

**OPINION NO. 92-072****Syllabus:**

When a county children services board is ordered by a court to provide supervision of visitation in a domestic relations case, the county children services board is obligated to provide that supervision, unless and until the order is changed, and the county children services board may not charge the court for costs incurred in carrying out the order, except as provided in the order. Refusal to comply with the court's order may be the basis for a contempt proceeding.

---

**To: Brent A. Saunders, Gallia County Prosecuting Attorney, Gallipolis, Ohio**  
**By: Lee Fisher, Attorney General, December 30, 1992**

You have requested an opinion relating to orders for supervised visitation issued by the Common Pleas Court, General Division, in connection with domestic actions pending before that court. In certain cases, because of allegations of abuse, the judge determines that visitation between a parent and a minor child or children should be supervised, and orders that the visitation take place at the Gallia County Children's Home ("the Home"). The child or children are residents of the county, but they are not residents of the Home, they are not in the temporary or permanent custody of the Gallia County Children's Services Board, and they are not the subject of any prior contact with the Home. There has been no finding that the children are abused, neglected, or dependent children, and there has been no issuance of an order for protective supervision. *See* R.C. 2151.011(B)(16), .03, .031, .04, .353. You have asked whether the Gallia County Children's Services Board is obligated to provide supervision of visitation in such circumstances and, if so, whether it may charge the court for the services rendered.

**Authority of Courts to Require that Visitation Be Supervised**

When a divorce, dissolution, legal separation, or annulment proceeding involves a child and the court has not issued a shared parenting decree, the court is required to "make a just and reasonable order or decree permitting each parent who is not the residential parent to visit the child at the time and under the conditions that the court directs," unless the court determines that visitation by that parent<sup>1</sup>

---

<sup>1</sup> This opinion directly addresses only parental visitation. A court may, however, grant visitation rights to persons other than parents in appropriate circumstances. *See, e.g.*, R.C. 3109.051, .11, .12.

would not be in the best interests of the child. R.C. 3109.051(A).<sup>2</sup> R.C. 3109.051 sets forth factors that a court must consider in establishing a visitation schedule and determining other visitation matters. Those factors include the health and safety of the child, the mental and physical health of all parties, and any history of child abuse or neglect. *See* R.C. 3109.051(D)(7), (9), (11), (12). In issuing an order for visitation pursuant to R.C. 3109.051, the court is bound by the standard that the order be "just and reasonable" and serve the best interests of the child. R.C. 3109.051(A). The court has broad discretion in forming such an order, and may require that visitation be supervised. An order will be reversed only upon a finding of abuse of discretion. *See, e.g.,* R.C. 3109.051(A), (F)(2); *Ward v. Royer*, No. CA90-09-090 (Ct. App. Clermont County July 15, 1991); *Bodine v. Bodine*, 38 Ohio App. 3d 173, 528 N.E.2d 973 (Franklin County 1988).

R.C. 3109.051, which authorizes a court to order visitation "under the conditions that the court directs," does not specify a particular procedure that must be followed in a supervised visitation arrangement, or a particular type of supervisor who must be present. R.C. 3109.051(A). Rather, the court is given discretion to impose whatever conditions it deems appropriate and, with respect to supervised visitation, different types of arrangements have been used. *See, e.g., Ward v. Royer* (court order was for supervised visitation with father in a public park with mother in attendance; subsequent order was for visitation in father's home under supervision of father's mother or brother); *John-tonny v. Malliski*, 67 Ohio App. 3d 709, 588 N.E.2d 200 (Geauga County), *motion to certify overruled*, 55 Ohio St. 3d 715, 563 N.E.2d 725 (1990) (by agreement, visitation was to be supervised by a licensed psychologist). Appellate courts have upheld the validity of orders for visitation supervised by a county children services agency. *See, e.g., Barton v. Barton*, No. CA89-08-013, slip op. at 6 (Ct. App. Madison County Feb. 20, 1990) (concluding that "visitation subject to supervision by the department of children's services is neither arbitrary nor unreasonable and does not constitute an abuse of discretion," and rejecting the argument that such visitation was not permissible because a court may not assign its jurisdiction to a county agency); *see also Blankschaen v. Blankschaen*, No. 38040 (Ct. App. Cuyahoga County July 13, 1978) (upholding order for visitation to be supervised by the Cuyahoga County Welfare Department, Social Services Division).

