

OHIO: *J.S. et al., v. Ohio Department of Job & Family Services*

Issue: Post-finalization Adoption Subsidy Increase

Adoptive parents sought an increase in adoption assistance for their three special needs adopted children, to cover a rise in cost of living, the children's daily living expenses, and the loss of income resulting from adoptive fathers' having to stay home due to the children's acting out. In negotiations, agency offered to increase assistance by the amount of the loss of income and to pay for the children's therapeutic services. However, in accordance with its stated policy, agency declined additional assistance to cover family's increased daily living expenses. Agency's denial of additional assistance affirmed by Ohio Department of Job & Family Services and the trial court on grounds that agency's offer was negotiated in good faith and appropriate to meet the needs of each child, and that the agency had considered the full financial needs of the children in its decision. Appellate court affirmed.

Citation: Case No. 05AP-1145; 2006 Ohio App. LEXIS 2427 (Ohio App. Ct. May 25, 2006).

OHIO: *In the Matter of Izaiah Wilson, Minor Child*

Issue: Appropriateness of Award of Planned Permanent Living Arrangement

Trial court granted agency permanent custody of child with severe physical and neurological disabilities. On appeal, child's mother argued that trial court should have awarded a Planned Permanent Living Arrangement, as the child's severe disabilities made him unable to function in a family-like setting. Appellate court affirmed the permanent custody award because, although the child did have significant problems as required by 2151.353 (A)(J)(1), the agency had permanently placed other children with much worse medical conditions, had identified several potential adoptive homes for the child, and was optimistic that it could find a permanent home for him. Moreover, the child's foster parents were willing to care for him indefinitely until a permanent home could be found. Finally, evidence indicated that the child himself would not benefit from continued contact with his parents pursuant to a PPLA because even if they visited, which they had done only sporadically, he would be unable to recognize them.

Citation: Case No.2005CA00177; 2005 Ohio 6203; 2005 Ohio App. LEXIS 5594. (Ohio App. Ct. Nov. 14, 2005).

OHIO: *In the Matter of: Stephan Miller, et.al., v. Greene County CSB*

Issue: Appropriateness of Award of Planned Permanent Living Arrangement

Agency requested permanent custody of a child with severe Downs Syndrome. However, trial court granted child's GAL's motion for PPLA, finding that child's multiple disabilities would make it difficult to find an adoptive placement. Appellate Court affirmed, holding that the fact that child was doing well in his current foster placement, where foster mother had significant specialized training and experience to deal with child's problems, did not mean that child could live in any adoptive home, that agency had acknowledged that it would be difficult to find an adoptive home for the child, and the child maintained a positive relationship with his natural mother.

Citation: C.A. Case No. 2005-CA-16; 162 Ohio App. 3d; 2005 Ohio 4035; 833 No.E. 2d 805; 2005 Ohio App. LEXIS 3686. (Ohio App. Ct. Aug. 5, 2005).

OHIO: *In the Matter of: The Caravano Children*

Issue: Relevance of Adoption Subsidy in Determining Child Support Award

Trial court removed two special needs children from their adoptive parents' home pursuant to a dependency finding, and agency subsequently began receiving the \$250.00 monthly Federal Adoption Subsidy that adoptive parents had been receiving for the children. Trial court ordered adoptive parents to pay child support. On appeal, appellants argued that the trial court had erred in failing to reduce their support obligation by the amount of the adoption subsidy that agency was now receiving. Appellate court affirmed, holding that the adoption subsidy is provided to parents of "special needs" children, to assist in paying for expenses that are over and above the needs of a verage children. As such, receipt of the subsidy does not diminish the child's need for support, and need not be considered in determining the amount of child support owed.

Citation: Case No. 04CA41; 2005 Ohio 1110; 2005 Ohio App. LEXIS 1114. (Ohio App. Ct. March 7, 2005).

