did not negate the sibling relationship that was established by virtue of F.M. and A.W.'s common biological mother. Consequently, for purposes of R.C. 2151.04(D), F.M. and A.W. are siblings.

R.C. 2151.04(D)(1) specifically requires that A.W. reside "in a household in which a parent, guardian, custodian, or other member of the household committed an act that was the basis for an adjudication" of A.W.'s sibling. Only three people were expected to be residing with A.W.: Mother, the maternal grandmother, and Mother's sixteen-year-old sister. Significantly, the record contains no evidence whatsoever that any of those individuals committed an act that formed the basis of the adjudication regarding F.M., as is required by R.C. 2151.04(D)(1).

CSB acknowledges that it has no evidence that Mother abused or neglected F.M., even though it reportedly conducted an investigation. Nor is there any evidence that the maternal grandmother or Mother's sister committed such acts. In fact, no one was charged with or convicted of harming F.M. There is no medical evidence in the record regarding any of the details surrounding F.M.'s condition. Nor is there any evidence as to when F.M. might have been injured; who took her to the hospital; whether Mother reacted appropriately upon learning of F.M.'s condition; what treatment the child received; the child's current condition; or whether any part of the child's condition was the result of an intentional act, an accident, or even a medical condition. The agency presented no evidence that a member of A.W.'s household "committed an act" that was the basis for F.M.'s adjudication. Thus, CSB failed to connect any members of A.W.'s household to F.M.'s condition in order to demonstrate that a similar risk of harm existed for A.W.

Notwithstanding, CSB has argued that the statute is satisfied simply by virtue of Mother having custody of F.M. In other words, Mother should be deemed to have committed an act that resulted in F.M.'s adjudication because F.M. was in her care and custody at the time that harm befell F.M. In effect, CSB contends that because Mother had custody of her child, she was responsible for everything that happened to her, regardless of whether Mother was present, involved, or had any knowledge of the situation and regardless of whether F.M.'s condition was the result of intention, accident, or otherwise.

Of course, parents are always ultimately "responsible" in a broad sense for their children, but we have not found any authority that provides such a sweeping interpretation of the "committed an act" language contained in R.C. 2151.04(D). In ascertaining legislative intent and applying a statute, this Court is obligated to give effect to the words used in a statute. R.C. 2151.04(D) contains language that requires that a member of A.W.'s household "committed an act," that formed the basis of an adjudication of her sibling. In keeping with the plain language of the statute, we conclude that there must be clear and convincing evidence that some person in the child's household committed an act that resulted in an adjudication of that child's sibling. Our application of the plain language of the statute is also consistent with our understanding of the legislative intent of R.C. 2151.04(D): "to protect the next child from a similar fate."

In re M.O., 9th Dist. Summit No. 25312, 2010-Ohio-5107:

R.C. 2151.04(C) defines a dependent child as "any child whose condition or environment is such as to warrant the state, in the interests of the child, in assuming the child's guardianship." This adjudication should concentrate on whether the children are receiving proper care and support and look to environmental elements that are adverse to the normal development of children. The focus is on whether parental care is *adequate*, not whether it is *ideal*. See R.C. 2151.011(B)(1). Conditions of the home that are adverse to the normal development of children typically involve extreme filth or health or safety hazards that are so severe that they require removal of the children from the home.

The caseworker also expressed concern that S.F., then twelve years old, slept in a bedroom in the basement because there was no functioning light down to the basement and the bed in the basement had no linens on it. Because the caseworker gave no further explanation about light or the bed, there was no evidence to demonstrate whether these conditions were temporary or ongoing. She did not explain whether the light was not working due to the inoperability of the light or simply because it needed a new light bulb.

The absence of linens from S.F.'s bed may also have been temporary. There was no evidence that the child slept on a bare mattress on a regular basis, only that there were no linens on the bed at the time the caseworker observed it. She testified that all of the other beds in the house had linens on them and did not testify about whether she and Mother spoke about the absence of linens on S.F.'s bed. Moreover, it is unclear how the health or well-being of a twelve-year-old boy would be seriously impacted by sleeping on an unmade bed, absent evidence that the mattress was unsanitary.

CSB failed to establish that the condition of Mother's home was unsafe for the children or that it was so dirty that it posed a threat to their health or well-being. This was a home where Mother lived with four sons who ranged in age from twelve to nineteen. Coupled with the fact that Mother worked fulltime and went to school two evenings a week, it might be expected that the condition of the home would not be pristine. CSB's evidence about the condition of this home did not rise to the level of clear and convincing evidence that it was so adverse to the normal development of these children that it warranted intervention by the state.

This Court found no legal authority to support the trial court's conclusion that, because the children were "chronic truants" they were also dependent and neglected. According to R.C. 2152.02(F)(5), "any child who is a chronic truant" is a "delinquent child," not a dependent or neglected one. Throughout R.C. Chapters 2151 and 2152, the term "chronic truant" is used exclusively in reference to an adjudication of "delinquency;" it is never used in connection with, or as a basis for, an adjudication of dependency or neglect. This Court likewise found no case law to support the trial court's conclusion that an adjudication of dependency or neglect can be based solely on the child's truancy. To uphold the trial court's adjudications would require us to expand the definitions of dependency and neglect without any legal authority to do so.

Moreover, the legislature has evidenced its intent that the juvenile court will address truancy outside the dependency and neglect setting. Were we to construe the definitions of dependency and/or neglect to encompass mere truancy, we would potentially circumvent an entire statutory scheme that the legislature has put in place to address chronic truancy. Chapters 2151, 2152, and 3321 of the Ohio Revised Code provide the statutory framework for addressing the responsibilities of both parent and child for compulsory school attendance and chronic truancy. This comprehensive scheme sets forth specific procedures that must be followed before finding a child a "chronic truant," none of which appear to have been followed here. Truancy proceedings involve the parent, in addition to the child, based on proving allegations that the parent "has failed to cause the child's attendance at school in violation of R.C. 3321.38 and, in addition, the particular facts upon which that allegation is based." Ohio's compulsory school attendance laws are set forth in an entire chapter of the Ohio Revised Code, R.C. Chapter 3321. Specific procedures are required for notifying students and parents about the potential consequences of school absences, prior to the time that the child's attendance has reached the level of "chronic" truancy. Moreover, the statutory framework expresses a clear preference for encouraging school attendance through intervention methods

such as counseling, parental involvement programs, and mediation, rather than instituting legal proceedings or removing the child from the home.

Although poor school attendance may be one of the underlying facts in an adjudication of dependency or neglect, it is generally coupled with other problems in the home, such as deplorable living conditions, a lack of food, domestic violence, and/or drug abuse by the parents. There was no such additional evidence presented in this case. Without some evidence that the children were in an unsuitable environment during their school absences or that Mother was "willfully" at fault in refusing to provide for her children's educational needs, this evidence could not satisfy the definitions of dependency under R.C. 2151.04 or neglect under R.C. 2151.03. The trial court did not have sufficient evidence before it to adjudicate the children neglected or dependent.

In re D.H., 9th Dist. Summit No. 25095, 2010-Ohio-2998:

CSB had based its dependency complaints on allegations that the children's home environment was unsuitable because Mother and Father had been manufacturing and selling drugs there. At the adjudicatory hearing, however, CSB failed to present evidence to establish the truth of any of those allegations.

Consequently, the only problem in Mother's home that CSB demonstrated at the hearing was the presence of a small amount of marijuana. CSB presented conflicting evidence about where the marijuana was found. The police officer testified that the marijuana was found under a couch in the living room, but Mother told the caseworker that she had given the officers the bag of marijuana. At most, CSB established that Mother possessed a small quantity of marijuana for her personal use. CSB presented no evidence that Mother ever smoked marijuana in the home or in the presence of her children, nor did it offer evidence that the children's environment had otherwise been negatively affected by Mother's marijuana possession or use.

In *In re R.S.*, 9th Dist. No. 21177, 2003-Ohio-1594, this Court reversed an adjudication of dependency that was based solely on the mother's admitted use of marijuana outside the presence of her children. Because the agency failed to present any evidence that the children had been negatively affected by the mother's marijuana use, this Court concluded that it had failed to establish dependency under R.C. 2151.04(C).

The trial court further found this case distinguishable from *In re R.S.* because the police arrested Mother and Father and there were no other adults available to care for the children. The court's conclusion that the parents' arrest left the children without a caregiver is unsupported by the evidence. Unlike other cases that this Court has reviewed, there was no evidence that Mother or Father was given any opportunity at the time of their arrest to attempt to contact another caregiver for the children. When the caseworker spoke to Mother the next day, Mother gave her the names of two relatives and CSB placed the children with one of them that same day.

This case is legally indistinguishable from In re R.S. because the evidence adduced at the adjudicatory hearing demonstrated nothing more than a parent's admitted involvement with a small amount of marijuana, with no evidence that her marijuana use or possession had affected her children in any way. In fact, while the mother in *In re R.S.* admitted to daily use of marijuana, there was no evidence of regular drug use by this mother. The dissent assumes that probable cause of unlawful activity existed to support the execution of the search warrant, however, that is merely an assumption since the issue has not been determined by the court below and is not before us on the record.

We must again emphasize that we do not condone a parent's use or possession of marijuana, but we cannot conclude that this parental fault, without evidence of its impact on the children, demonstrates a deficiency in the children's condition or environment. Because CSB failed to present any evidence that the condition or environment of these four children warranted their removal by the state, it failed to establish that they were dependent children under R.C. 2151.04(C). The assignment of error is sustained.

In re M.H., 9th Dist. Wayne No. 09CA0028, 2009-Ohio-6911:

CSB premised its claim of dependency solely on concerns regarding inappropriate sexual behavior in the home. Specifically, CSB alleged that Mother's husband Jerrod (M.H.'s stepfather) may have had sexual contact with M.H., and that the three-year old B.P. had alleged that both Jerrod and seven-year old M.H. had sexual contact with her. CSB had the burden of proving these allegations to establish dependency. The State's theory of the case was premised solely on the situation in M.H.'s home based on B.P.'s allegations of sexual contact between her and Jerrod, her and M.H., and Jerrod and M.H.

The trial court found that B.P.'s allegations of sexual abuse were not proven. CSB has not raised any cross-assignment of error in regard to this issue and it is now *res judicata*. CSB's allegations of dependency were premised solely on B.P.'s allegations of sexual abuse. In the absence of evidence substantiating those allegations, CSB has failed to prove its case by clear and convincing evidence.

Moreover, even if the trial court could consider evidence of matters beyond those alleged in the complaint, the finding that M.H. is dependent pursuant to R.C. 2151.04(C) is against the weight of the evidence. The juvenile court premised its finding of M.H.'s dependency solely on its belief that State intervention is necessary to determine how M.H. may be assisted by a course of therapy to alleviate any psychological issues for him. The trial court does not identify what those issues are or how they are impacting the child's life. In addition, the only evidence presented regarding the child's psychological issues demonstrates that those issues arose as a result of CSB's initial intervention and removal of M.H. to foster care. Furthermore, there is no evidence that anyone other than Mother initiated counseling for M.H. in recognition of issues caused by CSB's intervention into the lives of this family. This Court takes well Mother's argument that CSB cannot create a detrimental condition or environment for a child and then premise allegations of dependency on that condition or environment. Based on our thorough review, this Court is compelled to conclude that the trial court's finding of dependency is against the manifest weight of the evidence. Mother's first assignment of error is sustained.

In re N.C., 9th Dist. Summit No. 24590, 2009-Ohio-4514:

A trial court did not abuse its discretion by finding that two children were not abused, neglected, or dependent when their father was exposing them to profane and sexually graphic language while creating a podcast. The father created and posted a podcast which was co-hosted by the children and discussed a variety of topics, some of which were profane and vulgar in nature. However, a psychologist testified that the children did not show any signs of physical, emotional or sexual abuse and recommended that the family stay together. A police officer also testified there were no criminal charges pending against the father based on the creation of the podcast and that he had no concerns regarding the physical safety of the two children.

> Contrary to CSB's argument, it did not present clear and convincing evidence sufficient to support a finding of abuse, dependency, or neglect and neither this Court or the trial court is permitted to indulge in speculation otherwise. While everyone who testified at the adjudication hearing expressed concern about N.C. and G.C.'s exposure to the content of Father's podcasts, no one testified that N.C. and G.C. had actually suffered any harm (mental, emotional, psychological, or otherwise) as a result. Any reasonable reviewer of Father's podcasts would agree with Dr. Esson's conclusion that they amount to extremely poor judgment and decision-making on Father's part and that the children and Mother were very uncomfortable with the graphic language used. Without additional evidence, however, these conclusions alone do not support a finding of abuse, dependency, or neglect. As such, we must conclude that the record does not contain clear and convincing evidence sufficient to support a finding of abuse, dependency, or neglect. CSB's first assignment of error is overruled.

In re J.A., 9th Dist. Summit No. 24332, 2009-Ohio-589; ¶10:

> Juvenile court may, but is not required to, consider evidence of events or circumstances in existence after the date(s) alleged in a complaint alleging abuse, dependency and/or neglect.

In re V.R., 9th Dist. Summit No. 23527, 2008-Ohio-1457, ¶17-18, 20:

> A dependency adjudication focuses not on the fault of the parents, but on the child's environment, including the condition of the home itself and the availability of medical care and other necessities. The adjudication requires that Children Services present clear and convincing evidence of conditions adversely affecting the normal development of the child.
>
> In this case, the agency failed to present clear and convincing evidence of conditions adversely affecting the child's normal development. Despite the Mother's positive toxicology screen at the hospital for alcohol, marijuana, and opiates, Children Services did not prove any adverse effect on the child stemming from that exposure. The evidence showed that the child was healthy. She did not display any symptoms of exposure to drugs or alcohol and her toxicology screen was negative.
>
> While smoking marijuana, especially while pregnant, is not a good parenting decision, the State is not warranted in assuming guardianship without clear and convincing evidence of an actual adverse effect on the child. When, as in this case, the mother had a plan for supplying adequate food, clothing, and shelter for the baby and the living conditions were appropriate, the state is not warranted in assuming guardianship. Therefore, the trial court erred in adjudicating the child a dependent child under R.C. 2151.04(B).

In re C.R., 108 Ohio St.3d 369, 2006-Ohio-1191, 843 N.E.2d 1188:

> A juvenile court adjudication of abuse, neglect, or dependency is a determination about the care and condition of a child and implicitly involves a determination of the unsuitability of the child's custodial and/or noncustodial parents.
>
> When a juvenile court adjudicates a child to be abused, neglected, or dependent, it has no duty to make a separate finding at the dispositional hearing that a noncustodial parent is unsuitable before awarding legal custody to a nonparent.

Permanent Custody

In re N.C., 9th Dist. Summit No. 28074, 2016-Ohio-3243:

> The Ohio Supreme Court has explained that in considering an award of permanent custody, the juvenile court need not determine that the termination of parental rights was "the only option." Nor must the court find that no suitable relative was available for placement. Rather, R.C. 2151.414 requires that the juvenile court weigh all the relevant factors and find the best option for the child. The statute does not make the availability of a placement that would not require a termination of parental rights an all-controlling factor. The statute does not even require the court to weigh that factor more heavily than other factors.

In re K.H., 9th Dist. Summit No. 27952, 2016-Ohio-1330:

> By the time of the hearing, the four children had spent more than two years living outside Mother's custody. Her young daughters had lived outside her custody for most of their lives. This Court has repeatedly stressed, however, that the time period in and of itself cannot be held against the parent without considering the reasons for it and the implications that it had on this child.

In re E.M., 9th Dist. Wayne No. 15CA0033, 2015-Ohio-5316:

> This Court has often explained that the factors contained within R.C. 2151.414(B)(1)(a)-(e) are alternative findings, and only one must be met in order for the first prong of the permanent custody test to be satisfied. While Mother challenges the trial court findings that the parents abandoned E.M. and that they have failed to remedy the conditions that initially caused the child to be removed from his home, Mother has made no argument regarding the trial court's alternative finding that the parents demonstrated a lack of commitment toward the child, pursuant to R.C. 2151.414(E)(4), although she has mistakenly labeled the verbatim language of R.C. 2151.414(E)(1) as R.C. 2151.414(E)(4) in her appellate brief. Thus, notwithstanding any challenges to the findings of abandonment or the failure to remedy conditions, the first prong of the permanent custody test is satisfied by the alternative finding, made by the trial court and left unchallenged by Mother, that the parents demonstrated a lack of commitment toward the child. Because the record supports an alternative finding on the first prong of the permanent custody test and Mother has not challenged that finding, Mother has failed to demonstrate prejudice regarding the trial court's first prong finding.

In re G.D, 9th Dist. Summit No. 27855, 2015-Ohio-4669:

> Father assigns error to the fact that the foster father addressed the court without being sworn in as a witness and asks that we consider this as plain error. He claims that the trial court erroneously relied on the foster father's statement in its opinion.
>
> The record reveals that after hearing all the evidence and closing arguments, the trial court noted the presence of the foster parents in the courtroom and invited them to speak, stating that the law allows them to make a statement. The foster father made a brief comment on behalf of his wife and himself.

We are not aware that the law affirmatively provides for foster parents to make unsworn statements in permanent custody proceedings. No citation was offered by the trial court, nor has CSB cited any legal authority in support of such a claim in its appellate brief. We recognize that foster parents are occasionally sworn and testify when called as witnesses for one of the parties to a custody proceeding. As is the case with any witness, the foster parent would be subject to cross-examination and such testimony would be weighed and assessed for credibility by the trier of fact. In that light, we note that Evid.R. 603, R.C. 2317.30, as well as Article I, Section 7 of the Ohio Constitution all require that an oath be administered to a witness before the witness may testify. While it has been said to be error for the trial court to admit unsworn testimony, such error is generally waived if a timely objection is not made. This is because the failure to administer an oath can easily be corrected at the time; an attorney may not fail to object and then cite the lack of an oath as error. Consequently, any error in allowing the statement would have been forfeited by Father's lack of objection.

Moreover, the matter does not rise to the level of plain error in this case. By way of comparison, this Court recently found plain error in the failure of a magistrate to swear in the sole witness on each side of a civil case for a money judgment where the parties were proceeding pro se. In that case, there was no sworn testimony at all, and the magistrate clearly relied upon unsworn testimony in rendering judgment. In the present case, all of the key witnesses were sworn in. The foster father presented the only unsworn statement in the case, and it is not at all clear that the trial court based its decision, as claimed in Father's assigned error, upon that statement. This is so because the findings of the trial court are fully supported by the testimony of properly sworn witnesses.

The trial judge did not cite the foster father in her opinion, nor did she state that she was relying on the foster father's statement in her opinion. It does not appear from the record that she relied on the unsworn statement of the foster father in any way. Rather, it appears that the trial judge relied instead on the properly admitted testimony of the guardian ad litem and the caseworker in making her findings and in crafting her opinion. Accordingly, Father has not demonstrated prejudice.

In re M.P., 9th Dist. Lorain No. 14CA010693, 2015-Ohio-4417, ¶17:

Despite repeated suggestions throughout the hearing to the contrary, Mother was only required to comply with the written requirements of the journalized case plans, not additional requirements that the caseworker or guardian ad litem seemed to believe had been imposed upon her.

The caseworker testified that Mother's visits were terminated because they were "chaotic," Mother inappropriately spoke to the children about the case plan, and was hostile toward LCCS. The agency also blamed Mother for the children's increased behavioral problems before and after visits. To begin with, this Court questions the reasonableness of the agency's reunification efforts in this regard. The children were removed from Mother's care because she was overwhelmed by caring for seven minor children and her relationship with her adult daughters and the father of her older children was admittedly problematic. Given that the case plan goal was to reunite Mother only with her own minor children, it unclear why the agency arranged for this entire extended family of seven minor children and at least four adults to visit together. The chaos that was observed during the visits might have been prevented by allowing Mother to have some visitation with her minor children without her grandchildren and adult daughters.

Next, LCCS faulted Mother for speaking to her children about the case plan. It is understandable why children services agencies prohibit the parents from discussing the merits of the case with their children, yet it is also somewhat unrealistic to expect that parents can turn off their emotions and/or refuse to answer their children's questions when asked. Mother admitted that she should not have spoken to her children about the case, but that violation of the rules, in and of itself, does not seem to have been a sufficient justification for terminating Mother's visits.

LCCS also pointed to Mother's poor behavior toward the agency. The primary evidence about her behavior, however, was limited to an incident in which Mother called the caseworker a name. Mother admitted that she became upset and emotional when she learned that the female M.P. would not be attending a visit, and that she called the caseworker an "idiot." LCCS witnesses repeatedly testified about Mother calling the caseworker an idiot, but no further details about that incident were admitted into evidence. There was no testimony that Mother became overly aggressive or violent, behaved irrationally, threatened anyone, or that she did anything more extreme than calling the caseworker an "idiot."

Finally, the agency blamed Mother for the children's behavior problems before and after the visits. This Court has reviewed many permanent custody cases in which agencies presented testimony about the children's behavioral problems before or after visits in an apparent attempt to persuade the trial court that, because the children act out, something wrong must be happening during the visits. This Court cannot simply speculate about the cause of the children's behavioral changes, however.

Parental visitation during permanent custody cases, by its nature, may trigger a variety of emotional and behavioral reactions from the children. These are children who have been removed from their home, do not likely understand why, do not know when or if they will return home or find a new home, and their parents are forbidden from discussing those issues with them. Behavioral reactions to visitation could be the result of a myriad of emotions, including love, fear, loss, anger, or confusion. Without evidence of what occurred during the visits or expert testimony to establish cause and effect, this Court is not inclined to draw conclusions about a parent from the mere fact that the children's behavior changes before or after the visits.

The evidence here was simply that the children had behavioral changes before and after visits. All three children had behavioral problems that escalated during this case, even after visits with Mother stopped. Moreover, no facts or expert testimony linked their behavioral problems to any inappropriate behavior by Mother.

At the hearing, the caseworker testified that Mother had obtained stable housing. The evidence demonstrated that Mother had rented a four-bedroom home where she lived by herself. Although LCCS presented evidence that the home was sparsely furnished, there was no evidence that it was not stable or suitable for the children.

In conclusion, this Court cannot conclude that there was sufficient properly-admitted evidence before the trial court to support its conclusion that Mother had failed to substantially remedy the conditions that caused her children to be placed outside the home. In fact, from the evidence before the trial court, it appeared that Mother had made significant progress on the case plan. She had been given only six months to work on the case plan and only five months of visits with her children before LCCS moved for permanent custody. By the time of the hearing, Mother had demonstrated to the agency that she had no

substance abuse problems, had secured stable employment and housing, completed parenting classes and a domestic violence course, and was engaged in counseling. Consequently, we cannot conclude that the trial court's error in admitting inadmissible hearsay constituted harmless error. Mother's second assignment of error is sustained.

In re S.C., 9th Dist. Summit No. 27676, 2015-Ohio-2623:

Mother's first assignment of error is that the trial court committed plain error by terminating her parental rights because it never journalized the case plan that CSB filed prior to the adjudicatory hearing, nor did it formally adopt any of the amended case plans. Although Mother suggests that this error affected the trial court's subject matter jurisdiction, the juvenile court's subject matter jurisdiction was established when CSB filed complaints to allege that S.C. and I.O.-C. were abused, neglected, and dependent children. Consequently, even if Mother would prevail on this assigned error, this Court's judgment would not affect the trial court's subject matter jurisdiction in this case, nor would it render any aspect of the trial court proceedings null and void.

Instead, Mother asserts an error that challenges the propriety of the trial court's permanent custody judgment. Permanent termination of parental rights has been described as 'the family law equivalent of the death penalty in a criminal case. Therefore, parents must be afforded every procedural and substantive protection the law allows. Among the procedural protections of the parties is the statutory obligation of the children services agency to develop a case plan and make reasonable efforts to reunify the children with one or both parents. See R.C. 2151.412 and 2151.419.

Because there was no judicial finding in this case that CSB was excused from making reasonable reunification efforts under one of the circumstances enumerated in R.C. 2151.419(A)(2), it had the statutory obligation to develop a case plan and make reasonable reunification efforts between Mother and the children. CSB did file a case plan in this case that included reunification goals and services for Mother.

Of relevance here, R.C. 2151.353(E) required the trial court to "journalize" the case plan in its initial dispositional order. It is only after the trial court journalizes the case plan that it becomes an order of the court that is binding on the parties. Although this issue was never raised in the trial court, Mother correctly asserts that the trial court erred by failing to comply with the statutory requirement that it adopt a case plan in this case.

To demonstrate reversible error, however, Mother must demonstrate not only that the trial court committed error but also that she suffered prejudice as a result. Moreover, had any of the parties raised this issue in a timely manner in the trial court, the court would have had the opportunity to promptly remedy this error. Because none of the parties raised this error in a timely manner, or at any time prior to or during the permanent custody hearing, Mother has forfeited all but plain error.

Mother has failed to demonstrate, under the specific facts of this case, that the trial court's failure to adopt the case plan rose to the level of plain error under either standard.

Mother analogizes the facts of this case to those of *In re S.R.*, in which this Court recognized plain error because the trial court terminated the father's parental rights despite the lack of any reunification efforts by the agency. This Court's decision in *In re S.R.* emphasized that it was "the egregious nature" of the facts of that case that compelled us to recognize plain error. Specifically, CSB knew the identity and location of S.R.'s father, that he was interested in reunifying with S.R., and the record failed to reveal any basis for CSB to obtain a reasonable efforts bypass under R.C. 2151.419(A)(2), yet the agency did not include S.R .'s father in the case plan or make any efforts to reunify him with S .R. prior to moving for permanent custody.

