[Cite as *In re Patterson*, 2010-Ohio-766.]

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

IN RE: JARON PATTERSON	:	APPEAL NO. C-090311 TRIAL NO. F07-549X
	:	*D E C I S I O N.*
	:	

Civil Appeal From: Hamilton County Juvenile Court

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: March 5, 2010

Raymond Becker, for Appellant Trent Twitty,

Appellee Arnitra Crawley, pro se,

Miranda Tavares, Hamilton County Public Defender, Guardian ad Litem,

Jerome Stineman, for Cheryl Twitty Choate.

Please note: This case has been removed from the accelerated calendar.

DINKELACKER, Judge.

{¶1} Appellant, Trent Twitty, appeals a decision of the Hamilton County Juvenile Court granting a motion for custody of his son, Jaron Patterson, filed by appellee Arnitra Crawley and denying the motion filed by Cheryl Twitty Choate, his sister. We find no merit in his sole assignment of error, and we affirm the juvenile court's judgment.

{¶2} In February 2007, the Hamilton County Department of Job and Family Services (HCJFS) filed for temporary custody of Johneka Hargroves's seven children, including Jaron. The juvenile court later determined that the individual listed in the complaint as Jaron's alleged father could not be his biological father, so the court served the complaint on a John Doe father by publication. It later found Jaron to be abused and dependent and granted temporary custody to HCJFS.

{¶3} Subsequently, HCJFS filed a motion for permanent custody of Jaron. After a maternal relative filed a petition for custody, HCJFS withdrew the motion for permanent custody and asked for an extension of temporary custody. Jaron's guardian ad litem also filed a motion asking the court to modify temporary custody to permanent custody, which she later withdrew.

{¶4} In May 2008, the court determined that Twitty was Jaron's father. Subsequently, Crawley, a secondary caregiver for the child, and Choate filed petitions for custody of Jaron. The court held hearings on both petitions.

{¶5} The record shows that Jaron was almost two years old at the time of the hearings and had special needs. He had been diagnosed with spastic diplegia, a form of cerebral palsy. He received physical therapy, speech therapy, and water therapy and would continue to need therapy in the future.

{¶6} At the time of the hearings, Twitty was not seeking custody himself because he was facing sentencing in a criminal case and expected to be sent to prison. He wanted his sister to have custody of his son because of the importance of family. He did not know that he was Jaron's father until genetic tests had been conducted, although he acknowledged knowing that Hargroves was pregnant.

{¶7} Choate's contact with the child began when she learned of her brother's paternity in May 2008. She attended Twitty's visitation at HCJFS for two hours a week. During the visitation, she would step back and allow Twitty to visit with his son. At the time of the hearings on the custody petitions, she had been visiting Jaron for approximately four months.

{¶8} HCJFS completed a home study of Choate's home and deemed it appropriate. Choate was employed full-time. She was the caregiver in her extended family and had experience with children through caring for her many nieces and nephews. She stated that her primary reason for seeking custody was that she believed that Jaron needed to be raised by family, and that he deserved to have a sense of belonging and to be exposed to family traditions.

{¶9} Crawley met Jaron in June 2007, when he was six months old and attending day care at her place of employment. She became interested in him and spoke to his foster mother. Subsequently, she took the necessary steps to become an approved secondary caregiver for him. She saw him almost every day for approximately a year and a half before the hearings on the custody petitions. She visited him in his foster home and cared for him almost two hours daily, between day care and bedtime. She had a room and a crib set up for Jaron at her home, and Jaron had developed a relationship with another child for whom she cared.

{¶10} Crawley performed Jaron's physical therapy with him and had intimate knowledge of his daily schedule. HCJFS conducted a home study and determined that she

would be an appropriate custodian. She stated that she understood the importance of birth families and that she should extend visitation to Jaron's family if it was in his best interest.

{¶11} A magistrate found that "an award to Ms. Crawley minimizes the disruption to Jaron, allows him to maintain his current relationship and bonding, keeps him with a familiar mother figure and does not preclude ongoing contact and a relationship with his biological family. * * * In this case Jaron's best interest is served by placement with the long term daycare provider that he knows and that can provide for his needs and provide a continuing loving and caring environment." Twitty objected to the magistrate's decision. The juvenile court overruled his objections and adopted the magistrate's decision. This appeal followed.

{¶12} Before we determine the merits of Twitty's assignment of error, we must address a procedural issue. Choate has filed a brief as an appellee in this case. But by her own admission, she is seeking to overturn the juvenile court's decision awarding custody to Crawley. Since she is not seeking to defend the court's judgment, but to overturn it, she is not an appellee. She should be an appellant, but she has not filed a notice of appeal.[1]

{¶13} Generally, a party must file a notice of appeal from a judgment adverse to that party's interest and may not inject herself into another party's appeal.[2] But where one party appeals from a judgment, a reversal as to that party "will not justify a reversal against the other non-appealing parties unless the respective rights of the appealing party and the non-appealing parties are so interwoven or dependent on each other as to require

[1] See App.R. 4; *Willoughby Hills v. C.C. Bar's Sahara, Inc.*, 64 Ohio St.3d 24, 26, 1992-Ohio-111, 591 N.E.2d 1203; *Queen City Lodge No. 69 v. State Emp. Rel. Bd.*, 1st Dist. No. C-060530, 2007-Ohio-170, ¶15; *In re Apger* (1960), 111 Ohio App. 164, 166, 171 N.E.2d 347.
[2] *Greenberg v. L. I. Snodgrass Co.* (1953), 95 Ohio App. 307, 309, 119 N.E.2d 114, affirmed (1954), 151 Ohio St. 351, 119 N.E.2d 292.

a reversal of the whole judgment."[3] In this case, Choate's argument rests almost entirely on the fact that she is a biological relative of the child. Hers and Twitty's rights are so interwoven that reversal as to Twitty, the appealing party, would require reversal of the entire judgment granting custody to Crawley.

