[Cite as *In re DeVore*, 2006-Ohio-4432.]

COURT OF APPEALS
THIRD APPELLATE DISTRICT
LOGAN COUNTY

IN THE MATTER OF: **CASE NUMBER 8-06-08**

ALEX DeVORE

O P I N I O N

[JEFFREY D. DeVORE and BEVERLY DeVORE, PARENTS-APPELLANTS]

IN THE MATTER OF: **CASE NUMBER 8-06-09**

PHILIP DeVORE

O P I N I O N

[JEFFREY D. DeVORE and BEVERLY DeVORE, PARENTS-APPELLANTS]

CHARACTER OF PROCEEDINGS: Civil Appeals from Common Pleas Court, Juvenile Division.

JUDGMENTS: Appeals dismissed.

DATE OF JUDGMENT ENTRIES: August 28, 2006

ATTORNEYS:

STEVEN R. FANSLER
Attorney at Law
Reg. #0000644
212 North Detroit Street
P.O. Box 764
West Liberty, OH 43357-0764
For Appellants.

DEBORAH K. WOLF
Assistant Prosecuting Attorney
Reg. #0007921
117 East Columbus Avenue, Suite 200
Bellefontaine, OH 43311
For Appellee, Logan County Children Services.

BRIDGET HAWKINS
Attorney at Law
Reg. #0056082
P.O. Box 549
Bellefontaine, OH 43311
Guardian Ad Litem.

BRYANT, P.J.

{¶1} The appellant, Jeffrey DeVore ("Jeffrey"), appeals the judgments of the Logan County Common Pleas Court, Juvenile Division, overruling his motion to order the appellee, Logan County Children's Services ("agency"), to request permanent custody of his minor children, Alex DeVore ("Alex") and Philip DeVore ("Philip").

{¶2} Jeffrey and his wife, Bev DeVore ("Bev"), have been married for over twenty years. Two daughters were born as issue of the marriage, and both are emancipated. In approximately 1997[1], Jeffrey and Bev decided to adopt through an international adoption. Although Bev had been diagnosed with multiple sclerosis shortly before the adoption, they decided to proceed and adopted

[1] The parties do not indicate when the children were adopted. However, attached as Exhibit A to the agency's memorandum filed on Nov. 28, 2005 was a document entitled "Cluster gathering 9/3/02". The

Alex, born on 6/12/1989, and Philip, born on 4/21/1990, from Brazil. Alex and Philip exhibited mental, emotional, and behavioral issues after the adoption. Over the next four years, Bev's medical condition worsened, the biological daughters began exhibiting behavioral problems, and Alex and Philip's problems worsened. Jeffrey and Bev eventually decided they could no longer deal with the boys' problems. For example, Jeffrey wrote in the "Cluster report":

> **I feel as if we have become victims of children preying on the opportunity [to] control things with lies, deceit and manipulation. * * * Our biological girls recently got into trouble with alcohol. I feel this was a cry for help. This is so uncharacteristic of them, since they were raised in a loving Christian home. * * * The over whelming [sic] issues with the boy's [sic] have pushed out the girls['] needs. All of our energy has been focused on meeting the needs of the boys and the girls are suffering. I cannot ignore this any longer. I need to save my family.**
> **To continue on in my opinion would be bordering on neglect. We simply cannot provide the skills so critically necessary for the boys.**

Agency Memo., Nov. 28, 2005, at Ex. A.

{¶3} On October 25, 2002, the agency filed complaints alleging that Alex and Philip were dependent children. The trial court held a hearing on November 22, 2002 for purposes of adjudication and disposition. The court adjudicated Alex and Philip dependent children, ordered them into the agency's temporary custody, and established child support. The court twice ordered extensions of temporary

---

document is apparently written by Jeffrey and indicates that he and Bev made the decision to adopt "about 5 ½ years ago".

custody, and on June 22, 2004, the trial court granted the agency's request to place both Alex and Philip in planned permanent living arrangements ("PPLA").

{¶4} On July 5, 2005, Jeffrey filed a "multi-branch" motion. As to the first "branch", Jeffrey moved the court to order Alex and Philip into the agency's permanent custody because the agency had failed to file a motion for permanent custody within the "12 of 22" rule provided in R.C. 2151.413(D). The second "branch" requested termination of child support in the event the first "branch" was granted. The other "branches" of the motion were presented as alternatives to the first and second "branches". The third "branch" asked the court to order the agency to provide a definite timeline as to the boys' placements. "Branch" four requested a reduction in child support. Jeffrey requested the reduction due to the family's other expenses, including approximately $27,000.00 per year in college tuition for the daughters; approximately $17,000.00 per year in law school tuition for Jeffrey; the additional $40.00 per month Jeffrey must pay to extend his health insurance to a family plan; Bev's medical and pharmaceutical costs; the cost of secondary housing in Columbus so Jeffrey can attend night classes; and approximately $1,500.00 per year for the daughters' car insurance policies[2]. See Multi-Branch Mot., Jul. 5, 2005. In the fifth and final "branch", Jeffrey requested that a $260.00 child support reduction be made retroactive.