CSB's efforts to reunify Mother with S.C. and I.O.-C. were significantly different from those in *In re S.R.* Although we do not accept CSB's argument that the trial court's failure to adopt the case plan constituted "harmless error," we cannot conclude that Mother has met the more significant burden of demonstrating that the error rose to the level of "plain error." Under the specific facts of this case, as detailed below, Mother has failed to demonstrate that the trial court's failure to explicitly adopt the case plan created a manifest miscarriage of justice or affected the basic fairness or integrity of the trial court proceedings.

CSB eventually moved for permanent custody of both children and the matter proceeded to a hearing before the trial judge. Although the case plan had not been journalized, all parties proceeded through this case up to the final judgment under the apparent understanding that they were bound by the terms of the case plan. The purported adoption and binding effect of the case plan was repeatedly referenced during the hearing, with no objection from any party. Mother herself testified about her understanding of the case plan and what she had done to work toward reunification with her children.

Mother received reasonable reunification services from CSB and all parties attempted to resolve obstacles to Mother's reunification with her children. Throughout the two-day permanent custody hearing, the trial court heard considerable testimony about the reunification goals of the case plan and the services provided to Mother; the repeated motions and court hearings to change service providers, the caseworker, and the visitation schedule; Mother's repeated utilization of CSB's internal grievance procedures; and Mother's attempts to comply with the reunification goals of the case plan.

Under the specific facts of this case, this Court cannot conclude that the trial court's error in failing to adopt the case plan created a manifest miscarriage of justice or affected the basic fairness of the proceedings. Therefore, Mother has failed to demonstrate plain error and her first assignment of error is overruled.

In re K.T., 9th Dist. Lorain No. 14CA010646, 2015-Ohio-2304:

Father claims that he was denied the effective assistance of trial counsel. In making this claim, he points to trial counsel's absence from the beginning of the permanent custody hearing; failure to object to hearsay regarding details of his sentence; failure to request that Father be transported to the permanent custody hearing or to otherwise arrange for his participation in the hearing; and failure to object to the fact that the motion for permanent custody served upon him did not include a full explanation of the meaning of permanent custody, as indicated in R.C. 2151.414(A)(1).

Most troubling among Father's claims in support of this assignment of error is the fact that trial counsel failed to even request that Father be transported to the permanent custody hearing or, alternatively, to arrange for Father's meaningful participation in the hearing by some other means. There is no indication in the record that Father did not want to attend or participate in the permanent custody hearing. Trial counsel entered no objection to Father's absence from the hearing. For the following reasons, we conclude that trial counsel was ineffective in that she failed to protect Father's right to a fair trial by neglecting to ensure his meaningful participation in the permanent custody hearing involving his three children.

Ohio courts, including this one, have recognized that parents have a constitutionally protected right to be present at permanent custody hearings, but they also recognize that such right is not absolute if the parent is incarcerated. The fundamental requirement of due process is an opportunity to be heard at a meaningful time and in a meaningful manner. Accordingly, Father's due process right to be heard could have been satisfied by arranging for his presence at the permanent custody hearing or by an alternate method of meaningful participation. Father's trial counsel had a duty to protect Father's right to a fair trial by ensuring his meaningful participation at the permanent custody hearing.

In this case, trial counsel failed to request in writing or orally that Father be transported to the permanent custody hearing. Nor did counsel enter an objection to the absence of Father from the hearing. Trial counsel failed to arrange for a deposition or an affidavit by Father, and she failed to arrange for Father's participation by video or telephone. Any reliance by trial counsel on the trial court's denial of transportation to the earlier adjudicatory hearing for the third child is misplaced and does not eliminate counsel's responsibility to address Father's right to participate in the permanent custody hearing. Moreover, the permanent custody hearing has a significance that is distinct from that of the adjudication of the third child. Because counsel did not provide Father with an opportunity to be heard at the permanent custody hearing in a meaningful manner, her representation was deficient and the first prong of the Strickland test is met.

We conclude that the second prong of Strickland is met. Father's trial counsel was ineffective in that she failed to protect Father's right to a fair trial by failing to ensure his meaningful participation in the permanent custody hearing. Counsel's errors were so serious as to deprive Father of a fair trial whose result is reliable.

In re M.P., 9th Dist. Lorain No. 14CA010678, 2015-Ohio-2226:

Appellant Mother appeals from a judgment of the Lorain County Court of Common Pleas, Juvenile Division, that terminated her parental rights to her minor child, M.P., and placed the child in the permanent custody of Lorain County Children Services. This Court reverses and remands.

We consider the evidence regarding the trial court's finding that Mother failed continuously and repeatedly to substantially remedy the problems that initially caused the removal of the child despite reasonable case planning and diligent efforts by the agency. See R.C. 2151.414(B)(1)(a) and R.C. 2151.414(E)(1). This factor is unique among those listed in R.C. 2151.414(E) in that confirmation of the finding is based not only on a parent's failure to remedy certain problems, but is specifically conditioned upon agency behavior, i.e., whether the agency engaged in reasonable case planning and diligent efforts to assist the parents to remedy those problems. See R.C. 2151.414(E)(1). Mother contends that LCCS did not meet the required level of assistance because she was not afforded sufficient time to address these problems and

because the case plan was not tailored to her needs in remedying the conditions that initially caused the removal of M.P.

R.C. 2151.414(E)(1) requires that children services agencies engage in reasonable case planning and diligent efforts to remedy the concerns at issue. In addition to setting appropriate case plan goals for parents engaged in custody actions, children services agencies must, in good faith, provide services and engage in efforts that are reasonably calculated to succeed in reunifying parents and their children. These plans must take into consideration the individual circumstances of each case. In addition, it is fundamental that parents must be afforded a reasonable amount of time to accomplish their goals.

We conclude that Mother was not afforded a reasonable length of time in which to accomplish the tasks that she had been given. LCCS moved for permanent custody less than six months after the case plan was adopted, and the permanent custody hearing was conducted three months later. We recognize that Ohio law no longer provides a minimum length of time as a prerequisite to the filing of a motion for permanent custody, with the exception of reliance on R.C. 2151.414(B)(1)(d). Nevertheless, six months is an exceedingly short time in which to accomplish all of the goals set forth here, whereas custody cases are frequently extended to the maximum of two years. See R.C. 2151.415(D)(4). The record provides no indication of why this proceeding was cut short by the early filing of a motion for permanent custody. This case does not involve the sort of extreme behaviors that call for such expedited treatment, nor does it involve a reasonable efforts bypass procedure. See, e.g., R.C. 2151.419(A)(2).

Second, this Court concludes that the case plan created for Mother and the assistance offered to her on the key case plan components were not reasonably calculated to successfully reunite Mother and M.P. This Court has previously recognized that children services agencies have much discretion in the creation of reasonable case plans for parents at risk of having their parental rights terminated, and they also have much discretion in implementing those case plans. At the same time, however, the end result must be one that has some reasonable chance of promoting the reunification of the family and not one that seems likely to be doomed to failure or to promote separation. Ms. Allen of the Urban League believed that the obligations placed upon Mother by her case plan were so "overwhelming" that it was "really a setup for failure." We emphasize here that the agency's reasonable efforts are not measured by a comparison to the services provided by the Urban League. Nevertheless, Mother's compliance with case plan objectives under the guidance of Ms. Allen at the Urban League is evidence of the likelihood of reunification within appropriate time limits had LCCS used reasonable efforts to assist Mother in fulfilling her case plan objectives.

Case plans are the tools that children services agencies use to set forth the goals of parents to allow for the return of children to their parents. Their central purpose is to remedy the problems that caused the children's removal and to accomplish the reunification of parents and children. In so doing, the agency must take into consideration the individual circumstances of each case. In this case, this young Mother had no family support, no resources, and no home upon which to rely. The case plan and the level of assistance offered to Mother by LCCS in this case falls short of the goal of promoting the reunification of the family.

In re M.P., 9th Dist. Medina No. 14CA0110-M, 2015-Ohio-2088:

> Father's second assignment of error is that the trial court committed reversible error by considering the report of the guardian ad litem because the guardian did not comply with several requirements of Sup.R. 48(D)(13). As Father argues, the record reveals that the guardian ad litem did not observe Father with the children, ascertain the wishes of the children, or interview Father.
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> Father asserts on appeal that, because the guardian ad litem failed to comply with these requirements of Sup.R. 48, the trial court should not have considered her report or testimony. He relies on *Nolan v. Nolan*, 4th Dist. Scioto No. 11CA3444, 2012–Ohio–3736, which is distinguishable for several reasons. To begin with, the father in *Nolan* argued, and the appellate court agreed, that the report of the guardian ad litem should not have been considered by the trial court because the guardian's investigation "fell far short" of the minimum standards of Sup.R. 48(D)(13).
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> Unlike *Nolan*, the investigation conducted by the guardian ad litem in this case complied with Sup.R. 48(D)(13) in most respects. Father points only to her failure to conduct a deeper investigation into his suitability as a parent and to ascertain the wishes of the children. Otherwise, Father does not dispute that the guardian ad litem met with all other parties several times and otherwise fulfilled her duties under Sup.R. 48(D)(13).

In re E.M., 9th Dist. Wayne No. 14AP0030, 2015-Ohio-641:

> On April 2, 2014, CSB moved for permanent custody. Mother opposed the motion and alternatively sought an award of legal custody to Grandmother. Although Mother's attorney sought a continuance, the permanent custody hearing proceeded in Mother's absence. Following the hearing, the trial court found that Mother had abandoned E.M. and that permanent custody was in the child's best interest. Accordingly, the trial court denied Grandmother's motion for legal custody, terminated Mother's parental rights, and granted CSB's motion for permanent custody of E.M. Mother appealed and assigned four errors for review.
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> R.C. 2151.011(C) states that, for purposes of R.C. Chapter 2151, "a child shall be presumed abandoned when the parents of the child have failed to visit or maintain contact with the child for more than ninety days, regardless of whether the parents resume contact with the child after that period of ninety days." This provision does not provide a definition of abandonment, but rather explains that when a parent fails to visit or maintain contact with his or her child for more than 90 days, there is a presumption of abandonment, which a parent may rebut.
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> In considering whether the evidence clearly and convincingly supports a finding that Mother abandoned her child by failing to visit or to maintain contact with him for more than 90 days, we begin with the documented fact that E.M. was removed from Mother's care and placed in the emergency temporary custody of the agency on May 3, 2013, and the additional fact that CSB filed its motion for permanent custody of E.M. on April 2, 2014, eleven months later. Any ground for permanent custody on which the trial court relies must exist at the time the motion for permanent custody is filed.

As explained above, the agency bears the burden of clearly and convincingly satisfying the statutory requirements in a case involving the termination of parental rights. Therefore, the burden to establish abandonment of her child through an absence of visits by Mother is upon the agency. Upon consideration, we conclude that the agency failed to meet its burden. Absent clear and convincing evidence of abandonment, the judgment granting permanent custody of E.M. to CSB cannot stand.

In re A.P, 9th Dist. Medina No. 13CA0083-M, 2015-Ohio-206:

A.P., born December 28, 2008, was removed from the custody of her mother in a prior dependency case and was placed in the legal custody of her maternal grandmother. In June 2010, the trial court removed A.P. from the grandmother's custody after Medina County Job and Family Services ("MCJFS") filed this dependency case. The grandmother later moved for A.P. to be returned to her legal custody, but the trial court denied the motion and removed the grandmother from the case plan. Eventually, MCJFS moved for, and was granted, permanent custody of A.P.

Prior to the 2012 permanent custody hearing, Father appeared before the court and purported to voluntarily surrender his parental rights to MCJFS. According to the trial court's March 2012 judgment, it accepted Father's voluntarily surrender pursuant to R.C. 5103.15(B)(1), which authorizes written agreements to surrender parental rights to children services agencies, if approved by the juvenile court.

The grandmother appealed and this Court reversed the permanent custody judgment because the trial court had erred in removing the grandmother from the case plan and denying her the opportunity to be reunified with A.P. On remand, by agreement of the parties, A.P. was placed in the grandmother's legal custody, with the mother retaining residual parental rights. The parties and the trial court eventually agreed that Father's March 8, 2012 surrender of his parental rights remained effective. Although Father did not participate in the proceedings, he was appointed counsel to represent him on this issue and did not raise any argument on the record for or against the ongoing termination of his parental rights and responsibilities. On January 15, 2013, the trial court journalized the ongoing termination of Father's parental rights and dismissed him as a party to this case.

A few weeks later, the attorney then serving as A.P.'s guardian ad litem withdrew and the trial court appointed a different attorney to serve as the guardian ad litem. After the new guardian ad litem reviewed the record in this case, he filed a series of motions to challenge the trial court's order of March 8, 2012, which accepted Father's surrender of his parental rights under R.C. 5103.15(B)(1), and its order of January 15, 2013, which journalized the ongoing termination of Father's parental rights and responsibilities. Specifically, as a representative of the child's best interest, he questioned the trial court's authority to relieve Father of his legal responsibility to pay child support when neither MCJFS nor A.P.'s grandmother had assumed that obligation. On June 25, 2014, the guardian filed a motion to vacate the trial court's judgment, insofar as it held that Father's surrender of his parental rights survived this Court's reversal of the 2012 permanent custody decision and the trial court's judgment on remand that placed A.P. in the legal custody of her grandmother.

The trial court overruled the motions filed by the guardian ad litem, reasoning that: (1) he lacked standing to move to vacate the judgments entered on March 8, 2012 and January 15, 2013; (2) his motions were barred by the doctrines of res judicata and collateral estoppel; and (3) the motions failed on their merits The trial court reasoned that Father had permanently surrendered his parental rights pursuant to R.C. 5103.15(B)(1), and that the termination of his rights had not been affected by this Court's reversal of the 2012 judgment or the trial court's proceedings on remand.

The trial court reasoned that Father had surrendered his parental rights in 2012 pursuant to R.C. 5103.15(B)(1), which provides an avenue by which a child's parents may agree, with court approval, to surrender their child to the permanent custody of a certified public or private agency. An agreement executed pursuant to R.C. 5103.15(B)(1) and approved by the juvenile court constitutes a binding contract, which "cannot be revoked by the parents or legal guardian absent the consent of the [children services agency]." Consequently, because the trial court had purported to authorize the 2012 voluntary surrender of Father's parental rights pursuant to R.C. 5103.15(B)(1), and MCJFS had not agreed to revoke that surrender after the reversal of the permanent custody judgment, the trial court concluded that Father's parental rights and responsibilities remained terminated.

We agree with the guardian ad litem that the trial court's legal reasoning was flawed. To begin with, the trial court erred in concluding that Father surrendered his parental rights pursuant to R.C. 5103.15(B)(1). The Ohio Supreme Court has repeatedly emphasized that R.C. 5103.15 has no application to cases in which the child has been adjudicated neglected or dependent and is under the jurisdiction of the juvenile court.

By the explicit terms of R.C. 5103.15(B)(1), an agreement to voluntarily place a child in the permanent custody of a children services agency may only be executed by parents having custody of a child. At the time Father purported to surrender his parental rights to then three-year-old A.P., she was in the temporary custody of MCJFS. Because Father did not have custody of A.P. at the time he attempted to surrender his parental rights, he could not execute his surrender under R.C. 5103.15(B)(1).

Moreover, because A.P. had two parents, any surrender under R.C. 5103.15(B)(1) would have also required that A.P.'s mother agree to surrender her parental rights to the agency, but she did not. R.C. 2151.011(B)(33) defines a "permanent surrender" under R.C. 5103.15 as a voluntary agreement by which both parents surrender their parental rights to the agency. A surrender by only one parent under R.C. 5103.15(B)(1) is authorized only "if a child has only one parent." R.C. 2151.011(B)(33).

In substance, Father's attempted voluntary surrender of his parental rights was not executed pursuant to R.C. 5103.15, but was instead consent to the ultimate 2012 permanent custody judgment. Because Father had already lost temporary custody of A.P. to MCJFS and was faced with a contested hearing on the permanent custody motion, he waived his parental rights and agreed that permanent custody to MCJF was in A.P.'s best interest. At that time, Father relinquished all of his parental rights, which were then transferred to MCJFS.

Aside from its misapplication of R.C. 5103.15, the trial court erred by refusing to recognize that Father's residual parental rights and responsibilities were necessarily reinstated after this Court's reversal of the 2012 permanent custody judgment. On remand, MCJFS no longer held permanent custody of A.P., nor did it hold the parents' residual rights and responsibilities. Ultimately, the trial court placed A.P. in the legal custody of her grandmother, a dispositional placement that left intact both parents' residual parental rights, privileges, and responsibilities. The grandmother did not assume Father's child support obligation because, by definition, legal custody vests in the custodian the right to physically care for the child, including the rights and responsibilities of meeting her basic daily needs for food, shelter, education, medical care, and supervision, "all subject to any residual parental rights, privileges, and responsibilities," which explicitly include "the responsibility for [paying child] support." R.C. 2151.011(B)(21) and (48).

As A.P.'s biological parent, Father still had a legal obligation to financially support A.P., because no one had adopted her or otherwise assumed that legal responsibility. See R.C. 3103.031. A biological father does not have the right to walk away from that legal obligation simply because he does not want to be a parent. Consequently, this Court must conclude that the guardian ad litem presented a meritorious claim that Father's residual parental rights and responsibilities should have been reinstated during the trial court proceedings on remand.

Shortly after his appointment, the new the guardian ad litem persuasively argued that the trial court's error in dismissing Father as a party to this action involved unusual and/or extraordinary operative facts. Because the trial court's error, if left uncorrected, would deprive A.P. of her right to a potential relationship with Father and her right to receive child support from him until she reaches the age of 18 in approximately 12 years, the guardian ad litem stated substantial grounds to relieve A.P. from the unjust operation of the judgment.

Consequently, this Court concludes that the trial court abused its discretion in denying the motion of the guardian ad litem to vacate the trial court's 2013 judgment insofar as it failed to reinstate the residual parental rights and responsibilities of Father. The fourth assignment of error is sustained and the judgment is reversed and remanded on that basis.

In re N.M, 9th Dist. Summit No. 27400, 2014-Ohio-4783:

Mother next argues that the trial court committed plain error by terminating parental rights despite the fact that the case plans had not been signed by either of the parents nor did CSB indicate on the plans whether it had attempted to reunify N.M. with members of the extended family. We note that both parents were represented by counsel and during the course of the proceedings, neither counsel argued that the failure to sign the case plans was substantively prejudicial to either parent. In addition, counsel did not suggest that CSB had failed to attempt to find suitable family members to care for the child. Instead, Mother relies on this Court's reasoning in *In re S.R.*, which pointed to the lack of the father's signature and other deficiencies of the written case plan to highlight that, without any legitimate explanation, CSB had failed to involve the father and his extended family in any case planning or reunification efforts.

However, unlike the circumstances in *In re S.R.*, where the father was not included in the case plan whatsoever, in this case, even if there are deficiencies in the written case plans, the record clearly reveals that CSB involved both parents and their extended families in the case planning process and that both parents were provided with their case plans. As explained above, CSB attempted to work with Father to address his mental health issues and to obtain the necessary medical training to enable him to care for N.M, which were central goals included in his case plan.

The record further reflects that CSB reached out to the extended family to attempt to find suitable caregivers for N.M. At the hearing, the caseworker testified that she had spoken to two different relatives who had expressed a willingness to care for N.M. and obtain the medical training, but that neither of them followed through. Although the paternal grandmother testified at the hearing that she was willing to complete the medical training with a family friend and find appropriate housing for N.M., she admitted that she had not yet taken any of those steps. Moreover, she had not informed the caseworker about her willingness to care for N.M. until the day before the permanent custody hearing.

In re B.C., 141 Ohio St.3d 55, 2014-Ohio-4558, 21 N.E.3d 308:

Due process does not require that a parent be afforded the right to file a delayed appeal from a judgment terminating parental rights.

In summation, statutory protections already ensure that a parent faced with termination of parental rights has the opportunity to participate in the proceedings fully, with notice, representation, and the remedy of an appeal. We therefore hold that Ohio's current procedures comport with due process and that a delayed appeal is not constitutionally required to protect the parent's interest.

In re K.M., 9th Dist. Medina No. 14CA0025-M, 2014-Ohio-4268:

The appropriateness of a legal custody award to relatives invokes consideration of the same factors as a determination of the best interest of a child for purposes of a permanent custody decision. As a result, when asked to conduct a review of such a decision, this Court typically conducts a single best interest review of the trial court's decision to place the child in the permanent custody of the agency rather than in the legal custody to a relative. If permanent custody is in the child's best interest, legal custody or placement with relatives necessarily is not. Consequently, on review, this Court will consider all relevant factors, including, but not limited to, the factors set forth in R.C. 2151.414(D), in evaluating the best interest decision of the trial court. The factors specifically set forth in R.C. 2151.414(D) include: the interaction and interrelationships of the child, the wishes of the child, the custodial history of the child, and the child's need for permanence in his or her life.

In re G.D., 9th Dist. Summit No. 27337, 2014-Ohio-3476:

> To establish the factor set forth in R.C. 2151.414(E)(1), CSB was required to prove that, after the placement of the children outside the home and "notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents, the parent has failed continuously and repeatedly to substantially remedy the conditions causing the children to be placed outside their home. To begin with, although CSB had alleged a few reasons for removing the children from the home, the reasons for the children's removal are those set forth in the adjudicatory decision. The only factual findings set forth in the adjudicatory decision to explain why the children were adjudicated dependent and removed from the home were that the mother agreed to the adjudication and that Father was incarcerated at that time. Although R.C. 2151.28(L) required that a more detailed factual basis be set forth in the adjudicatory decision, neither parent filed objections on that basis. See Juv.R. 40(D)(3)(b)(iv). Nevertheless, the decision as adopted by the trial court does not detail the "conditions" that caused the children's removal.
>
> Moreover, pursuant to the plain language of R.C. 2151.414(E)(1), a finding under this section must be premised on 'reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused the child to be placed outside the home.
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> Parental utilization of the services provided under the applicable case plan shall be considered in making this determination.
>
> At the time the trial court adopted the case plan in its initial dispositional order, Father was removed from the case plan because he was incarcerated. Because Father was not included on the case plan and received no court-ordered reunification services, there was no evidence before the trial court to support a finding under R.C. 2151.414(E)(1).
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> R.C. 2151.414(E)(4) required CSB to prove that Father had demonstrated a lack of commitment by failing to regularly support, visit, or communicate with the children "when able to do so" or by "other actions showing an unwillingness to provide an adequate permanent home for the children. Father does not dispute that, since his incarceration before the adjudicatory hearing, he has not visited, supported, or communicated with his children. He correctly argues, however, that his failure to maintain that contact with his children did not establish a lack of commitment under R.C. 2151.414(E)(4) because CSB failed to prove that he had the ability to visit, support, or communicate with his children.
>
> Finally, the trial court found that CSB had proven that Father was incarcerated for committing an offense against a sibling of the children. R.C. 2151.414(E)(5). Despite the serious nature of this permanent custody ground and the relative ease with which this fact, if true, could have been established at the hearing, Father correctly argues that CSB failed to present evidence to establish this factor. Specifically, although CSB presented brief testimony that Father was incarcerated in Florida for committing sexual offenses against "two other children," it presented no evidence that either of those children was a sibling of G.D. and G.D.

Brief factual statements in the report of the guardian ad litem that Father had sexually offended against a sibling of these children do not constitute evidence of that fact. The role of the guardian ad litem is to "assist a court in its determination of a child's best interest" by providing the court with relevant information and "an informed recommendation" about the children's best interest. Sup.R. 48(B) and (D)(13). Although the report of the guardian ad litem may necessarily include information about what other people told her, reliance upon her report as establishing those things as fact is improper. This Court is unaware of any legal authority that permits the guardian ad litem to offer evidence of 'facts' about which she has no first-hand knowledge.

In re S.R., 9th Dist. Summit No. 27209, 2014-Ohio-2749:

Regardless of the reasons behind CSB's failure to recognize Father's established paternity, it is clear from the record that the agency deprived Father of his constitutional and statutory rights to attempt to be reunified with his child. Throughout the pendency of this case, during which CSB apparently believed that the "12 of 22" clock was ticking against both parents, it did absolutely nothing to involve S.R.'s biological father or members of his extended family in the case planning process, but instead set up unnecessary obstacles to the paternal family's participation in any reunification efforts.

Appellate counsel for CSB conceded that CSB's failure to include Father on the case plan prior to moving to terminate his parental rights constituted plain error under the facts of this case. We must emphasize that it is the egregious nature of these facts that compels us to recognize plain error in this case. From the beginning of this case, CSB knew Father's identity and location and that he was interested in reunification with his daughter, yet it completely ignored its statutory obligation to attempt to reunify S.R. with her biological family. Because this Court must limit its review to the facts of this case, we do not reach the issue of whether CSB also would have been obligated to include an alleged father in the case plan if his paternity had not been established.

This Court must once again stress that the authority of the juvenile court and the county children services agency in abuse, dependency, and neglect cases is strictly governed by a comprehensive statutory scheme set forth in R.C. Chapter 2151. The specific powers and duties of the county children services agency of relevance here are further set forth R.C. 5153.16 (A)(4), (12), and (18).

This Court's interpretation of all relevant statutes and regulations must be guided by the fundamental notion that both parents, including an unmarried and non-custodial father, have a basic civil right to the care and custody of their child.