{¶14} We turn now to the merits of the case. In his sole assignment of error, Twitty contends that the juvenile court erred in awarding custody to a non-relative instead of an appropriate family member. He argues that the evidence showed that Jaron's best interest would have been served by awarding custody to Choate. This assignment of error is not well taken.

{¶15} Under R.C. 2151.353(A)(3), if a juvenile court finds a child to be an abused, dependent, or neglected child, it may award legal custody to any person who has filed a petition for legal custody.[4] The court has discretion to determine what placement option is in the child's best interest.[5] In determining the child's best interest, the court must consider the factors set out in R.C. 2151.414(D).[6] An appellate court will not reverse the juvenile court's award of custody absent an abuse of discretion.[7] If the juvenile court's decision regarding a child's best interest is not supported by competent, credible evidence, then it is unreasonable and may be reversed.[8]

{¶16} Relatives seeking custody of a child do not have the same rights as a natural parent. No preference exists for family members, other than parents, in custody awards.[9] R.C. 2151.412(G) does state that if parents are not suitable custodians for their children, extended family members are next in priority. But courts have held that this

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[3] *Wigton v. Lavender* (1984), 9 Ohio St.3d 40, 457 N.E.2d 1172, syllabus; *Reighard v. Cleveland Elec. Illuminating*, 7th Dist. No. 05 MA 120, 2006-Ohio-2814, ¶11.
[4] *In re Needom*, 1st Dist. Nos. C-080107 and C-080121, 2008-Ohio-2196, ¶14.
[5] Id.; *In re Wilkenson* (Oct. 12, 2001), 1st Dist. Nos. C-010402 and C-010408.
[6] *Needom*, supra, at ¶15; *In re Graham*, 167 Ohio App.3d 284, 2006-Ohio-3170, 854 N.E.2d 1126, ¶19.
[7] *Needom*, supra, at ¶14; *Wilkenson*, supra.
[8] *Wilkenson*, supra.
[9] *In re A.V.*, 10th Dist. No. 05AP-789, 2006-Ohio-3149, ¶14; *Wilkenson*, supra; *In re Dyal*, 4th Dist. No. 01CA11, 2001-Ohio-2383.

statute applies only to case plans, not custody determinations, and even then, its provisions are not mandatory.[10]

{¶17} In this case, the juvenile court stated that while Choate had filed her petition shortly after finding out that her brother was Jaron's father, she was "the unfortunate victim of mother's failure to disclose the name of the birth father." It also stated that "[a]lthough she claimed to understand that Jaron had developed a relationship with Ms. Crawley and others, and that she would agree to maintain that relationship, presumably by visits, she failed to recognize the best interest for Jaron. Her comments were more addressed to the needs of the family first and to the child's needs or interest second[.]"

{¶18} On the other hand, the record shows that Crawley had a long-standing relationship with the child, had bonded with him, was involved in his life, had intimate knowledge of his medical needs, and had performed his physical therapy. Competent, credible evidence supported the juvenile court's conclusion that placement with her would have been far less disruptive than a placement with Choate, who was still a relative stranger to the child, albeit through no fault of her own.[11]

{¶19} Twitty argues that Crawley, with the help of Jaron's foster mother, had "embarked on a mission of making [Jaron] her own." This argument has little relevance. It also ignores evidence that Jaron's father was unknown at the time Crawley became involved with Jaron and that HCJFS was seeking permanent custody of him at that time. Twitty also argues that Crawley was less than sincere when she said that the child should have a relationship with his biological family. But matters as to the credibility of evidence are for the trial court to decide.[12]

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[10] *In re S.M.*, 5th Dist. No. 2009-AP070036, 2009-Ohio-6181, ¶9-10; *In re B.D.*, 4th Dist. No. 08CA3016, 2008-Ohio-6273, ¶30; *In re Halstead*, 7th Dist. No. 04 CO 37, 2005-Ohio-403, ¶39.
[11] See *In re Celecia G.*, 6th Dist. No. L-08-1261, 2009-Ohio-876, ¶26; *Wilkenson*, supra.
[12] *Myers v. Garner*, 66 Ohio St.3d 610, 614-615, 1993-Ohio-9, 614 N.E.2d 742; *Cas. Restoration Servs., LLC. v. Jenkins*, 1st Dist. No. C-060983, 2007-Ohio-5131, ¶10.

{¶20} Since competent, credible evidence supported the juvenile court's decision to award custody to Crawley, this court will not disturb it.[13] The juvenile court's decision was not so arbitrary, unreasonable, or unconscionable as to connote an abuse of discretion.[14] Consequently, we overrule Twitty's assignment of error and affirm the trial court's judgment.

Judgment affirmed.

CUNNINGHAM, P.J., and **MALLORY, J.,** concur.

Please Note:

The court has recorded its own entry this date.

[13] See *Needom*, supra, at ¶19; *Wilkenson*, supra.
[14] See *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 218, 450 N.E.2d 1140; *Wilkenson*, supra.