

## **A. ABUSE, NEGLECT, DEPENDENCY**

### **1. Adjudication - Required Findings**

#### **Matters of T.J.**

Court of Appeals of Ohio, Fifth District, Knox County. September 03, 2019 Slip Copy 2019 WL 4267799

Judgment reversed and remanded because trial court failed to make the requisite findings of dependency pursuant to R.C. 2151.28(L). A review of the judgment entries reveals the entries are devoid of any findings of fact and conclusions of law “as to the existence of any danger to the child and any underlying family problems that are the basis for the court’s determination that the child is a dependent child.”

#### **IN RE: A.S.**

Court of Appeals of Ohio, Ninth District, Summit County. April 08, 2020 Slip Copy 2020 WL 1698728

Evidence did not support finding of dependency where, despite the agency's concerns that child might be at risk of harm in Mother's and Father's home, the child never suffered any injury or neglect while in their care. While a child need not remain in an unsafe environment until he suffers actual harm, there must be clear and convincing evidence that the child is reasonably at risk for harm to support an adjudication of dependency.

#### **In re P.C.**

Court of Appeals of Ohio, Third District, Logan County. May 11, 2020 Slip Copy 2020 WL 2313802

Dependency adjudication was reversed and remanded because trial court failed to make the requisite findings set forth in R.C. 2151.28. In fact, the judgment entry was completely devoid of any findings in support of the dependency adjudication.

#### **In re G.W.**

Court of Appeals of Ohio, First District, Hamilton County. June 17, 2020 Slip Copy 2020 WL 3264478

Appellate court affirmed trial court's dismissal of complaint by agency for temporary custody, finding the weight of the evidence did not support an adjudication of abuse or neglect where there was conflicting medical evidence and the trial court did not abuse its discretion by relying on the parents' expert who had completed a full examination of the children and family history over agency experts, one of whom had examined the children for less than ten minutes and had not examined the child's birth records, and the other whom did not examine the children. The appellate court further held that it was not reversible error nor plain error for the trial court to accept the unsworn testimony of the parents' doctor where the agency did not request that the doctor be sworn nor objected to his testimony, but rather stipulated to his qualifications as an expert, cross-examined him, and cited parts of his testimony in support of an adjudication, thus treating him as fully qualified and competent to testify.

**In re M.R.**

Court of Appeals of Ohio, First District, Hamilton County. July 08, 2020 Slip Copy 2020 WL 3815684

Mother appealed trial court's decision adjudicating her children dependent. Appellate court reversed and remanded the decision as to four of the five children, pointing out that the conduct of a parent is relevant only insofar as that parent's conduct forms a part of the environment of the child at issue and that impact must be specifically demonstrated in a clear and convincing manner. The appellate court found that the agency presented no evidence demonstrating how Mother's incidences of violence at her ex's home were harmful to the children. There was also no clear and convincing evidence that Mother left her children alone that night or on any other night. Further, the medical records provided support for establishing the dependency of B.H., they did not provide clear and convincing evidence to establish the dependency of the other children. The magistrate and the juvenile court improperly relied upon hearsay portions of the medical records that had been excluded by the magistrate to make a dependency finding. This hearsay evidence was the only evidence the juvenile court relied upon to find that the other children were in an environment that warranted state intervention. There was no corroborating evidence these children suffered physical or mental injury or that they otherwise had unmet needs.

**In re K.J.**

Court of Appeals of Ohio, Third District, Hancock County. August 03, 2020 Slip Copy 2020 WL 4434615

Trial court erred in finding the child neglected and dependent where none of the allegations regarding the environment of the children were supported by the testimony of the investigator or caseworker. "Although courts are not required to wait for a child to be injured or harmed before finding a child is neglected or dependent, there must be some evidence presented beyond a mere possibility of harm." Without the environment having any effect on the children or a demonstration of lack of adequate parental care, the agency failed to prove by clear and convincing evidence that the children were dependent or neglected.

**2. Disposition – best interest factors**

**In re A.B.**

Court of Appeals of Ohio, Twelfth District, Clermont County. September 03, 2019 Slip Copy 2019 WL 4165086

Judgment affirmed awarding legal custody of sexually abused child to father and supervised visits for mother where mother had not followed all aspects of case plan, had not been ruled out in the abuse investigation and father had, and where all best interest factors weighed in favor of father. Mother's argument that she could not biologically be the perpetrator of semen found in the child's mouth was rejected, as the evidence of semen "certainly does not eliminate the possibility of involvement" by Mother. Rather, the record reflects that through his investigation, the investigator was able discern that Mother was the only individual who was alone with the child the day of the incident, and that he had concerns with eliminating Mother as a suspect.

**In re J.W.**

Court of Appeals of Ohio, Eighth District, Cuyahoga County. September 12, 2019 Slip Copy 2019 WL 4316895

Award of legal custody to father was appropriate where father had good relationship with child, was employed and could provide for her, even though teenage child expressed desire to remain living with

maternal grandmother to be near mother, friends, and school.

### **In re E.B.**

Court of Appeals of Ohio, First District, Hamilton County. September 27, 2019 Slip Copy 2019 WL 4733116

Guardian ad Litem appeals Court's decision to award legal custody to maternal second cousin, arguing that Court should have granted permanent custody to the agency; Agency opposed permanent custody, supporting custody to maternal cousin. Affirming the trial court's judgment, Court found that 1) court's order was a final appealable order even though a transition period was ordered and no date of legal custody to begin was specified; 2) GAL has standing to appeal as ensuring a child's best interests are protected affects a substantial right in the custody proceeding; 3) despite conflicts between caseworkers, court's decision was supported by the evidence; 4) GAL could not argue that child was not bonded with cousin when GAL's motion was the cause to prevent that; 5) though only parents are to be given preference over non-parents/non-relatives, the court did not base its decision solely on cousin's familial relationship to Mother. Instead, the court viewed cousin's relative status as one, among a myriad of factors, the fact that placement with cousin would not sever Mother's parental rights, and that Mother's other children currently reside with the maternal grandparents (thereby facilitating the growth of sibling relationships).

### **In re A.H.**

Court of Appeals of Ohio, Eighth District, Cuyahoga County. October 03, 2019 Slip Copy 2019 WL 4887231

Trial court's decision to award permanent custody to agency for two of the minor children was not supported by clear and convincing evidence. Mother's initial case plan objectives consisted of obtaining and maintaining appropriate housing, attending parenting classes, completing a drug and alcohol assessment, following up with any treatment recommendations and submitting to random drug screens. The agency later added an anger management program. The record reflects that Mother fulfilled most of her case plan objectives, including those that initially caused the children to be removed from Mother's care.

### **In re J.S.**

Court of Appeals of Ohio, Eighth District, Cuyahoga County. October 31, 2019 Slip Copy 2019 WL 5617843

J.S., a minor, appealed PCC to agency, arguing trial court failed to fully consider whether there could be a legally secure placement without granting permanent custody because both her mother and maternal grandmother were willing to take legal custody. The trial court conducted an in camera interview with J.S. in which her wishes were expressed. It was J.S.'s desire to live with her mother and, if that could not occur, then with her maternal grandmother and, as a final alternative, with her great-grandmother. While there was clearly evidence that J.S. has a loving relationship and is bonded with mother and grandmother, there was other testimony and evidence presented to support the trial court's decision to grant permanent custody, thus trial court did not abuse discretion.

### **In re A.M.**

Court of Appeals of Ohio, Ninth District, Summit County. December 18, 2019 Slip Copy 2019 WL 6895367

Father appeals trial court's determination that it was in the best interest of the child for a long-time family friend to have legal custody of his daughter over him. Appellate court affirmed, determining that, in matters of legal custody after an AND determination, the test is one of best interests. In this

case, though Father had substantially complied with elements of the case plan, that alone was not enough to overcome the best interest factors here, where, though now bonded with the child, he had little involvement the first seven years of the child's life, the child was closely bonded with her half-sisters, all of whom were in family friend's legal custody, the child was well-adjusted in this home and her school, and the child wished to remain there.