Among the procedural protections of the parties is the obligation of the agency to make reasonable efforts to reunify the child with one or both parents. See R.C. 2151.419. The "reasonable efforts" requirement of R.C. 2151.419 was first enacted in 1989 and replaced prior statutory provisions that required children services agencies to develop reunification plans between children and parents in all situations.

R.C. 2151.419(A)(2) now authorizes the trial court to relieve the agency of its obligation to make reasonable reunification efforts if it finds that one of five enumerated circumstances exist, which the legislature has implicitly determined justify a lack of reunification efforts between parent and child. Those limited circumstances are when "the parent from whom the child was removed:" has been convicted of certain violent or dangerous crimes against the child, sibling, or another child living in the home; has repeatedly withheld food or medical treatment from the child without a legitimate excuse; has repeatedly

placed the child at risk of harm due to alcohol or drug abuse and has rejected treatment; has abandoned the child; or has had her parental rights to a sibling of the child involuntarily terminated.

Absent a judicial finding that one of the circumstances enumerated in R.C. 2151.419(A)(2) exists, a children services agency is obligated to make reasonable reunification efforts and has the burden of demonstrating to the court that it made those efforts. See R.C. 2151.419(A). There is nothing in the record to suggest that any of the R.C. 2151.419(A)(2) circumstances pertained to Father, particularly given that S.R. was not removed from his home. Moreover, absent a judicial finding to that effect, CSB was statutorily required to make reasonable efforts to reunify S.R. with Father.

In addition to its obligation to make reasonable reunification efforts, CSB was required to file a case plan in this case because it filed a complaint to allege that S.R. was a neglected and dependent child. R.C. 2151.412(A)(1). Case plan requirements are set forth in more detail in administrative regulations developed by the director of job and family services. See R.C. 2151.412(C)(1) and (2). The case plan serves as the permanency plan for the child and is required in every case unless the child is deserted, emancipated, both parents' rights have been terminated, or the child is the subject of an interstate compact. Ohio Adm. Code 5101:2-38-05(H) and (I).

Pursuant to Ohio Adm. Code 5101:2-38-05(A), CSB was required to prepare a case plan utilizing the Ohio Department of Job and Family Services Form 01410. In preparing the case plan, the agency was required to "attempt to obtain an agreement among all parties," including both parents "regarding the content of the case plan." R.C. 2151.412(E); Adm. Code 5101:2-38-05(B).

The final page of Job and Family Services Form 10410 requires that each party, including each parent, sign the case plan. If they do not sign, the form requires an explanation about why the party did not sign in agreement or participate in the planning process. Specific examples are included on the form: "Unable to Locate/Unavailable," "Disagreed with Plan" and "Other." An open box is provided for a more detailed explanation "[i]f any party did not sign the case plan or disagreed with the case plan."

Father's name is not included on any of the case plans in this case, and no written explanation is given for his failure to sign in agreement or participate in the planning process. There is likewise nothing on the final case plan about the agency's efforts to contact and include the paternal grandparents or other adult members of Father's family. See Ohio Adm. Code 5101:2-39-01(P); JFS 10410, Section 7.

The agency's unexplained exclusion of Father and his extended family from all reunification and/or case planning efforts in this case completely undermined the integrity and legitimacy of these trial court proceedings and violated the statutory and constitutional rights of both Father and S.R. The overriding purpose of the case plan is for the agency to help the family remedy its problems and return the child to her 'home' or, if that is not possible, to find a suitable caregiver who is part of her extended family.

The agency's powers and duties extend to parents and other family members who reside outside the state of Ohio and to parents who did not have custody of the child at the commencement of the case. See R.C. 5153.16(A)(12); Ohio Adm. Code 5101:2-40-02(B), (G), and (K); Ohio Adm. Code 5101:2-37-04(A) and (D).

The trial court ultimately terminated Father's parental rights under the so-called "12 of 22" provision of R.C. 2151.414(B)(1)(d). In other words, the first prong of the permanent custody test was satisfied, and the agency essentially established parental unfitness, simply by the passage of time. In this case, however, that passage of time could not imply parental unfitness because Father was given no reasonable opportunity to demonstrate his ability to parent S.R. A presumption of parental unfitness based on the passage of "12 of 22" months arises only if and when a parent has been given a reasonable opportunity to demonstrate that he is suitable to parent his child but fails to do so.

The trial court had no authority to make a "12 of 22" finding under the facts of this case because Father was not provided with any reasonable reunification efforts. R.C. 2151.413(D)(3)(b) explicitly provides that an agency "shall not file a motion for permanent custody" on 12 of 22 grounds if reasonable reunification efforts are required under R.C. 2151.419 and the agency has not provided those services to the child or parent.

Because Father was not included on the case plan and was afforded no services whatsoever in attempting to be reunified with S.R., the trial court committed plain error in terminating his parental rights under the "12 of 22" provision of R.C. 2151.414(B)(1)(d). Father's third assignment of error is sustained.

In re S.D.-M., 9th Dist. Summit No. 26874, 2014-Ohio-1501:

Notwithstanding, it is apparent from the record that the failure to comply with this purported component of his case plan was viewed by the service providers as a major stumbling block to any efforts to place S.D-M. with Father. In light of the facts in this case and our legal precedents, we find it significant that drug screens and participation in the Fame Fathers program were never added to Father's case plan, nor were they otherwise made an order of the trial court. Because these matters were not added to Father's case plan and were not otherwise made an order of the trial court, Father was not and should not be bound by them as comprising his case plan.

The procedures for the creation and amendment of a case plan are statutorily mandated. See R.C. 2151.412. Because the journalized case plan binds all parties, the terms of the case plan bind not only the parents, but also the state. See R.C. 2151.412(F)(1). The procedures in R.C. 2151.412 establish that a caseworker may not independently create an initial case plan, nor may a caseworker alone amend a parent's case plan by merely telling the parent to complete extra tasks. See R.C. 2151.412(F)(2). Rather, the process of creating a case plan is begun when the agency files a proposed case plan with the trial court. R.C. 2151.412(D). It is only after the trial court approves the case plan or determines the contents of the case plan following the taking of evidence, that the trial court journalizes the case plan as part of the dispositional order for the child and it becomes binding on the parties. R.C. 2151.412(E) and (F)(1).

The statute further provides that any party may propose changes to a substantive part of the case plan. The additional requirements of drug screens and attendance at a support group are substantive matters and are therefore, subject to "the mandatory procedure" set out in R.C. 2151.412. We recognize that some changes may, in the absence of objections, be implemented by the agency without formal adoption and journalization by the trial court. R.C. 2151.412(F)(2)(b). Notwithstanding the foregoing, it is critical to note that the statute mandates that the moving party must first file any proposed changes with the trial court and must also provide written notice of proposed changes to all parties. R.C. 2151.412(F)(2). The parties then have the statutory right to object and request a hearing on the proposed change. Id. In such a

case, "[t]he agency shall not implement the proposed change unless it is approved by the court." R.C. 2151.412(F)(2)(a). Absent written notice to the court and to the parties of proposed changes, any such proposal will lack the force of a court order and, as well, the parents are deprived of the due process right to notice.

Even emergency amendments, generated to prevent immediate or threatened harm, which may be implemented immediately by the agency, require the agency to notify the court and all parties by the next day and, in addition, require the agency to file a statement of the proposed change with the trial court within three days and give written notice of the proposed change to all parties. R.C. 2151.412(F)(3). In addition, the resulting case plan is to be journalized by the trial court. R.C. 2151.412(F)(3)(a) and (b). See also Ohio Adm. Code 5101:2–38–05. Accordingly, mere statements by a caseworker to a parent, even under the guise of requirements, are not sufficient to amend a case plan and create a binding obligation under the statute. Caseworkers do not have such authority. The initial creation of a binding case plan and the implementation of substantive changes to a case plan lie solely within the province of the trial judge.

The creation and substance of a case plan is critical because it is the primary reunification tool of children services agencies as contemplated by Chapter 2151. It is no less important where, as here, a trial court relies on R.C. 2151.414(B)(1)(d), the "12 of 22" factor, in support of permanent custody. In such cases, the Ohio Supreme Court has emphasized that the statute anticipates that parents will have those 12 months "to demonstrate their ability and fitness to care for their child. Otherwise, the process "interferes with the protection of parental rights afforded by the legislature." This period of time is designed to allow for the implementation of the case plan and guide the parents towards reunification.

Here, the record demonstrates that CSB did not file a proposal for a routine change, nor did CSB file a statement in support of an emergency change in regard to either drug screens or the Fame Fathers program. Additionally, the trial court did not journalize an amended case plan that included these matters. Thus, drug screening and participation in the Fame Fathers program were never part of Father's case plan.

In re J.W., 9th Dist. Summit No. 26874, 2013-Ohio-4368:

After the juvenile court issues a permanent custody order under R.C. 2151.414, it retains continuing jurisdiction over the children until they reach the age of majority or are adopted. R.C. 2151.353(E)(1); R.C. 2151.417(B). It is important to emphasize, however, that the trial court's jurisdiction continues only over the children, not their natural parents. Following the permanent custody decision, the parents "cease to be parties to the action." R.C. 2151.414(F). Upon the entry of the permanent custody judgment, Mother lost any right to be involved in the ongoing, post-judgment proceedings. Although Mother lost her right to participate in the proceedings, however, the trial court also lost all authority over her, as she was no longer subject to its jurisdiction.

Mother was no longer a party in the ongoing, post-judgment proceedings in juvenile court, and lacked standing to participate in the proceedings pertaining to the post-judgment placement and well-being of her children. Based on her lack of standing in the ongoing proceedings, CSB argues that she also lacked standing to seek relief from the judgment pursuant to Civ.R. 60(B). Although it is true that Mother lacked standing to participate in the post-judgment proceedings in the juvenile court, she did not attempt to seek redress under the trial court's ongoing jurisdiction over the children. Instead, she moved to collaterally attack the final judgment pursuant to Civ.R. 60(B).

Next, we turn to the merits of Mother's argument that the trial court erred in denying her Civ.R. 60(B) motion without a hearing. The trial court was not required to hold an evidentiary hearing on the motion, however, unless Mother alleged operative facts which would warrant relief under Civ.R. 60(B). A trial court's authority to vacate a prior valid judgment pursuant to Civ.R. 60(B) is limited to the grounds set forth in the rule. The rule's purpose in strictly limiting the situations under which a trial court has authority to vacate a prior judgment is to strike a proper balance between the conflicting principles that litigation must be brought to an end and justice should be done.

To prevail on a Civ.R. 60(B) motion for relief from judgment, Mother was required to demonstrate that: (1) she had a meritorious defense or claim to present if relief was granted; (2) she was entitled to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5); and (3) the motion was made within a reasonable time. The test is not fulfilled if any one of the requirements is not met.

Because Mother failed to set forth operative facts that she had grounds for relief from the permanent custody judgment under either Civ.R. 60(B)(4) or (5), the trial court did not err in denying her motion without a hearing.

In re N.R., 9th Dist. Summit No. 26834, 2013-Ohio-4023:

Father's first assignment of error is that he was denied his right to due process because he was incarcerated and was not transported to court to attend the first day of the hearing. This Court has repeatedly held that the trial court does not violate the due process rights of an incarcerated parent by failing to order that he or she be transported to the permanent custody hearing so long as the parent is represented by counsel at the hearing, a full record of the proceedings is made, and any testimony that the parent may wish to present could be offered by way of deposition.

In re D.K., 9th Dist. Summit No. 26272, 2012-Ohio-2605:

Regarding the first prong of the permanent custody test, the trial court found that the children could not be placed with either parent within a reasonable time or should not be placed with either parent. See R.C. 2151.41.4(B)(1)(a). In support of that finding, for the mother, the trial court relied on Section 2151.41.4(E)(6). This factor applies if a parent has been convicted of or pleaded guilty to specific offenses. See R.C. 2151.41.4(E)(6). Both Leslie G. and Michael K. have challenged this finding.

Leslie G. was convicted of violating R.C. 2919.22(B)(6), child endangering, by allowing a child to be within 100 feet of the illegal manufacture or cultivation of controlled substances. Although subsections (A) and (C) of Section 2919.22 are offenses included within Section 2151.41.4(E)(6), subsection (B) is not.

The General Assembly has, thus, specifically excluded subsection (B) of Section 2919.22 from Mother was convicted is not included in the affirmative listing of statutes in Section 2151.41.4(E)(6). The trial court made no other findings in satisfaction of the first prong of the permanent custody test that might alternatively support its judgment

In re R.H., 9th Dist. Lorain No. 11CA010002, 2011-Ohio-6749:

> Through his first assignment of error, Father argues that although the trial court made a finding that permanent custody was in the children's best interests, it erred by failing to articulate its findings on each of the best interest factors set forth in R.C. 2151.414(D)(1). Although this Court has held that the trial court must make a best interest finding based on the mandatory factors set forth in R.C. 2151.414(D), it has only noted in dicta that the trial court "should" also detail its findings on each best interest factor, as such reasoning would aid this Court's ability to conduct a meaningful appellate review.
>
> In this case, although the better practice would have been for the trial court to more fully articulate its reasoning for its ultimate best interest finding, Father has failed to demonstrate that the trial court committed reversible error by failing to do so.
>
> Father next argues that the trial court erred by failing to appoint independent counsel for the children. None of the parties raised this issue at any time in the trial court, but Father raises it for the first time on appeal to this Court. Although Father cites authority from other appellate districts for his assertion that this issue need not be timely raised in the trial court to preserve it for appellate review, that is not the law in this district.
>
> As this Court has repeatedly stated, where no request was made in the trial court for counsel to be appointed for the children, the issue will not be addressed for the first time on appeal.

In re P.W.T., 9th Dist. Wayne No. 11CA0020, 2011-Ohio-5858:

> Mother's first assignment of error is that CSB did not exert reasonable efforts to reunify her with PWT. Specifically, she maintains that CSB treated her differently from other parents due to her mental illness and did not seriously work with her toward reunification with PWT. To begin with, Mother did not raise this issue during the two and one-half years that this case was pending in the trial court. At the time of the permanent custody hearing, after PWT had been in agency custody for two years, the trial court was not required to again find that CSB had made reasonable efforts toward reunification.

In re C.B., 129 Ohio St.3d 231, 951 N.E.2d 398, 2011-Ohio-2899:

> We hold that when a trial court denies a children services agency's motion to modify temporary custody to permanent custody, terminates the placement of temporary custody with the agency, and awards legal custody to a parent, the order is final and appealable under R.C. 2505.02.

Legal Custody

In re D.T., 9th Dist. Lorain No. 14CA010700, 2015-Ohio-5041:

> Mother argues that the trial court committed reversible error by placing the children in the legal custody of their relatives. Following an adjudication of neglect, dependency, or abuse, the juvenile court's determination of whether to place a child in the legal custody of a parent or a relative is based solely on the best interest of the child. Although there is no specific test or set of criteria set forth in the statutory scheme, courts agree that the trial court must base its decision on the best interest of the child. The trial court's decision to grant or deny a motion for legal custody is within its sound discretion and will not be reversed absent an abuse of discretion. An abuse of discretion implies that the court's decision was unreasonable, arbitrary, or unconscionable.
>
> This Court has held that the best interest test set forth in R.C. 2151.414(D), although it relates to permanent custody, provides guidance in legal custody determinations. When determining a child's best interest under R.C. 2151.414(D), the juvenile court must consider all the relevant enumerated factors: the interaction and interrelationships of the children, their wishes, the custodial history of the children, and their need for permanence in their lives. Although the trial court is not precluded from considering other relevant factors, the statute explicitly requires the court to consider all of the enumerated factors.

In re D.M., 9th Dist. Lorain No. 12JC37211, 2015-Ohio-141:

> When a child has been adjudicated neglected and dependent, the trial court has several dispositional alternatives available, including legal custody to either parent or to any other person who has filed a motion requesting legal custody of the child prior to the dispositional hearing. See R.C. 2151.353(A).
>
> The statutory scheme regarding an award of legal custody does not include a specific test or set of criteria, but Ohio courts have concluded that the trial court must base such a decision on the best interest of the child. We have previously indicated that the best interest factors of R.C. 2151.414(D) may provide some guidance in determining whether legal custody is in the best interest of the child. Consequently, on review, this Court will consider the factors set forth in R.C. 2151.414(D) in evaluating the best interest decision of the trial court. Those factors include: the interaction and interrelationships of the child, the wishes of the child, the custodial history of the child, and the child's need for permanence in his life.
>
> Before addressing the evidence presented on these factors, we note that Mother has argued that the trial court failed to consider that, as a parent, she had a "paramount" right to custody of her child over Grandmother. That right is not absolute, however. The Ohio Supreme Court has, in fact, recognized, that parents who are suitable persons have a paramount right to the custody of their minor children. Nevertheless, the Court has also indicated that an adjudication of abuse, neglect, or dependency implicitly involves a determination of the unsuitability of the child's parents. Accordingly, once the case reaches the disposition phase, the best interest of the child controls. There has already been an adjudication of neglect and dependency in the present case. Only the question of the best interest of the child remains in regard to the legal custody of D.M.

In re L.S., 9th Dist. Summit No. 27338, 2014-Ohio-5531:

> In R.C. 2151.353(A)(3) the legislature differentiated between a parent and "any other person" who may be awarded legal custody. The court may award legal custody of the child to either parent or to any other person who files a motion requesting legal custody or is identified as a proposed legal custodian by any party to the proceedings. With this distinction being made in the first sentence, the legislature chose not to include the term "parent" in the second sentence, which details who must sign a statement of understanding. Instead, the statute limits that requirement to only "person[s] identified in a complaint or a motion filed by a party to the proceedings as a proposed legal custodian." R.C. 2151.353(A)(3). "We read the statute as providing for a grant of legal custody to either parent, or, in the alternative, to any other person who files a motion for legal custody and a statement of understanding."
>
> Reading the two sentences of R.C. 2151.353(A)(3) together in context, and using the plain language in the statute, we conclude that a parent is not required to sign a statement of understanding before being awarded legal custody of his or her child. Mother's assignment of error is overruled.

In re A.G., 139 Ohio St.3d 572, 2014-Ohio-2597, 13 N.E.3d 1146:

> When a domestic-relations court certifies an ongoing custody case to a juvenile court under R.C. 3109.04(D)(2), matters related to the original divorce-custody case continue to be domestic-relations matters, governed only by R.C. 3109.04.
>
> Upon certification, a juvenile court has exclusive and continuing jurisdiction "to modify the judgment and decree of the court of common pleas as the same relate to the custody and support of children." R.C. 2151.23(D).
>
> Therefore, in deciding a custody issue in a domestic-relations court's stead, a juvenile court is also required to comply with R.C. 3109.04. R.C. 2151.23(F)(1). Because R.C. 3109.04 continued to govern the matter, A.G. continued to lack the authority to invoke the jurisdiction of the court to modify a prior custody decree.
>
> That this case was later transferred to another juvenile court for proper venue does not change the court's subject-matter jurisdiction and thus does not change A.G.'s status as a nonparty.
>
> As a child who has an interest in the outcome of custody litigation between her parents, A.G. has a right to notice and opportunity to be heard on the narrow issue of her wishes and concerns regarding allocation of her parents' rights to custody and visitation.
>
> We hold that due process does not mandate that a child be permitted to attend custody proceedings that are ancillary to a divorce.

In re B.C., 9th Dist. Summit No. 26976, 2014-Ohio-2748:

> When ordering child support, R.C. 3113.215 requires the trial court to use a child support worksheet identical in content and form to the R.C. 3113.215(E) or (F) model worksheet. This worksheet must actually be completed and made a part of the trial court's record.
>
> Next, a calculation of child support pursuant to the basic child support schedule and applicable worksheet through the line establishing the actual annual obligation, is rebuttably presumed to be the correct amount of child support due. R.C. 3119.03.

Pursuant to R.C. 3119.22:

> The court may order an amount of child support that deviates from the amount of child support that would otherwise result from the use of the basic child support schedule and the applicable worksheet, through the line establishing the actual annual obligation, if, after considering the factors and criteria set forth in section 3119.23 of the Revised Code, the court determines that the amount calculated pursuant to the basic child support schedule and the applicable worksheet, through the line establishing the actual annual obligation, would be unjust or inappropriate and would not be in the best interest of the child.
>
> If it deviates, the court must enter in the journal the amount of child support calculated pursuant to the basic child support schedule and the applicable worksheet, through the line establishing the actual annual obligation, its determination that that amount would be unjust or inappropriate and would not be in the best interest of the child, and findings of fact supporting that determination.

This Court has held that it is well settled that the requirements of R.C. 3119.22 are mandatory and must be literally and technically followed. If a trial court fails to comply with the literal requirements of the statute, it results in reversible error.

Further, the determinations and findings required by R.C. 3119.22 must be contained in the trial court's order.

In re T.K., 9th Dist. Summit No. 26916, 2014-Ohio-576:

> "Residual parental rights, privileges, and responsibilities" as that term is used in R.C. Chapter 2151, are those rights, privileges, and responsibilities remaining with the natural parent after the transfer of legal custody of the child, including, but not necessarily limited to, the privilege of reasonable visitation, consent to adoption, the privilege to determine the child's religious affiliation, and the responsibility for support. R.C. 2151.011(B)(48). See also R.C. 2151.353(A)(3)(c), similarly describing residual parental rights, privileges, and responsibilities.
>
> Turning to the legal question before us, this Court must consider the meaning of "the determination of religious affiliation" in the context of a legal custody case. Here, the parents objected to the legal custodians raising the child in the Catholic faith and have expressed their privilege to determine their child's religious affiliation by choosing no religious affiliation. Accordingly, the trial court ordered the legal custodians to not engage the child in church activities designed for membership, including requirements necessary for membership in Catholic Church. We must decide whether the trial court erred in failing to also bar the legal custodians from permitting the child to experience any teaching, indoctrination, exposure, thoughts, or feelings regarding religion, the supernatural, or supreme beings. Mother has cited no legal authority in support of this expansive interpretation of the statutory language.

The Ohio General Assembly has provided that when a child is placed in the legal custody of another, the natural parents retain "the privilege to determine the child's religious affiliation." R.C. 2151.353(A)(3)(c); R.C. 2151.011(B)(48). The legislature has reserved no further rights, privileges or responsibilities for the parents in regard to religion. Chapter 2151 of the Revised Code does not offer a definition of "religious affiliation." The statute is narrowly written and does not, by its terms, invite an expansive interpretation.

Mother agreed to the placement of her child in the legal custody of the grandparents, a home with which she was very familiar. The trial court has held that the parents are privileged, under R.C. 2151.353(A)(3)(c), to determine the child's religious affiliation to be "none" and ordered that the legal custodians are, accordingly, to refrain from engaging the child in church activities designed for membership. The statute offers the parents no further rights, privileges or responsibilities.

State ex rel. V.K.B. v. Smith, 138 Ohio St.3d 84, 2013-Ohio-5477, 3 N.E.3d 1184:

V.K.B. had obtained sole custody of the child in a judgment issued by the juvenile court in 2009. Since then, she had moved to Arizona with her daughter for two years, making it their permanent home. On a visit to Ohio in 2012, she was called back to Arizona, and left the child temporarily with her mother. While V.K.B. was away, the child's paternal grandfather filed an ex parte motion in the Sandusky Juvenile Court for emergency temporary custody of the child, which was granted. V.K.B. filed a complaint for a writ of prohibition, alleging that the Ohio court lacks jurisdiction now that she and the child are residents of Arizona.

The court of appeals, on a motion to dismiss by respondents for failure to state a claim upon which relief can be granted, dismissed the case, finding that the juvenile court had jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act, R.C. Chapter 3127, and that V.K.B. had an adequate remedy by way of appeal if the court errs in its rulings. V.K.B. appealed to this court.

We reverse the judgment of the court of appeals because (1) if V.K.B. can prove the allegations in her complaint, the juvenile court has failed to follow the statute that creates its jurisdiction over the child and (2) in this context, appeal is not an adequate remedy at law because it is neither "complete," "beneficial," nor "speedy."

Moreover, the court has granted "temporary" custody to a grandparent, who, unlike a parent, does not have fundamental rights in the care and custody of a child. Within the framework of the statutes, the overriding principle in custody cases between a parent and nonparent is that natural parents have a fundamental liberty interest in the care, custody, and management of their children. That "temporary" custody has now lasted over one year.

Thus, if V.K.B. can prove the allegations in her complaint, the juvenile court has not satisfied the requirements of the statute, and therefore does not have jurisdiction over the parties, the child, or the case.

Moreover, the lack of jurisdiction here need not be "patent and unambiguous." V.K.B.'s argument that appeal in this case does not amount to an "adequate remedy" for purposes of prohibition has merit.

Ohio law has consistently applied the principle that appeal is an adequate remedy in cases involving child custody. However, that precedent does not directly apply here.

In the context of this case, appeal is not adequate. Here, the contest is between a parent and a nonparent. As explained above, natural parents have a fundamental constitutional interest in the care, custody, and management of their children that grandparents do not.

In addition, in this case the juvenile court has awarded "temporary custody" but has neither communicated with the Arizona court nor specified the duration of the temporary order to allow the Arizona court to rule. Thus, there is no guarantee that the court will not simply sit on this "temporary" order indefinitely.