#### **Powers and Duties of a County Children's Home and a County Children Services Board**

The Gallia County Children's Home is operated by the Gallia County Children's Services Board ("the Board") in accordance with the provisions of R.C. Chapter 5153. *See, e.g.,* R.C. 5153.16(B)(10). The duties of a county children services board, on behalf of children in the county considered by the board to be in need of public care or protective services, include: (1) accepting custody of children committed to it by a court exercising juvenile jurisdiction; (2) providing such care as the board considers to be in the best interests of a child who is in need of public care or services; and (3) providing temporary emergency care for any child considered by the board to be in need of such care, without agreement or commitment. R.C. 5153.16(B)(3), (4), (7). A county children services board is responsible for providing for visitation of a child whom it serves when the case plan for the child provides for such visitation; that visitation may include supervised visitation at an institution operated by the county children services board. *See* R.C. 2151.412; 9 Ohio Admin. Code 5101:2-39-081, -09, -30; 9 Ohio Admin. Code 5101:2-42-92, -93. R.C. 5153.16(B)(12) provides that a county children services board shall "[c]ooperate with,

---

<sup>2</sup> Prior to May 31, 1990, provisions governing visitation appeared in R.C. 3109.05. *See* 1989-1990 Ohio Laws, Part II, 1964 (Am. Sub. H.B. 15, eff. May 31, 1990).

make its services available to, and act as the agent of persons, courts, the department of human services, the department of health, and other organizations within and outside the state, in matters relating to the welfare of children."

In the situation you have described, the Gallia County Children's Services Board has no case plan for the child and has had no prior contact with the child. No statutory provision expressly authorizes or requires a county children services board to supervise visitation in a domestic relations case, and it is not clear whether the statutory duties of a county children services board require such a board to supervise visitation in domestic relations cases. An argument may be made that it is inappropriate for a county children services board to be supervising visitation of a child if no action has been taken under R.C. Chapter 2151 to have the child found abused, neglected, or dependent, in need of protective supervision, or otherwise in need of public care or services and that it is, thus, inappropriate for a court to enter an order requiring such supervision absent such a finding. *See, e.g.*, R.C. 2151.011(B)(16), .03, .031, .04, .353, .421.

#### **Requirements for Compliance with Court Order**

Whether or not a county children services board has a statutory duty to supervise visitation in domestic relations cases, the issue raised in your request is how a county children services board should respond to an order directing it to do so. Your question relates to a situation in which a court orders that supervised visitation of a child or children having no connection with the Gallia County Children's Home take place at the Home. The order contemplates that employees of the Gallia County Children's Services Board will supervise the visitation. It is assumed that the order appears on its face to be valid and within the jurisdiction of the issuing court.

When a county children services board is the subject of a court order, the board may: (1) obey that order; (2) seek to have the order changed by the courts; or (3) disobey the order at its peril. *See, e.g., State ex rel. Beil v. Dota*, 168 Ohio St. 315, 322, 154 N.E.2d 634, 639 (1958) (quoting *United States v. United Mine Workers of America*, 330 U.S. 258, 303 (1947)) ("[t]he interests of orderly government demand that respect and compliance be given to orders issued by courts possessed of jurisdiction of persons and subject matter. One who defies the public authority and willfully refuses his obedience, does so at his peril"), *cert. denied*, 360 U.S. 912 (1959); *Board of Education v. Hamilton Classroom Teachers Association*, 5 Ohio App. 3d 51, 53, 449 N.E.2d 26, 29 (Butler County 1982) ("[a]n order issued by a court with jurisdiction must be obeyed until it is reversed by orderly and proper proceedings" (citation omitted)); 1988 Op. Att'y Gen. No. 88-052; 1986 Op. Att'y Gen. No. 86-034; 1981 Op. Att'y Gen. No. 81-053. A person who disobeys or resists a court order may be subject to a contempt proceeding. *See, e.g.*, R.C. 2705.02(A); 1990 Op. Att'y Gen. No. 90-009. It has been stated that "an opinion of the Attorney General regarding a court's authority cannot authorize a public official to disregard any order of that court." Op. No. 90-009, at 2-39.