### **IN RE: J/B CHILDREN**

Court of Appeals of Ohio, First District, Hamilton County. March 24, 2020 Slip Copy 2020 WL 1460434

While it would have been helpful for the juvenile court to cite each statutory factor in its analysis, the failure to do so did not preclude meaningful appellate review where the court otherwise engaged in a thorough analysis. Here, the appellate court could discern that the trial court engaged in a thorough analysis of all the factors, even though it only cited specifically to one. Appellate court also found that denial of mother's continuance was not an abuse of discretion, even though it was the first one she requested, as the evidence showed she had used dilatory tactics throughout the case.

### **In re: C.W., minor child, (B.W., Appellant).**

Court of Appeals of Ohio, Tenth District, Franklin County. March 31, 2020 Slip Copy 2020 -Ohio- 1248

Court of appeals determined that, though best interest factors regarding the relationship and close bond between child and mother and the wishes of the mother and child weighed in favor of mother, there was no abuse of discretion in weighing other factors against that, including her failure to cease using drugs, address her mental health issues, inappropriate parenting of the child (such as directing her to misbehave at foster home in order to establish her lack of ability to bond or unlikelihood of adoptive placement), and housing instability. Trial court's decision to award permanent custody to agency was supported by competent evidence, even though it was a difficult decision.

### **IN RE: S.S. K.S. A.S. C.S. H.T. G.T.**

Court of Appeals of Ohio, Ninth District, Summit County. April 08, 2020 Slip Copy 2020 WL 1698740

Permanent custody determination affirmed. Even though parents complied with case plan and significantly improved condition of home, all relevant best interest factors must be considered and the fact that the interactions between the parents and children did not improve, parents did not supervise the children, and the parents had a lack of insight into how their actions affected the children and took no responsibility for the situation weighed heavily in favor of permanent custody.

## **3. Disposition – Legal Custody**

### **In re J.G.**

Court of Appeals of Ohio, Twelfth District, Fayette County. September 09, 2019 Slip Copy 2019 WL 4257007

A statement of understanding for legal custody pursuant to R.C.2151.353(A)(3) is not required when the individual being awarded custody filed his/her own motion for legal custody. The statement of understanding is only required when another party to the case (such as a children's services agency) identifies a proposed legal custodian in its pleadings and that person is present at the disposition hearing and willing to accept legal custody but has not filed his/her own motion.

**In re A.M.**

Court of Appeals of Ohio, Ninth District, Summit County. October 16, 2019 Slip Copy 2019 WL 5212589

Family friends were granted temporary, then legal custody of child due to young mother not being able to properly care for her. Mother initially had visitation “by agreement” but after disputes arose, Mother moved for legal custody and through mediation agreed to dismiss her motion in exchange for significant visitation. One year later, legal custodians moved out of county with the child and Mother again moved for legal custody. In prior appeal, court found error with the trial court’s requirement that Mother must prove a change in circumstances had occurred, holding that in a private legal custody case, the best-interest-of-the-child standard should be used for any custody modification petition filed by a natural parent and remanded for the court to consider best interests. Trial court found that it was in child’s best interest to remain with legal custodians. Mother appeals. Court of Appeals found that the trial court erred by failing to consider that appropriate relatives should generally be given priority over nonrelatives in legal custody decision where the child is closely bonded and connected to both, by giving inappropriate weight to the wishes of an eight-year-old over the recommendations of two GALs, and by weighing the child’s adjustment to her current living situation when that was created due to an erroneous prior decision of the court.

**In re A.F.**

Court of Appeals of Ohio, Twelfth District, Butler County. November 12, 2019 Slip Copy 2019 WL 5887051

Father appealed grant of legal custody to maternal aunt. Court affirmed decision, finding best interest factors weighed in favor of aunt over parents even though agency failed to adhere to OAC regulations in not obtaining an annual updated home study at Aunt’s home. Appellate court held that the failure of the agency to follow its own administrative regulations would not restrict the legal authority of the juvenile court to award legal custody of the children pursuant to R.C. 2151.353(A)(3) as long as the party to whom custody is awarded filed a motion requesting legal custody of the child or is identified as a proposed legal custodian in a complaint or motion filed prior to the dispositional hearing by any party to the proceedings, the court determines that a grant of legal custody is in the child’s best interest, and the person receiving legal custody must sign a statement of understanding. While an updated home study would have been beneficial to the juvenile court in assessing the children’s best interest, the lack of a more recent home study was not a bar to the authority of the juvenile court to make a legal custody decision.

**IN RE C.D.Y., ET AL.**

Court of Appeals of Ohio, Eighth District, Cuyahoga County. December 05, 2019 Slip Copy 2019 WL 6606432

Father was awarded custody of minor children after they were adjudicated neglected in Mother’s care. Approximately one year later, Mother filed motion to modify custody to name her the legal custodian, as Father was incarcerated; children were residing with Father’s girlfriend, to whom he gave power of attorney. Trial court denied Mother’s motion and granted temporary legal custody to Father’s girlfriend. Mother appealed; appellate court reversed and remanded, finding that Father’s girlfriend did not file a motion for custody nor did she file a statement of understanding, therefore could not be awarded legal custody under R.C. 2151.353(A)(3)(a)–(d) without doing so, and that the court failed in considering all of the best interest factors.

**IN RE: J.M.**

Court of Appeals of Ohio, Second District, Montgomery County. March 06, 2020 Slip Copy 2020 WL 1082361

Mother appealed trial court's award of legal custody to paternal aunt and uncle, claiming best interest factor analysis was arbitrary, unreasonable, and unconscionable. Appellate court affirmed trial court's judgment, finding that, though Mother did have a medical condition at the time of the child's birth, Mother had made tremendous progress in her recovery and had completed much of her case plan, case-plan compliance is not the only consideration in a legal-custody determination. At the time of the hearing, Mother still was being transported everywhere and receiving help managing her finances. Independent visits involving Mother and J.M. had been occurring for only about a month. In addition, the caseworker referenced a lengthy history of domestic violence between Mother and Father, noted they had only been separated for a month, had a history of an on-again off-again relationship, and other issues that historically recurred and never had been addressed adequately. Further, though Mother and Father both wanted legal custody to go to maternal aunt, who had custody of one of J.M.'s siblings, the benefit of residing with a sibling was outweighed by the detriment to the child of leaving paternal aunt and uncle, the only caregivers she had ever known. In addition, visitation with siblings was being facilitated.

**IN RE: A.C.**

Court of Appeals of Ohio, Third District, Allen County. March 16, 2020 Slip Copy 2020 WL 1244822

Mother appealed from trial court's determination awarding legal custody to family friend. Mother argued that she had made significant progress with her case plan, that she had ended her toxic relationship with the children's father, she had recovered from a stroke which prevented her from caring for the children, she had obtained secure housing, and had become financially independent. There had been two GAL's in the case; the second GAL supported reunification. Further, there were issues with the family friend as she had moved multiple times since the children had been in her care and there were questions about her willingness to facilitate a relationship between Mother and the children. Appellate court acknowledged the trial court were not left with a clear "best" option here, but found that there was sufficient evidence that demonstrated the children's bond with the family friend, the children had been with the family friend for a significant time period, and Mother still showed some bad judgment despite her progress on other areas in the case plan. There was also clear emphasis in the magistrate's decision on safety and well-being of the minor children, which the magistrate found to be in jeopardy if the children were returned to Mother, and the children seemed to be doing well in the family friend's care and they were adjusted to their school and community. Further, because Mother retained residual rights and had visitation, she could apply for modification in the future.

**4. Disposition - Permanent Custody**

**In re N.M.P.**

Supreme Court of Ohio. April 16, 2020 --- N.E.3d ---- 2020 WL 1879619

"Advisory opinions" that R.C. 2151.414(B)(1)(d), the "12 of 22" rule allowing agency to seek permanent custody does not require 22 consecutive months of agency involvement, it only requires that the child was in the agency's custody for 12 of 22 consecutive months prior to seeking permanent custody. Thus, in a situation where the custody of the agency is interrupted, as long as the amount of time totals 12 months in the 22 consecutive month time period, the statutory requirement

permitting the agency to seek permanent custody is satisfied. Dissent raised issue that this case was not appropriate to decide, in that its decision would not affect the outcome of the appellate case, but did not dispute the majority's interpretation.

### **In re P.**

Court of Appeals of Ohio, First District, Hamilton County. September 04, 2019 Slip Copy 2019 WL 4273787

Despite the magistrate often citing to irrelevant facts in support of her findings, sometimes not citing any facts at all, and finding several conditions to be satisfied that were not supported by sufficient evidence, both prongs of the R.C. 2151.414(B) analysis were still found to be satisfied by sufficient evidence and not against the manifest weight of the evidence.