An "adequate remedy" in child-custody cases is unlike that in other types of cases, because for a child and its parent, time is the most precious of commodities. If a child is removed from her parent for a year, as has already occurred in this case, that year can never be replaced. If a writ is not issued and the case returned to the juvenile court in these circumstances, it may languish for one or two more years before the court issues an appealable order. The appeal can take an additional year or two by the time briefs are prepared and oral arguments delivered and the judges arrive at a conclusion.

Thus, even if the juvenile court eventually issues a final order, and V.K.B. appeals the case only to the court of appeals, it may take five years or more between the time custody was "temporarily" moved from the child's mother to a nonparent and the time the case is resolved. If the case is appealed here, it may take an additional year or more. Instead of a toddler, J.B. will be seven, eight, or even nine years old. The formative years she spent away from her mother can never be recaptured. This problem is particularly acute here, as J.B. has been diagnosed as autistic.

This is not to say that appeal is not an adequate remedy in all child-custody cases. But where, as alleged here, (1) custody has been removed from a parent who previously had been awarded permanent custody, (2) custody is awarded to a nonparent in an ex parte proceeding, (3) the juvenile court is not complying with the requirements of the Uniform Act or other applicable law, and (4) the juvenile court has issued a "temporary" order with no indication of when a hearing or other action might be taken to resolve the case, appeal is not an "adequate remedy at law" for purposes of an extraordinary writ.

While visiting Ohio, an Arizona child has been summarily taken from her mother and given to a nonparent through an ex parte proceeding. The juvenile court did not follow the law that gives it jurisdiction over the child. And the court of appeals has told the mother that she has an adequate remedy at law since at some distant point in the future any error will be vindicated on appeal. We disagree.

The writ of prohibition is granted. The Sandusky County Juvenile Court is hereby directed to vacate all orders entered in this matter subsequent to August 2010, and the child is to be returned to the custody of the mother forthwith.

In re A.S., 9th Dist. Summit No. 26462, 2013-Ohio-1975:

Juv.R. 40 contemplates that new events may arise or be discovered between the time of a magistrate's decision and a trial judge's final judgment, and the rule provides a mechanism for the introduction of such evidence in a timely manner. See Juv.R. 40(D)(4)(b) and (d), and Civ.R. 53(D)(4)(b) and (d). This is reasonable, given the fact that a magistrate's decision is not a final order and may be revised. Juv.R. 40(D)(4)(a) ("magistrate's decision is not effective unless adopted by the court."); Juv.R. 40(D)(4)(b) permits the court to "hear a previously-referred matter, take additional evidence, or return a matter to a magistrate" before taking action on a magistrate's decision.

Thus, although a court has discretion to refuse to consider new evidence, a court does not have discretion to refuse to consider new evidence if the objecting party demonstrates that it could not, with reasonable diligence, have presented the evidence to the magistrate. In such a case, the court is required to hear the new evidence.

It is plain that the evidence at issue could not have been presented at the prior dispositional hearing because it arose subsequent to that time. The evidence did not exist until Relatives spoke up at a contempt hearing that took place after the dispositional hearing, after the magistrate issued her decision, and after Father filed objections to that decision. Relatives' statements are undoubtedly relevant to the question of whether Relatives should, in fact, be granted legal custody. Therefore, a full examination of the reasons for that change and the apparent subsequent reversal by Relatives should have been conducted and made available to the trial judge before she made a final determination on the custodial disposition of the child.

Basic notions of fairness and common sense suggest that when individuals who stood, at the time, as the named custodians in documents pending before the trial judge have just announced that they no longer wish to have that role, their willingness and appropriateness to serve as legal custodians should be explored on the record, including being subject to cross-examination, before a custodial disposition is finalized. To deny Father a hearing on this matter is putting form far over substance. It has been said that a court that considers child custody or visitation issues should be guided by the child's best interests, not a technical requirement that has the potential to actually negatively impact a child's best interests. Under the unique facts of this case, Father should have been permitted to explore the mindset of Relatives in regard to their inclinations and suitability to assume legal custody of this child, and the trial court erred in failing to hear or to order a hearing on the new evidence.

In re M.B., 9th Dist. Lorain No. 11CA10060, 2012-Ohio-5428:

Mother contends that the trial court erred in granting legal custody to M.B.'s paternal great aunt and great uncle because the proposed legal custodians did not file a statement of understanding, as described in R.C. 2151.353(A)(3), with the court prior to the dispositional hearing. For its part, LCCS contends that a R.C. 2151.353(A) statement of understanding was not necessary because the motion for legal custody was not filed by the proposed custodians, but was filed instead by the agency under R.C. 2151.415 and that section of the Revised Code does not require such a statement.

The filing of a written objection to the decision of a magistrate is not a substitute for the obligation to object to a purported error at the time of its occurrence. Indeed, the contemporaneous objection rule is fundamental to our jurisprudence. The rule serves the interest of justice because it allows for the correction of many defects while they are readily curable, as well as it encourages the elimination of delay and the unnecessary use of the appellate process. In this case, any purported error could have been very easily corrected had an objection been timely entered. Moreover, even if R.C. 2151.353(A)(3) is applicable here, given that the paternal great aunt addressed the substance of that statute through her testimony at the dispositional hearing, the matter would not rise to the level of plain error.

Father contends that he is entitled to reasonable visitation and asserts his fundamental interest in the care, custody, and management of his child. These rights, however, are not absolute, but "are always subject to the ultimate welfare of the child. Where, as here, a child has been adjudicated abused, dependent or neglected, that judgment implicitly involves a determination of the unsuitability of the child's parents. As the parent of a neglected and dependent child whose legal custody is being awarded to a non-parent, Father no longer retains the full range of parental rights, but rather only "residual parental rights, privileges and responsibilities," which include the privilege of reasonable visitation. R.C. 2151.353(A)(3)(c). See also R.C. 2151.011(B)(48). Furthermore, in a case where there has been an adjudication of abuse, neglect or dependency, a juvenile court is permitted to control any parental conduct or relationship that will be detrimental or harmful to the child. R.C. 2151.359(A)(1). Accordingly, Father is not guaranteed visitation with his son, but visitation remains an issue to be considered and ruled upon by the juvenile court.

In re A.K., 9th Dist. Summit No. 26291, 2012-Ohio-4430:

The juvenile court's obligation to appoint a guardian ad litem in cases alleging only dependency is a qualified one, which depends upon the facts and circumstances of each case. See R.C. 2151.281 and Juv.R. 4. Of particular relevance here, R.C. 2151.281(G) requires the trial court to appoint a guardian ad litem for the children in a dependency case when there is a conflict of interest between the children and their parents. Juv.R. 4(B)(2) and Juv.R. 4(B)(8) further require the trial court to appoint a guardian ad litem for the children when the interests of children and parents "may" conflict or when a guardian ad litem is necessary "to meet the requirements of a fair hearing." Because the "conflict" and "fair hearing" provisions arguably applied to this case for different reasons, we will address them separately.

R.C. 2151.281(G) requires the appointment of a guardian ad litem in a dependency case if there is a conflict of interest between the child and the child's parents. Juv.R. 4(B) more broadly requires the appointment of a guardian ad litem in any juvenile case in which the interests of the child and the interests of the parent may conflict. Although this Court found no case law that specifically construed these conflict provisions within the context of a dependency case, there is identical conflict language in R.C. 2151.281(A)(2), which requires the appointment of a guardian ad litem for the child within the context of a delinquency case. Many courts, including this Court, have construed the requirement of R.C. 2151.281 (that a guardian ad litem is required when the court finds "that there is a conflict") together with the language of Juv.R. 4 (that appointment is required whenever there "may be" a conflict), to require that a guardian ad litem be appointed when the record demonstrates that there is a "strong possibility" that the interests of the child and the interests of the parent conflict.

We can find no reason why these constructions of the "conflict" language in R.C. 2151.281 and Juv.R. 4(B)(2) should not apply to cases in which dependency is alleged, given that they interpreted identical language within the same statute and juvenile rule. Consequently, in a dependency case, where the record demonstrates the "strong possibility" of a conflict between the interest of the child and the parent, the juvenile court is required by R.C. 2151.281 and Juv.R. 4(B)(2) to appoint a guardian ad litem to represent the child. The question then becomes whether the record in this case demonstrated the strong possibility of a conflict between the interests of the children and the interests of Mother.

In this dependency case, however, the record reveals that, at the beginning of the case, the interests of Mother and the children may not have been in conflict because Mother acknowledged her inability to meet the needs of the children and agreed to the removal and temporary custody arrangement with the aunt. Mother stipulated to the adjudications of dependency and agreed that the children should be temporarily placed with the aunt.

The strong possibility of a conflict between the interests of the children and Mother became apparent on the record, however, after CSB filed the motion for legal custody and Mother informed the trial court that she was opposed to that permanent disposition. Mother sent a letter to the court to request that she be permitted to appear at the hearing, with appointed counsel, to oppose the motion. At that point, Mother was focused on opposing the motion and protecting her own parental rights, a position that did not necessarily represent her children's best interests. Through Mother's written opposition to the legal custody motion, the record demonstrates that there was the strong possibility of a conflict between the interests of the children and the interests of Mother, which required the trial court to appoint a guardian ad litem to investigate and report to the court on the best interests of the children.

Rather than receiving evidence about the children's wishes or best interests from a guardian ad litem or any of the children themselves, the only evidence before the court came from the testimony of the CSB caseworker, the aunt, and Mother, none of whom was authorized to speak on behalf of the children. Only the guardian ad litem is authorized to testify on behalf of the children and express their wishes and desires. Moreover, although the guardian ad litem is permitted to express the wishes of the children through statements made by the children, the court's consideration of other out-of-court statements may not be used to prove the truth of the matters asserted, but, instead, may be used for the limited purpose of informing the court as to why the guardian reached his recommendation.

In re A.P., 9th Dist. Medina No. 12CA0022-M, 2012-Ohio-3873:

Grandmother of child adjudicated a dependent child did not lose her status as the child's "custodian" when the juvenile court placed the child in the temporary custody of the children services agency and, therefore, the juvenile court incorrectly concluded that the grandmother had lost her statutory right to participate in the reunification efforts of the case plan and continue working toward goal of reunification with child; although court may have had legitimate concern about grandmother's male friend posing a potential threat to child, the court had other means to protect child, such as requiring continued supervision of visits or adding requirements to case plan to ensure that child had no contact with friend.

In re D.D., 9th Dist. Wayne No. 11CA0031, 2012-Ohio-1122:

Following an adjudication of neglect, dependency, or abuse, the juvenile court's determination of whether to place a child in the legal custody of a parent or a relative is based solely on the best interest of the child. Since legal custody is intended to be permanent, a court is not permitted to "modify or terminate an order granting legal custody of a child unless it finds, based on facts that have arisen since the order was issued or that were unknown to the court at that time, that a change has occurred in the circumstances of the child or the person who was granted legal custody, and that modification or termination of the order is necessary to serve the best interest of the child. R.C. 2151.42(B). Although, if a non-parent moves for legal custody against a presumptively fit parent, the trial court must first find that the parent is unfit and that it is in the best interests of the children to be placed in the legal custody of the non-parent before granting the motion,

the Perales standard does not apply to a legal custody determination following an adjudication that the children are abused, neglected, or dependent.

Before awarding legal custody to a natural parent following an adjudication of abuse and neglect, however, the trial court was required to determine that the award was in the best interests of the children. Although the court's finding that Samantha R. is "unfit to be a parent" may include an implicit finding that awarding custody to her would not be in the children's best interests, that does not affect whether awarding custody to Travis D. is in the children's best interests. As the trial court evaluated the evidence under the wrong legal standard, we must reverse and remand this matter for the trial court to apply the appropriate legal standard in the first instance.

In re M.B., 9th Dist. Summit No. 26004, 2012-Ohio-687:

A juvenile court may adjudicate custodial claims brought by the persons considered nonparents at law.

In an R.C. 2151.23(A)(2) child custody proceeding between a parent and a nonparent, the court may not award custody to the nonparent without first making a finding of parental unsuitability that is, without first determining that a preponderance of the evidence shows that the parent abandoned the child, that the parent contractually relinquished custody of the child, that the parent has become totally incapable of supporting or caring for the child, or that an award of custody to the parent would be detrimental to the child.

The fundamental rights of a parent are effectuated by severely limiting the circumstances under which a parent may be denied custody of their minor children. Therefore, in these instances, there must be a finding of parental unsuitability before child custody can be awarded to a nonparent.

Unsuitability does not connote some moral or character weakness. Rather, unsuitability equates to detriment to the child. When it is detrimental for a child to be in the custody of his or her parent, it is not in the best interest of the child for the parent to have custody and the parent is unsuitable to have custody. Detriment to a child includes not only the physical and mental effects a custody award may have on a child, but also the emotional and psychological effects as well.

Given all the evidence in the record, we must conclude that Grandparents proved by a preponderance of the evidence that it would be detrimental for M.B. to be in Mother's custody. The record contains evidence that M.B. suffered from physical and mental difficulties (headaches and stomachaches) as well as emotional and psychological difficulties (emotional regression and thumb sucking) as a result of living with Mother. There was evidence that Mother and Michael had a verbally abusive relationship that often resulting in arguments that M.B. observed. M.B. worried about Mother and was forced to assert a caretaking role with Mother rather than focus on her own developmental growth. Moreover, there was evidence that Mother often struggled to provide for M.B. Although Mother clearly loves M.B. and M.B. would prefer to be near Mother if the circumstances were different, we must conclude that Mother cannot be a suitable parent for M.B. at this point in her life.

In re A.P., 9th Dist. Medina No. 11CA0049-M, 2011-Ohio-5998:

> Tammy Twyford, A.P.'s maternal grandmother, had legal custody of A.P. from 2009 until the trial court removed her from the case plan after she violated the terms of protective supervision. In the same order, the trial court denied Ms. Twyford's motion for expanded visitation and/or legal custody. Ms. Twyford has attempted to appeal that order. This Court dismisses the attempted appeal because the trial court's order is not appealable under R.C. 2505.02.
>
> Under the Ohio Constitution, Ohio's courts of appeals have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district. Certain interlocutory orders are appealable under R.C. 2505.02. Under R.C. 2505.02(B)(2), an order may be reviewed if it is an order in a "special proceeding" and it "affects a substantial right." Juvenile court proceedings under Chapter 2151 of the Ohio Revised Code, are special statutory proceedings. Therefore, the order in this case is appealable if it "affects a substantial right."
>
> There is no indication that Ms. Twyford will be foreclosed from obtaining appropriate relief in the future if she is not permitted to immediately appeal the trial court's March 24 order modifying the case plan. Therefore, the order is not one affecting a substantial right and is not appealable under R.C. 2505.02. Thus, we lack jurisdiction to consider Ms. Twyford's assignments of error.

In re A.T., 9th Dist. Wayne No. 10CA0024, 2011-Ohio-5222:

> Two-year-old A.T. has been in foster care for most of his life. Neither of his parents is willing or able to provide a permanent home for him. His paternal grandparents, with the support of the children services agency, sought legal custody. The child's guardian ad litem, however, moved for permanent custody for the purpose of making A.T. available for adoption by his foster parents. The trial court granted legal custody to the grandparents. The guardian ad litem has appealed and has assigned five errors for review.
>
> The guardian ad litem's first assignment of error is that the trial court erroneously applied a higher standard of proof than it should have. Specifically, she has asserted that "the trial court erred as a matter of law by improperly assigning a higher standard of proof for the guardian ad litem to meet since the pending motion for permanent custody was filed on behalf of the child by the guardian ad litem." The guardian ad litem's supporting argument, however, has not addressed or challenged the level of proof actually utilized by the trial court, but has instead addressed the arguments made by the opposing lawyers before the trial court. She has complained that the opposing lawyers asserted the guardian ad litem should have "a higher standard of proof" because the motion for permanent custody was filed by the guardian ad litem and not by the agency. The guardian ad litem has not stated what she believes the proper burden of proof should be, nor has she stated exactly what burden of proof was urged by the opposing lawyers.
>
> Arguments by opposing lawyers are not the proper subject of an assignment of error and are only potentially relevant to an appeal if those arguments have impacted some aspect of the trial court judgment. The sole purpose of an appeal is to provide the appellant an opportunity to seek relief in the form of a correction of errors of the lower court that injuriously affected him.

The guardian ad litem has argued that legal custody does not give A.T. the permanency he needs because the status can be challenged by motion. The General Assembly has provided, however, that an order granting legal custody of a child to a person is intended to be permanent in nature. R.C. 2151.42(B). Although a court may subsequently modify or terminate an order granting legal custody, it may do so only if it finds, based on facts that have arisen since the order was issued or that were unknown to the court at that time, that a change has occurred in the circumstances of the child or the person who was granted legal custody, and that modification or termination of the order is necessary to serve the best interest of the child.

The guardian ad litem has also argued that illness and old age should be considerations when placing a child with an "older generational family member." While age might be a factor in some cases, it does not appear to be significant here. There is no evidence that either grandparent has any chronic health problems. In addition, at 46 and 43 years of age, the grandparents are not of such advanced ages that they would likely be unable to care for A.T. until adulthood.

Adoption, Guardianship, and Support Issues

V.L. v. E.L., 136 S.Ct. 1017, 194 L.Ed.2d 92 (2016):

A Georgia court entered a final judgment of adoption making petitioner V.L. a legal parent of the children that she and respondent E.L. had raised together from birth. V.L. and E.L. later separated while living in Alabama. V.L. asked the Alabama courts to enforce the Georgia judgment and grant her custody or visitation rights. The Alabama Supreme Court ruled against her, holding that the Full Faith and Credit Clause of the United States Constitution does not require the Alabama courts to respect the Georgia judgment.

A State is not required, however, to afford full faith and credit to a judgment rendered by a court that did not have jurisdiction over the subject matter or the relevant parties. Consequently, before a court is bound by a judgment rendered in another State, it may inquire into the jurisdictional basis of the foreign court's decree. That jurisdictional inquiry, however, is a limited one. If the judgment on its face appears to be a record of a court of general jurisdiction, such jurisdiction over the cause and the parties is to be presumed unless disproved by extrinsic evidence, or by the record itself.

Those principles resolve this case. Under Georgia law, as relevant here, the superior courts of the several counties shall have exclusive jurisdiction in all matters of adoption. That provision on its face gave the Georgia Superior Court subject-matter jurisdiction to hear and decide the adoption petition at issue here. The Superior Court resolved that matter by entering a final judgment that made V.L. the legal adoptive parent of the children. Whatever the merits of that judgment, it was within the statutory grant of jurisdiction over all matters of adoption. The Georgia court thus had the adjudicatory authority over the subject matter required to entitle its judgment to full faith and credit.

The Alabama Supreme Court reached a different result by relying on Ga. Code Ann. §19-8-5(a). That statute states (as relevant here) that "a child who has any living parent or guardian may be adopted by a third party only if each such living parent and each such guardian has voluntarily and in writing surrendered all of his or her rights to such child. The Alabama Supreme Court concluded that this provision prohibited the Georgia Superior Court from allowing V.L. to adopt the children while also allowing E.L. to keep her existing parental rights. It further concluded that this provision went not to the merits but to

the Georgia court's subject-matter jurisdiction. In reaching that crucial second conclusion, the Alabama Supreme Court seems to have relied solely on the fact that the right to adoption under Georgia law is purely statutory, and the requirements of Georgia's adoptions statutes are mandatory and must be strictly construed in favor of the natural parents.

That analysis is not consistent with this Court's controlling precedent. Where a judgment indicates on its face that it was rendered by a court of competent jurisdiction, such jurisdiction is to be presumed unless disproved. There is nothing here to rebut that presumption. The Georgia statute on which the Alabama Supreme Court relied, Ga. Code Ann. §19-8-5(a), does not speak in jurisdictional terms; for instance, it does not say that a Georgia court "shall have jurisdiction to enter an adoption decree" only if each existing parent or guardian has surrendered his or her parental rights. Neither the Georgia Supreme Court nor any Georgia appellate court, moreover, has construed §19-8-5(a) as jurisdictional. That construction would also be difficult to reconcile with Georgia law. Georgia recognizes that in general, subject-matter jurisdiction addresses whether a court has jurisdiction to decide a particular class of cases, not whether a court should grant relief in any given case. Unlike §19-8-2(a), which expressly gives Georgia superior courts exclusive jurisdiction in all matters of adoption, §19-8-5(a) does not speak to whether a court has the power to decide a general class of cases. It only provides a rule of decision to apply in determining if a particular adoption should be allowed.

Section 19-8-5(a) does not become jurisdictional just because it is mandatory and must be strictly construed. This Court has long rejected the notion that all mandatory prescriptions, however emphatic, are properly typed jurisdictional. Indeed, the Alabama Supreme Court's reasoning would give jurisdictional status to every requirement of the Georgia adoption statutes, since Georgia law indicates those requirements are all mandatory and must be strictly construed. That result would comport neither with Georgia law nor with common sense.

As Justice Holmes observed more than a century ago, it sometimes may be difficult to decide whether certain words in a statute are directed to jurisdiction or to merits. In such cases, especially where the Full Faith and Credit Clause is concerned, a court must be slow to read ambiguous words, as meaning to leave the judgment open to dispute, or as intended to do more than fix the rule by which the court should decide. That time-honored rule controls here. The Georgia judgment appears on its face to have been issued by a court with jurisdiction, and there is no established Georgia law to the contrary. It follows that the Alabama Supreme Court erred in refusing to grant that judgment full faith and credit.

Lorain County Children Services v. Gossick, 9th Dist. Lorain No. 13CA010476, 2014-Ohio-3865:

Mr. Gossick received legal custody of his son O.G. after a divorce. Beginning on April 18, 2011, when O.G. was 16 years old, he was apparently removed from Mr. Gossick's care and placed in foster care. There is no evidence in the record regarding any adjudication of O.G. as unruly, delinquent, dependent, or otherwise. O.G. attained the age of 18 years old on August 28, 2012, at which time he left the foster care system and went to live with his mother.

Lorain County Department of Job & Family Services ("DJFS") filed a complaint on October 23, 2012, in case number 12JS37527, against Louis Gossick. The Department sought an order of retroactive support on behalf of O.G. (dob 8/28/1994) pursuant to a purported child support order issued in case number 11JC32718. Mr. Gossick filed an answer in which he admitted that he was O.G.'s father. Mr. Gossick raised several defenses to the claim, including the Department's failure to obtain a timely child support order pursuant to R.C. 2151.36.

Mr. Gossick also filed a motion to dismiss pursuant to Civ.R. 12(B)(1) for lack of subject matter jurisdiction. He argued that the juvenile court lost jurisdiction over the issue of O.G.'s support when he attained the age of eighteen. DJFS did not file a brief in opposition to the motion to dismiss.

The juvenile court derives its subject matter jurisdiction pursuant to statute. R.C. 2151.23(B)(4) grants original jurisdiction to the juvenile court to hear and determine an application for an order for the support of any child, if the child is not a ward of another court of this state. R.C. 2151.23(A)(14) grants exclusive original jurisdiction to the juvenile court to exercise jurisdiction and authority over the parent, guardian, or other person having care of a child alleged to be a delinquent child, unruly child, or juvenile traffic offender, based on and in relation to the allegation pertaining to the child. Necessarily, then, the juvenile court must issue any such support order while the subject of the support is still a child.

Even construing the allegations in the pleadings and all documentary evidence in the light most favorable to the Department and further resolving all reasonable competing inferences in favor of DJFS as the non-moving party, this Court concludes that there is nothing in the record to demonstrate that the Department invoked the continuing jurisdiction of the juvenile court over issues relating to O.G. beyond O.G.'s attainment of the age of eighteen. The juvenile court lost jurisdiction and authority over Mr. Gossick with regard to issues concerning O.G. once O.G. was no longer a child, i.e., upon attainment of the age of eighteen, unless one of the express grounds for extension of jurisdiction existed. In this case, there is nothing in the Department's complaint nor in any documentary evidence submitted into the record to indicate that O.G. had been adjudicated an unruly or delinquent child in case number 11JC32718.

Accordingly, there is nothing in the record to support the conclusion that the juvenile court retained jurisdiction and authority over O.G. and Mr. Gossick. Finally, DJFS cites no authority, and this Court has found none, which would allow the juvenile court to issue in the first instance a retroactive order for child support regarding a person who is no longer a child and no longer otherwise subject to the juvenile court's jurisdiction. Under these circumstances, the juvenile court erred by denying Mr. Gossick's motion to dismiss DJFS's complaint for retroactive child support as there was no "child" in existence over whom the juvenile court retained jurisdiction. Mr. Gossick's second assignment of error is sustained.

In re S.H., 9th Dist. Medina No. 13CA0066-M, 2013-Ohio-4380:

In *In re S.H.*, 9th Dist. No. 13CA0057-M, 2013-Ohio-3708, this Court remanded this case to the probate court to determine whether it would be in S.H.'s best interests to appointment a guardian for purposes of making medical decisions on her behalf. Upon remand the Medina County Court of Common Pleas, Probate Division found that it was not in the best interests of S.H. to appoint Schimer as guardian of S.H. for purposes of making medical decisions on S.H.'s behalf.

In the case at bar, both parents and S.H. assert the right to refuse chemotherapy. However, R.C. 2111.50(F) gives the probate court full *parens patriae* powers. When considering any question related, and issuing orders for, medical or surgical care or treatment of incompetents or minors subject to guardianship, the probate court has full *parens patriae* powers unless otherwise provided by a section of the Revised Code. Further, R.C. 2111.50(C) mandates the best interest test be applied in all medical decisions for a ward.