Accordingly, when a county children services board is ordered by a court to provide supervision of visitation in a domestic relations case, the county children services board is obligated to provide that supervision, unless and until the order is changed by orderly and proper proceedings. Refusal to comply with the court's order may be the basis for a contempt proceeding. Thus, while there are arguments that the Gallia County Children's Services Board can make in an attempt to have the court reconsider a particular order, unless and until the court acts to do so, the court's order is binding on the Gallia County Children's Services Board and must control its conduct.

### **Costs of Supervised Visitation**

Your second question is whether the Gallia County Children's Services Board may charge the court for providing supervised visitation when the court's order makes no provision for any payment by the court. No statutory provision authorizes a county children services board to impose such a charge upon a court. In the absence of statutory authority, one governmental agency may not charge a second governmental agency for services performed, even if those services benefit the second agency. See 1982 Op. Att'y Gen. No. 82-011; see also 1986 Op. Att'y Gen. No. 86-104. It follows that a county children services board cannot require the court to pay costs incurred by the county children services board in providing supervised visitation in a domestic relations case pursuant to court order. Of course, if the order provides for payment of costs by one of the parties or another source, a county children services board may seek payment in accordance with the order. It may also be appropriate for a county children services board to petition the court to amend its order to require that costs associated with supervised visitation be borne by either the court or the parents who are the subject of the order. The ultimate determination of whether payment to a county children services board, from whatever source, is appropriate is one that is left to the discretion of the court.

### **Cooperation between County Children Services Boards and the Courts to Resolve Problems Related to Court-Ordered Visitation**

A representative of the Gallia County Children's Services Board has informed my staff that the provision of supervised visitation pursuant to court order has caused disruption at the Home and has placed a strain upon the Board's facilities and staff. According to this representative, the court-ordered visitation often conflicts with visitation of residents of the Home or with other programs of the Home. Visits may include a number of persons; visitors may be unruly and sloppy; there may be arguments and even violence. It is sometimes necessary to move the residents of the Home from their living and recreation areas to accommodate the visits or to shield the residents from an antagonistic atmosphere. It has, on occasion, been necessary to summon deputy sheriffs to control dangerous situations. The Home has no records on the children and no familiarity with their families or their problems. The Gallia County Children's Services Board feels that the court-ordered supervised visitations interfere with the Board's ability to provide responsible care to the children who reside at the Home.<sup>3</sup>

It is possible for the Gallia County Children's Services Board to seek to have a particular court order changed through judicial proceedings, and that approach may be appropriate in instances in which the Board believes that an order is unlawful or finds an order burdensome. The requirement of R.C. 5153.16(B)(12) that a county

---

<sup>3</sup> The Gallia County Children's Services Board has submitted a copy of a resolution which states, in part:

The Gallia County Children's Services Agency shall be under no obligation to provide either the location for or the supervision of visitation for children of divorced or divorcing parents, whose cases are either pending or have been finalized in the Common Pleas Court, Gallia County, General Division. It shall hereafter be policy that until such time as a statutory obligation exists to provide such services, no such obligation shall rest with The Gallia County Children's Services Agency.

The existence of this resolution does not affect the analysis set forth in this opinion.

children services board cooperate with, and make its services available to, the courts, in matters relating to the welfare of children, suggests that the Gallia County Children's Services Board may communicate with the court on such subjects as the types of facilities and services that the Board has available and the level of its staffing. The court's exercise of discretion in ordering supervised visitation may be affected by knowledge of difficulties encountered by the Gallia County Children's Services Board in carrying out the court's orders. Through such cooperative efforts, it may be possible to minimize the negative effects upon the Home and its children while providing protection to children whose parents are involved in domestic actions. *See, e.g.*, 1989 Op. Att'y Gen. No. 89-108, at 2-545; 1987 Op. Att'y Gen. No. 87-039, at 2-264 ("[p]ersons involved in the controversy should...weigh the interests on both sides and seek a workable arrangement").

#### **Conclusion**

It is, therefore, my opinion, and you are advised, that when a county children services board is ordered by a court to provide supervision of visitation in a domestic relations case, the county children services board is obligated to provide that supervision, unless and until the order is changed, and the county children services board may not charge the court for costs incurred in carrying out the order, except as provided in the order. Refusal to comply with the court's order may be the basis for a contempt proceeding.