### **Matter of A.D.**

Court of Appeals of Ohio, Fifth District, Guernsey County. September 11, 2019 Slip Copy 2019 WL 4316701

Trial court's findings that permanent custody was warranted due to father's consistent failure to follow the case plan, even though it was clear he loved his children, was supported by the evidence.

### **In re I.S.**

Court of Appeals of Ohio, Fifth District, Richland County. November 06, 2019 Slip Copy 2019 WL 5853211

Maternal grandmother appeals PCC, claiming that she was denied effective assistance of counsel in that her attorney took a position as a magistrate on the eve of trial, and that reversal is required to further consider custody/placement as foster mother who was intended as adoptive placement abdicated her parenting role after the appeal was filed. Court affirmed PCC, finding that grandparents are not afforded the same right to counsel as parents in a PCC and that post-trial actions are not subject to appeal.

### **IN RE: A.D. G.D.**

Court of Appeals of Ohio, Ninth District, Lorain County. February 18, 2020 Slip Copy 2020 WL 774014

First prong of the PCC test was satisfied by finding by clear and convincing evidence that Father abandoned the children. Father's claim that the trial court's finding of abandonment was error because he was subject to a court order suspending contact and visitation with the children was not well taken where the suspension of Father's contact was explicitly conditioned on him attempting to remedy his parenting problems by engaging in specific services and he refused to engage in any services because he continued to deny that he had any parenting problems. Court of appeals noted that the outcome of this case might have been different if Father had made some attempt to comply with the conditions of the order, but was unsuccessful, or factors outside his control prevented him from complying, but he did not.

### **IN RE CA.T., ET AL. Minor Children [Appeal by C.T., Mother]**

Court of Appeals of Ohio, Eighth District, Cuyahoga County. February 20, 2020 Slip Copy 2020 WL 838136

PCC awarded to agency, Mother appealed arguing ineffective assistance of counsel, and that it is inappropriate for the trial court to have based its abandonment findings when the county terminated

visitation. Appellate court disagreed, finding that Mother made no effort to restore visitation once it was terminated, Mother failed to communicate her whereabouts to the agency for over a year, resulting in an inability of the agency to contact her or communicate with her. Further, Mother failed to demonstrate that attorney's failure to make a closing argument, to object to the introduction of Mother's convictions for interfering with custody, and to object to the agency calling a supervisor as a witness rather than the social worker who had been more directly involved with the family were unreasonable and prejudicial to the outcome of the case.

### **IN RE: S.F.**

Court of Appeals of Ohio, Second District, Montgomery County. February 28, 2020 Slip Copy 2020 WL 973694

It was not error for trial court to award permanent custody to agency after determination that paternal grandmother did not have sufficient income to provide for the child.

### **IN RE: C CHILDREN.**

Court of Appeals of Ohio, First District, Hamilton County. March 13, 2020 Slip Copy 2020 WL 1230319

Mother appealed trial court's PCC of three of her seven children. The case was filed when Mother was arrested, and later convicted, for child endangerment when she sent videos depicting her holding her four-month-old child's head down in an attempt to suffocate her and swinging the child back and forth from the neck by a rope. Her seven children were all removed; four were ultimately able to be placed with a relative. Mother did not communicate with the children while incarcerated, but upon her release contacted the case worker and immediately proceeded to engage in the case plan. At permanent custody hearing, Mother emphasized the various services she completed both in prison and in her case plan, how these services improved her parenting skills, her current full-time job, her consistency in visiting her children after her release, and that the children expressed their desire to return to Mother's care. The caseworker and GAL recommended permanent custody of all three children based on the children's significant mental, emotional, and behavioral needs, the difficulties of placing all three children together, Mother's recent child endangerment history, and her failure to contact the children while incarcerated. Though the court commended Mother's efforts upon her release, the appellate court found that clear and convincing evidence supported the court's findings that the children could not be placed with Mother within a reasonable time.

### **IN RE G.A.**

Court of Appeals of Ohio, Eighth District, Cuyahoga County. March 23, 2020 Slip Copy 2020 WL 1488575

Trial court awarded PCC to agency; Mother appealed. Court of appeals affirmed, finding that, under R.C. 2151.414(D)(2), the juvenile court did not have an option. If all four of the factors under R.C. 2151.414(D)(2) are present, the juvenile court must find that it is in a child's best interest to be placed in the permanent custody of the agency. In this case, the four factors required to be found under R.C. 2151.414(D)(2) were present by clear and convincing evidence: (1) the child could not be placed with mother within a reasonable time or should not be placed with mother due to her domestic violence conviction, (2) the child had been in the agency's custody for almost four years, (3) the child does not meet the requirements of a planned permanent living arrangement, and (4) there were no relatives or other person who could take legal custody of the child.

### **IN RE: L.L.**

Court of Appeals of Ohio, Third District, Hancock County. April 20, 2020 Slip Copy 2020 WL 1910506

Appellate court upheld decision of trial court finding that factors necessary to award permanent custody were satisfied because mother had abandoned the child and the best interests of the child were served by an award of permanent custody. The majority agreed with the trial court that the findings of two periods of abandonment for more than 90 days, one due to hospitalization for drug abuse and the other due to imprisonment were voluntary actions of abandonment by mother, supported by the evidence and therefore justified the finding under the statute. However, the concurrence found that, while the abandonment due to violating the law was a voluntary action by mother and therefore supported the result, the finding that mother's hospitalization was voluntary was error and should not have been a basis for determining she had abandoned the child. The concurrence's reasoning was that time being treated for an illness, regardless of what caused the illness, should not be counted as part of an abandonment calculation. Public policy would encourage one, especially a parent, to seek whatever medical treatment they require without concern that it would be used against them in a court proceeding to terminate parental rights.

### **In re D.M.**

Court of Appeals of Ohio, First District, Hamilton County. June 10, 2020 Slip Copy 2020 WL 3076569

Mother and Father were both minors at the time of the birth of all three of their children; the children were adjudicated dependent and agency was awarded temporary custody due to Mother and Father's inability to care for the children themselves. According to the case plan, Mother was to demonstrate appropriate parenting skills and knowledge to meet the children's developmental and medical needs, demonstrate substance sobriety, mental health stability and compliance, appropriate parenting skills and knowledge. Appellate court reversed and remanded decision of trial court granting permanent custody of children to the agency, finding that the evidence did not support the conclusion that Mother did not complete her case plan. The trial court abused its discretion in finding that the children did not have a legally secure permanent placement with Mother, because the agency did not investigate the placement and prove that it was insufficient, even though it had the burden of proof to do so. In addition, reliance on the fact that the children were bonded with their foster parents in a best interest determination because the case had dragged on for four years through no fault of Mother was inappropriate.

### **In re S.D.**

Court of Appeals of Ohio, First District, Hamilton County. June 18, 2020 Slip Copy 2020 WL 3304348

Magistrate denied agency's motion for permanent custody. Agency and GAL filed objections, trial court sustained objections, considered new evidence of Mother's theft charge, sustained the objections and granted the motion for permanent custody to the agency. Parents appealed. Appellate court reversed, finding that in an extremely difficult case, termination of parental rights is an alternative of last resort and is only justified when it is necessary for the welfare of the children and that the agency did not present clear-and-convincing evidence in support of its motion for permanent custody.

### **In re P/W Children**

Court of Appeals of Ohio, First District, Hamilton County. June 30, 2020 Slip Copy 2020 WL 3526431  
Permanent custody motion granted by trial court. Father appealed, claiming trial court committed error in finding that he abandoned the children while he was subjected to a CPO for four years.

Appellate court affirmed trial court's decision, finding that even though father had known for years that mother agreed that the children should not be included in the CPO, father presented no evidence that he made any effort to have the CPO so limited and therefore failed to rebut the presumption of abandonment. Further, there was indication that father had filed a motion to modify the CPO, but that the motion was denied when he failed to appear at a hearing set on his motion, further bolstering the court's conclusion that father abandoned the children. The filing of a motion to modify would indicate that father did know what he had to do, yet failed to follow through or make any further attempt to see his children within an almost four-year period.