Although R.C. 2111.02 does not explicitly require a finding of "parental unsuitability" it remains a factor for the court to consider. If the probate court finds that a parent is unsuitable, it clearly would not be in the "best interest" of the minor child to allow the parent to make medical decisions on behalf of the child. However, a finding of parental "suitability" does not end a probate court's inquiry. Parental rights, even if based upon firm belief and honest convictions can be limited in order to protect the "best interests" of the child. Where parental involvement threatens to harm the child, the parents' authority must yield.

Thus we find that it is well established in Ohio and in other jurisdictions, that, when parents cannot or will not consent to potentially life-saving treatment for a minor, then a court may appoint another to approve the procedure and thereby protect the child's life and health.

In the case at bar, the medical evidence presented is that the proposed treatment will give S.H. a chance to grow and to thrive. While we respect the wishes of the parents and believe them to be honest and sincere, we are unwilling to adhere to the wishes of the parents under the facts of this case. Both the child's Guardian ad litem and the probate court's own Investigator found it to be in the best interest of S.H. to undergo treatment aimed at saving and preserving her life. The trial court in this case has disregarded those individuals choosing instead to base its decision, at least in part, on matters that are not contained in the trial court record. Further, the trial court's decision is wrought with speculation. The parties have never raised whether R.C. 2116.06 is constitutional as applied.

In re S.H., 9th Dist. Medina No. 13CA0057-M, 2013-Ohio-3708:

S.H. and her family are Amish. Her parents make their living raising and selling produce at a stand in front of their house. S.H. has seven brothers and sisters ranging in age from 12 years to 8 months. S.H. is the third oldest child. She just completed the fourth grade at an Amish School in the Black River school district. S.H. is ten years old.

In April 2013, S.H. was admitted to Akron Children's Hospital for fatigue and an observable mass near her collarbone. After examination and testing, it was determined S.H. has a type of leukemia, T-Cell Lymphoblastic Lymphoma, Stage III. She had tumors in her neck, chest (mediastinum) and kidneys. The most significant concern was the mass in S.H.'s neck area, which prior to initial treatment, impacted her airway and caused her admission into the pediatric intensive care unit. Sarah's doctors recommended she undergo chemotherapy. The parents consented, but they testified the doctors did not fully explain to them the short-term and long-term effects of chemotherapy. According to the parents, the doctors also understated the risks to S.H.'s health if she underwent chemotherapy.

In June, S.H.'s cancer had improved but she was still very sick from the side effects of the treatment. The parents decided to stop chemotherapy and to begin to treat S.H. through natural, holistic medicine. They informed Dr. Bodas of their decision.

Dr. Bodes told the parents he would not accept their decision to stop chemotherapy. Dr. Bodas made a referral to Medina County Job and Family Services in June. The agency refused to file neglect or dependency charges against the parents. Dr. Bodes then referred the matter to the hospital's ethics committee and legal staff to have a guardian appointed to make S.H.'s medical decisions.

On July 9, 2013, Schimer filed a motion for appointment of an emergency guardian for medical decision making for S.H. and an application for the appointment of a limited guardian for medical purposes. Schimer is an attorney and a registered nurse. Her primary occupation is general counsel for the Northeast Ohio Medical University. Schimer was approached by representatives of Akron's Children's Hospital to file the application.

Child custody disputes under Ohio law fall within the coverage of one of two statutes, depending on the circumstances-R.C. 3109.04 and 2151.23. R.C. 2151.23(A)(2) grants juvenile courts exclusive original jurisdiction to determine custody of any child not a ward of another court of this state. R.C. 3105.011 gives domestic relations courts the jurisdiction appropriate to the determination of all domestic relations matters. R.C. 3109.04 dictates the rules and procedures for domestic relations courts to follow in child custody cases.

However, the case at bar is not a custody dispute at all. Rather, Schimer filed an application requesting to be appointed as guardian of S.H. for medical purposes pursuant to R.C. 2111.06.

The trial court in the case at bar failed to consider R.C. 2111.06. Under R.C. 2111.06, there are three separate, disjunctive grounds for appointment of a limited guardian over a minor, (1) the minor has no parents, (2) the minor's parents are unsuitable or (3) if the minor's interests will be promoted by appointment of the guardian. Schimer sought a limited guardianship over S.H. based upon the third ground, that S.H.'s interests will be promoted by the appointment of a guardian. There is no requirement the trial court find the parents to be unfit or unsuitable before appointing a guardian on this ground.

Because the trial court failed to even consider whether S.H.'s interests will be promoted by appointment of the guardian, we sustain Schimer's first assignment of error and remand this case to the trial court to make that determination without regard to the suitability of the parents.

In re G.T.B., 128 Ohio St.3d 502, 2011-Ohio-1789, 947 N.E.2d 166:

Courts of appeals have been given original jurisdiction in habeas corpus actions by Ohio Const. Art. IV, §3(B)(1)(c). The General Assembly is without power to limit or alter the original jurisdiction of Courts of Appeals in habeas corpus actions. Therefore, notwithstanding R.C. 2151.23(A)(3), a Court of Appeals has jurisdiction to entertain a petition for a writ of habeas corpus involving the custody of a child.

In addition, although R.C. 2725.03 limits the jurisdiction over habeas corpus cases involving inmates of state benevolent or correctional institutions to the courts or judges of the county in which the institution is located, there is no comparable statutory limitation on child-custody habeas corpus cases.

Modification of Parental Rights & Shared Custody

Rowell v. Smith, 133 Ohio St.3d 288, 2012-Ohio-4313, 978 N.E.2d 146:

> On September 9, 2003, appellee, Julie Ann Smith, gave birth to a daughter as the result of artificial insemination with sperm from an unknown donor. At the time, Smith was involved in a relationship with appellant, Julie Rose Rowell. Several years later, when Smith and Rowell's relationship ended, Rowell filed a petition in juvenile court pursuant to R.C. 2151.23(A)(2) seeking an order for shared custody of the minor child and simultaneously requesting a temporary order granting her companionship time with the child.
>
> On February 18, 2010, a magistrate issued an order that designated Smith as the child's temporary custodian and granted Rowell temporary visitation. When Smith failed to comply with the February 18 order, Rowell filed another motion for an order finding Smith in contempt. On March 22, 2010, a magistrate found Smith guilty of contempt and sentenced her to three days in jail, suspending the sentence if within 30 days of the order, Smith purged herself of contempt by allowing visitation and paying Rowell $2,500 for attorney fees and costs associated with prosecuting the motion for contempt. Smith failed to comply with the order giving her the terms of the opportunity to purge the contempt, and on June 28, 2010, Rowell moved for enforcement of the March 22 order. Smith filed objections to the magistrate's March 22 decision.
>
> Construing the juvenile rules liberally, as we must, see Juv.R. 1(B), we hold that a juvenile court may issue temporary visitation orders in cases within its jurisdiction under R.C. 2151.23 if it is in the child's best interest.
>
> Here, the juvenile court had subject-matter jurisdiction over the case under R.C. 2151.23, it afforded Smith the opportunity to be heard on the issue of visitation, and it had discretion under Juv.R. 13(B) to issue a temporary visitation order, so long as it was in the child's best interest. Within these parameters, we find that the court had authority to grant the temporary order and that the temporary order did not violate Smith's fundamental rights.

In re M.R.L., 9th Dist. Summit No. 25618, 2011-Ohio-4997:

> Father argues that the trial court erred in ordering that Mother, as the child's sole legal custodian, has the right to determine where the child will attend school. This Court disagrees.
>
> Under the terms of the parties' shared parenting plan, both parents were named as the child's legal custodians. M.R.L. was subsequently adjudicated a neglected child based on allegations in CSB's complaint filed properly in the juvenile court. After the initial dispositional hearing, the juvenile court continued the child in Mother's legal custody, effectively terminating Father's status as a legal custodian. The juvenile court further granted an order of protective supervision to CSB to allow the agency to continue to monitor the child's welfare and well-being. CSB later moved the juvenile court to terminate its order of protective supervision. After a final hearing, the juvenile court did so and closed the case. At that time, Mother was the child's sole legal custodian pursuant to the juvenile court's exercise of its exclusive original jurisdiction.

CSB's filing of a complaint alleging M.R.L. to be abused, neglected, and dependent vested the juvenile court with exclusive original jurisdiction to determine matters of the child's custody. R.C. 2151.23(A)(1). This Court has recognized that, in cases where the child's custody has been determined pursuant to an order out of the domestic relations court, the juvenile and domestic relations courts assume concurrent jurisdiction. Concurrent jurisdiction, however, does not mean that the issues regarding the custody and care of a child must be determined by referring to the orders of both courts to arrive at a piecemeal recitation of parental rights and responsibilities. In the event of inconsistencies, that feat would be Herculean. The potential disruptions in the life of a child, whose parents seek to rely on disparate orders out of different courts, cannot reasonably be interpreted to be what is meant by the concept of concurrent jurisdiction. The juvenile court's award of legal custody solely to Mother supplanted the domestic relations court's award of shared parenting. Here, having exercised its exclusive original jurisdiction and awarded legal custody to Mother pursuant to R.C. 2151.353(A)(3), the juvenile court retained continuing jurisdiction over the child pursuant to R.C. 2151.353(E)(1). Notwithstanding its concurrent jurisdiction with the domestic relations court, the juvenile court properly exercised its continuing jurisdiction in applying the law pursuant to R.C. Chapter 2151 and issuing its order that Mother has the right to make educational decisions on behalf of the child.

"Legal custody," as that term is used in R.C. Chapter 2151, means a legal status that vests in the custodian the right to have physical care and control of the child and to determine where and with whom the child shall live, and the right and duty to protect, train, and discipline the child and to provide the child with food, shelter, education, and medical care, all subject to any residual parental rights, privileges, and responsibilities. An individual granted legal custody shall exercise the rights and responsibilities personally unless otherwise authorized by any section of the Revised Code or by the court. R.C. 2151.011(A)(19). Accordingly, after being awarded legal custody within the context of R.C. Chapter 2151, Mother had the right to make educational decisions for the child, subject to any residual rights retained by Father.

"Residual parental rights, privileges, and responsibilities," as that term is defined in R.C. Chapter 2151, means those rights, privileges, and responsibilities remaining with the natural parent after the transfer of legal custody of the child, including, but not necessarily limited to, the privilege of reasonable visitation, consent to adoption, the privilege to determine the child's religious affiliation, and the responsibility for support. R.C. 2151.011(A)(46). While legal custody expressly vests the rights to train and educate a child in the legal custodian, the list of residual parental rights, privileges, and responsibilities is silent as to anything reasonably calculated to vest in that natural parent the right to determine where the child attends school. Applying the language in R.C. 2151.011(A)(19) and (46), the juvenile court properly concluded that Father's residual rights and privileges did not accord him the right to make decisions regarding the child's education and that that right resided solely in Mother by virtue of her status as the child's sole legal custodian. Father's third assignment of error is overruled.

In re Mullen, 129 Ohio St.3d 417, 953 N.E.2d 302, 2011-Ohio-3361:

The issue raised in this case is whether a parent, by her conduct with a nonparent, entered into an agreement through which the parent permanently relinquished sole custody of the parent's child in favor of shared custody with the nonparent. For the reasons that follow, we hold that competent, credible evidence supports the juvenile court's conclusion that the parent did not enter into such an agreement. Accordingly, we affirm the judgment of the court of appeals.

In December 2007, Hobbs filed a verified complaint for shared custody in the Hamilton County Juvenile Court pursuant to R.C. 2151.23(A)(2) and a motion for visitation during the proceedings. Hobbs alleged that Mullen had created a contract through her conduct with Hobbs to permanently share legal custody of the child. Hobbs asked the court to grant her immediate visitation rights with the child and to enter an order pursuant to R.C. 2151.23(A)(2) granting her equal and shared custody of the child. In January 2008, Liming also petitioned for shared custody of the child.

This appeal concerns whether a parent's conduct with a nonparent created an agreement for permanent shared legal custody of the parent's child. The determination of whether such a contract is present is essential. If there is no such contract, then the parent retains all parental rights. If there is such a contract, then the juvenile court must engage in a "suitability" and "best interests" analysis.

On this conflicting and disputed evidence, the juvenile court concluded that there was reliable, credible evidence that Mullen's conduct did not create an agreement to permanently relinquish sole custody of her child in favor of shared custody with Hobbs. In accordance with its standard of review, the appellate court reviewed the evidence presented to the juvenile court and noted that there was strong evidence supporting both Mullen's and Hobbs's positions. However, of particular interest to the appellate court was the evidence that the juvenile court relied on to conclude that although Mullen and Hobbs had shared responsibilities for the child, Mullen had not agreed to permanently cede partial custody rights. The appellate court determined that "taken as a whole," reliable, credible evidence supported the juvenile court's findings that Mullen had not permanently given over partial legal custody of the child. The appellate court declined to disturb that decision.

We conclude that the appellate court applied the proper standard of review in this matter. We also conclude that the appellate court did not err when it affirmed the juvenile court's decision to dismiss Hobbs's complaint for shared custody of the child. Like that of the juvenile and appellate courts, our review of the record shows that not only was there evidence indicating that Mullen had intended to share custody of the child, there was contrary evidence indicating that Mullen did not agree to permanently cede partial legal custody rights to Hobbs.

Finally, we do not agree with appellant's argument that "coparent" equals "shared legal custody" and that because the parties' statements and various documents used the term "coparent," the parties therefore clearly agreed to "shared legal custody." "Coparenting" is not synonymous with an agreement by the biological parent to permanently relinquish sole custody in favor of shared legal parenting. "Coparenting" can have many different meanings and can refer to many different arrangements and degrees of permanency. The parties' use of the term, together with other evidence, however, may indicate that the parties shared the same understanding of its meaning and may be considered by the trial court in weighing all the evidence.

Medical Records & Privileges

Griffith v. Aultman Hospital, Slip Opinion, No. 2016-Ohio-1138:

> In this appeal from the Fifth District Court of Appeals, we consider the definition of "medical record" as it is used in R.C. 3701.74. Appellant Griffith advances the following proposition of law: "A hospital should not be permitted to withhold portions of a patient's medical record by unilaterally selecting and storing those medical records in a department other than its medical records department."
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> For the reasons that follow, we conclude that because the Ohio General Assembly did not limit the definition of "medical record" in R.C. 3701.74(A)(8) to data in the medical-records department, the physical location of the data is not relevant to the determination whether that data qualifies as a medical record. Instead, the focus is whether a healthcare provider made a decision to keep data that was generated in the process of the patient's healthcare treatment and pertains to the patient's medical history, diagnosis, prognosis, or medical condition. We hold that for purposes of R.C. 3701.74(A)(8), "maintain" means that the healthcare provider has made a decision to keep or preserve the data.
>
> The plain language of R.C. 3701.74 does not require that a patient seeking a medical record state a reason for doing so. The Fifth District found that the purpose of R.C. 3701.74 is to enable the patient to obtain his or her file in order, for example, to obtain a second opinion or transfer to another medical provider. The General Assembly has not imposed upon the patient or the patient's representative any burden of demonstrating a reason for accessing the medical record. All that is required of a patient or a patient's representative is to "submit to the health care provider a written request signed by the patient dated not more than one year before the date on which it is submitted." R.C. 3701.74(B).

State ex rel. Clough v. Franklin Cty. Children Servs., 144 Ohio St.3d 83, 2015-Ohio-3425, 40 N.E.3d 1132:

> On April 22, 2014, Clough made a verbal request, through an agent, to inspect records concerning Clough's daughter, J.C. On April 30, 2014, Clough's agent received a written response from respondent Anne C. O'Leary, chief legal counsel for FCCS, denying Clough's request. The letter explained that respondent Charles M. Spinning, executive director of FCCS, did not find good cause to release the records. On May 13, 2014, Clough's agent tendered to O'Leary a written request for the inspection of J.C.'s case file. FCCS responded, once again refusing to allow inspection of the file. Clough filed her complaint in mandamus in this court on July 3, 2014.
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> Although Clough does not mention the public-records law in her complaint, she nevertheless asserts a violation of that law in her brief. Even assuming that the issue has been properly presented, Clough cannot prevail. R.C. 149.43(B)(1) requires that upon request, all public records shall be promptly prepared and made available for inspection at reasonable times. R.C. 149.43(A)(1) defines a "public record" as "records kept by any public office." But R.C. 149.43(A)(1)(v) excepts from disclosure "records the release of which is prohibited by state or federal law."
>
> FCCS asserts that the documents Clough requested are exempted from disclosure by R.C. 2151.421(H)(1), which explicitly provides that a children services agency's investigatory record resulting from a report of suspected child abuse is confidential. That statute states: "Except as provided in divisions (H)(4) and (N) of this section, a report made under this section is confidential." R.C. 2151.421(H)(1). This exemption was explained to Clough in one of the responses to her inspection request.

Therefore, if the file constitutes a report of a child-abuse allegation and the investigation of that allegation, as Clough describes it in her brief, the file is confidential under R.C. 2151.421(H)(1).

Considering the special master's report, the file appears to contain, with very few possible exceptions, the records of an investigation of a report of possible child abuse, and therefore falls under the confidentiality provision in R.C. 2151.421(H)(1). Thus, those records are exempt from disclosure under R.C. 149.43(A)(1)(v).

Even those documents in the file that might not be confidential under R.C. 2151.421 are open to inspection only to the persons or entities specified in R.C. 5153.17:

The confidentiality promised by R.C. 5153.17 is not absolute. Ohio courts have held that while it is the primary duty of the executive director of a county children services agency to keep its records confidential, the executive director may allow inspection when the requester shows "good cause." "Good cause" is established when the requester shows that disclosure is in the best interests of the child or that the due process rights of the requester are implicated.

The exceptions to the confidentiality provision in R.C. 5153.17 are narrow. A parent's right to a fair trial might override the confidentiality requirement. "Good cause" may be shown when the requester has a right arising under another statute to inspect the records in question. The good cause shown must outweigh the considerations underlying the confidentiality requirement.

Clough's argument in support of disclosure is that FCCS did not follow its own policies and procedures in denying her request. This does not qualify as good cause. While her case is sympathetic, and she is no doubt concerned about the investigation of her daughter's possible abuse, she has not alleged that the child is currently in any specific danger, that her due-process rights are in jeopardy, or that there is any similarly compelling reason to depart from the statutory mandate of confidentiality.

Guarino-Wong v. Hosler, 1st Dist. Hamilton No. C-120453, 2013-Ohio-1625:

Plaintiffs-appellants Candice Guarino-Wong and Gary Wong commenced this personal injury action against defendant-appellee Leah Hosler. Hosler had rear-ended Guarino-Wong in an automobile accident, and Guarino-Wong sought to recover for damages that she had suffered, including damages for medical expenses, lost wages, physical and mental pain and suffering, impairment of normal life enjoyment, and future pain and suffering. Gary Wong had sought damages for the loss of his wife's consortium. Following a jury trial, Guarino-Wong was awarded $10,968.40, an amount significantly less than that which she had sought to recover.

This appeal concerns the propriety of the trial court's admission of a medical report issued by Dr. George Jewell, who had examined Guarino-Wong but did not provide testimony in this case, as well as trial testimony from Drs. Henry Kenkel and Thomas Bender concerning Dr. Jewell's report.

At the close of trial, Dr. Jewell's report was admitted into evidence over objection from Guarino-Wong. The jury returned a verdict in the amount of $10,958.40. Guarino-Wong filed a motion for a new trial under Civ.R. 59. She argued that the trial court had committed an error of law by allowing Drs. Kenkel and Bender to testify about Dr. Jewell's report and by admitting into evidence the same report. The trial court denied the motion.

Guarino-Wong now appeals. In her first three assignments of error, she argues that the trial court erred in allowing Dr. Bender to read from Dr. Jewell's medical report, that the trial court erred in allowing Dr. Kenkel to read from Dr. Jewell's report, and that the trial court erred in admitting into evidence the written report of Dr. Jewell. We address these assignments together.

Hosler argues that the report and statements read from the report are admissible pursuant to Evid.R. 803(4) as statements made for the purposes of medical diagnosis or treatment.

We are not persuaded by this argument. The report prepared by Dr. Jewell contains both statements by Guarino-Wong explaining her symptoms, as well as medical opinions and conclusions reached by Dr. Jewell. The statements read from the report by Drs. Kenkel and Bender were opinion and diagnostic statements from Dr. Jewell.

Evid.R. 803(4) excepts as hearsay statements made for the purposes of medical diagnosis and treatment because of "the assumption that a person will be truthful about his physical condition to a physician because of the risk of harmful treatment resulting from untruthful statements." We hold that Evid.R. 803(4) applies to statements made by a patient for purposes of that patient's medical diagnosis and treatment. It cannot be used to admit opinion testimony of treating physicians.

Because Dr. Jewell's report contained statements and opinions formulated by the doctor himself, and because Drs. Kenkel and Bender read Dr. Jewell's opinions from the report, Evid.R. 803(4) cannot serve as an exception to allow admission of the hearsay evidence.

Hosler further argues that this evidence was admissible pursuant to Evid.R. 803(6), the hearsay exception pertaining to records of regularly conducted activity. A record will qualify for admission as a hearsay exception under Evid.R. 803(6) when it is shown that the record was regularly recorded in a regularly conducted activity, was made by a person with knowledge of the activity, was recorded at or near the time of the activity, and that a foundation for the record was laid by a custodian of the record or by an otherwise qualified person.

Medical records are one type of record that may be admissible under this hearsay exception. But we find that Evid.R. 803(6) does not provide for admission of the evidence in this case because there was no testimony by a record custodian or otherwise qualified person as to the requirements stated above, namely that the report had been generated in the regular course of business. A witness providing such testimony "need not have firsthand knowledge of the transaction, but he or she must demonstrate familiarity with the operation of the business and the circumstances of the record's preparation, maintenance and retrieval. Neither Dr. Jewell nor a qualified representative testified at trial regarding the preparation of the medical report and that it had been kept in the ordinary course of business. Dr. Kenkel had testified that Dr. Jewell's report was part of his medical chart on Guarino-Wong, but that his office had not participated in the preparation of the record. This was not sufficient to comply with the requirements of Evid.R. 803(6).

It is common and acceptable for expert medical witnesses to review and comment upon a plaintiff's medical records, and it was not per se error for Drs. Kenkel and Bender to reference Dr. Jewell's report. An expert may state that he or she has reviewed a plaintiff's medical records and may provide reasons why the expert agrees or disagrees with the contents of the records. Testimony of this nature does not require a record custodian or qualified witness to independently testify as to the requirements of Evid.R. 803(6). But in this case, the testimony elicited from Drs. Kenkel and Bender went beyond such acceptable testimony. Both doctors read and quoted medical opinions and conclusions contained within the report. This report was then admitted into evidence, providing the jury further opportunity to review Dr. Jewell's medical opinions. When a medical report is used by an expert in such a substantive manner, a record custodian or other qualified witness must testify that the record was kept in the regular course of business,

was recorded at or near the time of activity, and was made by a person with knowledge of the activity pursuant to Evid.R. 803(6).

We further find that Dr. Jewell's report and the testimony regarding the report were inadmissible under Evid.R. 803(6) because they contained Dr. Jewell's opinions. This court has held that Evid.R. 803(6) does not allow for opinions and diagnoses found in business records to be admitted into evidence.

The trial court erred in allowing Drs. Kenkel and Bender to substantively read from a medical report issued by a doctor who had examined Guarino-Wong but had not testified at trial, and by admitting that medical report into evidence. Because the admission of this hearsay evidence affected Guarino-Wong's substantial rights, the judgment of the trial court is reversed. This cause is remanded for further proceedings consistent with the law and this opinion.

Laporte v. J.P. Food Service, Inc., 11th Dist. Portage No. 2000-P-0103, 2001-Ohio-4314, *2:

The medical records appellant sought to introduce were from doctors who did not testify in court. Even if the records themselves were admitted, the relevant portions of them would be inadmissible. The records themselves are admissible under the business records exception to the hearsay rule. Evid. R. 803(6), RC §2317.40. However, there are additional evidentiary hurdles that must be overcome for certain portions of the records to be admissible.

These records were properly certified by the custodian pursuant to R.C. 2317.40 and 2317.42. Therefore, the records themselves met the authenticity requirements of Evid. R. 901. The portions of the medical records that do not require expert testimony, for example the date of certain visits or a patient's height and weight, are admissible. However, the portions of the medical records that contain medical opinions or diagnoses must be further authenticated to be admissible. This is because medical opinions and diagnoses are expert testimony under Evid. R. 702.

A knowledgeable person must testify as to the diagnoses or opinions included in medical records. To hold otherwise would permit a party to present expert medical testimony through a lay witness, or in this case no witness at all, and effectively prevent the opposing party from challenging the expert testimony through cross-examination. This would violate Evid. R. 701 and 702.

Evid. R. 501:

The privilege of a witness, person, state or political subdivision thereof shall be governed by statute enacted by the General Assembly or by principles of common law as interpreted by the courts of this state in the light of reason and experience.

R.C. 4732.19:

The confidential relations and communications between a licensed psychologist or licensed school psychologist and client are placed upon the same basis as those between physician and patient under division (B) of §2317.02 of the Revised Code. Nothing in this chapter shall be construed to require any such privileged communication to be disclosed.

