

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

IN RE: A.H. AND J.W. : APPEAL NO. C-250283  
: TRIAL NO. F/23/1708 Z  
:  
: *JUDGMENT ENTRY*

**ZAYAS, Presiding Judge.**

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); Loc.R. 11.1.

This case involves calculation of temporary custody for purposes of determining expiration deadlines and permissible extensions of temporary custody where the Hamilton County Department of Job and Family Services (“HCJFS”) dismissed and refiled the complaint several times prior to disposition under R.C. 2151.353.

The children were removed via a telephone ex parte emergency order on December 2, 2023, and HCJFS ultimately filed three complaints for temporary custody thereafter. *See* R.C. 2151.31(D) and 2151.27(A). The first two complaints were dismissed without prejudice due to the failure to hold a dispositional hearing within the statutory deadline. *See* R.C. 2151.35(B)(1) and 2151.28(B)(3). The first complaint was filed on December 4, 2023, amended on March 27, 2024, and dismissed on August 9, 2024. The second complaint was filed on August 9, 2024, and dismissed on October 23, 2024. The third complaint was filed on October 23, 2024. HCJFS was granted

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interim custody of A.H. and J.W. on each day a new complaint was filed. Adjudication and disposition finally occurred on January 22, 2025, with the children being adjudicated neglected and dependent, and temporary custody being awarded to HCJFS.

No party disputes either the adjudication or disposition. Rather, a dispute arises as to when the first year of temporary custody under R.C. 2151.353(G) began. The magistrate found that the first year began on December 4, 2023, the day the first complaint was filed. Mother objected and argued that the first year began on October 23, 2024, the day the third complaint was filed. The trial court disagreed with both and found that the first year began on August 9, 2024, the day the second complaint was filed.

Mother now appeals, asserting in a single assignment of error that the juvenile court erred in calculating the first year of temporary custody. Mother argues that the first year of temporary custody commenced on October 23, 2024, not on August 9, 2024.

Under R.C. 2151.353(G), the first year of temporary custody begins on *the earlier* of either (1) the date on which the complaint in the case was filed, or (2) the children were *first* placed in shelter care.

Here, the children were taken into emergency custody on Saturday, December 2, 2023, under R.C. 2151.31(D), which allows a juvenile judge or authorized referee to grant by telephone an ex parte order authorizing the taking of a child if there is probable cause to believe that the child is in immediate danger from the child's surroundings and that the child's removal is necessary to prevent immediate or threatened physical or emotional harm. R.C. 2151.31 (A)(3)(b) and (D). When a child is taken under this provision, the child is in "shelter care." *See* R.C. 2151.31(E)

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(requiring a judge or referee to hold a hearing under R.C. 2151.314 to determine if the child *should remain* in shelter care if the judge or referee finds that probable cause exists for the emergency order); *see also* R.C. 2151.011(B)(55) (defining “shelter” as “the temporary care of children in physically unrestricted facilities pending court adjudication or disposition.”). Thus, the children were *first* taken into shelter care on December 2, 2023.

R.C. 2151.353(G) differentiates between the filing of a complaint in the case and when a child is *first* placed in shelter care and states that the *sooner* of the two dates is the starting point. Thus, the statute clearly contemplates that a child can be placed in shelter care *before* the filing of a complaint and looks to when the child was *first* placed in shelter care. In other words, nothing in the plain language of this provision connects the determination of when a child was first placed in shelter care to the date of the complaint.

Further, contrary to the juvenile court’s finding, there was no “lapse” in custody. Under R.C. 2151.35(B)(1), the court is required to dismiss the complaint “on its own motion or the motion of any party or the guardian ad litem of the child.” This suggests that expiration of the statutory deadline does not result in automatic dismissal of the complaint or termination of the interim-custody orders to HCJFS; rather, the court must enter orders dismissing the complaint. Further, in this case, the juvenile court always dismissed the expired complaint and regranted interim custody to HCJFS based on the newly-filed complaint the same day in the same entry. Thus, there was no “lapse” in custody in this case.

Consequently, mother is correct, as a general matter, that the juvenile court erred in finding that the period of temporary custody began on August 9, 2024. However, we reject mother’s argument that the period of temporary custody began on

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October 23, 2024. Instead, we hold that the period for temporary custody began on December 2, 2023, when the children were “first placed in shelter care.”

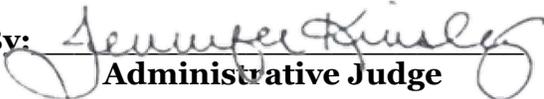
Based on the foregoing, we sustain mother’s assignment of error, reverse the portion of the juvenile court’s judgment pertaining to the period for temporary custody, and remand the cause for the juvenile court to enter temporary-custody orders consistent with this judgment.

The court further orders that 1) a copy of this Judgment constitutes the mandate, 2) the mandate be sent to the trial court for execution under App.R. 27, and 3) costs shall be taxed under App.R. 24.

**BOCK and NESTOR, JJ.**, concur.

**To the clerk:**

**Enter upon the journal of the court on 11/7/2025 per order of the court.**

By:   
**Administrative Judge**