### **In re G. Children**

Court of Appeals of Ohio, First District, Hamilton County. July 08, 2020 Slip Copy 2020 WL 3815980

Father appealed from trial court decision granting permanent custody of two children to agency. The children had been removed from mother's home due to substance abuse, mother later died. Case plan was developed with services and visitation for Father. Visitation with one of the children was later suspended due to allegations of sexual abuse, which were never substantiated. Nevertheless, the child psychologist testified that it would be devastating to the child that was the subject of the abuse claims to be in Father's custody. Father had stable income and housing. Although there appears to have been some concerns regarding substance abuse early in the case, Father tested negative, and the agency had not referred father for any screenings since. Father argued that because there was no direct evidence of a bond between the children, they should be split up and he should be given custody of the child who was not subject to the sexual abuse allegations. Appellate court found that it was reasonable for the juvenile court to presume a bond between the children, and to find that it was not in their best interest to separate them, affirming decision of trial court.

### **In re S. Children**

Court of Appeals of Ohio, First District, Hamilton County. July 22, 2020 Slip Copy 2020 WL 4207421

Trial court granted permanent custody to agency based upon finding that children cannot or should not be placed with either parent in a reasonable time. Parents appealed. Appellate court reversed and remanded, finding that, while clear and convincing evidence supported this determination as to Mother; it did not as to Father, who complied with all recommended services with the exception of completing a program which he attended in part but had to stop due to a work conflict, which had been resolved as of the trial and he was scheduled to restart. The trial court made no other findings with respect to father other than that had not completed services to address domestic violence in support of its determination, and given a lack of additional findings, it was not sufficient to support the trial court's finding that children cannot or should not be placed with either parent in a reasonable time.

## **B. DUE PROCESS**

### **1. Service**

#### **In re C.S.**

Court of Appeals of Ohio, Ninth District, Summit County. September 04, 2019 Slip Copy 2019 WL 4187627

Incarcerated father's due process rights were not violated when trial court approved service upon him by certified mail because personal service was impracticable in accordance with R.C. 2151.29, and his request to be conveyed to the hearing was also granted.

#### **Matter of C.H.**

Court of Appeals of Ohio, Eleventh District, Ashtabula County. October 21, 2019 Slip Copy 2019 WL 5306958

After determining that alleged father had not established paternity, Ashtabula County Children's Services Board added "John Doe" to case and requested service by publication. Court granted request, but publication did not appear in newspaper until one day after termination hearing. Mother argued lack of service and jurisdiction over John Doe as error on appeal. Court overruled error, stating that a mother cannot challenge the lack of proper notice to the non-appealing father unless she can demonstrate prejudice to her. Sghe did not argue any kind prejudice to her as a result of the lack of service on John Doe.

#### **IN RE: C.H.**

Court of Appeals of Ohio, Third District, Mercer County. March 02, 2020 Slip Copy 2020 WL 995830

Despite potential deficiencies in service and notice to the parents of the permanent custody hearing as a result of the agency failing to exercise "reasonable diligence" in attempting to notify them of the permanent custody motions and the final hearing and failure to include their last known address and the street address of the courthouse as required under Juv.R. 16(A), the appellate court determined the deficiencies were waived because 1. the parties regularly did not maintain contact with their attorneys nor with the agency, nor did they regularly attend court hearings for their children; and 2. the weight of the evidence indicated they had actual notice of the hearing, even if they didn't know specifically that it was a permanent custody hearing. The court opined that parties who show little interest in their children or in proceeding with their case plan cannot be protected by claiming a due process violation when it is largely through their own actions that it was difficult to serve them or get them to come into court.

### **2. Continuances**

#### **In re K.M.**

Supreme Court of Ohio. March 19, 2020 --- N.E.3d ---- 2020 WL 1291455

County children services board filed complaints alleging that children of two different mothers were abused, neglected, or dependent. Trial court denied mothers' motions to dismiss complaints based on failure to conduct dispositional hearing within 90 days after filing of complaints. Mothers appealed. The Court of Appeals affirmed the trial court; Mothers filed discretionary appeals, which

the Supreme Court accepted and consolidated into one appeal. Supreme Court held that R.C. 2151.35(B)(1), which requires dispositional hearing within 90 days of filing of complaint imposed mandatory statutory deadline, not directory deadline, and cases must be dismissed without prejudice.

### **In re D.G.B.**

Court of Appeals of Ohio, Eighth District, Cuyahoga County. September 05, 2019 Slip Copy 2019 WL 4208526

Mother's rights were not violated by denying request for continuance at the final hearing because claim she was in emergency room was not verified, she had sought a prior continuance claiming she was in an emergency room and it turned out to be untrue, and court took a recess for attorney to determine her whereabouts and learned she was not in the ER. Custody awarded to fathers was in children's best interest; mother had not followed case plan, children were doing well with fathers, increased school attendance, and children wanted to stay with fathers.

### **Matter of M.A.S.**

Court of Appeals of Ohio, Eleventh District, Portage County. December 16, 2019 Slip Copy 2019 WL 6840347

Denial of continuance request was not abuse of discretion based upon Father's claim that his counsel was just appointed four days prior to hearing and that he was not aware of the proceedings where Father was in and out of jail, had opportunities during his release periods to make contact with the child or realize, assuming, arguendo, he was unaware of the removal, that Mother did not have custody of his child and request counsel.

### **Matter of S.I.M.**

Court of Appeals of Ohio, Eleventh District, Portage County. January 21, 2020 Slip Copy 2020 WL 290968

Father appealed PCC claiming trial court erred in denying his request for a continuance and to be transported from prison for the dispositional hearing in order to file a motion to consider his relative as a possible placement. Court of appeals rejected Father's argument, finding that his request for transport only satisfied one of the three prongs of the *Mathews v. Eldredge* test: that he has an interest affected by the action to be taken. The other two prongs: whether deprivation of his interest would occur and whether the Government's interest would be affected, were not construed in his favor, as he still has two years left on his prison term thus is not a viable option for placement and the Government would be deprived of its interest in permanency for the child. Granting a continuance would also not have affected the determination to grant permanent custody due to Father's incarceration. As to the relative, the child had been placed with a family for two years before Father had brought up the relative, and while CPS investigated the possibility of placement with the relative, she was not a party in the matter and had never filed a motion for custody.

## **3. Reasonable Efforts by Agency**

### **In re H.S.**

Court of Appeals of Ohio, Ninth District, Summit County. October 23, 2019 Slip Copy 2019 WL 5430317

Permanent custody to agency granted; father appealed. Judgment reversed and remanded, finding

that CSB had not made reasonable reunification efforts. Hands-on parenting education incorporating the children, which was deemed necessary by the juvenile court to accommodate the needs of the parents with cognitive delays, still had not occurred. Although the juvenile court is precluded from ordering an extension of temporary custody beyond two years after the complaint was filed, the trial court retains continuing jurisdiction upon remand by operation of law. Agency operated under incorrect assumption that upon reversal and remand after children have been the subjects of a dependency action for more than two years, the juvenile court retains jurisdiction only for an additional six-month period and ceased providing reasonable access to services. Upon remand, CSB's self-imposed artificial six-month deadline defeated the purpose of any reunification efforts. By prematurely filing its motion for permanent custody, knowing that in-home visits must then stop, the agency created an artificial barrier to reunification that it could not overcome.

### **In re J.H.**

Court of Appeals of Ohio, Ninth District, Lorain County. November 04, 2019 Slip Copy 2019 WL 5696170

Agency's attempts to locate Father were insufficient where their inquiry was limited to asking Mother and Paternal Grandmother if they knew where he was. It is reasonable to expect that, at a minimum, Agency conduct a computer search to determine Father's whereabouts. In addition, once Agency found Father fourteen months into the case, they were required to include Father on the case plan, to provide an opportunity to participate in the case planning process and to attempt to obtain an agreement among all parties, including Father, regarding the content of the case plan. If an agreement could not be reached, Father also should have been given the opportunity to present evidence at the dispositional hearing to determine the contents of the case plan to be adopted by the court. The Agency's failure to do the above as well as the trial court's failure to transport Father to the hearing were reversible errors.