R.C. 2317.422: Qualification of records of hospital, nursing or rest home, or adult care facility:

(A) Notwithstanding sections 2317.40 and 2317.41 of the Revised Code but subject to division (B) of this section, the records, or copies or photographs of the records, of a hospital, homes required to be licensed pursuant to section 3721.01 of the Revised Code, and residential facilities licensed pursuant to section 5119.34 of the Revised Code that provides accommodations, supervision, and personal care services for three to sixteen unrelated adults, in lieu of the testimony in open court of their custodian, person who made them, or person under whose supervision they were made, may be qualified as authentic evidence if any such person endorses thereon the person's verified certification identifying such records, giving the mode and time of their preparation, and stating that they were prepared in the usual course of the business of the institution. Such records, copies, or photographs may not be qualified by certification as provided in this section unless the party intending to offer them delivers a copy of them, or of their relevant portions, to the attorney of record for each adverse party not less than five days before trial. Nothing in this section shall be construed to limit the right of any party to call the custodian, person who made such records, or person under whose supervision they were made, as a witness.

(B) Division (A) of this section does not apply to any certified copy of the results of any test given to determine the presence or concentration of alcohol, a drug of abuse, a combination of them, a controlled substance, or a metabolite of a controlled substance in a patient's whole blood, blood serum or plasma, breath, or urine at any time relevant to a criminal offense that is submitted in a criminal action or proceeding in accordance with division (B)(2)(b) or (B)(3)(b) of section 2317.02 of the Revised Code.

R.C. 2317.02: The following persons shall not testify in certain respects:

(B)(1) A physician or a dentist concerning a communication made to the physician or dentist by a patient in that relation or the physician's or dentist's advice to a patient, except as otherwise provided in this division, division (B)(2), and division (B)(3) of this section, and except that, if the patient is deemed by §2151.421 of the Revised Code to have waived any testimonial privilege under this division, the physician may be compelled to testify on the same subject.

The testimonial privilege established under this division does not apply, and a physician or dentist may testify or may be compelled to testify, in any of the following circumstances:

(1)(a)(i) If the patient or the guardian or other legal representative of the patient gives express consent;

(1)(b) In any civil action concerning court-ordered treatment or services received by a patient, if the court-ordered treatment or services were ordered as part of a case plan journalized under §2151.412 of the Revised Code or the court-ordered treatment or services are necessary or relevant to dependency, neglect, or abuse or temporary or permanent custody proceedings under Chapter 2151. of the Revised Code.

(B)(5)(a) As used in divisions (B)(1) to (4) of this section, "communication" means acquiring, recording, or transmitting any information, in any manner, concerning any facts, opinions, or statements necessary to enable a physician or dentist to diagnose, treat, prescribe, or act for a patient. A "communication" may include, but is not limited to, any medical or dental, office, or hospital communication such as a record, chart, letter, memorandum, laboratory test and results, x-ray, photograph, financial statement, diagnosis, or prognosis.

(G)(1) A school guidance counselor who holds a valid educator license from the state board of education as provided for in §3319.22 of the Revised Code, a person licensed under Chapter 4757. of the Revised Code as a professional clinical counselor, professional counselor, social worker, independent social worker, marriage and family therapist or independent marriage and family therapist, or registered under Chapter 4757 of the Revised Code as a social work assistant concerning a confidential communication received from a client in that relation or the person's advice to a client unless any of the following applies:

(a) The communication or advice indicates clear and present danger to the client or other persons. For the purposes of this division, cases in which there are indications of present or past child abuse or neglect of the client constitute a clear and present danger.
(b) The client gives express consent to the testimony.
(c) If the client is deceased, the surviving spouse or the executor or administrator of the estate of the deceased client gives express consent.
(d) The client voluntarily testifies, in which case the school guidance counselor or person licensed or registered under Chapter 4757 of the Revised Code may be compelled to testify on the same subject.
(e) The court in camera determines that the information communicated by the client is not germane to the counselor-client, marriage and family therapist-client, or social worker-client relationship.
(f) A court, in an action brought against a school, its administration, or any of its personnel by the client, rules after an in-camera inspection that the testimony of the school guidance counselor is relevant to that action.
(g) The testimony is sought in a civil action and concerns court-ordered treatment or services received by a patient as part of a case plan journalized under §2151.412 of the Revised Code or the court-ordered treatment or services are necessary or relevant to dependency, neglect, or abuse or temporary or permanent custody proceedings under Chapter 2151 of the Revised Code.

Delinquency Issues

In re A.G., Slip Opinion, No. 2016-Ohio-3306:

> We reaffirm that juveniles are entitled to the same constitutional double-jeopardy protections as adults, and we hold that juvenile courts must conduct the same double-jeopardy analysis in delinquency proceedings that other courts apply in adult criminal proceedings.
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> We hold that the merger analysis set forth in *State v. Ruff*, 143 Ohio St.3d 114, 2015-Ohio-995, 34 N.E.3d 892, applies to juvenile delinquency proceedings to protect a child's right against double jeopardy.

State v. Baker, Slip Opinion, No. 2016-Ohio-2708:

> To determine whether a suspect knowingly, intelligently, and voluntarily waived his Miranda rights, courts examine the totality of the circumstances. When the suspect is a juvenile, the totality of the circumstances includes the juvenile's age, experience, education, background, and intelligence as well as his capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights. A juvenile's access to advice from a parent, guardian or custodian also plays a role in assuring that the juvenile's waiver is knowing, intelligent, and voluntary.
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> R.C. 2933.81(B) states that all statements made by a person during a custodial interrogation in a place of detention are presumed to be voluntary if the statements made by the person are electronically recorded. Nothing in R.C. 2933.81(B) creates a presumption regarding a waiver of constitutional rights; by its terms, the legislative presumption applies only to whether a statement itself was voluntary. And the voluntariness of a custodial statement does not answer whether the suspect knowingly, voluntarily, and intelligently waived his Miranda rights before making that statement, as those are distinct inquiries. Absent the state's compliance with Miranda and a suspect's valid waiver of his Fifth Amendment rights, even voluntary statements are inadmissible.
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> A legislature may not supersede the constitutional rule announced in *Miranda*. Therefore, R.C. 2933.81(B) cannot lessen the protections announced in *Miranda* by removing the state's burden of proving a suspect's knowing, intelligent, and voluntary waiver of rights prior to making a statement during a custodial interrogation. Although *Miranda* allows for alternative legislative solutions that are at least as effective in apprising accused persons of their right and in assuring a continuous opportunity to exercise it, the act of recording a suspect's custodial statement does nothing to appraise a suspect of, or to protect the suspect's opportunity to exercise, his Fifth Amendment rights. While a recording might identify police coercion or its absence, nothing about the fact of recording ensures that a suspect understands his rights and knowingly and intelligently waives them. In short, applying R.C. 2933.81(B) to the question of a suspect's waiver of Miranda rights would impermissibly lower the state's burden of demonstrating a valid waiver of those rights.
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> We hold that the statutory presumption of voluntariness created by R.C. 2933.81(B) does not affect a reviewing court's analysis of whether a defendant waived his Miranda rights. The state retains the burden of proving a knowing, intelligent, and voluntary waiver by a preponderance of the evidence.

When a defendant challenges his confession as involuntary, due process requires that the state prove by a preponderance of the evidence that the confession was voluntary. The same standard applies to adults and juveniles: Neither man nor child can be allowed to stand condemned by methods which flout constitutional requirements of due process of law.

As applied to juveniles, the R.C. 2933.81(B) presumption violates due process. To satisfy due process with respect to a challenged confession, the state must prove by a preponderance of the evidence that the confession was voluntary. The due-process test for voluntariness takes into consideration the totality of the circumstances.

The totality-of-the-circumstances test takes on even greater importance when applied to a juvenile. A 14- or 15-year-old cannot be compared with an adult in full possession of his senses and knowledgeable of the consequences of his admissions.

In the end, the burden of establishing the voluntariness of a juvenile's custodial statement falls on the state. The General Assembly may not remove that burden via a presumption based on the existence of an electronic recording without running afoul of the due-process protections owed the child. States may adopt a higher standard under their own law, but they may not lessen the standard that the United States Constitution requires. R.C. 2933.81(B) impermissibly eliminates the state's burden of proving the voluntariness of a custodial statement when the statement was electronically recorded and, instead, places the burden on the defendant to prove that the statement was involuntary. For these reasons, we conclude that R.C. 2933.81(B), as applied to juveniles, is unconstitutional.

State v. Arnold, Slip Opinion, No. 2016-Ohio-1595:

In considering claims of the privilege against self-incrimination, the trial courts must be mindful that the Fifth Amendment's prophylaxis is not available to all comers in all circumstances merely because they have the presence of mind to chant the accepted constitutional liturgy. A trial court must ensure that the proponent of the privilege provides the basis for asserting the privilege and evidence to support that claim (e.g., personal statements under oath) so that the court may determine whether a direct answer might tend to incriminate the witness, and thus that the witness's silence is justified.

The trial court's inquiry into the basis of a witness's assertion of the privilege is critical, even when the purported basis seems implausible, frivolous, or suspect. The trial court must tread lightly, of course, because if the witness, upon interposing his claim, were required to prove the hazard in the sense in which a claim is usually required to be established in court, he would be compelled to surrender the very protection which the privilege is designed to guarantee. Thus, the trial court must carefully balance the interests of the party claiming protection against self-incrimination and the adversary's entitlement to equitable treatment in its analysis of the propriety of the claim. And the record of the trial court's proceedings should clearly reflect the court's inquiries into the bases of the claim of privilege and the proponent's responses.

In re D.S., Slip Opinion, No. 2016-Ohio-1027:

> Determination of juvenile offender's age at the time of offense is a condition precedent to the application of sex offender registration scheme; The finding regarding age eligibility may occur prior to or at the classification hearing; Deferred sex-offender classification following juvenile's release from secure facility did not violate double jeopardy; and Imposition of registration and notification requirements that continue beyond age 18 or 21 does not violate due-process.

Betterman v. Montana, 136 S.Ct. 1609 (2016):

> Sixth Amendment's speedy trial guarantee protects the accused from arrest or indictment through trial, but does not apply once a defendant has been found guilty at trial or has pleaded guilty to criminal charges.

Wearry v. Cain, 136 S.Ct. 1002, 194 L.Ed.2d 78 (2016):

> The suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution. Evidence qualifies as material when there is any reasonable likelihood it could have affected the judgment of the jury. To prevail on his Brady claim, Wearry need not show that he more likely than not would have been acquitted had the new evidence been admitted. He must show only that the new evidence is sufficient to "undermine confidence" in the verdict.

Montgomery v. Louisiana, 136 S.Ct. 718, 193 L.Ed.2d 59 (2016):

> Petitioner Montgomery was 17 years old in 1963, when he killed a deputy sheriff in Louisiana. The jury returned a verdict of "guilty without capital punishment," which carried an automatic sentence of life without parole. Nearly 50 years after Montgomery was taken into custody, this Court decided that mandatory life without parole for juvenile homicide offenders violates the Eighth Amendment's prohibition on "cruel and unusual punishments." Miller v. Alabama. Montgomery sought state collateral relief, arguing that *Miller* rendered his mandatory life-without-parole sentence illegal. The trial court denied his motion, and his application for a supervisory writ was denied by the Louisiana Supreme Court, which had previously held that *Miller* does not have retroactive effect in cases on state collateral review.
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> *Miller's* prohibition on mandatory life without parole for juvenile offenders announced a new substantive rule that, under the Constitution, is retroactive in cases on state collateral review. The "foundation stone" for *Miller's* analysis was the line of precedent holding certain punishments disproportionate when applied to juveniles. *Miller* recognized that children differ from adults in their diminished culpability and greater prospects for reform, and that these distinctions diminish the penological justifications for imposing life without parole on juvenile offenders. Because *Miller* determined that sentencing a child to life without parole is excessive for all but the rare juvenile offender whose crime reflects irreparable corruption, it rendered life without parole an unconstitutional penalty for a class of defendants because of their status - i.e., juvenile offenders whose crimes reflect the transient immaturity of youth. *Miller* therefore announced a substantive rule of constitutional law, which, like other substantive rules, is retroactive because it necessarily carries a significant risk that a defendant - here, the vast majority of juvenile offenders - faces a punishment that the law cannot impose upon him.

A State may remedy a *Miller* violation by extending parole eligibility to juvenile offenders. This would neither impose an onerous burden on the States nor disturb the finality of state convictions. And it would afford someone like Montgomery, who submits that he has evolved from a troubled, misguided youth to a model member of the prison community, the opportunity to demonstrate the truth of *Miller's* central intuition—that children who commit even heinous crimes are capable of change.

State v. Leak, 145 Ohio St.3d 165, 2016-Ohio-154, 47 N.E.3d 821:

Appellant Leak, was arrested on a warrant following a domestic-violence incident. Immediately prior to his arrest, he was a passenger in a car legally parked on a public street. In this case, we are asked to determine whether the warrantless inventory search of a lawfully parked vehicle violates the Fourth Amendment to the United States Constitution and Article I, Section 14 of the Ohio Constitution. We conclude that in this case, it does.

The state urges us to adopt a rule of law stating that the arrest of a recent occupant of a legally parked vehicle establishes an exception to the prohibition of unreasonable searches. We decline to do so. The arrest of a recent occupant of a legally parked vehicle does not, by itself, establish reasonableness to justify a warrantless search of the vehicle the arrestee had been riding in. Accordingly, we reverse the Fifth District's affirmance of the trial court's denial of Leak's motion to suppress evidence of the gun that was found in the unlawful search of the car in which Leak had been a passenger, and we vacate his convictions and sentence for carrying a concealed weapon and for improper handling of a firearm.

Under the Fourth Amendment, warrantless searches are per se unreasonable without prior approval by a judge or magistrate, subject to only a few specific exceptions. Two such exceptions are a search incident to a lawful arrest and an inventory search conducted pursuant to law enforcement's community-caretaking function.

The first exception we will examine is a search incident to a lawful arrest. This exception has two rationales: officer safety and "safeguarding evidence that the arrestee might conceal or destroy. It is not unreasonable under the Fourth Amendment for a law-enforcement officer to search a vehicle without a warrant when a recent occupant of the vehicle has been arrested and (1) the arrestee is unsecured and within reaching distance of the vehicle or (2) it is reasonable to believe the vehicle contains evidence of the offense that led to the arrest.

Here, there is no question that Leak was arrested, secured, and not within reaching distance of the car prior to the search of the car. The question then becomes whether it was reasonable to believe that the car contained evidence of Leak's offense of arrest - domestic violence. After examining the record and the arresting officer's testimony at the suppression hearing, we think that it was not.

Inventory searches performed pursuant to standard police procedure on vehicles taken into police custody as part of a community-caretaking function are reasonable. There are three main objectives to inventory searches: (1) protecting an individual's property while it is in the custody of the police, (2) protecting the police from claims of lost or stolen property, and (3) protecting the police from danger.

Here there is nothing in the record to suggest that it was in the interest of public safety to impound or tow this car. Rather, the record in this case presents only the arresting officer's uncertain and unverified belief that he had just arrested the owner of the car.

In sum, finding no support in the statute or municipal ordinance for a lawful impoundment of the car on the facts of this case, and given the officer's testimony that the sole reason he towed the car was his belief that he had just arrested the owner and that he was looking for evidence of a crime, we conclude that the search of this car was not a reasonable exercise of the officer's community-caretaking role under Bl*ue Ash*. Because no exception to the prohibition on warrantless searches applies here, we hold that the search of the car in which Leak had been a passenger violated the Fourth Amendment to the United States Constitution and Article I, Section 14 of the Ohio Constitution.

In re J.T., 143 Ohio St.3d 516, 2015-Ohio-3654, 39 N.E.3d 1240:

The juvenile in this matter was carrying a broken pistol in his waistband that was no longer capable of firing a round. That fact notwithstanding, he was charged with carrying a concealed deadly weapon and was found delinquent. Today, we apply a common-sense reality check to that fact pattern. When a person has an inoperable handgun tucked into his or her waistband and does not use it as a bludgeoning implement, it is not a deadly weapon. While it had been designed as a deadly weapon in that it was meant to fire a potentially lethal projectile, its essence as a deadly weapon ended when it became inoperable. In effect, since it was inoperable, it was no different from a stone or a brick. If it had been used as a bludgeon or otherwise used, possessed, or carried as a weapon, it could be considered a deadly weapon. As nothing more than a heavy object tucked into a waistband or a pocket, however, it was not. Just as it would be improper to convict someone of carrying a concealed weapon simply because he had a stone in his pocket, it is also improper to convict someone of that crime simply for having an inoperable pistol tucked into his waistband.

Based upon the foregoing analysis, an inoperable pistol that is not used as a bludgeon is not a deadly weapon for purposes of R.C. 2923.12, which prohibits carrying a concealed weapon. Accordingly, there was insufficient evidence to support the finding of delinquency for carrying a concealed weapon. The judgment of the court of appeals is reversed, and the finding of delinquency is vacated.

State v. Brown, 143 Ohio St.3d 444, 2015-Ohio-2438, 39 N.E.3d 496:

The state of Ohio appeals from a judgment of the Sixth District Court of Appeals that reversed Terence Brown's conviction for possession of oxycodone and held that the trial court should have suppressed the evidence obtained following a traffic stop for a marked lane violation made by a township police officer who acted without statutory jurisdiction. The appellate court concluded that the traffic stop was unreasonable pursuant to Article I, Section 14 of the Ohio Constitution because the township officer lacked statutory authority to make a stop for a marked lane violation on an interstate highway, and it suppressed the evidence obtained from the search of Brown's vehicle.

It is undisputed that the township police officer in this case exercised law-enforcement powers not granted to township police officers by the General Assembly; thus, because the officer acted without authority to stop Brown for a minor misdemeanor traffic offense on an interstate highway, the traffic stop, the arrest, and the search were unreasonable and violated Article I, Section 14 of the Ohio Constitution.

In this case, the state admits that Officer Clark violated R.C. 4513.39 by stopping Brown for a marked lane violation on Interstate 280. Thus, Clark acted outside her authority and exercised law-enforcement powers not expressly granted to a township officer by the General Assembly. The government's interests in permitting an officer without statutory jurisdiction or authority to make a traffic stop for a minor misdemeanor offense in these circumstances is minimal and is outweighed by the intrusion upon the individual's liberty and privacy that necessarily arises out of the stop. Accordingly, the traffic stop and the ensuing search and arrest in this case were unreasonable and violated Article I, Section 14 of the Ohio Constitution, and the evidence seized as a result should have been suppressed.

State v. Bode, 144 Ohio St.3d 155, 2015-Ohio-1519, 41 N.E.3d 1156:

An adjudication of delinquency may not be used under R.C. 4511.19(G)(1)(d) to enhance the penalty for a later offense when the adjudication carried the possibility of confinement, the adjudication was uncounseled, and there was no effective waiver of the right to counsel.

State v. Smith, 9th Dist. Summit No. 26804, 2015-Ohio-579:

In his second assignment of error, Smith argues that his kidnapping conviction is void because the juvenile court failed to properly transfer subject matter jurisdiction to the court of common pleas. Specifically, Smith argues that the court's transfer was ineffective because it did not conduct an amenability hearing on his various kidnapping charges. We disagree.

The juvenile court has the exclusive original jurisdiction over "a person under eighteen years of age who allegedly commits an act that would be a felony if committed by an adult." R.C. 2151.23(I). "In response to a rise in rates and severity of juvenile crime and the belief that not all juveniles can be rehabilitated, in 1969, the General Assembly enacted a statutory scheme that provides for some juveniles to be removed from the juvenile courts' authority."

There are two types of transfers from juvenile court to the court of common pleas: discretionary and mandatory. "Mandatory transfer removes discretion from judges in the transfer decision in certain situations. Discretionary transfer, as its name implies, allows judges the discretion to transfer or bind over to adult court certain juveniles who do not appear to be amenable to care or rehabilitation within the juvenile system or appear to be a threat to public safety." Before the court may exercise its discretion in transferring a case to common pleas, it must conduct a hearing and consider certain factors for and against the transfer. R.C. 2152.12(B).

Smith acknowledges that his aggravated robbery and aggravated burglary charges were subject to mandatory bindover. See R.C. 2152.12(A)(1)(b)(ii). Smith argues, however, that the court was required to hold an amenability hearing before transferring his kidnapping charges because these charges are subject to a discretionary, not mandatory, transfer. See R.C. 2152.10(A)(2)(b). R.C. 2152.12(B). Smith asserts that this provision requires the court to parse out mandatory bindover charges from discretionary charges even when they all arise from the same act. We disagree.

Smith argues that, pursuant to R.C. 2152.12(F)(2), the court was required to resolve each charge individually. The plain language of the statute, however, does not support Smith's position. Pursuant to R.C. 2152.12(F)(2), if the court determines that one or more acts charged are subject to mandatory bindover, the court must transfer "the case or cases" that involve the relevant act or acts. Moreover, as discussed above, once the juvenile court determines that there is probable cause to believe that the child has committed an act that is subject to a mandatory bindover, the juvenile court loses jurisdiction "with respect to the delinquent acts alleged in the complaint." R.C. 2152.12(I).

The plain language of R.C. 2152.12(F)(2) and (I) focuses on the alleged delinquent act, not on the individual charges within a complaint. Thus, we conclude that, even under R.C. 2152.12(F)(2), the juvenile court is required to transfer all charges that arise from an act that is subject to a mandatory bindover.

In re T.J., 9th Dist. Summit No. 27269, 2014-Ohio-4919:

In her first assignment of error, T.J. argues that the trial court erred when it allowed the State to amend the complaint against her after the adjudicatory hearing had already begun. Specifically, she argues that the court should not have allowed the State to amend the delinquency charge related to promoting prostitution. We disagree.

A complaint charging a juvenile with delinquency must be made under oath, identify by number the statute alleged to have been violated, and state in ordinary and concise language the essential facts that bring the proceeding within the jurisdiction of the court. Juv.R. 10(B)(1)-(3). Once an adjudicatory hearing has commenced, a complaint generally may be amended either by agreement of the parties or, if the interests of justice require, upon order of the court. Juv.R. 22(B). When the complaint is one charging delinquency, however, one must ask whether the proposed amendment would change the name or identity of the specific violation of law so that it would be considered a change of the crime charged if committed by an adult. If so, the complaint only may be amended by agreement of the parties. Where requested, a court order shall grant a party reasonable time in which to respond to an amendment.

Unlike the Criminal Rules, the Juvenile Rules do not specify that a complaint must list each and every element of the offense. Instead, a delinquency complaint must contain the essential facts and the numerical designation of the statute at issue. Juv.R. 10(B)(1). The complaint need not specify the exact numerical designation of the statutory subsection under which the State intends to proceed so long as a reasonable, ordinary person would understand the charges against him, based on the language in the complaint.

State v. Gilbert, 143 Ohio St.3d 150, 2014-Ohio-4562, 35 N.E.3d 493:

In a plea negotiation, appellee, Kareem Gilbert, received the benefit of a bargain with the state but simply chose not to live up to his end of the deal.

After he was indicted on several charges, Gilbert agreed in a plea agreement to testify against his father, Ruben Jordan, in a murder case. In exchange, some of the charges against Gilbert were amended or dismissed. The trial court proceeded to sentence Gilbert without waiting for him to testify against his father as anticipated in the plea agreement. Later, after he began serving his time in prison, he refused to testify as promised. A year after he was sentenced, the state claimed that Gilbert had breached the plea agreement by failing to give truthful testimony against his father. He was brought back to court from

prison, the trial court threw out the former plea, and Gilbert entered a second plea. He was resentenced, and he then appealed to the First District Court of Appeals. That court reversed the trial court's decision, holding that the trial court did not have the authority to reconsider its own final judgment. We agree.

Once the final judgment was entered and Gilbert was sentenced to prison, the trial court lost jurisdiction to vacate its judgment of conviction and to resentence Gilbert. There must be finality to a court's judgment. There is no authority for a court to revisit a sentence that has already been imposed based on a defendant's failure to fulfill his obligations under a plea agreement.

In re D.M., 140 Ohio St.3d 309, 2014-Ohio-3628, 18 N.E.3d 404:

Juv.R. 24 applies in bindover hearings. A prosecuting attorney is under a duty imposed by Juv.R. 24(A)(6) and the Due Process Clauses of the Ohio Constitution and the United States Constitution to disclose to a juvenile respondent all evidence in the state's possession that is favorable to the juvenile and material to either guilt, innocence, or punishment. We further hold that when the state or the juvenile claims that documents are privileged or otherwise not discoverable, it is an abuse of discretion for the juvenile court not to perform an in camera inspection of the documents to determine whether they contain discoverable evidence prior to ordering the party to turn over the documents to the opposing party or sanctioning the party for failing to comply with a discovery order.

In re I.A., 140 Ohio St.3d 203, 2014-Ohio-3155, 16 N.E.3d 653:

In this case, we address the issue of when a juvenile court can conduct an R.C. 2152.83(B)(2) hearing to determine whether a juvenile adjudged delinquent should undergo juvenile-offender-registrant classification. Specifically, we address whether a juvenile court can conduct an R.C. 2152.83(B)(2) hearing at the time of disposition in a case in which a juvenile is committed to a secure facility, or whether the court must wait to conduct the classification hearing until the juvenile is released from the secure facility. We hold that pursuant to R.C. 2152.83(B)(1), a court that commits a child to a secure facility may conduct at the time of disposition a hearing regarding the appropriateness of juvenile-offender-registrant classification for that child.