OHIO: Kathleen Weaver vs. Ohio Department of Job & Family Servicers

Issue: Adoption Subsidy Award

Hamilton County DJFS granted adoptive mother's request for adoption assistance, however adoptive mother objected to the amount granted, arguing that it did not comport with the child's actual needs or the statutory guidelines. ODJFS and the trial court affirmed agency's decision. Appellate court affirmed, holding that the agency was entitled to divide the three levels of intensity provided in OAC 5101:2-47-18(A) to guide adoption assistance supplemental "difficulty of care" payments into subcategories, and was not required to negotiate with Appellant as required by 5101:2-47-43 when it had agreed to pay a per diem rate equal to the maximum foster care maintenance rate as required by Section 673(a)(2)(C)(3), Title 42, U.S. Code and OAC 5101:2-47-43(D).

Citation: C-020471; 153 Ohio App. 3d 331; 2003 Ohio 3827; 794 N.E. 2d 92; 2003 Ohio App. LEXUS 3444 (July 18, 2003)..

OHIO: *In Re: D.C.*

Issue: Appellate Review/Jurisdiction

Agency appealed findings by Citizens' Review Board and trial court that agency had failed to make reasonable efforts to facilitate a permanent plan for a child in its care, which rulings had effectively deprived agency of its right to receive federal reimbursement for the child's foster care costs under Title IV -E of the Social Security Act, 42 U.S.C. §§ 670- 679. Appellate court held that the law merely stated that failure to make reasonable efforts made agency ineligible to receive reimbursement; nowhere did it state that agency had a *right* to recover reimbursement costs. Appellate jurisdiction rests upon a final order affecting a substantial right, *therefore* appellate court dismissed the case for lack of jurisdiction.

Citation: C.A. No. 21008; 2003 Ohio 97; 2003 Ohio App. LEXIS 88. (Jan. 15, 2003).

Gregory Eischen, Et. al., vs. Stark Board of Commissioners, Et. al.

Issue: Wrongful Adoption

Appellant adoptive parents filed complaint for wrongful adoption against agency and county commissioners, alleging that they had failed to disclose pertinent information regarding the history of their adopted child. Trial court found the Appellees to be immune from suit and dismissed the complaint pursuant to R.C. 2744.02 (A)(1). On appeal, Appellants argued that Appellees' right to immunity had been preempted under 2744.02(B)(5), which states that "...a political subdivision is liable for injury, death, or loss to person or property when liability is expressly imposed...by a section of the Revised Code...". Appellants' argued that Appellees' had violated the express placement guidelines set forth in O.R.C. 5153.163(E), thus triggering the 2744.02(B)(5) immunity exception. Appellate court affirmed the lower court's ruling, holding that O.R.C. 5153.163(E) is a payment mechanism and not a guideline for placement of special needs children, and thus had not triggered the 2744.02(B)(5) exception; Moreover, because Appellees had been performing a governmental function in placing the child for adoption they were in fact immune from suit.

Citation: Case No. 2002CA00090; 2002 Ohio 7005; 2002 Ohio App. LEXIS 6816 (Dec. 16, 2002)

OHIO: Tyler Marie Glassco, c/o Karis Glassco v. ODJFS

Issue: Post-finalization Adoption Assistance

Adoption finalized when child was an infant. Various emotional and behavioral issues became apparent as child grew older. Adoptive mother's application for adoption assistance (AA) on behalf of the child was denied by ODJFS on grounds that child's ADHD did not meet the definition of "special needs". State hearing examiners and the trial court affirmed. The Court of Appeals reversed and remanded, holding that the lower courts had erroneously relied upon the OAC section addressing *retroactive* adoption assistance (5101:2-47-39) in denying Appellant's application for post-finalization *future* benefits. Adoption assistance for future benefits under OAC 5101:2-47-35 is different and separate from retroactive adoption assistance under OAC 5101:2-47-39; Provisions regarding retroactive AA payments cannot be applied until after the requirements pertaining to future payments have been met, because "it is conceivable that a party may meet the standard for future AA payment but fail to meet the standard for retroactive AA payment." Had the hearing officer, administrative hearing examiners and trial court determined the child's eligibility for future benefits first as they should have, they would have found that the child was indeed eligible for future AA under 5101:2-47-35(B)(1)(a) because her adoptive mother had not been informed of the adoption assistance program prior to finalization of the adoption.

Citation: No. 03AP-871; 2004 Ohio 2168; 2004 Ohio App. LEXIS 1866 (April 29, 2004).