### **Matter of D.D.**

Court of Appeals of Ohio, Fifth District, Muskingum County. November 08, 2019 Slip Copy 2019 WL 5887286

Mother appealed PCC to Agency, claiming Agency did not make reasonable efforts to work with her. Court affirmed PCC, finding that Mother's choice to reprove the agency had no merit in a situation where she ultimately showed no interest in the agency's reunification efforts from the date of placement forward. "[C]ourts have found an implied exception to mandatory case planning efforts when those efforts would be futile."

### **In re: A.L.**

Court of Appeals of Ohio, Ninth District, Lorain County. January 21, 2020 Slip Copy 2020 WL 291048

Mother and Father were divorced in Florida; Father was granted custody and moved to Ohio with children. Thereafter, CPS filed a complaint alleging concerns about Mother's mental health and that she was not then engaged in any treatment, and that Father had an unstable living situation. The children were adjudicated dependent; CPS filed a case plan that included only Father and the children. Mother was not included in the case plan except to indicate that she lived out of state, would have no visitation with the children, and if ordered by the court, the agency would reassess the situation and provide services "if appropriate." At disposition, trial court adopted magistrate's decision that awarded Father custody under protective supervision. Neither the magistrate's nor the trial court's decision adopted any case plan. Appellate court reversed and remanded, finding that the trial court committed reversible error in its dispositional order by failing to adopt any case plan pursuant to ORC 2151.412(E) and had no evidence before it to demonstrate that CPS had made

reasonable efforts to reunify Mother with her children.

### **IN RE R.G. A Minor Child [Appeal by S.A., Mother]**

Court of Appeals of Ohio, Eighth District, Cuyahoga County. February 06, 2020 Slip Copy 2020 WL 584110  
Court of Appeals of Ohio, Eighth District, Cuyahoga County. May 21, 2020 Slip Copy 2020 WL 2569414

As a result of a dependency finding at child's birth due to significant health needs that were no fault of mother, temporary custody of child was awarded to CPS and the child was placed with a foster family with a therapeutic foster care license that permits them to care for medically fragile children and take ongoing training. However, the foster family lived an hour away from mother, making it difficult for her to comply with the terms of the case plan. CPS moved for permanent custody; trial court granted PCC, finding that the seriousness and nature of the child's special needs made the child's placement with Mother a threat to the child's safety and the agency had engaged in reasonable efforts in providing services to reunify mother and child. Court of appeals reversed, finding the court erred by failing to inquire as to whether a suitable foster care option ever became available closer to Mother's home, which was a huge obstacle in Mother's ability to comply with the case plan. In addition, the record demonstrated that Mother was making progress in her case plan objectives by obtaining employment as a nurse's assistant and worked with feeding tubes and trachea equipment in her employment. In May, the court sua sponte reconsidered its prior opinion and issued an updated decision also finding the trial court erred in failing to meet the 12/22 threshold.

### **In re M.G.**

Court of Appeals of Ohio, Ninth District, Summit County. July 29, 2020 Slip Copy 2020 WL 4342745

Finding of reasonable efforts by agency is not required when children are removed from mother and placed in father's home.

## **4. Right to/Effective Assistance of Counsel**

### **Matter of O.M.S-W.**

Court of Appeals of Ohio, Tenth District, Franklin County. January 23, 2020 141 N.E.3d 1081 2020 WL 399280

Attorney for mother in permanent custody hearing requested leave to withdraw as counsel on behalf of mother, which the magistrate granted; Mother was not present at hearing. Following hearing, magistrate filed decision committing permanent custody of mother's daughter to county children services for purposes of adoption; trial court ratified magistrate's decision regarding attorney's withdrawal, and entered order committing permanent custody of daughter to county children services. Mother appealed, arguing she had ineffective assistance of counsel and did not waive her right to counsel. Court of appeals agreed, finding that the trial court failed to engage in real consideration and discussion of any supposed parental waiver of the right to counsel to determine whether the right to counsel has been waived voluntarily, knowingly, and intelligently. The record reflected that Mother was not served nor successfully notified of her attorney's representation at any time before that, nor had she been advised or knew that the November hearing was converted to a hearing on permanent custody despite easily obtainable evidence in the record of her whereabouts.

**In re C.R.**

Court of Appeals of Ohio, Fifth District, Stark County. August 12, 2020 Slip Copy 2020 WL 4719276

Mother argued that trial court erred in failing to appoint attorney to represent one of her children who had allegedly articulated wishes that conflicted with the GAL's recommendation. Appellate court affirmed trial court's determination that the appointment of independent counsel was not required, finding that there was nothing in the record to establish the child "consistently and repeatedly expressed a strong desire" to live with Mother.

**5. Opportunity to be Heard**

**In re E.J.**

Court of Appeals of Ohio, Twelfth District, Warren County. August 10, 2020 Slip Copy 2020 WL 4577184

Child, age 14, appealed from trial court's decision awarding permanent custody to the agency, claiming court violated her due process rights in refusing to allow her to attend the permanent custody hearing to assist her attorney in opposing permanent custody. Appellate court affirmed trial court's decision to exclude her from the hearing as permitted pursuant to R.C. 2151.35(A)(1), and found no abuse of discretion in doing so, as there was valid concern for the stability of the child's mental health in having her listen to testimony discussing her parents' shortcomings and this concern was the underlying reason for the dependency case. Further, the child was afforded the opportunity to be heard via *in camera* interview, the decision on permanent custody reflects that the court carefully considered her wishes, which were adequately represented by appointed counsel, who elicited testimony concerning the child's wishes and provided a closing argument reiterating the child's position against permanent custody.

**C. CIVIL PROCEDURE**

**Matter of D.F.**

Court of Appeals of Ohio, Tenth District, Franklin County. September 13, 2019 Slip Copy 2019 WL 4391274

The magistrate issued written decisions finding children to be dependent. The same day, the trial court entered judgments adopting the magistrate's decisions and making the magistrate's decisions the judgments of the court. Thirty-one (31) days later, mother filed a motion for leave to file objections to the magistrate's decisions, along with her objections and a request for a transcript at the state's expense. She did not file an appeal. The motion for leave to file objections stated that after the magistrate provided an oral decision at the hearing, counsel wrote mother a letter giving her instructions to contact counsel in order to file timely objections, as counsel would be on vacation and unavailable prior to and during the deadline for objections. According to the motion for leave to file objections, mother left messages for counsel over Labor Day weekend; counsel's staff returned mother's call but left mother a message under the incorrect name because counsel's staff had written mother's name down incorrectly. After counsel got back, mother told counsel that she decided to wait until counsel returned from vacation to inquire about the status of the appeal. FCCS filed a motion to dismiss mother's motion for leave to file late objections, arguing her failure to file timely objections deprived the trial court of jurisdiction; however, the trial court granted appellant's motion for leave to file objections and held a hearing on the objections, eventually overruling appellant's objections and approving and adopting the magistrate's decisions. Despite Civ. R. 53 (D)(5) giving the trial court discretion to grant a "reasonable" extension of time to file objections to a

magistrate's decision beyond the 14-day deadline is “[f]or good cause shown,” the appellate court found that the failure of mother to file timely objections and/or timely appeal after the final judgments of the trial court had been entered renders the trial court’s decision trial court’s later judgment on the untimely objections to be a nullity which is “unreviewable on appeal.” The court also found the factual circumstances surrounding the delay to not rise to the level of the “good cause” required to be shown in order to grant an extension to file objections.

### **In re D.R.**

Court of Appeals of Ohio, Ninth District, Summit County. November 13, 2019 Slip Copy 2019 WL 5963115

Parties purportedly reached agreement to grant legal custody of minor child to maternal grandmother and submitted agreement to Magistrate. Attorneys were all present in court, Mother was available via telephone; Father was not available but was represented by trial counsel who stated to Magistrate that Father was in agreement. Magistrate issued decision granting custody to maternal grandmother. Fourteen days later, Father's trial counsel filed an objection to the magistrate's decision, explaining that she had inadvertently misrepresented to the court that Father agreed that child should be placed in grandmother's legal custody. She explained that, although Father had expressed his agreement the day before the hearing, he called her after the hearing and said that he had changed his mind and wanted to seek legal custody. Trial Court treated objection as 60(B) Motion, and granted the motion. GAL appealed, arguing Father has not met 60(B) requirements. Appellate court affirmed vacated custody order, holding that matter should have been treated as objection to the magistrate’s decision under Juv. R. 40(D)(3) and under those requirements, it was timely filed and was specific in grounds for objection. Because the requirements of Juv. R. 40(D)(3) were satisfied, the improper treatment of Father’s request as a 60(B) Motion and whether or not the motion satisfied the prongs of the 60(B) test were unnecessary and not reversible error.