In re H.V., 138 Ohio St.3d 408, 2014-Ohio-812, 7 N.E.3d 1173:

A juvenile court is within its statutory authority under R.C. 5139.52(F) to commit a juvenile for a period exceeding the 30–day minimum set forth in the statute. In so doing, we affirm the judgment of the Ninth District Court of Appeals. If the ODYS release authority releases a juvenile prior to the statutorily prescribed minimum period of 30 days, that release is contrary to law. Likewise, if the ODYS release authority releases a juvenile prior to the expiration of the minimum time specified by a juvenile court's order, that release violates a court order and is contrary to law.

The juvenile court was within its statutory authority under R.C. 2152.19(A)(8), 5139.52(F), and 2152.01(A) to order H.V. to serve the imposed term of commitment for his supervised-release violation consecutively to the imposed term of commitment for his new crime.

State ex rel. Jean-Baptiste v. Kirsch, 134 Ohio St.3d 421, 2012-Ohio-5697, 983 N.E.2d 302:

> On October 19, 2006, a Scioto County assistant prosecuting attorney filed a complaint in the Scioto County Juvenile Court alleging that Jean-Baptiste, then 17 years old, appeared to be a delinquent child for committing a rape of a ten-year-old child on August 19, 2006, an offense that would be a felony of the first degree if committed by an adult. In January 2007, Jean-Baptiste admitted the allegations of the complaint, and on the day after Jean-Baptiste turned 18 years old, Judge Kirsch adjudicated him to be a delinquent child. On February 5, 2007, following a dispositional hearing, Judge Kirsch ordered that Jean-Baptiste be committed to the permanent custody of the Ohio Department of Youth Services ("DYS") for placement in an institution for a minimum of one year and for a maximum period not to extend beyond his 21st birthday-January 18, 2010. The judge also classified Jean-Baptiste as a sexual predator and ordered him to meet the registration requirements of that classification upon his release.
>
> The Supreme Court of Ohio granted writ of prohibition, finding that the juvenile court "patently and unambiguously" lacked jurisdiction to proceed with the classification of Jean-Baptiste, because he was no longer a "child" as defined by R.C. 2125.02. The court also noted that Jean-Baptiste had included an argument that the juvenile court lacked "jurisdiction to classify him because the judge failed to hold a classification hearing within a reasonable time of his release from DYS."
>
> Because Jean-Baptiste was adjudicated a delinquent child and was committed to a secure facility, the statute is clear that the court must issue the order classifying the child as a juvenile-offender registrant at the time the child is released from the secure facility - not afterward. The statute is logical, given that the juvenile-offender registrant may be subject to certain registration requirements upon his or her release into the community. Because Jean-Baptiste was released on the day that he turned 21 and because R.C. 2152.83 specifies that classification must occur when a child is released from a secure facility, the juvenile court patently and unambiguously lacks jurisdiction to classify Jean-Baptiste after his 21st birthday, when he was no longer a child.

In re K.P., 9th Dist. Lorain No. 12CA010183, 2012-Ohio-5814:

> A juvenile court has broad discretion to craft an appropriate disposition for a child adjudicated delinquent. A juvenile court may commit a child to the custody of DYS for an indefinite term, not to exceed the child's twenty-first birthday. R.C. 2152.16(A). This Court recently held that R.C. 2152.17(F) is inapplicable to sentences for parole violations. Even in cases such as this where R.C. 2152.17(F) is inapplicable, this Court has determined that in sentencing the juvenile for his violation of parole, the court had the inherent authority to run his sentence consecutive to his sentence for the new offense.
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> Here, the juvenile court ordered that K.P. be ordered to the legal custody of DYS for an indefinite period of six months to twenty-one years of age in Case No. 11 JD34929. The trial court further ordered that the commitment to DYS in Case No. 11 JD34929 was to be served consecutively to the parole revocation under Case. No. 09JD26221. As we held, it is within the inherent authority of the juvenile court to run parole violations consecutively to DYS commitments for new crimes. Thus, the juvenile court did not err in running K.P.'s parole revocation consecutively to his DYS commitment for committing a new crime.

In re J.V., 134 Ohio St.3d 1, 2012-Ohio-4961, 979 N.E.2d 1203:

> In June 2005, pursuant to a plea agreement, the trial court found juvenile appellant J.V. delinquent and guilty of one count of felonious assault, one count of aggravated robbery, and the attendant firearm and serious-youthful-offender specifications. The court imposed a blended sentence: at least two years of incarceration at the Ohio Department of Youth Services ("ODYS") and a stayed adult sentence of three years. Near the end of his sentence at ODYS, J.V. was involved in a fight that led the trial court to invoke the theretofore stayed adult sentence.
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> On appeal, the court of appeals affirmed the invocation of the stayed adult sentence. We accepted J.V.'s discretionary appeal, which presents two propositions of law. The first proposition of law states, "The invocation of an adult prison sentence upon a juvenile, pursuant to R.C. 2152.14, violates the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 10 and 16 of the Ohio Constitution." We conclude to the contrary that the invocation of the adult prison sentence was constitutional. The second proposition of law states, "A juvenile court does not have the authority to impose criminal punishment (including post-release control) after the delinquent child turns 21." We agree, and reverse that portion of the court of appeals decision.
>
> In this case, based on delinquency admissions, J.V. was sentenced to a blended sentence. The adult portion of the sentence was stayed, pending the successful completion of the traditional juvenile disposition. R.C. 2152.13(D)(1)(c). When the juvenile court invoked the stayed sentence because J.V. did not successfully complete his juvenile disposition, the judge did not increase J.V.'s sentence; he merely removed the stay. The sentence had already been imposed.
>
> As we have explained, R.C. 2152.14 does not require the stay to be lifted, and it allows the juvenile court to impose a lesser sentence than the stayed sentence when the adult portion of a stayed disposition is invoked.
>
> Because the invocation proceeding is not a criminal proceeding, the fact-finding need not be according to the beyond-a-reasonable-doubt standard required in criminal trials. The clear-and-convincing-evidence standard allowed by R.C. 2152.14(E)(1) is less rigorous, though stronger than a mere preponderance-of-the-evidence standard. We have stated that clear and convincing evidence is that which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established. The standard requires the judge to have a firm belief or conviction about the facts adduced. We conclude that there is nothing fundamentally unfair about a statutory scheme that authorizes a judge to reach conclusions about facts according to a clear-and-convincing-evidence standard, as R.C. 2152.14(E)(1) does.
>
> In this case, J.V. had notice of the invocation hearing, he was present at the hearing, he had counsel at the hearing, he had the opportunity to present evidence at the hearing, and he had the opportunity to cross-examine the witnesses called by the state. Based on our examination of the record, the court complied with the statutory framework laid out in R.C. 2152.14. We conclude that J.V. was not denied due process based on the fact that the trial court reached factual conclusions according to a clear-and-convincing-evidence standard.

J.V. turned 21 on March 11, 2009. Accordingly, the juvenile court had no jurisdiction over him after that date. Nevertheless, in February 2010, it held a de novo sentencing hearing to correct the original juvenile disposition, which did not mention postrelease control. At that time, the juvenile court imposed the adult sentence and added postrelease control. Based on the plain language of R.C. 2152.02(C)(6), the juvenile court did not have jurisdiction over J.V. There can be no doubt that the juvenile court acted outside its jurisdiction and therefore that the disposition issued in February 2010 is void.

State v. D.W., 133 Ohio St.3d 434, 2012-Ohio-4544, 978 N.E.2d 894:

An amenability hearing under R.C. 2152.12(B)(3) may be waived provided (1) the juvenile, through counsel, expressly states on the record a waiver of the amenability hearing and (2) the juvenile court engages in a colloquy on the record with the juvenile to determine that the waiver was made knowingly, voluntarily, and intelligently.

In re M.W., 133 Ohio St.3d 309, 2012-Ohio-4538, 978 N.E.2d 164:

The issue we confront in this appeal is whether a juvenile has a statutory right to counsel during a police interrogation conducted before a complaint is filed or an appearance is made in juvenile court.

R.C. 2151.352 provides that a child is entitled to representation by legal counsel at all stages of the proceedings under this chapter or Chapter 2152. Because the term "proceedings," as used in this statute, means court proceedings, a juvenile does not have a statutory right to counsel at an interrogation conducted prior to the filing of a complaint or prior to appearing in juvenile court.

In re C.P., 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729:

In this case, we determine the constitutionality of R.C. 2152.86, which creates a new class of juvenile sex-offender registrants: public-registry-qualified juvenile-offender registrants. These offenders are automatically subject to mandatory, lifetime sex-offender registration and notification requirements, including notification on the Internet. We hold that to the extent that it imposes such requirements on juvenile offenders tried within the juvenile system, R.C. 2152.86 violates the constitutional prohibition against cruel and unusual punishment contained in the Eighth Amendment to the United States Constitution and the Ohio Constitution, Article I, Section 9, and the Due Process Clause of the Fourteenth Amendment to the United States Constitution and the Ohio Constitution, Article I, Section 16.

Lifetime registration and notification requirements R.C. 2152.01's goals of rehabilitating the offender and aiding his mental and physical development. Instead, lifetime registration and notification ensure that PRQJORs will encounter continued difficulties, because of their offenses, long into adulthood. Notification and registration anchor the juvenile offender to his crime.

As for protecting the public interest and safety, some might argue that the registration and notification requirements further those aims. However, it is difficult to say how much the public interest and safety are served in individual cases, because the PRQJOR statutory scheme gives the juvenile judge no role in determining how dangerous a child offender might be or what level of registration or notification would be adequate to preserve the safety of the public.

We conclude that the social and economic effects of automatic, lifetime registration and notification, coupled with an increased chance of reoffense, do violence to the rehabilitative goals of the juvenile court process. As the court decided in Graham in regard to a life sentence without parole for juvenile offenders, we find that penological theory "is not adequate to justify" the imposition of the lifetime registration and notification requirements of R.C. 2152.86 for juveniles.

S.B. 10 forces registration and notification requirements into a juvenile system where rehabilitation is paramount, confidentiality is elemental, and individualized treatment from judges is essential. The public punishments required by R.C. 2152.86 are automatic, lifelong, and contrary to the rehabilitative goals of the juvenile system. We conclude that they "shock the sense of justice of the community" and thus violate Ohio's prohibition against cruel and unusual punishments.

R.C. 2152.86 eliminates the discretion of the juvenile judge, this essential element of the juvenile process, at the most consequential part of the dispositional process. R.C. 2152.86 requires the automatic imposition of a lifetime punishment—with no chance of reconsideration for 25 years—without benefit of a juvenile judge weighing its appropriateness. An automatic longterm punishment is contrary to the juvenile system's core emphasis on individual, corrective treatment and rehabilitation.

R.C. 2152.86(B)(1) requires the imposition of an adult penalty for juvenile acts without input from a juvenile judge. Under R.C. 2152.86, the court cannot consider individual factors about a child or his background, cannot have a say in how often a child must register or where he must register, or determine how publication of the offense might affect rehabilitation. An SYO offender remains within the jurisdiction of the juvenile court, but R.C. 2152.86 removes the juvenile court's ability to exercise its most important role in rehabilitation. Fundamental fairness requires that the judge decide the appropriateness of any such penalty.

The requirement in R.C. 2152.86 of automatic imposition of Tier III classification on a juvenile offender who receives an SYO dispositional sentence undercuts the rehabilitative purpose of Ohio's juvenile system and eliminates the important role of the juvenile court's discretion in the disposition of juvenile offenders and thus fails to meet the due process requirement of fundamental fairness. In this case, we determine that fundamental fairness is not a one-way street that allows only for an easing of due process requirements for juveniles; instead, fundamental fairness may require, as it does in this case, additional procedural safeguards for juveniles in order to meet of the juvenile system's goals of rehabilitation and reintegration into society.

In re Tyree Feaster, 9th Dist. Summit No. 25395, 2011-Ohio-4222:

Mr. Feaster asserts that the trial court erred in denying his motion to withdraw his plea as the trial court completely failed to mention post-release control at the plea hearing. We agree.

The Supreme Court has held that if a trial court fails during a plea colloquy to advise a defendant that the sentence will include a mandatory term of post-release control, the defendant may dispute the knowing, intelligent, and voluntary nature of the plea either by filing a motion to withdraw the plea or upon direct appeal. If the trial judge completely failed to comply with the rule, e.g., by not informing the defendant of a mandatory period of postrelease control, the plea must be vacated. A complete failure to comply with the rule does not implicate an analysis of prejudice.

Under the facts of this case, as a consequence of his plea agreement/admission, which included a serious youthful offender designation, Mr. Feaster faced a suspended prison sentence of thirteen years. A serious-youthful-offender disposition consists of a "blended" sentence: a traditional juvenile disposition and a stayed adult sentence. Pursuant to his designation as a serious youthful offender, with respect to the adult portion of Mr. Feaster's sentence, the trial court was required to impose a sentence available for the violation under Chapter 2929 of the Revised Code. R.C. 2152.13(D)(1)(a). Under R.C. 2929.14(F)(1), when the trial court sentenced Mr. Feaster to prison, the trial court was required to include in the sentence a requirement that the offender be subject to a period of post-release control after the offender's release from imprisonment. R.C. 2967.28(B)(1) provides that the term of post-release control for a first-degree felony is five years.

The State asserts that Mr. Feaster was not actually sentenced to prison and thus no post-release control notification was necessary. While it is true that Mr. Feaster's prison sentence was suspended, Mr. Feaster was still, nonetheless sentenced to prison.

Based upon Mr. Feaster's plea agreement, it is clear that the consequences Mr. Feaster should have been informed of included not only the term of the prison sentence that was suspended, but also his post-release control obligations. Here, there is no dispute the trial court completely failed to mention the post-release control obligations that accompanied Mr. Feaster's suspended prison sentence. Hence, Mr. Feaster was not informed that post-release control would be part of his prison sentence, the length of post-release control, or the consequences of violating post-release control. Accordingly, we are required to vacate his plea. Therefore, we sustain Mr. Feaster's assignment of error.

In re D.R., 9th Dist. Lorain No. 11CA009970, 2011-Ohio-4462:

This Court applies the same analysis to claims of ineffective assistance of counsel for juveniles and adults: whether there was deficiency in the performance of counsel and that, but for counsel's errors, there is a reasonable possibility that the outcome of the proceeding would have been different. In the context of an admission of delinquency, a juvenile must demonstrate a reasonable probability that he would not have entered the admission in the absence of counsel's errors. The alleged ineffective assistance of counsel must be apparent from the record on appeal. When allegations of the ineffectiveness of counsel are premised on evidence outside the record, the proper mechanism for relief is through the post-conviction remedies of R.C. 2953.21.

In re E.D., 9th Dist. Summit No. 25594, 2011-Ohio-4067:

E.D. was arrested for loitering for the purpose of engaging in drug-related activity on May 3, 2010, and May 7, 2010, in violation of Akron Codified Ordinance (A.C.O.) §138.26, a misdemeanor of the fourth degree if committed by an adult. On July 21, 2010, E.D. filed a motion asking the juvenile court to find A.C.O. §138.26 unconstitutional and to dismiss all charges. The trial court entered an order on August 24, 2010, dismissing E.D.'s charges and finding the ordinance unconstitutionally void for vagueness and overbroad.

Revised A.C.O. §138.26(B)(2) provides for the arrest of a person "displaying the physical characteristics of drug intoxication. In *Rowland*, the Ohio Supreme Court expressly criticized similar language and found it to be extremely indefinite. The prior version of A.C.O. §138.26(B) provided for the arrest of "a person who displays physical characteristics of drug intoxication or usage, such as needle tracks, burned or calloused thumb and index fingers, underweight, or nervous and excited behavior." The Ohio Supreme Court found the prior version to be extremely indefinite, and the current version fails to provide constitutionally cognizable guidance as to the "physical characteristics of drug intoxication. The revised subsection fails to correct the indefiniteness and remains unclear.

A law may also be void for vagueness when it 'delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. The State argues that subsection (C) of the revised ordinance expressly forbids racial or ethnic considerations in determining specific intent. In addition, it contends that subsection (E) now requires the formation of a review committee to monitor enforcement to determine if any disparate enforcement is occurring. The State also argues that the revised ordinance does not have the same potential for arbitrary or selective enforcement because unnamed circumstances can no longer be used for enforcement. However, Revised A.C.O. §138.26 still allows officers to subjectively determine whether or not a citizen exhibits the above "characteristics" and thus are given unfettered discretion to determine whether a person's conduct manifests drug activity. This invites arbitrary and discriminatory enforcement and renders the ordinance unconstitutionally void for vagueness.

As the Ohio Supreme Court stated in *Rowland*, a clear and precise enactment may be overbroad if in its reach it prohibits constitutionally protected conduct. In considering an overbreadth challenge, the court must decide whether the ordinance sweeps within its prohibitions what may not be punished under the First and Fourteenth Amendments. The challenged statute must be substantially overbroad to be invalidated on its face. In addition, the party challenging the enactment must show that its potential application reaches a significant amount of protected activity. Nevertheless, criminal statutes that make unlawful a substantial amount of constitutionally protected conduct may be held facially invalid even if they also have legitimate application.

In *Rowland*, the Ohio Supreme Court refused to read into the ordinance a "specific intent" element because it was not found in the language of the ordinance and because it was irreconcilable with the language of the ordinance. The revised version of the statute added a "specific intent" element. However, this addition does not sufficiently limit the statute to prevent it from being overbroad.

Allowing officers, judges, and juries to consider the enumerated circumstances in A.C.O. §138.26(B) sweeps within the prohibitions of the ordinance many things that may not be constitutionally punished under the First and Fourteenth Amendments. Accordingly, the revised ordinance is impermissibly overbroad. The State's assignment of error is overruled.

In re S.C.W., 9th Dist. Summit No. 25421, 2011-Ohio-3193:

S.C.-W., then aged 12, was arrested on September 16, 2009, based on an incident that occurred at the Firestone Park Library in Akron, Ohio. According to the testimony introduced at trial, a police officer working security at the library told him to leave the property. The officer granted, one person, S.C.-W.'s older sister, permission to reenter the library to retrieve her cell phone. When S.C.-W. attempted to reenter the library with his sister, he struggled with and was quickly subdued by the officer. As a result of the incident, a complaint was filed in the Summit County Court of Common Pleas, Juvenile Division, alleging that S.C.-W. was a delinquent child by reason of one count of assault in violation of R.C. 2903.13, a felony of the fourth degree if committed by an adult, one count of resisting arrest in violation of 2921.33, a misdemeanor of the first degree if committed by an adult, and one count of criminal trespass in violation of 2911.21, a misdemeanor of the fourth degree if committed by an adult. After a bench trial on March 15, 2010, he was adjudicated delinquent by reason of assault, resisting arrest, and criminal trespass. On April 27, 2010, S.C.-W. was sentenced to four months of traditional probation and was required to submit a DNA sample.

Based on our review of the record, we conclude that the State failed to present sufficient evidence to demonstrate beyond a reasonable doubt that S.C.W. knowingly caused or attempted to cause physical harm to Officer Culp.

S.C.W. was adjudicated delinquent by way of the first degree misdemeanor of resisting arrest. The State was therefore required to introduce evidence demonstrating that S.C.W., while he struggled with [the police officer] as he did, understood that he was under arrest, or at least in the process of being arrested. An arrest signifies a restraint on a person's freedom of movement in contemplation of filing a criminal charge. The evidence must show that the subject of an arrest should reasonably have understood that such a seizure occurred." The Supreme Court held, in *Darrah*, that

> An arrest occurs when the following four requisite elements are involved: (1) An intent to arrest, (2) under a real or pretended authority, (3) accompanied by an actual or constructive seizure or detention of the person, and (4) which is so understood by the person arrested.

In this case, Officer Culp testified that he grabbed S.C.W. and took him into the library. Although Officer Culp was wearing his uniform, there is no other evidence in the record that would suggest S.C.W. had reason to believe an arrest was taking place.

There is no evidence in the record that Officer Culp advised S.C.W. that he was under arrest as Officer Culp struggled to with S.C.W. in an effort to prevent him from entering the library. Nor is there any evidence that Officer Culp took some other action from which S.C.W. could reasonably understand that an arrest was taking place. We have said, and other districts have concurred, that a statement articulating arrest is not necessary, but rather an arrest may be inferred from the circumstances. In this instance, however, given the nature of the scuffle surrounding S.C.W.'s purported attempt to reenter the library, we cannot say that this element was established beyond a reasonable doubt. Officer Culp told S.C.W. that he could not re-enter the library with his sister. S.C.W. disregarded the officer's directive. Although he then engaged in a struggle with S.C.W., the evidence clearly shows that this struggle was predicated on their dispute over whether S.C.W. could follow his sister into the library. While S.C.W.'s disregard of the officer's command not to reenter the library may have supported a different charge, the evidence is

insufficient to demonstrate that S .C.W., then twelve years old, understood that he was being placed under arrest.

J.D.B. v. North Carolina, 564 U.S. 261, 131 S.Ct. 2394, 180 L.Ed.2d 310 (2011):

A child's age properly informs Miranda's custody analysis.

Given a history replete with laws and judicial recognition that children cannot be viewed simply as miniature adults, there is no justification for taking a different course here. So long as the child's age was known to the officer at the time of the interview, or would have been objectively apparent to a reasonable officer, including age as part of the custody analysis requires officers neither to consider circumstances unknowable to them, nor to anticipate the frailties or idiosyncrasies of the particular suspect being questioned. Precisely because childhood yields objective conclusions, considering age in the custody analysis does not involve a determination of how youth affects a particular child's subjective state of mind. In fact, were the court precluded from taking J. D. B.'s youth into account, it would be forced to evaluate the circumstances here through the eyes of a reasonable adult, when some objective circumstances surrounding an interrogation at school are specific to children. These conclusions are not undermined by the Court's observation in *Alvarado* that accounting for a juvenile's age in the Miranda custody analysis could be viewed as creating a subjective inquiry. The Court said nothing about whether such a view would be correct under the law or whether it simply merited deference under the Antiterrorism and Effective Death Penalty Act of 1996, 110 Stat. 1214. So long as the child's age was known to the officer, or would have been objectively apparent to a reasonable officer, including age in the custody analysis is consistent with the Miranda test's objective nature. This does not mean that a child's age will be a determinative, or even a significant, factor in every case, but it is a reality that courts cannot ignore.

On remand, the state courts are to address the question whether J. D. B. was in custody when he was interrogated, taking account of all of the relevant circumstances of the interrogation, including J. D. B.'s age at the time.

In re D.B., 129 Ohio St.3d 104, 950 N.E.2d 528, 2011-Ohio-2671:

R.C. 2907.02(A)(1)(b) criminalizes what is commonly known as "statutory rape." The statute holds offenders strictly liable for engaging in sexual conduct with children under the age of 13-force is not an element of the offense because a child under the age of 13 is legally presumed to be incapable of consenting to sexual conduct.

As applied to children under the age of 13 who engage in sexual conduct with other children under the age of 13, R.C. 2907.02(A)(1)(b) is unconstitutionally vague because the statute authorizes and encourages arbitrary and discriminatory enforcement. When an adult engages in sexual conduct with a child under the age of 13, it is clear which party is the offender and which is the victim. But when two children under the age of 13 engage in sexual conduct with each other, each child is both an offender and a victim, and the distinction between those two terms breaks down.

It must be emphasized that the concept of consent plays no role in whether a person violates R.C. 2907.02(A)(1)(b): children under the age of 13 are legally incapable of consenting to sexual conduct. Furthermore, whether D.B. used force to engage in sexual conduct does not play a role in our consideration of R.C. 2907.02(A)(1)(b). The trial court found that D.B. did not use force. Whether an offender used force is irrelevant to the determination whether the offender committed rape under R.C. 2907.02(A)(1)(b).

We note that while we hold that R.C. 2907.02(A)(1)(b) is unconstitutional as applied to a child under the age of 13 who engages in sexual conduct with another child under the age of 13, a child under the age of 13 may be found guilty of rape if additional elements are shown: the offender substantially impairs the other person's judgment or control, R.C. 2907.02(A)(1)(a); the other person's ability to resist or consent is substantially impaired because of a mental or physical condition or advanced age, R.C. 2907.02(A)(1)(c); or the offender compels the other person to submit by force or threat of force, R.C. 2907.02(A)(2). None of those additional elements was present here.

Application of R.C. 2907.02(A)(1)(b) in this case also violates D.B.'s federal right to equal protection. The Equal Protection Clause directs that all persons similarly circumstanced shall be treated alike.

The plain language of the statute makes it clear that every person that engages in sexual conduct with a child under the age of 13 is strictly liable for statutory rape, and the statute must be enforced equally and without regard to the particular circumstances of an individual's situation. R.C. 2907.02(A)(1)(b) offers no prosecutorial exception to charging an offense when every party involved in the sexual conduct is under the age of 13; conceivably, the principle of equal protection suggests that both parties could be prosecuted as identically situated. Because D.B. and M.G. were both under the age of 13 at the time the events in this case occurred, they were both members of the class protected by the statute, and both could have been charged under the offense. Application of the statute in this case to a single party violates the Equal Protection Clause's mandate that persons similarly circumstanced shall be treated alike.

All three boys allegedly engaged in sexual conduct with a person under the age of 13; however, only D.B. was charged with a violation of R.C. 2907.02(A)(1(b). This arbitrary enforcement of the statute violates D.B.'s right to equal protection. We accordingly hold that application of the statute in this case violated D.B.'s federal equal-protection rights. The statute is unconstitutional as applied to him.

Superintendence Rule 48 – Guardians Ad Litem

(A) Applicability. This rule shall apply in all domestic relations and juvenile cases in the courts of common pleas where a court appoints a guardian ad litem to protect and act in the best interest of a child.