{¶5} The agency filed a memorandum of law with exhibits, opposing Jeffrey's "multi-branch" motion on November 28, 2005. Jeffrey filed a memorandum in support of his motion on December 6, 2005, and the agency filed a response on February 3, 2006. The trial court filed its judgment entry on March 8, 2006, finding R.C. 2151.413(C) to be a discretionary statute. The court also found R.C. 2151.413(D)(1) inapplicable because Alex and Philip had been placed in PPLA under R.C. 2151.353(A)(5) and 2151.415(A)(5) and because the agency did "not have a disposition of temporary custody." Therefore, the court overruled the first and third "branches" of the motion and found the second "branch" to be moot. The trial court scheduled a final hearing on the fourth and fifth "branches" for March 30, 2006. On April 3, 2006, Jeffrey dismissed the unresolved portions of his motion, and he filed his notice of appeal on April 5, 2006. Jeffrey asserts the following assignments of error:

> **The trial court erroneously determined that it was discretionary for the Logan County Children's Service Agency to file a permanent custody motion and the court should have determined that it was statutorily mandatory.**
>
> **The court's determination that Branch II of Appellant's motion is moot and is therefore denied is erroneous if it was mandatory for the children's services agency to file for permanent custody**.

[2] We fail to see how expenses, voluntarily accepted and related to emancipated children and post-graduate education, justify a termination of child support for minor children who were adopted and brought to this country by the parents.

{¶6} In the first assignment of error, Jeffrey contends that R.C. 2151.413(C) is mandatory and requires the agency to file a motion for permanent custody "if the child or children have been in the temporary custody of that Agency for at least 12 of a 22-month period of time." Jeffrey claims that the agency "had temporary custody of Alex and Philip from October 25 of 2002 until the status was changed on June 22 of 2004." Jeffrey contends that from October 25, 2003 until June 22, 2004, the agency could have requested permanent custody, and it was required to do so. Jeffrey stresses that public policy requires permanency in a child's life[3], which requires the agency to seek permanent custody when the "12 of 22 rule" is satisfied.

{¶7} In response, the agency contends that R.C. 2151.413(C) is discretionary and an alternative to R.C. 2151.413(D). The agency contends that Chapter 2151 of the Revised Code clearly distinguishes the concepts of temporary custody, permanent custody, and PPLA. The agency argues that the "12 of 22 rule" only applies when a child is in temporary custody, and since a PPLA is distinguishable, R.C. 2151.413(D) does not control R.C. 2151.413(C).

{¶8} Appellate jurisdiction is limited to review of lower courts' final judgments. See Section 3(B)(2), Article IV of the Ohio Constitution. To be a

[3] We find this argument ironic considering Jeffrey and Bev opted for an international adoption of not just one, but two boys, who were brought to Ohio only to be raised in a household where the mother's deteriorating health and the boys' "bad influence" on the biological daughters forced the family to place them in the agency's custody after only a few years.

final, appealable order, a judgment must satisfy the requirements of R.C. 2505.02 and, if applicable, Civ.R. 54(B). *Chef Italiano Corp.v. Kent State Univ*. (1989), 44 Ohio St.3d 86, 88, 541 N.E.2d 64. Juvenile court matters, brought pursuant to Chapter 2151 of the Revised Code, are special proceedings. *State ex rel. Fowler v. Smith*, 68 Ohio St.3d 357, 360, 1994-Ohio-302, 626 N.E.2d 950. A "special proceeding" is "an action or proceeding that is specially created by statute and that prior to 1853 was not denoted as an action at law or suit in equity." R.C. 2505.02(A)(2). Court orders rendered in a special proceeding must "affect a substantial right". R.C. 2505.02(B)(2). A substantial right is defined as "a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect." R.C. 2505.02(A)(1). "A substantial right is, in effect, a legal right that is enforced and protected by law." *State v. Coffman*, 91 Ohio St.3d 125, 127, 2001-Ohio-296 and 2001-Ohio-273, 742 N.E.2d 644 (citing *Cleveland v. Trzebuckowski*, 85 Ohio St.3d 524, 526, 1999-Ohio-285, 709 N.E.2d 1148). "[A]n order affects a substantial right if the order is one which, if not immediately appealable, would foreclose the appropriate relief in the future." 4 Ohio Jurisprudence 3d (1999), Appellate Review, Section 43 (citing *Union Camp Corp., Harchem Div. v. Whitman* (1978), 54 Ohio St.2d 159, 375 N.E.2d 417).

{¶9} We do not find the trial court's judgment entry to be a final, appealable order because it does not affect a substantial right. As to Chapter 2151 of the Revised Code, the General Assembly specifically stated:

> **[t]he sections in Chapter 2151. of the Revised Code with the exception of those sections providing for the criminal prosecution of adults, shall be liberally interpreted and construed so as to effectuate the following purposes:**
>
> > **(A) To provide for the care, protection, and mental and physical development of children subject to Chapter 2151. of the Revised Code, whenever possible, in a family environment, separating the child from the child's parents only when necessary for the child's welfare or in the interests of public safety[.]**

R.C. 2151.01(A). Jeffrey's prayer for relief essentially demanded the trial court to order the agency to file for permanent custody. Jeffrey's motion did not request declaratory judgment under Chapter 2721 of the Revised Code, nor was it a proper petition for a writ of mandamus under Chapter 2731 of the Revised Code. Jeffrey's motion was clearly intended to result in the termination of parental rights and the payment of child support so Jeffrey's expenses and the needs of his biological family could be met. If a parent wishes to surrender, or relinquish, parental rights and permanent custody there are separate statutory provisions allowing a parent to do so. However, no such provision exists in Chapter 2151. In cases concerning Chapter 2151, Ohio courts have noted a parent's fundamental right to *have* or *retain* custody of their children, not to terminate it. See generally

In re C.W., 104 Ohio St.3d 163, 2004-Ohio-6411, 818 N.E.2d 1176, at ¶ 23 (citations omitted). We cannot find that a substantial right has been implicated by the trial court's judgment entry in this case, as Jeffrey has other, more appropriate methods of seeking relief.

{¶10} Having found that the judgments of the Logan County Common Pleas Court, Juvenile Division, are not final, appealable orders, we dismiss these appeals.

Appeals dismissed.

SHAW and ROGERS, JJ., concur.

r