### **Matter of J.W.**

Court of Appeals of Ohio, Tenth District, Franklin County. November 21, 2019 Slip Copy 2019 WL 6211278

Though concerned by the fact that the trial court orally pronounced its judgment at the close of the hearing without affording counsel the opportunity to present closing arguments, appellate court found that any error on the part of the trial court in not allowing closing argument by either appellant was harmless error. No prejudice to either appellant resulted from any purported error because presenting closing arguments would not have changed the outcome in this case. The evidence overwhelmingly supports the trial court's decision, and nothing counsel could have said during closing argument would have altered the ultimate conclusion in this particular case.

### **In re A.T.**

Court of Appeals of Ohio, Third District, Crawford County. December 09, 2019 Slip Copy 2019 WL 6701685

Denial of grandparents motion to intervene was not an intervention of right under Civ.R. 24(A) because a legal interest in the action is not conferred solely as a result of their family relationship. Trial court’s denial of permissive intervention under Civ. R. 24(B) was not an abuse of discretion because grandparents did not stand *in loco parentis* to the children. Though they provided support to their daughter and grandchildren, they did not assume the mother's role in their grandchildren's lives or the concomitant “rights, duties, and responsibilities” of parenthood. Further, allowing intervention would have prejudiced the mother by providing her with two additional party opponents in the dispositional proceeding. Further,

refusal to grant intervention does not mean that grandparents still (and are within the preferred class) could be considered as a placement alternative when considering the children's best interests.

**In re K.V.**

Court of Appeals of Ohio, Eighth District, Cuyahoga County. December 12, 2019 Slip Copy 2019 WL 6769766

**In re A.C.**

Court of Appeals of Ohio, Eighth District, Cuyahoga County. December 12, 2019 Slip Copy 2019 WL 6769767

Two cases, decided the same day, where trial court approved and adopted Magistrate's Decision even though objections were timely filed and transcript was requested, but had not yet been filed for court's review. Appellate court found that trial court's failure to conduct independent review of transcript pursuant to Juv.R. 40(D)(4)(d) upon timely objections was reversible error. Both contained claims that court used "CourtSmart" technology that allowed court to review the testimony at the hearing electronically, but in both cases, that was not deemed sufficient. In second case, appellate court did note that there was language in Rule 40 that states that "[w]ith leave of court, alternative technology or manner of reviewing the relevant evidence may be considered," there was nothing in the record to indicate that such leave was given, and it was also significant that the court granted appellant's motion to order the transcript, but ruled before the time period permitted for the transcript to be filed.

**IN RE: B/K CHILDREN.**

Court of Appeals of Ohio, First District, Hamilton County. March 25, 2020 Slip Copy 2020 WL 1488723

Mother argued that the trial court failed to comply with Juv.R. 40(D)(4)(d) in failing to specifically rule on her objections to the magistrate's decision in its entry. The court of appeals rejected this argument, finding that, while it is preferable that the court use words such as "sustained," "denied," "overruled," or the like, when disposing of objections, the language used by the court in its decision left no question that it properly considered mother's objections, found them meritless, and overruled them.

**In re S. Children**

Court of Appeals of Ohio, First District, Hamilton County. June 17, 2020 Slip Copy 2020 WL 3264458

A trial court may adjudicate a child who is deceased at the time that the complaint is filed an abused child.

**D. STANDING**

**Matter of M.D.**

Court of Appeals of Ohio, Tenth District. September 12, 2019 Slip Copy 2019 WL 4325208

Juvenile court prohibited aunt's eleventh hour request to intervene to seek custody in a case that had been ongoing for several years. Aunt didn't appeal but mother did, arguing error in denying aunt's motion to be added as a party and dismissing her custody motion. Appellate court found that mother did not have standing to argue this position on behalf of aunt, who chose not to appeal, but acknowledged rulings of other appellate courts that have held a parent has standing to raise the denial of a relative's motion to intervene in a child custody proceeding, to the extent the denial impacted appellant's parental rights, therefore the court went ahead and analyzed whether the aunt's proposed intervention in this action impacted mother's parental rights. Appellate court found no abuse of discretion in the trial court's analysis

that while aunt had good intentions, her lack of any bond with the children, her lack of knowledge of the complexity of the girls' needs, and the lateness of her request for custody and resulting lack of time for the court and a necessary investigation by FCCS made her an inappropriate custodian at the time of hearing.

### **In re E.C.**

Court of Appeals of Ohio, Tenth District, Franklin County. September 19, 2019 Slip Copy 2019 WL 4534519

While Mother did have standing to argue that the trial court failed evaluate paternal grandmother as a relative could provide a legally secure permanent placement prior to granting PCC, the trial court did not commit reversible error because paternal grandmother never filed a motion seeking legal custody and no party identified her as a potential legal custodian in a complaint or motion.

### **In re R.M.S.**

Court of Appeals of Ohio, First District, Hamilton County. October 18, 2019 Slip Copy 2019 WL 5300193

Affirmed prior holding in Hamilton County that a parent has no standing to appeal an award of permanent custody and a denial of a relative's custody petition where the parent does not challenge the termination of her parental rights and the relative did not appeal the denial of her custody petition. The assertion of injury to a parent's residual parenting rights cannot be redressed where the requested relief is to award custody to a relative who did not appeal the denial of her or his custody petition.

### **In re A.G.**

Court of Appeals of Ohio, Sixth District, Lucas County. May 01, 2020 Slip Copy 2020 WL 2096396

Mother's parental rights were terminated in 2014 and permanent custody was awarded to the agency. Legal custody was thereafter given to Mother's ex-husband, who also had custody of Mother's two children with him. Mother has unsupervised companionship with the other two children. In 2019, Mother filed a third-party complaint against her ex-husband, requesting companionship or custody with A.G. Thereafter, she amended her complaint for custody and companionship to allege neglect and dependency and added the agency as a party, alleging that LCCS has neglected its responsibilities to A.G, that her ex-husband has neglected A.G. and failed to provide for her basic needs, and that it is not in A.G.'s best interest to observe her half-siblings maintain a relationship with their mother while A.G. is not permitted the same privilege. Mother's amended complaint omits any request that she be awarded custody of A.G., however, she again requests visitation and companionship. Trial court dismissed Mother's complaint, finding that she lacked standing to seek custody or parenting time because her parental rights were terminated. Mother appealed. Appellate court affirmed in part, and reversed in part, finding that R.C. 2151.27(A)(1) and the first paragraph of Juv.R. 10(A) grant standing to "any person" to file a complaint for dependency or neglect, therefore Mother had standing to file the amended complaint alleging A.G. was neglected even though her parental rights had been terminated. However, the trial court correctly determined that Mother lacked standing to seek relief in the form of visitation and companionship because such residual parental rights were terminated when permanent custody was awarded to the agency.

### **Matter of D.R.**

Court of Appeals of Ohio, Fifth District, Licking County. August 06, 2020 Slip Copy 2020 WL 4581680

Biological father did not have standing to claim failure to serve legal father, and subsequent dismissal of legal father from PCC case was error. Further, he failed to raise the issue before the trial court, failed to

file objections on this basis and failed to demonstrate any prejudice he suffered by the alleged error.

## **E. THIRD PARTY VISITATION RIGHTS**

### **C.B. v. K.R.**

Court of Appeals of Ohio, Twelfth District, Fayette County. September 09, 2019 Slip Copy 2019 WL 4257008

Award of father's visitation to paternal grandmother while he was incarcerated, requiring grandmother to provide all transportation, was within the sound discretion of the trial court. Custodian's prior violations of father's visitation order were not part of the consideration, as no motion as to those violations had been filed and it was father's, not grandmother's right to raise this issue.