(B) Definitions. For purposes of this rule:

(1) "Guardian ad litem" means an individual appointed to assist a court in its determination of a child's best interest.

(2) "Child" means:

(a) A person under eighteen years of age, or

(b) A person who is older than eighteen years of age who is deemed a child until the person attains twenty-one years of age under section 2151.011(B)(5) or section 2152.02(C) of the Revised Code.

(c) A child under R.C. 3109.04 or a disabled child under R.C.3119.86 who falls under the jurisdiction of a domestic relations court or of a juvenile court with a paternity docket.

(C) Appointment of Guardian Ad Litem.

(1) Each court appointing a guardian ad litem under this rule shall enter an Order of Appointment which shall include:

(a) A statement regarding whether a person is being appointed as a guardian ad litem only or as a guardian ad litem and attorney for the child.

(b) A statement that the appointment shall remain in effect until discharged by order of the court, by the court filing a final order in the case or by court rule.

(c) A statement that the guardian ad litem shall be given notice of all hearings and proceedings and shall be provided a copy of all pleadings, motions, notices and other documents filed in the case.

(2) Whenever feasible, the same guardian ad litem shall be reappointed for a specific child in any subsequent case in any court relating to the best interest of the child.

(3) The court shall make provisions for fees and expenses in the Order.

(D) Responsibilities of a Guardian Ad Litem. In order to provide the court with relevant information and an informed recommendation regarding the child's best interest, a guardian ad litem shall perform, at a minimum, the responsibilities stated in this division, unless impracticable or inadvisable to do so.

(1) A guardian ad litem shall represent the best interest of the child for whom the guardian is appointed. Representation of best interest may be inconsistent with the wishes of the child whose interest the guardian ad litem represents.

(2) A guardian ad litem shall maintain independence, objectivity and fairness as well as the appearance of fairness in dealings with parties and professionals, both in and out of the courtroom and shall have no ex parte communications with the court regarding the merits of the case.

(3) A guardian ad litem is an officer of the court and shall act with respect and courtesy to the parties at all times.

(4) A guardian ad litem shall appear and participate in any hearing for which the duties of a guardian ad litem or any issues substantially within a guardian ad litem's duties and scope of appointment are to be addressed.

(5) A non-attorney guardian ad litem must avoid engaging in conduct that constitutes the unauthorized practice of law, be vigilant in performing the guardian ad litem's duties and request that the court appoint legal counsel, or otherwise employ the services of an attorney, to undertake appropriate legal actions on behalf of the guardian ad litem in the case.

(6) A guardian ad litem who is an attorney may file pleadings, motions and other documents as appropriate under the applicable rules of procedure.

(7) When a court appoints an attorney to serve as both the guardian ad litem and attorney for a child, the attorney shall advocate for the child's best interest and the child's wishes in accord with the Rules of Professional Conduct. Attorneys who are to serve as both guardian ad litem and attorney should be aware of Rule 3.7 of the Rules of Professional Conduct and act accordingly.

(8) When a guardian ad litem determines that a conflict exists between the child's best interest and the child's wishes, the guardian ad litem shall, at the earliest practical time, request in writing that the court promptly resolve the conflict by entering appropriate orders.

(9) A guardian ad litem shall avoid any actual or apparent conflict of interest arising from any relationship or activity including, but not limited to, those of employment or business or from professional or personal contacts with parties or others involved in the case. A guardian ad litem shall avoid self-dealing or associations from which the guardian ad litem might benefit, directly or indirectly, except from compensation for services as a guardian ad litem.

(10) Upon becoming aware of any actual or apparent conflict of interest, a guardian ad litem shall immediately take action to resolve the conflict, shall advise the court and the parties of the action taken and may resign from the matter with leave of court, or seek court direction as necessary. Because a conflict of interest may arise at any time, a guardian ad litem has an ongoing duty to comply with this division.

(11) Unless excepted by statute, by court rule consistent with this rule, or by order of court pursuant to this rule, a guardian ad litem shall meet the qualifications and satisfy all training and continuing education requirements under this rule and under any local court rules governing guardians ad litem. A guardian ad litem shall meet the qualifications for guardians ad litem for each county where the guardian ad litem serves and shall promptly advise each court of any grounds for disqualification or unavailability to serve.

(12) A guardian ad litem shall be responsible for providing the court or its designee with a statement indicating compliance with all initial and continuing educational and training requirements so the court may maintain the files required in division (G) of this rule. The compliance statement shall include information detailing the date, location, contents and credit hours received for any relevant training course.

(13) A guardian ad litem shall make reasonable efforts to become informed about the facts of the case and to contact all parties. In order to provide the court with relevant information and an informed recommendation as to the child's best interest, a guardian ad litem shall, at a minimum, do the following, unless impracticable or inadvisable because of the age of the child or the specific circumstances of a particular case:

(a) Meet with and interview the child and observe the child with each parent, foster parent, guardian or physical custodian and conduct at least one interview with the child where none of these individuals is present;

(b) Visit the child at his or her residence in accordance with any standards established by the court in which the guardian ad litem is appointed;

(c) Ascertain the wishes of the child;

(d) Meet with and interview the parties, foster parents and other significant individuals who may have relevant knowledge regarding the issues of the case;

(e) Review pleadings and other relevant court documents in the case in which the guardian ad litem is appointed;

(f) Review criminal, civil, educational and administrative records pertaining to the child and, if appropriate, to the child's family or to other parties in the case;

(g) Interview school personnel, medical and mental health providers, child protective services workers and relevant court personnel and obtain copies of relevant records;

(h) Recommend that the court order psychological evaluations, mental health and/or substance abuse assessments, or other evaluations or tests of the parties as the guardian ad litem deems necessary or helpful to the court; and

(i) Perform any other investigation necessary to make an informed recommendation regarding the best interest of the child.

(14) A guardian ad litem shall immediately identify himself or herself as a guardian ad litem when contacting individuals in the course of a particular case and shall inform these individuals about the guardian ad litem's role and that documents and information obtained may become part of court proceedings.

(15) As an officer of the court, a guardian ad litem shall make no disclosures about the case or the investigation except in reports to the court or as necessary to perform the duties of a guardian ad litem. A guardian ad litem shall maintain the confidential nature of personal identifiers, as defined in Rule 44 of the Rules of Superintendence, or addresses where there are allegations of domestic violence or risk to a party's or child's safety. A guardian ad litem may recommend that the court restrict access to the report or a portion of the report, after trial, to preserve the privacy, confidentiality, or safety of the parties or the person for whom the guardian ad litem was appointed in accordance with Rule 45 of the Rules of Superintendence. The court may, upon application, and under such conditions as may be necessary to protect the witnesses from potential harm, order disclosure of or access to the information that addresses the need to challenge the truth of the information received from the confidential source.

(16) A guardian ad litem shall perform responsibilities in a prompt and timely manner, and, if necessary, an attorney guardian ad litem may request timely court reviews and judicial intervention in writing with notice to parties or affected agencies.

(17) A guardian ad litem who is to be paid by the court or a party, shall keep accurate records of the time spent, services rendered, and expenses incurred in each case and file an itemized statement and accounting with the court and provide a copy to each party or other entity responsible for payment.

(E) Training Requirements. In order to serve as a guardian ad litem, an applicant shall have, at a minimum, the following training:

(1) Successful completion of a pre-service training course to qualify for appointment and thereafter, successful completion of continuing education training in each succeeding calendar year to qualify for continued appointment.

(2) The pre-service training course must be the six hour guardian ad litem pre-service course provided by the Supreme Court of Ohio, the Ohio CASA/GAL Association's pre-service training program, or with prior approval of the appointing court, be a course at least six hours in length that covers the topic areas in division (E)(3).

(3) To meet the requirements of this rule, the pre-service course shall include training on all the following topics:

(a) Human needs and child development including, but not limited to, stages of child development;

(b) Communication and diversity including, but not limited to, communication skills with children and adults, interviewing skills, methods of critical questioning, use of open-ended questions, understanding the perspective of the child, sensitivity, building trust, multicultural awareness, and confidentiality;

(c) Preventing child abuse and neglect including, but not limited to, assessing risk and safety;

(d) Family and child issues including, but not limited to, family dynamics, substance abuse and its effects, basic psychopathology for adults and children, domestic violence and its effects;

(e) Legal framework including, but not limited to, records checks, accessing, assessing and appropriate protocol, a guardian ad litem's role in court, local resources and service practice, report content, mediation and other types of dispute resolution.

(4) The continuing education course must be at least three hours in length and be provided by the Supreme Court of Ohio or by the Ohio CASA/GAL Association, or with prior approval of the appointing court, be a training that complies with division (5) of this rule.

(5) To meet the requirements of this rule, the three hour continuing education course shall:

(a) Be specifically designed for continuing education of guardians ad litem and not pre-service education; and

(b) Consist of advanced education related to topics identified in division (E)(3)(a)-(e) of this rule.

(6) If a guardian ad litem fails to complete a three hour continuing education course within any calendar year, that person shall not be eligible to serve as a guardian ad litem until this continuing education requirement is satisfied. If the person's gap in continuing education is three calendar years or less, the person shall qualify to serve after completing a three hour continuing education course offered under this rule. If the gap in continuing education is more than three calendar years that person must complete a six hour pre-service education course to qualify to serve.

(7) An individual who is currently serving as a guardian ad litem on the effective date of this rule, or who has served during the five years immediately preceding the effective date, shall have one year from the effective date to obtain the required six hour pre-service training in order to avoid removal from the court's list of approved guardians ad litem.

(8) Attendance at an Ohio Guardian ad Litem Training Program approved by the Supreme Court of Ohio or at an Ohio CASA/Guardian Association pre-service training program at any time prior to the effective date of this rule shall be deemed compliance with the pre-service training requirement.

(F) Reports of Guardians Ad Litem. A guardian ad litem shall prepare a written final report, including recommendations to the court, within the times set forth in this division. The report shall detail the activities performed, hearings attended, persons interviewed, documents reviewed, experts consulted and all other relevant information considered by the guardian ad litem in reaching the guardian ad litem's recommendations and in accomplishing the duties required by statute, by court rule, and in the court's Order of Appointment. In addition, the following provisions shall apply to guardian ad litem reports in the juvenile and domestic relations divisions of Courts of Common Pleas:

(1) In juvenile abuse, neglect, and dependency cases and actions to terminate parental rights:

(a) All reports, written or oral, shall be used by the court to ensure that the guardian ad litem has performed those responsibilities required by section 2151.281 of the Revised Code.

(b) Oral and written reports may address the substantive allegations before the court, but shall not be considered as conclusive on the issues.

(c) Unless waived by all parties or unless the due date is extended by the court, the final report shall be filed with the court and made available to the parties for inspection no less than seven days before the dispositional hearing. Written reports maybe accessed in person or by phone by the parties or their legal representatives. A copy shall be provided to the court at the hearing.

(d) A guardian ad litem shall be available to testify at the dispositional hearing and may orally supplement the final report at the conclusion of the hearing.

(e) A guardian ad litem also may file an interim report, written or oral, any time prior to the dispositional hearing and prior to hearings on actions to terminate parental rights. Written reports may be accessed in person or by phone by the parties or their legal representatives.

(f) Any written interim report shall be filed with the court and made available to the parties for inspection no less than seven days before a hearing, unless the due date is extended by the court. Written reports may be accessed in person or by phone by the parties or their legal representatives. A copy of the interim report shall be provided to the court at the hearing.

(2) In domestic relations proceedings involving the allocation of parental rights and responsibilities, the final report shall be filed with the court and made available to the parties for inspection no less than seven days before the final hearing unless the due date is extended by the court. Written reports may be accessed in person or by phone by the parties or their legal representatives. A copy of the final report shall be provided to the court at the hearing. The court shall consider the recommendation of the guardian ad litem in determining the best interest of the child only when the report or a portion of the report has been admitted as an exhibit.

(G) Responsibilities of the Court. In order to ensure that only qualified individuals perform the duties of guardians ad litem and that the requirements of this rule are met, each court appointing guardians ad litem shall do all of the following:

(1) Maintain a public list of approved guardians ad litem while maintaining individual privacy under Rules 44 through 47 of the Rules of Superintendence.

(2) Establish criteria, which include all requirements of this rule, for appointment and removal of guardians ad litem and procedures to ensure an equitable distribution of the work load among the guardians ad litem on the list.

(3) Appoint or contract with a person to coordinate the application and appointment process, keep the files and records required by this rule, maintain information regarding training opportunities, receive written comments and complaints regarding the performance of guardians ad litem practicing before that court and perform other duties as assigned by the court.

(4) Maintain files for all applicants and for individuals approved for appointment as guardians ad litem with the court. The files shall contain all records and information required by this rule, and by local rules, for the selection and service of guardians ad litem including a certificate or other satisfactory proof of compliance with training requirements.

(5) Require all applicants to submit a resume or information sheet stating the applicant's training, experience and expertise demonstrating the person's ability to successfully perform the responsibilities of a guardian ad litem.

(6) Conduct, or cause to be conducted, a criminal and civil background check and investigation of information relevant to the applicant's fitness to serve as a guardian ad litem.

(7) Conduct, at least annually, a review of its list to determine that all individuals are in compliance with the training and education requirements of this rule and local rules, that they have performed satisfactorily on all assigned cases during the preceding calendar year and are otherwise qualified to serve.

(8) Require all individuals on its list to certify annually they are unaware of any circumstances that would disqualify them from serving and to report the training they have attended to comply with division (E) of this rule.

(9) Each court shall develop a process or local rule and appoint a person for accepting and considering written comments and complaints regarding the performance of guardians ad litem practicing before that court. A copy of comments and complaints submitted to the court shall be provided to the guardian ad litem who is the subject of the complaint or comment. The person appointed may forward any comments and complaints to the administrative judge of the court for consideration and appropriate action. Dispositions by the court shall be made promptly. The court shall maintain a written record in the guardian ad litem's file regarding the nature and disposition of any comment or complaint and shall notify the person making the comment or complaint and the subject guardian ad litem of the disposition.

OAC 5101:2-38-05 – Requirements of a Case Plan

(A) The public children services agency (PCSA) shall develop and complete a case plan utilizing the JFS 01410 "Comprehensive Assessment Planning Model - I.S., Case Plan" (rev. 2/2006) if services are provided to the child in his or her own home or in a substitute care setting and one of the following occurs:

(1) The PCSA files a complaint pursuant to section 2151.27 of the Revised Code alleging the child is an abused, neglected, or dependent child.

(2) The PCSA has court ordered temporary custody or permanent custody of the child.

(3) The court orders the PCSA to provide protective supervision for a child living in his or her own home.

(4) The court orders the PCSA to place the child in a planned permanent living arrangement.

(B) The JFS 01410 shall be based on the completion of the JFS 01400 "Comprehensive Assessment Planning Model - I.S., Family Assessment" (rev. 7/2006).

(C) Completion of the JFS 01400 is not required to complete a case plan resulting from the following family in need of service intakes:

(1) Deserted child.

(2) Emancipated youth.

(3) Permanent surrender.

(4) Interstate compact on placement of children.

(D) The PCSA shall develop one case plan per case unless directed otherwise by an order of the court.

(E) If initiating the case planning process, the PCSA shall:

(1) Provide verbal or written notification to the following parties of their responsibility to work with the agency in jointly developing, implementing, and reviewing the case plan utilizing the JFS 01410 no less than seven days prior to case plan completion:

(a) Child's parent, guardian, or custodian.

(b) Pre-finalized adoptive parent, if applicable.

(c) Guardian ad litem and/or court appointed special advocate, if one has been appointed.

(d) Child, if age and developmentally appropriate.

(e) The Indian custodian, if any, and child's Indian tribe and extended relatives as defined in rule 5101:2-53-01 of the Administrative Code, if applicable.

(2) Work with all parties on the development, implementation, and review of the case plan; attempt to obtain agreement on the contents of the case plan by the parties mentioned in paragraph (E)(1) of this rule and provide each party with a copy of the JFS 01410.

(3) Inform all parties, if agreement cannot be obtained on the contents of the case plan, the parties may present evidence at the dispositional hearing and the court will determine the contents of the case plan based upon the evidence presented.

(4) Provide the substitute caregiver, including a relative or kin caregiver, or pre-finalized adoptive parent fulfilling this role, verbal or written notification of the opportunity to participate in the development, implementation, and review of the case plan no less than seven days prior to case plan completion. The date and method of notification shall be documented in the case record.

(F) If a case plan is developed pursuant to paragraph (A) of this rule, the PCSA shall file the JFS 01410 with the court based upon whichever of the following occurs first:

(1) No later than thirty days from the date the complaint was filed or the child was placed in shelter care.

(2) Prior to the adjudicatory hearing on the complaint.

(G) The JFS 01410 shall be considered complete once the court journalizes the case plan.

(H) If sufficient information is not available to complete any element contained on the JFS 01410, the PCSA shall do all of the following:

(1) Specify in the JFS 01410 developed pursuant to paragraph (F) of this rule, the additional information needed in order to complete all parts of the case plan and the steps needed to obtain the missing information and file with the court.

(2) Obtain the missing information, and complete the missing elements of the JFS 01410 and submit to the court no later than thirty days after the adjudicatory hearing or by the date of the dispositional hearing.

(I) The JFS 01410 shall serve as the permanency plan for the child.

(J) The JFS 01410 shall include a written visitation plan for siblings removed from their home and not jointly placed pursuant to rules 5101:2-42-92 and 5101:2-39-01 of the Administrative Code. The visitation plan shall provide for regular, ongoing visitation and interaction between the siblings no less than monthly unless the PCSA has documented that it would be contrary to the safety or well-being of the children.

(K) The sibling's visitation plan developed pursuant to paragraph (J) of this rule shall include a description of the following:

(1) Efforts made by the agency to place the siblings together and why those efforts were unsuccessful.

(2) Identification of any sibling who is not included in the visitation plan and an explanation of why visitation or interaction with the child would be contrary to the safety or well-being of the other sibling(s).

(L) The JFS 01410 shall include a written visitation plan for the parent, guardian, or custodian. The visitation plan shall provide for regular, ongoing visitation and interaction between the child placed in substititute care and the parent, guardian, or custodian pursuant to rule 5101:2-42-92 of the Administrative Code.

(M) Once the court journalizes the JFS 01410, the parties including PCSA staff, are bound by the provisions outlined in the journalized case plan. Failure to comply with the case plan by any party to the case plan may result in a finding of contempt of court. The JFS 01410 provides such notice to all parties.

(N) The PCSA shall contact the child's parent, guardian, or custodian, or if applicable, pre-finalized adoptive parent, and the guardian ad litem and/or court appointed special advocate and seek prior agreement for any amendment to the case plan if any of the following occurs:

(1) The conditions of either the child or his or her parent, guardian, or custodian, or if applicable, pre-finalized adoptive parent change; and the change affects the legal status of the child or the provision of supportive services.

(2) There is a change in the goal for the child and/or changes family members need to address to alleviate concerns.

(3) The child needs to be placed in a substitute care setting; returned to his or her parent, guardian, custodian, or pre-finalized adoptive parent; or moved to another substitute care setting.

(4) The child attains the age of sixteen and independent living and life skill services are offered.

(5) A change in the visitation plan for a child.

(6) A party must be added or deleted from the JFS 01410.

(O) The PCSA shall attempt to obtain the signatures of the parent, guardian, custodian, or if applicable, pre-finalized adoptive parent, and guardian ad litem and/or court appointed special advocate, if one has been appointed, if an amendment is made to the JFS 01410.

(P) The PCSA shall record, on the JFS 01410, the reasons for any agreed upon amendment made and submit the amendment to the court within seven days of the agreement.

(Q) If an amendment is not agreed upon by the parties, the PCSA shall request a change in the case plan by filing the proposed change with the court.

(1) The PCSA shall provide both of the following to all affected parties including the guardian ad litem and/or court appointed special advocate:

(a) Written notice of the proposed change no later than the close of business of the day after the proposed change is filed with the court.

(b) Written notice that an objection to the change requires a request for a court hearing be proposed within seven days of the filing with the court, not including the date of filing.

(2) The PCSA may implement the amendment fifteen days after it is filed with the court if:

(a) The court does not approve or disapprove the change.

(b) The court does not schedule a hearing.

(R) In an emergency situation or if a child is in immediate danger of serious harm, the PCSA shall:

(1) Implement the change and amend the case plan.

(2) Notify all parties, the child's guardian ad litem, and the court of the change no later than the next day after the change is implemented.

(3) File a statement of the change with the court within three days after the change is implemented.

(4) Give notice of the filing along with a copy of the statement within three days of the change to the child's parent, guardian, custodian, or pre-finalized adoptive parent, and guardian ad litem and/or court appointed special advocate, if one is appointed.

(S) In an emergency situation, all parties to the case plan and the guardian ad litem and/or court appointed special advocate have ten days to object to the change in the case plan and to request a court hearing regarding the change . If the objection and request for a hearing is filed with the court, the PCSA shall continue to implement the change unless the court disapproves. If the court does not approve the change, the PCSA shall revert back to implementing the provisions of the journalized case plan.

(T) For court-ordered protective supervision cases, the PCSA shall:

(1) Complete face-to-face contact with each parent, guardian, or custodian, or if applicable, pre-finalized adoptive parent, and child participating in and being provided services listed in the case plan no less than monthly to monitor progress on the case plan objectives.

(2) Complete at least one contact every other month in the child's home.

(U) For cases with children in custody, the PCSA shall:

(1) Complete face-to-face contact with the child pursuant to rule 5101:2-42-65 of the Administrative Code.

(2) Complete face-to-face contact with each parent, guardian, or custodian, or if applicable, pre-finalized adoptive parent participating in and being provided services listed in the case plan no less than monthly to monitor progress on the case plan objectives.

(3) Complete at least one contact every other month in the parent, guardian, or custodian's, or if applicable, pre-finalized adoptive parent's home.

(V) If the initial attempt to complete face-to-face contact pursuant to paragraph (T) or (U) of this rule is unsuccessful, the PCSA shall make a minimum of two additional attempts to complete the face-to-face contacts within the calendar month.

(W) The PCSA may suspend home visits with the parent, guardian, or custodian of a child in PCSA custody if conducting visits in the home presents a threat to the safety of the caseworker. A written justification to suspend visits in the home shall be documented in the case record and shall include all of the following:

(1) Identification of the specific threat to the caseworker's safety and the person posing the threat.

(2) Documentation of other measures taken to assure worker safety prior to suspension of home visits.

(3) The anticipated length of time home visits are to be suspended.

(4) Authorization of the executive director or his or her designee to suspend home visits.

(X) If home visits are suspended pursuant to paragraph (W) of this rule, the PCSA shall complete face-to-face contact with the parent, guardian, or custodian of the child no less than monthly in a location assisting in ensuring the safety of the caseworker.

(Y) The PCSA shall review the progress in achieving the case plan objectives and services by completing the JFS 01413 "Comprehensive Assessment Planning Model - I.S., Case Review" (rev. 8/2010) pursuant to rule 5101:2-38-09 of the Administrative Code.

(Z) The PCSA shall conduct semiannual administrative reviews of the case plan pursuant to rule 5101:2-38-10 of the Administrative Code.

(AA) The PCSA may develop a supplemental plan for locating a permanent family placement for a child concurrently with reasonable efforts to preserve and reunify families. The supplemental plan shall not be considered a part of the case plan and does not require agreement or approval by the parties. Any supplemental plan shall be discussed and reviewed with the parent, guardian, or custodian.

(BB) The PCSA shall maintain a copy of the original JFS 01410, all journalized amendments to the JFS 01410, all supplemental plans, and all documentation of the face-to-face contacts, including all attempts to monitor progress on the case plan objectives, in the child's case record in accordance with rule 5101:2-33-23 of the Administrative Code.

(CC) The PCSA shall attach the JFS 01443 "Child's Education and Health Information" (rev. 8/2010), to the JFS 01410 for each child placed in a substitute care setting.

(DD) The PCSA shall close the case if:

(1) There are no active safety threats and the overall level of risk is reduced.

(2) The court has ordered the case closed.

(EE) Upon determining case closure the PCSA shall do all of the following:

(1) Complete the JFS 01413 pursuant to rule 5101:2-38-09 of the Administrative Code.

(2) Complete the JFS 01404 "Comprehensive Assessment and Planning Model - I.S., Reunification Assessment" (rev. 2/2006) pursuant to rule 5101:2-37-04 of the Administrative Code if applicable.

(3) Notify all parties of the case closure.

(4) Complete and sign the JFS 01411 “Comprehensive Assessment Planning Model -I.S., Amended Case Plan Cover Sheet” (rev. 2/2006).

Attorney Neil P. Agarwal has an undergraduate degree in Business Administration from Ohio State University (B.S.), a law degree from the University of Toledo (J.D.), a Masters of Tax Law from Case Western Reserve University (LL.M.), a Masters of Business Administration from Kent State University (M.B.A.), and a Masters of Library and Information Science from Kent State University (M.L.I.S.). He is also a certified public accountant (CPA), a licensed Ohio realtor, and an adjunct professor of business law at Kent State University and the University of Akron.

Attorney Agarwal was admitted to the practice of law in the State of Ohio in 1996. He is a member in good standing and admitted to practice in the United States Supreme Court, Ohio Supreme Court, U.S. District Court for the Northern District Court of Ohio, U.S. Sixth Circuit Court of Appeals, and is a member of the Akron Bar Association.

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