### **Boling v. Thacker**

Court of Appeals of Ohio, Second District, Clark County. September 13, 2019 Slip Copy 2019 WL 4389189

Award of custody to father, with substantial visitation rights to maternal grandparents (every day after preschool until 5:30 p.m., every other weekend, and alternating holidays) was not an abuse of discretion, nor in contradiction to *Troxel v. Granville* where the wishes of the parents are considered. Providing substantial visitation to maternal grandparents does not require the conclusion that trial court ignored the wishes of the parents. The evidence before the trial court indicated that father had no objection to maternal grandparents having some amount of visitation with the child and agreed that continued contact between the child and mother's family was important. Further, given that the child saw maternal grandparents nearly every day for the first three years of her life, the trial court reasonably concluded that some award of visitation to maternal grandparents was appropriate.

### **Jenkins v. Jenkins**

Court of Appeals of Ohio, Ninth District, Lorain County. December 02, 2019 Slip Copy 2019 WL 6464789

Maternal grandparents appealed decision by trial court denying their motion for visitation, claiming the court unconstitutionally applied the law by prioritizing Mother's wishes over the best interest of the child in violation of the Equal Protection Clause of the Fourteenth Amendment, and that the court's application of the best interest factors was against the weight of the evidence. Appellate court affirmed trial court's decision, finding the equal protection argument inapplicable because grandparents are not similarly situated to parents. Grandparents also argued trial court gave Mother's wishes undue deference. The court of appeals rejected this argument, citing the trial court's findings that maternal grandfather's unwillingness to address Mother's legitimate concerns about inappropriate interactions between the minor child and a boy relative who resided with maternal grandparents was the main obstacle preventing contact, the obstacle was within maternal grandparents' control, and they were unwilling to address it or adopt the recommendations of Children Services. In addition, Mother had made efforts to address the issue by offering to schedule visits at neutral locations and to attend counseling, but maternal grandparents had rebuffed her attempts.

## **F. FINAL APPEALABLE ORDERS**

### **In re C.J.**

Court of Appeals of Ohio, Sixth District, Lucas County. September 20, 2019 Slip Copy 2019 WL 4566927

Per *In re Murray*, 52 Ohio St.3d 155, 556 N.E.2d 1169 (1990), an adjudication without a disposition is not a final appealable order. The trial court in this case did not hold a separate dispositional hearing or place the child in any of the custody arrangements found in R.C. 2151.353(A) following the adjudicatory hearing or any other time prior to father filing his notice of appeal. Although the juvenile court placed the child in the temporary custody of LCCS the day that the complaint was filed, this was not a “disposition” because it did not occur after an adjudicatory hearing.

### **IN THE MATTER OF: A.H, B.H.,C.H.,**

Court of Appeals of Ohio, Fifth District, Richland County. February 10, 2020 Slip Copy 2020 WL 639567

Motion to intervene by foster parents in proceeding where children were removed from their care was not final appealable order. To constitute a final order, the order must dispose of the whole case or some separate and distinct branch, and the granting of a motion to intervene does neither, as motions for custody and the future placement of the children remain pending before the trial court during which the interests of the parties and the children may be addressed and resolved.

### **In re: M.B. et al.**

Court of Appeals of Ohio, Tenth District, Franklin County. February 18, 2020 Slip Copy 2020 WL 806318

Trial court extended temporary custody to agency beyond two years after the date on which the complaint was filed or the children were first placed into shelter care. Mother's counsel filed a motion to dismiss, arguing that, given that the trial court had no jurisdictional authority to prolong the agency's temporary custody, the court had to terminate the dependency actions and grant Mother custody of the children. Trial court denied the motion; mother appealed. Court of appeals dismissed appeal, finding that the denial of Mother's motion to dismiss was not a final appealable order, as her substantial right to custody of the children had not been affected as the court had yet to make a final custody disposition regarding the children. Once the trial court does, Mother may appeal if that disposition is contrary to her interests. In that appeal, she may raise as error the trial court's denial her motions to dismiss and return of custody to her based on the trial court's alleged violation of the two year rule. Mother argued she could have no remedy because the trial court could repeatedly extend temporary custody, without making any final disposition. However, the record contained no indication that the trial court will go down this path as it has proactively pursued a final disposition for these children and a second permanent custody hearing is currently scheduled for later this month.

## **G. CERTIFICATION TO JUVENILE COURT**

### **Whitson v. Whitson**

Court of Appeals of Ohio, Fifth District, Richland County. October 10, 2019 Slip Copy 2019 WL 5173791

Upon learning that Mother was incarcerated, Paternal Grandmother petitioned for legal custody. Mother filed Counterclaim for Legal Custody. Father, though still married to Mother, had been separated from her for some time and resided with Paternal Grandmother. A home investigation revealed issues with Paternal Grandmother's health, a room with a dying dog, and Father continuing to remain in the home

and parent the children despite using drugs. The court found Mother unsuitable due to her incarceration and Father unsuitable due to his drug use and total inability to provide care or support for the children. The court also declined to award custody to Paternal Grandmother because she is in failing health and permitted the father to live in the home, and use and be under the influence of marijuana in the presence of the children. The Court therefore dismissed Paternal Grandmother's petition and Mother's Counterclaim and certified the matter to juvenile court pursuant to O.R.C. section 3109.04(D)(2) and *In re Perales* (1977), 52 Ohio St.2d 89. Mother appealed. Appellate court affirmed, finding that Mother did not order transcript and had no right to a free transcript, nor a right to counsel, nor had she been prejudiced by a denial of her request to appear at the hearing in person as she was not appealing an award of permanent custody, which would have affected her substantive rights. Rather, she was appealing a denial of legal custody, she would not have been awarded legal custody due to her incarceration and she still retained all of her parental rights.

## H. JUDICIAL BIAS

### **Matter of A.S.**

Court of Appeals of Ohio, Fifth District, Tuscarawas County. October 16, 2019 Slip Copy 2019 WL 5260839

Mother alleges that comments made by the court at the start of the hearing appearing to encourage her to terminate her parental rights demonstrated a prejudgment of the case; however the court of appeals held that the fact that the court also gave her the option to fight the PCC motion and the evidence in support of PCC did not overcome the presumption that a judge is fair and impartial.

## I. STANDARD OF REVIEW

### **In re A.C.**

Court of Appeals of Ohio, Eighth District, Cuyahoga County. November 21, 2019 Slip Copy 2019 WL 6247746

In a case of first impression, appellate court determined that standard of review for request to remove social worker from case is abuse of discretion. In this case, Father claimed caseworker should be removed because he alleged the caseworker's grandmothers had a personal relationship with Mother's family and that Father and his wife know the caseworker's grandmother. The caseworker testified, however, that both of her grandmothers are deceased; one grandmother died before she was born and the other grandmother died in 2014, long before the minor child at issue in this case was born. Father provided no evidence of any relationship between the families other than his bald accusations. Finding the caseworker's testimony credible and in the absence of any contradictory evidence, the court found no abuse of discretion.

### **IN THE MATTER OF: D. M. ADJUDGED NEGLECTED/ DEPENDENT CHILD**

Court of Appeals of Ohio, Fifth District, Tuscarawas County. February 03, 2020 Slip Copy 2020 WL 549236

### **IN THE MATTER OF: D. M. ADJUDGED NEGLECTED/ DEPENDENT CHILD**

Court of Appeals of Ohio, Fifth District, Tuscarawas County. February 03, 2020 Slip Copy 2020 WL 550196

### **IN THE MATTER OF: K. M. ADJUDGED NEGLECTED/ DEPENDENT CHILD**

Court of Appeals of Ohio, Fifth District, Tuscarawas County. February 03, 2020 Slip Copy 2020 WL 550199

### **IN THE MATTER OF: A. M. ADJUDGED NEGLECTED/ DEPENDENT CHILD**

Court of Appeals of Ohio, Fifth District, Tuscarawas County. February 03, 2020 Slip Copy 2020 WL 549458

### **IN THE MATTER OF: D. M., JR. ADJUDGED NEGLECTED/ DEPENDENT CHILD**

Court of Appeals of Ohio, Fifth District, Tuscarawas County. February 03, 2020 Slip Copy 2020 WL 549453

**IN THE MATTER OF: K. M. ADJUDGED NEGLECTED/ DEPENDENT CHILD**

Court of Appeals of Ohio, Fifth District, Tuscarawas County. February 03, 2020 Slip Copy 2020 WL 549347

**IN THE MATTER OF: K. M. ADJUDGED NEGLECTED/ DEPENDENT CHILD**

Court of Appeals of Ohio, Fifth District, Tuscarawas County. February 03, 2020 Slip Copy 2020 WL 549353

Mother has seven children; all seven were adjudicated neglected and dependent. CPS filed motions requesting permanent custody of three of the children, and legal custody to kinship for four of the children, all of which were granted by the trial court. An appeal was filed as to each child. Mother's attorney filed a conditional motion to withdraw and a brief pursuant to *Anders v. California*, in each case, asserting that the within appeal "has no merit." Court granted motions and found mother's claim to have no merit in each case. Importantly, Fifth District announced that, after the ruling in these seven cases, it would no longer consider *Anders* motions for PCC or legal custody cases, following the trend set by the Sixth and Second districts.

**In re E.R.M.**

Court of Appeals of Ohio, First District, Hamilton County. May 06, 2020 Slip Copy 2020 WL 2177091

Child was adjudicated dependent and placed with maternal cousin. Close friends of maternal cousin who bonded with the child filed for legal custody, with support of Mother and GAL. Father was not in the picture for first four years, but appeared in the case one year prior to disposition, followed case plan, began to develop relationship with child, and also filed for legal custody with support of agency. Trial was held and Magistrate awarded legal custody to nonparents. Father objected. Judge reversed course and granted custody to Father. Non parents appealed. Court of appeals reversed, determining that on objection, the judge applied the incorrect legal standard of unsuitability on Father's objection instead of best interests, which the Magistrate properly weighed in favor of nonparents. Unsuitability is an improper standard to use in AND cases, as the parents have *per se* already been found unsuitable by the dependency adjudication.

**In re I.L.**

Court of Appeals of Ohio, Eighth District, Cuyahoga County. May 14, 2020 Slip Copy 2020 WL 2501001

Child was removed from Mother's custody due to concerns about her mental stability and drug use and placed with paternal aunt. Mother sought reunification and Father filed for legal custody. Both mother and father were determined to have made significant progress with case plan and suitable options for custody. Transcript indicated that both caseworker and GAL recommended custody to father as the more stable parent. Magistrate made findings dismissing some of the concerns raised by GAL and caseworker as to Mother and raised concern that Father would be unable to maintain child in private school she was attending, ultimately recommending custody to mother under protective supervision. Father objected, trial court sustained father's objection and awarded legal custody to father, but adopted the magistrate's findings verbatim. Appellate court reversed, stating that the magistrate's finding supported its decision. Thus, because the trial court did not find that the magistrate failed to correctly determine the factual issues or properly apply the law, and because the factual findings of magistrate as adopted by the trial court do not support an award of legal custody to father, the trial court's decision to award legal custody to father was arbitrary and unreasonable.

## **J. ICPC**

### **In re T.K.M.**

Court of Appeals of Ohio, First District, Hamilton County. December 11, 2019 Slip Copy 2019 WL 6724547

Child found to be abused and neglected. Father, who lived in Seattle, did not object and did not initially seek custody, approving placement with Mother and maternal grandmother. Father exercised visitation. When legal custody was recommended to step-aunt, Father also filed seeking custody. Trial court ordered interstate home study pursuant to ICPC. The state of Washington did not approve the placement primarily because of father's lack of a relationship with his daughter and unresolved issues with Wife due to extramarital affair that produced T.K.M. Father argued that Washington's determination was based only on the word of caseworkers from HCJFS. Court of appeals found that Father never appealed the denial in the state of Washington, and the Ohio court had no jurisdiction to review it. "When an Ohio agency requests that another state, the receiving state, perform a local assessment or home study, and the receiving state does not approve the placement, 'the child shall not be placed.'" There is no right to judicial review in Ohio, the sending state, but any "interested party" has a right to seek judicial review through procedures in the receiving state, which Father failed to seek. Father also attempted to rely on an exception set forth in ICPC, Article III, Section (B)(4), which states that the "provisions of this compact shall not apply to \* \* \* [t]he placement of a child with a non-custodial parent" provided that (1) the noncustodial parent proves to the satisfaction of a court in the sending state a substantial relationship with the child; (2) the court in the sending state makes a written finding that placement with the noncustodial parent is in the best interests of the child; and (3) the court in the sending state dismisses its jurisdiction in the child's case. However, court of appeals found that ICPC did apply because none of these conditions created an exception to application of ICPC. Father specifically admitted that he did not have a substantial relationship with the child. The court did not find it was in the child's best interest to place the child with father, and it did not dismiss jurisdiction. Consequently, the juvenile court was precluded from placing the child with father.

## **K. CHILD SUPPORT**

### **IN RE J.H. A Minor Child [Appeal by A.H., Mother]**

Court of Appeals of Ohio, Eighth District, Cuyahoga County. February 20, 2020 Slip Copy 2020 WL 837425

Mother appealed from trial court imposing a minimum support order for her son upon her, arguing it was improper because she only receives SSI. Paternal aunt has legal custody. In reviewing only for plain error, court of appeals rejected Mother's argument, finding that the court did not inappropriately treat SSI as income; rather, it issued a minimum support order which it is permitted to do for an SSI recipient pursuant to RC 3119.06. Mother did not appear at the hearing and no transcript was filed, therefore the appellate court had no way of knowing if any evidence was presented regarding the nature or extent of Mother's mental or physical disability, her living situation and expenses, the child's situation and expenses or any other factors that may have been relevant to the magistrate's decision to recommend a minimum support order.

## **L. IMMUNITY**

### **MATERNAL GRANDMOTHER v. HAMILTON COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES**

Court of Appeals of Ohio, First District, Hamilton County. April 22, 2020 Slip Copy 2020 WL 1983759

Grandmother, as administrator of grandchild's estate, sued county, county commissioners, children's services agency and caseworkers for the wrongful death of her grandchild at the hands of her parents. County, commissioners, agency and caseworkers moved for judgment on the pleadings based upon sovereign immunity under R.C. 2744. Trial court determined that sovereign immunity applies and granted judgment on the pleadings as to all claims except those against the parents. Grandmother appealed. Court of appeals affirmed, finding sovereign immunity applied, as engaging in protection of children is a governmental function, none of the exceptions applied, and employees did not act outside of their scope of employment, there was no breach of duty, and they did not act wantonly, recklessly, in bad faith, or with malicious purpose. The majority stated fault lies solely on the parents. Dissent disagreed, finding that the appellants did allege sufficient facts which, if proven, could plausibly establish an exception to the individual caseworkers' immunity for acting wantonly and recklessly, based upon hospital's report of abuse and neglect to the agency employees; the employees' alleged failure to investigate; the permitted return to the home of mother and father; the potentially deficient home visit, and the coroner's finding that the cause of death was "Battered Child Syndrome with Acute and Chronic Intracranial Hemorrhages and Starvation" with an onset of months.

## **M. DISCOVERY**

### **IN RE: N.F. N.T.**

Court of Appeals of Ohio, Ninth District, Summit County. April 29, 2020 Slip Copy 2020 WL 2060584

Legal custodians appealed trial court's decision to expand Mother's parenting time to standard local rule, arguing, among other things, that trial court erred in accepting Mother's responses to Request for Admissions because they were unsigned, rather than deeming the requests as all admitted. Appellate court disagreed and found that there were no due process rights violated by accepting her responses to the Requests for Admission even though they were not signed, as they were timely filed and served.

## **N. ICWA In re E.C.**

Court of Appeals of Ohio, Eighth District, Cuyahoga County. July 23, 2020 --- N.E.3d ---- 2020 WL 4218807

Mother argued that the juvenile court erred in finding the children have no known Native American ancestry, and that the court failed to meet ICWA's heightened standard for the termination of parental rights. Appellate court disagreed, finding first that Mother failed to raise this issue at trial, thereby eliminating review for all but plain error. Even though Mother told the juvenile court that the children had Native American ancestry, the juvenile court did not have reason to know that the children were Indian children because she provided no additional information other than her statement that the children's great grandmother on father's side was a Blackfoot Indian. She contends that, upon this disclosure, it was the agency and court's burden to investigate further. The appellate court did not agree with this contention, finding that the juvenile court satisfied its burden under ICWA to ask the proceeding participants at the beginning of this case whether they knew or had reason to know that the children are Indian children. In addition, Mother, not the agency, had the burden to show that the children met the statutory definition of "Indian children" because mother is the party asserting the applicability of ICWA.